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Compliance-Focused Environmental Management System - Enforcement Agreement Guidance

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INTRODUCTION

SYNOPSIS

Since the late 1980s, civil multimedia compliance investigations conducted by the EPA National Enforcement Investigations Center (NEIC) have increasingly involved identifying causes of observed noncompliance. In many cases, the causes arise from inadequate environmental management systems (EMSs).[1] NEIC, in response, developed key elements for a compliance-focused EMS (CFEMS) model, which have been used as the basis for EMS requirements in many enforcement settlement agreements. The purpose of this guidance is to present those key elements and to show, through the "Model Settlement Agreement Language" [Appendix A], how the elements are typically incorporated into such agreements.

BACKGROUND

EPA has determined that properly designed and implemented EMSs can help promote positive environmental outcomes. The EPA Office of Enforcement and Compliance Assurance (OECA) supports the Agency's EMS policy, as expressed in the *USEPA EMS Position Statement*, to encourage the widespread use of EMSs across a range of organizations and settings, with particular emphasis on adopting EMSs to achieve improved environmental performance, including compliance, pollution prevention, and continual improvement in all areas, regulated and unregulated.[2]

OECA strongly encourages all organizations interested in focusing their EMSs on compliance to reference the CFEMS model as a potentially useful tool for supplementing existing EMS standards. However, OECA does not advocate that EMSs associated with voluntary EPA programs [e.g., National Environmental Performance Track (NEPT) and the Public Entity Environmental Management System Resource (PEER) Center/Local Government Program [3]], need to incorporate the *CFEMS* 12 elements. The *CFEMS* model has been developed for application in

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1 *The International Organization for Standardization (ISO) defines an EMS as "that part of the overall management system which includes organizational structure, planning activities, responsibilities, practices, procedures, processes and resources for developing, implementing, achieving, reviewing, and maintaining [the organization's] environmental policy." The EMS provides the structure by which specific activities related to environmental protection and compliance can be effectively and efficiently carried out.*

2 *The USEPA Position Statement on EMSs (EMS Position Statement; May 15, '02) is available at <http://www.epa.gov/ems/policy/position.htm>.*

3 *The PEER Center is supported by a cooperative agreement between EPA's Office of Water and the Global Environment and Technology Foundation. OECA has supported and provided funding for this program. The PEER Center has developed a national clearinghouse of EMS information with a focus on municipalities. In July 2002, EPA also designated eight Local Resource Centers around the country to provide assistance to local governments interested in adopting EMSs. The PEER Center website may be accessed at <http://www.peercenter.net/>.*

enforcement actions as injunctive relief for defendants with violations caused by management failures. Increasingly, however, we are learning that organizations, domestic and international, are consulting the *CFEMS* Guidance in enhancing their EMSs or voluntary EMS guidelines to better address internal and external compliance concerns. OECA encourages this as beneficial to both the implementing organizations and external stakeholders.

EPA's approach to EMSs in enforcement actions (as opposed to when EPA is promoting EMSs through voluntary programs, compliance assistance, or other non-enforcement means) is to focus on seeking the appropriate injunctive relief to return violators to compliance and minimize or eliminate the potential for repeat violations.

To achieve maximum benefit from the *CFEMS* elements, the overall EMS, in which they are incorporated, should embody the "plan, do, check, and act" model for continual improvement and address both regulated and unregulated aspects and impacts. Consequently, the *CFEMS Guidance* is intended to supplement, not replace, EMS standards such as ISO 14001 developed by voluntary consensus standards bodies. The *CFEMS* 12 elements support the broad, multimedia, beyond-compliance approaches that are the hallmarks of an effective, functioning EMS. They supplement existing EMS voluntary consensus standards by filling potential compliance-related gaps.

