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Regulating Small Business Facilities—The Environmental Results Program

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For the past several years, the states of Massachusetts, Delaware, Tennessee, Rhode Island, and Florida, as well as several other states, have worked with business sectors to provide compliance assistance that enables facilities to certify their compliance with environmental laws. Massachusetts coined the phrase Environmental Results Program (ERP) to describe this self-certification initiative. This is the second *ECOStates* article on ERP; the first article appeared in the Summer 2001 edition. ERP incorporates inspections and performance measurement to ensure that business' certifications are accurate and that environmental performance has improved.

After six years, the results are in, and the news is—the program works for small businesses. At a recent ERP meeting, George Gardner, Gardner Foreign Auto Parts, Pompano Beach, Florida, explained why: "Small business owner/operators want to do the right thing [environmentally], if we only know how. We need it to be simple and easy to understand. We want to protect our [real estate] investment and protect the environment, too. We have grandchildren who we want to enjoy the same environment as we have. ERP looks good, let's try it."

The U.S. Environmental Protection Agency (EPA) came to that same conclusion in late 2000. It reviewed nearly 50 innovations it had been working on with states, industry, and communities, and concluded that ERP was one of the best and was ready for diffusion. For the past three years, EPA has been working with states to encourage their adoption of ERP. EPA has sponsored a series of state-to-state meetings to discuss ERP application issues for various business sectors. The agency has created several ERP communication documents and established a partnership with the Massachusetts Department of Environmental Protection (MA DEP). Several EPA headquarters and regional offices are partnership members.

When it originally created ERP, MA DEP applied this approach to three small-business dominated sectors—dry cleaners, photo processors, and printers. With assistance from trade associations and other interested parties, MA DEP designed ERP workbooks that explain regulatory requirements, alternative pollution prevention approaches, and best management practices in a plain-language, business-oriented way. For facilities desiring a 'hands-on' approach, MA DEP held workshops throughout the state so that business owners, operators, and workers could attend and hear about the system.

What makes a self-certification system work is linking it to technical assistance and performance measurement. Inspectors check the state of compliance—the baseline—in randomly se-

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lected facilities prior to ERP implementation; then inspectors visit a different set of facilities following ERP implementation, conducting follow-up and enforcement, if necessary, and the results are compared for a statistically valid look at performance improvement.

Over the past three years, 10 states have begun to implement the ERP approach to address environmental concerns across eight business sectors. This article highlights ERP projects in five states that use mandatory or voluntary approaches. Some projects use a voluntary approach to help facilities address a mandatory permitting requirement. ERP projects use various aliases—Green Yards Program, Compliance Certification Pilot Program, Auto Body Certification Project, or Underground Storage Tank Compliance Program. Regardless of the name, the approach is the same—building a sustainable, business-friendly process that is cost effective for both states and businesses, and protects the environment.

Massachusetts—ERP to STAR

ERP has significantly increased the number of Massachusetts companies operating within the state's regulatory system, and these companies are achieving results that meet or exceed environmental standards. In some small business groups, before ERP, 80 percent of the companies were "flying under MA DEP's radar screen." Today, 98 percent are actively working with MA DEP to protect the environment. Taken together, their collective actions are delivering huge environmental benefits. Dry cleaners have prevented more than 22 tons of perchloroethylene from entering the air. Photo processors are now recovering more than 98 percent of the toxic silver they use. And, by making just one solvent substitution, printers have reduced volatile organic compound emissions by 8,000 pounds.

> "ERP has thrived in Massachusetts because it delivers real results: a cleaner environment, a better business climate, and more efficient government."
> *—MA DEP Commissioner Robert Golledge*

ERP tools—easy-to-read workbooks, annual compliance self-certification, and an industry-specific scoring system to measure environmental performance across whole sectors—have the adaptability, together or in any combination, to address a wide range of environmental and compliance shortcomings across diverse groups of pollution sources. Recently, for example, MA DEP has used ERP tools to improve compliance and spur better environmental performance by gas stations with vapor recovery systems, as well as facilities with small boilers and/or industrial wastewater holding tanks.

The adaptability of ERP tools doesn't end there. MA DEP has seen in the success and versatility of ERP tools the potential for progress even during difficult budget times. Despite resource constraints, existing and emerging environmental challenges across Massachusetts have continued to grow.