Settlement agreements that require EMS improvements typically require that the organization conduct an initial review of its current environmental management practices, followed by development of a comprehensive CFEMS that must be documented in a manual. The EMS manual must contain overarching policies, procedures, and programs that compose the facility-wide (or organization-wide) EMS framework, and describe respective management systems, subsystems, and tasks for the 12 key elements. After the organization has had sufficient time to implement and refine the EMS (usually 1 to 3 years), the agreement should require at least one EMS audit by an independent third-party auditor to verify implementation, with results reported to both the organization and EPA. However, additional audits, including compliance audits, are often required, as individual circumstances dictate. The audits also serve to promote further EMS improvement and more effective implementation.

The intended result of this approach is twofold: first, to have the organization develop an EMS that will both improve its compliance with applicable environmental requirements and, second, to improve its environmental performance through setting and achieving the organization's environmental targets and objectives.

The 12 key elements of a CFEMS addressed in this guide were compiled from a number of sources, as mentioned in previous revisions, and notably include: EMS assessment protocols developed by Deloitte and Touche LLP of San Francisco for the Global Environmental Management Initiative (1992) and an industrial client (1994); and ISO 14001 "Environmental management systems - Specification with guidance for use" (1996 and 2004).

The current revision involved expanding the Introduction to better describe the relationship of the CFEMS Guidance to EPA's overall EMS policy and its consistency with that policy, as well as revising the elements and the model settlement agreement language in Attachments A and B (new).[4]

COMPLIANCE-FOCUSED ENVIRONMENTAL MANAGEMENT SYSTEM ELEMENTS

1. Environmental Policy

a. This policy, upon which the EMS is based, must clearly communicate management commitment to achieving compliance with applicable federal, state, and local environmental statutes, regulations, enforceable agreements, and permits (hereafter, "environmental requirements"), minimizing risks to the environment from unplanned or unauthorized releases of hazardous or harmful contaminants, and continual improvement in environmental performance. The policy should also state management's intent to provide adequate personnel and other resources for the EMS.

2. Organization, Personnel, and Oversight of EMS

a. Identifies and defines specific duties, roles, responsibilities, and authorities of key environmental staff in implementing and sustaining the EMS (e.g., could include position descriptions and/or performance standards for all environmental department personnel, and excerpts from others having specific environmental duties, and regulatory compliance responsibilities).

b. Includes organization charts that identify units, line management, and other individuals having environmental duties and regulatory compliance responsibilities.

c. Includes ongoing means of communicating environmental issues and information among the various levels and functions of the organization, to include all persons working for or on behalf of the organization (e.g., on-site service providers and contractors who function as *de facto* employees), and for receiving and addressing their concerns.

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4 *The 12 elements are closely inter-related components of an EMS for which subsystems and procedures must be developed and fully integrated if the entire program is to be effective. They are usually included in settlement agreements as a complete group; however, individual elements may need to be modified to reflect site-specific conditions and circumstances.*

3. Accountability and Responsibility

a. Specifies accountability and environmental responsibilities of organization's managers, and managers of other organizations acting on its behalf for environmental protection and risk reduction measures, assuring compliance, required reporting to regulatory agencies, and corrective actions implemented in their area(s) of responsibility.

b. Describes incentive programs for managers and employees to perform in accordance with compliance policies, standards, and procedures.

c. Describes potential consequences for departure from specified operating procedures, including liability for civil/administrative penalties imposed as a result of noncompliance.

4. Environmental Requirements

a. Describes process for identifying potentially applicable environmental requirements; interpreting their applicability to specific operations, emissions, and waste streams; and effectively communicating those applicable environmental requirements to affected persons working for or on behalf of the organization.

b. Describes a process for developing, implementing and maintaining ongoing internal compliance monitoring to ensure that facility activities conform to applicable environmental requirements. Compliance monitoring shall include inspections and measurements, as appropriate.

c. Describes procedures for prospectively identifying and obtaining information about changes and proposed changes in environmental requirements, and incorporating those changes into the EMS (i.e., regulatory "change management").

d. Describes a procedure for communicating with regulatory agencies regarding environmental requirements and regulatory compliance.

5. Assessment, Prevention, and Control

a. Identifies an ongoing process for assessing operations, for the purposes of preventing, controlling, or minimizing reasonably foreseeable releases, environmental process hazards, and risks of noncompliance with environmental requirements. This process shall include identifying operations and waste streams where equipment malfunctions and deterioration, and/or operator errors or deliberate malfeasance, are causing, or have the potential to cause: (1) unplanned or unauthorized releases of hazardous or harmful contaminants to the environment, (2) a threat to human health or the environment, or (3) noncompliance with environmental requirements.

b. Describes process for identifying operations and activities where documented operating criteria, such as standard operating procedures (SOPs), are needed to prevent noncompliance or unplanned/unauthorized releases of hazardous or harmful contaminants, and defines a uniform process for developing, approving and implementing the documented operating criteria.

c. Describes a system for conducting and documenting routine, objective, self-inspections by department supervisors and trained staff, especially at locations identified by the process described in (a) above, to check for malfunctions,

deterioration, worker adherence to operating criteria, unusual situations, and unauthorized or unplanned releases.

d. Describes a "management of change" process to ensure identification and consideration of environmental requirements, the environmental aspects/impacts, and potential operator errors or deliberate malfeasance during planning, design, and operation of ongoing, new, and/or changing buildings, processes, equipment, maintenance activities, and products.

6. Environmental Incident and Non-compliance Investigations

a. Describes standard procedures and requirements for internal and external reporting of environmental incidents and noncompliance with environmental requirements.

b. Establishes procedures for investigation, and prompt and appropriate correction of noncompliance. The investigation process includes root-cause analysis of identified problems to aid in developing the corrective actions.

c. Describes a system for development, tracking, and effectiveness verification of corrective and preventative actions.

7. Environmental Training, Awareness, and Competence

a. Identifies specific education and training required for organization personnel or those acting on its behalf, as well as process for documenting training provided

b. Describes program to ensure that organization employees or those acting on its behalf are aware of its environmental policies and procedures, environmental requirements, and their roles and responsibilities within the environmental management system.

c. Describes program for ensuring that personnel responsible for meeting and maintaining compliance with environmental requirements are competent on the basis of appropriate education, training, and/or experience.

d. Identifies training on how to recognize operations and waste streams where equipment malfunctions and deterioration, and/or operator errors or deliberate malfeasance, are causing, or have the potential to cause: (1) unplanned or unauthorized releases of hazardous or harmful contaminants to the environment, (2) a threat to human health or the environment, or (3) noncompliance with environmental requirements.

8. Environmental Planning and Organizational Decision-Making

a. Describes how environmental planning will be integrated into organizational decision-making, including plans and decisions on capital improvements, product and process design, training programs, and maintenance activities.

b. Requires establishing, on an annual basis, written targets, objectives, and action plans for improving environmental performance, by at least each operating organizational subunit with environmental responsibilities, as appropriate, including those for contractor operations conducted at the facility, and how specified actions will be tracked and progress reported. Targets and objectives must include actions that reduce the risk of noncompliance with environmental requirements and minimize the

potential for unplanned or unauthorized releases of hazardous or harmful contaminants.

9. Maintenance of Records and Documentation

a. Identifies the types of records developed in support of the EMS (including audits and reviews), who maintains them and, where appropriate, security measures to prevent their unauthorized disclosure, and protocols for responding to inquiries and requests for release of information.

b. Specifies the data management systems for any internal waste tracking, environmental data, and hazardous waste determinations.

c. Specifies document control procedures.

10. Pollution Prevention

a. Describes an internal process or procedure for preventing, reducing, recycling, reusing, and minimizing waste and emissions, including incentives to encourage material substitutions. Also includes mechanisms for identifying candidate materials to be addressed by the pollution prevention program and tracking progress.

11. Continuing Program Evaluation and Improvement

a. Describes program for periodic (at least annually) evaluation of the EMS, which specifies a process for translating assessment results into EMS improvements. The program shall include communicating findings and action plans to affected organization employees or those acting on its behalf.

b. Describes a program for periodic audits (at least annually) of facility compliance with environmental requirements by an independent auditor(s). Audit results are reported to upper management and instances of noncompliance are addressed through the process described in element 6 above.