It is said that necessity is the mother of invention, and in this case, necessity has led to the need to expand ERP. MA DEP is currently in the process of evaluating more than 20 sectors, representing over 40,000 Massachusetts facilities, for partial or full application of a new approach based on ERP. MA DEP has designed a formal, systematic, and information-driven reconnaissance methodology to better focus limited agency resources on the most pressing environmental problems. MA DEP is conducting its reconnaissance based on five key guiding principles called Strategic Targeting, Assessment, and Response (STAR):

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- The most significant environmental priorities and risks should be identified and addressed;
- Pollution sources and activities that contribute most to those risks should be identified, brought into compliance, and kept there;
- Pollution sources and activities that contribute less to those risks should be identified so that an appropriate level of oversight can be determined;
- Compliance should be promoted throughout the regulated community by maintaining an agency presence; and
- Stakeholders should be involved in this process.

Under this conceptual model, MA DEP is taking a fresh look at the most pressing environmental problems, and the groups of pollution sources and activities that contribute most to those problems. The agency will then select key environmental indicators, set clear and measurable performance goals for the identified groups, and evaluate their current performance levels.

"This type of approach affords an excellent opportunity for a small state with limited resources to reach out to an otherwise unregulated small business sector with a results-based compliance assistance program. It provides the motivation for these small businesses to come into compliance in a non-threatening, supportive manner."
—DNREC Secretary John Hughes

If a group's performance meets or exceeds environmental performance goals, MA DEP will consider whether ERP or another streamlined regulatory approach will achieve comparable results. For a group falling short of performance goals, the agency will identify the specific root causes and respond strategically to improve the group's performance. MA DEP will look to ERP as a primary means of ensuring that limited state resources are deployed as efficiently as possible and industry performance achieves the desired results.

MA DEP will continue to look for groups in which poor performance contributes to significant environmental problems, and the extent to which ERP can be applied more broadly across the Department as the most efficient means of solving these problems.

During the upcoming year, MA DEP will look at six sectors. Candidates include biotechnology facilities, solid waste transfer stations, small engine and turbine power generators, dental offices, gasoline stations with vapor recovery systems, and photo processors. For each sector, MA DEP will either start or build on previous work to set performance indicators and evaluate and adjust, as needed, its oversight, incentive, and compliance strategies to maximize program results and resource efficiencies.

The Delaware Auto Body Self-Certification Program—Regulating an Unregulated Sector

Key to establishing a successful compliance assistance program is recognizing the needs and environmental capabilities among business sectors. With this concept in mind, the Delaware Department of Natural Resources and Environmental Control (DNREC) is implementing an Auto Body Self-Certification Program with assistance from an award though the EPA State Innovation Grant Program.

Traditionally, Delaware auto body shops have not been aware of their environmental requirements. Non-compliance problems for these facilities cross all environmental media—air, water, and waste. Delaware auto body shops

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are primarily small businesses that do not have the resources to research and understand complex environmental regulations. It is estimated that there are approximately 300 auto body shops statewide.

The Delaware Certification Program will encourage auto body shops to go beyond compliance. The intended outcome—compliance assurance, pollution prevention, and environmental protection—will be achieved through an education and self-audit process. By using the self-assessment checklist and workbook, facilities/shops will ultimately certify compliance with environmental regulations. This approach should ease the transition of a sector predominantly uneducated with respect to regulations to one aware of its environmental requirements and regulation by DNREC.

The Certification Program will help Delaware auto body shops understand their future permitting requirements. The intent is to change the culture of the permitting process from an overly burdensome, disruptive, or punitive regulatory process to one that is less burdensome and user friendly. To further ensure regulatory compliance, DNREC is developing a source category general state permit for its auto body sector.

The Certification Program is voluntary. Several incentives are being investigated to encourage participation. Examples of these incentives include penalty mitigation, a reduced inspection rate, a reduced permit fee, and a recognition program for those shops that participate.

The Certification Program is being developed in three phases over a two-year period. The program started in March 2003, and the state expects to complete it in early 2005. Delaware is modeling its Certification Program after similar ERP projects in Massachusetts, Rhode Island, Maryland, Florida, and the District of Columbia. DNREC has been networking with these states to share concepts and information.