12. Public Involvement/Community Outreach

a. Describes a program for ongoing community education and involvement in the environmental aspects of the organization's operations and general environmental awareness.

APPENDIX A

MODEL SETTLEMENT AGREEMENT LANGUAGE FOR EMS IMPROVEMENTS
(7 pages)

MODEL SETTLEMENT AGREEMENT LANGUAGE FOR EMS IMPROVEMENTS

I. **Definitions** *[includes only those definitions that are specifically relevant to the EMS Improvement provisions]*

(a) "Action Plan" shall mean a comprehensive plan for bringing the Facility, as defined below, into full conformance with the EMS provisions specified in Paragraph 20 of this Consent Decree and fully addressing all Audit Findings identified in the Audit Report.

(b) "Audit Finding" shall mean a written summary of all instances of nonconformance with the provisions of Paragraph 20 of this Consent Decree noted during the EMS audit, and all areas of concern identified during the course of the audit that, in the EMS Auditor's judgement, merits further review or evaluation for potential EMS, environmental, or regulatory impacts.

(c) "Audit Report" shall mean a report setting forth the Audit Findings resulting from the audit of a Facility by the EMS Auditor, which meets all the requirements set forth in **Paragraph** 18 of this Consent Decree.

(d) "EMS Auditor" (change made throughout document) shall mean the independent third-party hired by the COMPANY and approved by EPA to conduct an EMS audit at the Facility, and who meets the requirements set forth in Paragraph 8 of the Consent Decree.

(e) "Contractor" shall mean [contractor one name], any successor to [contractor one name] located on facility, [contractor two name], any successor to [contractor two name] located at the Facility and contractors providing the following services at the facility: [list of specific services such as asbestos removal, demolition, painting, waste handling, including vacuum truck operators, and construction].

(f) "Corrective Measures" shall mean those measures or actions appropriate to bring a Facility into full conformance with the EMS provisions of Paragraph 5 of this Consent Decree.

(g) "Environmental Requirements" shall mean all applicable federal, state, and local environmental statutes and regulations, including permits and enforceable agreements between the COMPANY and the respective environmental regulatory agency(ies).

(h) "Facility" as used in the term "the Facility" or in the term "the COMPANY's Facility" shall mean the [COMPANY name], facility located at [facility address (e.g., 600 South Kipling Road in Denver, Colorado)].

(i) "EMS Consultant(s)" shall mean individual(s) meeting the requirements of Paragraph 1. below, who are selected and/or contracted to perform the Initial EMS Review and

Evaluation and/or assist the COMPANY in developing and implementing the EMS required by this Decree.

A. ENVIRONMENTAL MANAGEMENT SYSTEM

Initial Review

1. Within ten (10) days following entry of this Decree, the COMPANY shall provide to EPA, in writing, a notification with information concerning the person(s) or organization(s) identified by the COMPANY [the "Proposed EMS Consultant(s)"] to perform an evaluation (commonly called a "gap analysis") of any environmental management practices existing at the Facility (the "Initial Review and Evaluation"). The notification shall include: (a) the name, affiliation, and address of the Proposed EMS Consultant(s); (b) information demonstrating how each Proposed EMS Consultant(s) satisfies the EMS auditor qualification requirements of Table 1 in ISO 19011 (First edition, 2004-10-01) and has experience in developing and implementing an EMS; (c) information demonstrating that the team conducting the Initial EMS Review and Evaluation, in composite, has a working process knowledge of Facility or similar operations, and has a working knowledge of federal and state environmental requirements which apply to the Facility; and (d) evidence that the Proposed EMS Consultant(s) have at least a bachelor's degree from an accredited institution. The written notification submitted by the Company pursuant to this identify the schedule, including milestones, for conducting the Initial EMS Review and Evaluation.

2. EPA shall notify the COMPANY whether the Proposed EMS Consultants are qualified to perform the Initial Review and Evaluation relative to the standards set forth in the previous Paragraph. If EPA disapproves of the COMPANY's selection of any Proposed EMS Consultant, then the COMPANY shall submit to EPA the identity of different Proposed EMS Consultant(s) within thirty (30) days of the COMPANY's receipt of EPA's determination. Both the COMPANY's initial proposal and EPA's review of any different Proposed EMS Consultants shall be governed by **Paragraphs** 1 and 2 of this Decree until such time as EPA notifies the COMPANY that these initial EMS Consultants are qualified to conduct the Initial Review and Evaluation.

3. The COMPANY shall direct the qualified initial EMS Consultant(s) identified pursuant to **paragraph** 2 above to conduct and complete an Initial EMS Review and Evaluation for both COMPANY [and any on-site Contractor operations]. The designated EMS Consultant(s) shall review and evaluate the current environmental management practices and documents, using the elements set forth in **paragraph** 5. below. The purpose is to identify where systems or subsystems have not been adequately developed or implemented, or need to be enhanced, or new management systems or subsystems developed, to adequately address the twelve elements set forth in Paragraph 5, below. The COMPANY shall require the EMS Consultants to prepare a report of the results of the Initial Review and Evaluation and provide such report

to the COMPANY within 90 days of the date that EPA notified the COMPANY that the initial EMS Consultants are qualified to conduct the Initial Review and Evaluation. This report shall also be provided to EPA, upon request.

Comprehensive EMS Development and Implementation

4. Based on the Initial EMS Review and Evaluation results and other information, the COMPANY, assisted by the EMS Consultant(s), shall develop, implement, and maintain a Comprehensive EMS for the Facility addressing, at a minimum, the 12 key elements presented in Paragraph 5, below. The purpose of developing the Comprehensive EMS is to assist the COMPANY in its efforts to comply with federal, state and local environmental requirements, as well as to improve environmental performance.

5. EMS Manual. Within nine (9) months of the date that EPA notified the COMPANY that the EMS Consultant(s) is qualified to assist in development of a Comprehensive EMS, the COMPANY shall submit to EPA for review and approval, an "Environmental Management System Manual" which describes and documents the Comprehensive EMS and contains an EMS implementation schedule for each of the described systems and subsystems not already fully implemented. The Environmental Management System Manual shall describe or contain, as appropriate, overarching policies, procedures, and programs that compose the facility-wide EMS framework, and respective management systems, subsystems, and tasks for the following elements:

NOTES: **(a) The 12 key elements of the compliance-focused EMS are inserted here or referenced as an Appendix.**

(b) If the COMPANY chooses ISO 14001:2004 (second edition) as the EMS model, then this language will need be modified to reference that model AND the supplementary provisions included in Appendix B need to be incorporated into the settlement agreement.

6. EPA shall approve the EMS Manual if it satisfactorily addresses the CFEMS elements. Subsequent to EPA's initial approval of the EMS Manual, the COMPANY may revise and/or update the EMS Manual for the Facility. Substantial revisions or updates to the EMS Manual made by the COMPANY before the EMS Audit required by **Paragraph 16** below, shall be submitted to EPA for review and approval. Upon approval by EPA, the changes shall be incorporated into the EMS Manual. The EMS Manual as approved pursuant to this Paragraph shall be used during the EMS Audit as further described in **Paragraphs 8 to 19**, below.

7. Upon the COMPANY's receipt of EPA's approval of the EMS Manual, The COMPANY shall commence implementation of the EMS in accordance with the schedule contained in the EMS Manual. The COMPANY shall submit implementation status reports to EPA on a quarterly basis (i.e., reports due in

January, April, July, and October), beginning not earlier than sixty (60) days from receipt of EPA's approval of the manual. The status reports shall be due on the 15th day of the reporting month and every quarter thereafter until implementation is complete. [Status report details may be added here.]