Tennessee—Regulating UST Owner/Operators

The Tennessee Division of Underground Storage Tanks (TDUST) is one of many agencies that compose the Tennessee Department of Environment and Conservation (TDEC). Serious budget issues and poor regulatory understanding on the part of the underground storage tank owner/operators have led the department to look for ways to improve the effectiveness of its programs. TDUST started working with EPA in June 2002 to adapt ERP for use in the underground storage tank sector.

By collecting and statistically analyzing data gathered with ERP tools, TDUST will be able to measure and monitor its efforts on a yearly basis as well as utilize this data to focus its resources where they are needed most. Data will be collected from self-audit inspections as well as on-site inspections. This data can then be analyzed to determine whether efforts are improving the compliance of tank owners and operators, as well as monitor changes in compliance across the state. Another benefit of ERP is the education component. The UST ERP workbook will educate owner/operators about their regulatory requirements in plain language and better familiarize them with their facilities during self-audit inspections. These mandatory self-audit inspections will reinforce their personal responsibility by making the owner/operators understand and be accountable for the compliance status of their facilities.

Since starting this initiative, TDUST has identified environmental business practice indicators, completed self-audit inspection questions, and developed red flags that will indicate

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when there may be a problem with an UST facility. TDUST is taking steps to automate ERP data entry functions and create a database that will help analyze this data. This initiative will not only allow the ERP tools to provide better quality standardized data and analysis but will also create an exchange format that can easily be shared with the EPA and other state agencies. TDUST is slated to host the first ERP UST Workshop on November 14, 2003.

In general, TDEC believes ERP will strengthen its UST program to address current issues, such as inadequate data collection and lack of regulatory understanding by Tennessee UST owner/operators. The educational component of ERP, when reinforced by annual self-certification inspections, should significantly increase UST owner/operator environmental awareness and responsibility, while improving compliance assurance statewide. The combination of these efforts, likewise, should reduce the risk and cost of future UST environmental cleanups in Tennessee.

Rhode Island ERP Multi-sector Applications

In 2002, the Rhode Island Department of Environmental Management (RI DEM) launched two ERP projects, one for auto body shops and the other for underground storage tank (UST) owner/operators.

After several years of in-house development, the Rhode Island Auto Body Certification Program was started in late 2002 as a voluntary initiative affecting nearly 400 facilities. The project was designed to improve compliance with environmental and occupational health standards in a previously under-regulated small business industry sector with significant environmental impacts.

The Rhode Island Certification Program is the first regulatory and assistance partnership involving state environmental and health departments, a state university, and a vocational training institution. The program leverages scarce resources, reaches a substantially higher segment of the regulated sector, and requires relatively less effort by the regulated community than traditional permitting and enforcement programs.

To date, the program has produced some significant results. More than 50 percent of the targeted facilities returned their certification forms. Several companies acknowledged multiple compliance violations. Initial evaluation of these results suggests that 285 violations at 165 facilities were identified and are being addressed.

There are numerous examples of compliance improvements being taken by Rhode Island auto body shops under this program: facility modifications to improve vehicle wash water management, purchase and use of solvent recyclers; contingency procedures/emergency plan development; purchase and use of technologies that prevent the release of (and reduce worker exposures to) metal-bearing sanding dust; worker environmental/health and safety training; and elimination of the use of EPA and Occupational Safety and Health Administration regulated carcinogen methylene chloride (as a paint stripper).

Rhode Island launched its UST Compliance Program in the fall of 2002. Approximately 750 facilities will be regulated under this program.

Stakeholder participation is an important part of an ERP. As a first step in the development process, RIDEM established an UST Stakeholder Committee to help guide the process. A draft workbook and accompanying checklist is now being tested by a subgroup of the stakeholder committee.

The UST Compliance Program will be mul-

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timedia. In addition to Resource Conservation and Recovery Act (RCRA) UST requirements, the program will incorporate Stage I and Stage II vapor recovery regulatory requirements. A longer-term goal is to include other multimedia components for waste oil management; hazardous waste management, storm water best management practices, and waste tire recycling requirements.