EMS Audit

8. Within 1 year of EPA's approval of the EMS Manual, the COMPANY shall propose to EPA for approval, the selection of an independent EMS Auditor who (a) was not involved in the Initial EMS Review and Evaluation, (b) meets the qualification requirements of ISO 19011 (First edition, 2002-10-01); (c) has expertise and competence in the regulatory programs under federal and state environmental laws; and (d) has at least a bachelor's degree from an accredited institution. In addition, the Proposed EMS Auditor must be capable of exercising independent judgment and discipline in performing an EMS Audit at the Facility, as described in Paragraph 16, below. The EMS Auditor must have no direct financial stake in the outcome of the EMS Audit conducted pursuant to this Consent Decree. If the COMPANY has or has had any other contractual or financial relationship with the Proposed EMS Auditor, the COMPANY shall disclose to EPA such past or existing contractual or financial relationships when the Proposed EMS Auditor(s) is identified.

9. EPA shall notify the COMPANY whether the Proposed EMS Auditor meets the qualifications set forth in the previous Paragraph. If EPA determines that the Proposed EMS Auditor does not meet the qualifications set forth in the previous paragraph, or that past or existing relationships with the Proposed EMS Auditor would affect the EMS Auditor's ability to exercise the independent judgment and discipline required to conduct the EMS Audit, such Proposed EMS Auditor shall be disqualified and another EMS Auditor shall be proposed by the COMPANY within thirty (30) days of the COMPANY's receipt of EPA's determination.

10. Both the COMPANY's initial proposal and EPA's review of any different Proposed EMS Auditor shall be governed by **Paragraphs 8 and 9** of this Decree until such time as EPA notifies the COMPANY that the EMS Auditor(s) is qualified.

11. Within ten (10) business days of the date that EPA notifies the COMPANY of the approval of the Proposed EMS Auditor, the COMPANY shall retain the Proposed EMS Auditor, thereafter designated the "EMS Auditor," to perform an EMS Audit of the Facility as further described in **Paragraph 16** below.

12. THE COMPANY shall identify any and all site-specific safety and training requirements for the EMS Auditor(s), and shall ensure that the requirements are met prior to conducting the audit.

13. THE COMPANY shall require the EMS Auditor to prepare a draft EMS Audit Plan and provide it to THE COMPANY and EPA for review and comment. The audit criteria shall include the provisions set forth in **Paragraph 5**, the EMS Manual

approved pursuant to **Paragraph** 6 of this Decree, above, and any other EMS standards or criteria deemed appropriate by the COMPANY. The EMS Audit Plan shall provide for an evaluation of the adequacy of EMS implementation relative to the audit criteria, from top management down, throughout each major organizational unit at the Facility, and to identify areas of concern. The draft EMS Audit Plan shall be submitted within two (2) months after the EPA's approval of the EMS Auditor.

14. Within 30 days of receipt of EPA's comments the COMPANY shall direct the EMS Auditor to develop a final audit plan that incorporates EPA's comments which shall be followed during conduct of the EMS Audit performed pursuant to this Consent Decree. The COMPANY shall direct the EMS Auditor to concurrently submit the final EMS Audit Plan to EPA and the COMPANY upon completion. The audit shall be completed within 60 days of submission of the final EMS audit plan.

15. EPA shall approve the EMS Audit Plan if it satisfactorily addresses the elements of Paragraph 13.

16. Within sixty (60) days after the COMPANY's receipt of EPA's approval of the EMS The EMS Audit shall be conducted in accordance with ISO 19011 (First edition, 2002-10-01). The EMS Auditor shall assess conformance with the criteria specified in **Paragraph** 13 above, and shall determine the following:

    a. Whether there is a defined system, subsystem, program, or planned task for the respective EMS element
    b. To what extent the system, subsystem, program, or task has been implemented, and is being maintained
    c. The adequacy of each operation's internal self-assessment procedures for programs and tasks composing the EMS
    d. Whether the COMPANY is effectively communicating environmental requirements to affected parts of the organization, or those working on behalf of the organization
    e. Whether further improvements should be made to the EMS to better conform to the audit criteria
    f. Whether there are observed deviations from the COMPANY's written requirements or procedures
    g. Whether continual improvement is occurring

17 Designated representatives from EPA, the COMPANY, and other environmental regulatory agencies may participate in the EMS audit as observers, but may not interfere with the independent judgement of the EMS Auditor. The COMPANY shall notify EPA at least ten (10) days before the commencement of the on-site portion of the EMS Audit to designated regulatory contacts regarding audit scheduling in order to make arrangements for observers to be present.

18. EMS Audit Report - The COMPANY shall direct the EMS Auditor to develop and concurrently submit an EMS Audit Report to the COMPANY and EPA for the EMS

Audit as required by this Consent Decree, within sixty (60) days following the completion of the on-site portion of the audit. The EMS Audit Report shall present the Audit Findings and shall contain the following information:

a. Audit scope, including the period of time covered by the audit
b. The date(s) the on-site portion of the audit was conducted
c. Identification of audit team members
d. Identification of the COMPANY representatives and regulatory agency personnel observing the audit
e. The distribution for the EMS Audit Report
f. A summary of the audit process, including any obstacles encountered
g. Detailed Audit Findings, including the basis for each finding and each Area of Concern identified
h. Identification of any Audit Findings corrected or Areas of Concern addressed during the audit, and a description of the corrective measures and when they were implemented
i. Certification by the EMS Auditor that the EMS Audit was conducted in accordance with the provisions of this Decree.

19. If the EMS Auditor believes that additional time is needed to analyze available information or to gather additional information, the COMPANY may request that EPA grant the EMS Auditor such additional time as needed to prepare and submit the Audit Report. EPA's decision whether to grant additional time shall be final and unreviewable.

Follow-Up Corrective Measures

20. Audit Response and Action Plan. Upon receiving the Audit Report, the COMPANY shall review and evaluate the Audit Findings and any need for conducting a root cause analysis of the identified Audit Findings, and shall investigate all Areas of Concern. Within sixty (60) days of receiving the Audit Report for each Facility, the COMPANY shall develop and submit to EPA for review and comment a response to the EMS Audit Report, (the "Audit Response and Action Plan"). The Audit Response and Action Plan shall provide a response to the findings and areas of concern identified in the EMS Audit Report and provide an action plan for expeditiously bringing the Facility into full conformance with the EMS provisions in Paragraph 5 of this Decree and the EMS Manual, and fully addressing all Areas of Concern. The Audit Response and Action Plan shall include the result of any root cause analysis, specific deliverables, responsibility assignments, and an implementation schedule for the identified actions and measures, including those that may have already been completed.

21. Final Audit Response and Action Plan - EPA will provide comments on the Audit Response and Action Plan and the COMPANY shall, within thirty (30) days of receipt of EPA's comments on the Audit Response and Action Plan, submit to EPA a Final Audit Response and Action Plan.

22. After making any necessary modifications to the Audit Response and Action Plan based on EPA comments, if any, the COMPANY shall implement the Audit Response and Action Plan in accordance with the schedules set forth therein.

23. Certification of EMS Implementation

    a. Within 10 days after completion of an EMS Audit in which no instances of nonconformance with the EMS Standard were found at the respective audited Facility, the COMPANY shall submit a Request for Certification of EMS Implementation to the EMS Auditor. Within ten (10) days after the receiving the certification request, the EMS Auditor shall issue to The COMPANY a Certification of EMS Implementation for the respective Facility, indicating that the EMS is fully implemented and conforms to the EMS Standard.

    b. Alternately, within 10 days after completion of actions or measures identified in the Final Audit Response and Action Plan, The COMPANY shall submit to the EMS Auditor a Request for Certification of EMS Implementation.

    c. As soon as practicable, but in no event later than 30 days after it has received the certification request pursuant to Subparagraph b. of this Paragraph, the EMS Auditor shall, as necessary, reinspect the respective Facility (i.e., conduct a "Certification Review") and submit to the COMPANY a written statement identifying those Audit Findings which have been addressed and any which have not, including an explanation describing the failure to address or correct, as appropriate, any Audit Findings. The COMPANY shall use its best efforts to address in a timely manner any outstanding Audit Findings identified during the Certification Review.

    d. When the EMS Auditor concludes that all Audit Findings have been addressed at the respective Facility, the EMS Auditor shall issue to the COMPANY a Certification of EMS Implementation for the respective Facility, indicating that the EMS is fully implemented and conforms to the EMS Standard.

    e. Within ten (10) days of receipt, the COMPANY shall submit a copy of each Certification of EMS Implementation to EPA.