"The multimedia approach provides a win/win for the facility and the department by gaining significant efficiencies and reduced costs for both. The facility saves by having all regulatory requirements in one easy-to-read document, and the department saves by reducing media inspections to one multimedia review."
—RIDEM Director Jan Reitsma

Florida—Compliance Certification for Small Business

The Florida Department of Environmental Protection (FDEP) has launched two compliance certification programs over the past several years. Both certification programs are focusing on business sectors that have historically low compliance rates.

Almost 50 percent of the Conditionally Exempt Small Quantity Hazardous Waste Generators in Florida are in the auto repair sector. Since these 12,000 facilities are inspected less frequently than larger hazardous waste generators, this sector was ideal for piloting a compliance certification program.

In 2001, DEP initiated the Compliance Certification Pilot Program (CCPP) for auto repair facilities in the 35 northern counties of the state to establish a compliance "baseline" for this sector. The CCPP includes about 2,000 facilities.

An initial pre-pilot inspection of about 170 randomly selected facilities was conducted in 2002 to determine a baseline performance measure for the pilot. About 80 percent of these inspected facilities were found to be out of compliance. The majority of the violations were a result of failure to comply with RCRA administrative requirements.

Workbooks and compliance certification packages identifying key environmental requirements were developed and distributed to all facilities within the pilot program area. Twenty-one evening workshops were held from Pensacola to Jacksonville between January and March 2003. The Florida Chamber of Commerce was enlisted to assist FDEP in providing detailed technical assistance to auto repair facilities in the workshops.

A number of important electronic tools were developed to augment eventual statewide expansion of the compliance certification: an on-line certification submission portal; Oracle tables and forms for data entry, retrieval, and analysis; and an automated mailing system for bulk mail.

As the pilot program concludes, post-certification inspections are being conducted on a randomly selected group of 170 auto repair facilities. The results will be compared to the baseline pre-certification inspections to determine the effectiveness of the CCPP. When the analysis is completed later this year, decisions will be made on further rollout of the compliance certification program for auto repair facilities, auto salvage yards, and other similar regulated sectors.

Historically, Florida salvage yards have proven to be one of most difficult business sectors to bring into compliance. In a five-year period (1996–2001), FDEP inspectors in the Central Florida area found that less than 10 percent of the auto salvage yards inspected were in compliance. With limited inspection resources, a new approach was required to improve salvage yard compliance rates.

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Green Yards is the new approach. It is a voluntary program that provides salvage yards with an environmental training workshop, a user-friendly workbook, and multimedia self-certification modules. After a facility's completion and review of all the modules, FDEP inspectors conduct an on-site verification before certifying the facility as a Green Yard.

"Compliance certification is a proven method of improving compliance and environmental protection. We are bringing those benefits to Florida's citizens and to Florida's environment."
—FDEP Secretary David Struhs

With the full cooperation and assistance of the Florida Auto Dismantlers and Recyclers Association, the Green Yards Program was piloted in Orange County (Orlando) beginning in the summer of 2002. More than 80 percent of the county salvage yards signed a letter of intent to participate. Yards that chose not to participate will be inspected as part of the routine compliance inspection procedure for the FDEP District Office.

Improving Compliance Assurance a Common Goal among Co-regulators

ERP offers a very promising approach toward providing more effective compliance assurance. ERP is a data-rich innovation that can take advantage of some existing state environmental activities, as well as address troubling environmental problems, specifically those problems that affect small business sectors. Many states have technical or compliance assistance programs but may be uncertain about how well they are working. Likewise, many states promote the adoption of pollution prevention techniques and best management practices but are unsure if they are being used.

ERP gives states the tools to improve compliance assurance and to determine whether the tools have worked (and whether facilities' certifications are accurate) through inspection and statistical measurement. An ERP investment can save resources—for example, MA DEP found that fewer staff were required to maintain the program once start-up activities were completed. Further, once an ERP investment is made within a state program, such as Massachusetts and Rhode Island, it is easier to replicate this approach in other business sectors within the state.

As a growing number of states adapt ERP to address their most pressing problems, states can learn more quickly from one another—using already developed ERP materials to launch their own ERP project for that sector and providing each other with the benefit of their ERP experience. The cost savings and environmental benefits of ERP continue to be documented. With more state-to-state collaboration, along with EPA Headquarters and Regional office support, the appeal of this innovation as an effective means for improving environmental performance should become more widespread.

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