APPENDIX B

SUPPLEMENTARY REQUIREMENTS FOR ISO 14001-2004 (second edition)
(3 pages)

SUPPLEMENTARY REQUIREMENTS FOR ISO 14001-2004 (SECOND EDITION)

4.3.1 Environmental Aspects

Add new second paragraph after "b" as follows:

Consistent with 4.5.3, the aspects/impacts assessment carried out pursuant to this section 4.3.1 shall specifically include, but not be limited to, identifying activities, products, or services where equipment malfunctions and deterioration, operator errors or deliberate malfeasance are causing, or have the potential to cause: (1) unplanned or unauthorized releases of hazardous contaminants to the environment, (2) a threat to human health or the environment, or (3) noncompliance with legal requirements.

4.3.2 Legal and Other Requirements

Add new subsections as follows:

(c) To communicate those requirements to affected organization personnel or those acting on its behalf (i.e, those who function as *de facto* employees). Information about applicable legal requirements shall be used to plan, develop, and implement ongoing routine evaluation of compliance, consistent with 4.5.2, to ensure that the organization's activities conform to those requirements

(d) For prospectively identifying and obtaining information about changes and proposed changes in legal requirements, and incorporating those changes into the EMS (i.e., regulatory "change management")

(e) For communicating with regulatory agencies regarding legal requirements and regulatory compliance .

4.3.3 Objectives, Targets, and Programme(s)

To end of second paragraph add:

Targets and objectives shall include, where appropriate, actions which reduce the risk of noncompliance with legal requirements and minimize the potential for unplanned or unauthorized releases.

4.4.1 Resources, Roles, Responsibility and Authority

Add to end of first paragraph as follows:

Management shall integrate environmental planning into organizational decision-making, including plans and decisions on capital improvements, product and process design, training programs and maintenance activities.

4.4.2 Competence, Training, Awareness

Add to end of first paragraph

This requirement shall also extend to any person within the organization or acting on its behalf whose activity has the potential to cause environmental regulatory noncompliance.

4.4.3 Communication

Replace opening paragraph and subsection as follows:

With regard to its environmental aspects, compliance with legal requirements and environmental management system, the organization shall establish and maintain procedures for:

(a) An ongoing means of internal communication regarding environmental issues and information among the various levels and functions of the organization, to include all organization personnel and those working on its behalf, and a means for receiving, documenting, and responding relevant communication from those individuals

Add new subsection as follows:

(c) As appropriate, implementing and maintaining security measures to prevent unauthorized disclosure of environmental management system information (including audits and reviews) and documentation, which shall include protocols for responding to inquiries and requests for release of information.

4.4.6 Operational Control

Add new subsections as follows:

(d) Conducting and documenting routine, objective, self-inspections by supervisors and trained staff to check for malfunctions, deterioration, worker noncompliance with operating criteria, unusual situations and unplanned or unauthorized releases.

(e) Developing, implementing and maintaining a "management of change" procedure to incorporate identification and consideration of legal requirements and environmental aspects during the planning and design of new and/or changes to buildings, operations, processes, equipment, maintenance activities, and products.

4.4.7 Emergency Response and Preparedness

Add to end of first paragraph

The procedures shall address internal and external reporting of environmental incidents and noncompliance with legal requirements.

4.5.2.1 Evaluation of Compliance

Add new paragraphs following the first paragraph as follows:

The compliance evaluations shall include:

(a) A compliance audit conducted at least annually, by an auditor(s) independent of the facility being audited. Evaluation results are reported to senior management and nonconformities (i.e., instances of noncompliance) are addressed through the process developed pursuant to element 4.5.3, below. The organization's annual compliance audit workplan, including any schedule, shall be based on the legal requirements applicable to the evaluated facility, and the results of previous audits.

(b) Conducting and documenting routine, objective, self-inspections by supervisors and trained staff.