



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

December 30, 2021

Partner Agency Colleagues:

On September 28, 2021, the U.S. Environmental Protection Agency’s Office of Enforcement and Compliance Assurance (OECA) extended flexibilities to states, tribes, territories, and local agencies (hereafter referred to collectively as “partner agencies”) until December 31, 2021, to assist in meeting inspection¹ commitments during the COVID-19 public health emergency. In that letter, OECA committed to evaluate the need to extend the flexibilities further as we approached that date. After careful consideration, OECA has determined that, due to COVID-19’s continued impact on certain localities, there is a need to extend the flexibilities for adjusting inspection commitments an additional three months to March 31, 2022. At that time, we will re-evaluate whether further extension is necessary.

We recognize the strong efforts made by our partner agencies to overcome challenges to performing on-site inspections during these unprecedented times. We are aware that our partner agencies have conducted tens of thousands of compliance monitoring activities across multiple environmental programs, including traditional on-site inspections, remote off-site activities, and innovative hybrid combinations, over the past 21 months. Where possible, and when it is safe to do so, we expect that onsite inspections will be performed. Where COVID-19 rates in certain localities are high, however, and it is not safe to perform on-site inspections, we will continue to allow adjustments for off-site compliance monitoring activities to count towards a partner agency’s on-site inspection commitments under OECA’s Compliance Monitoring Strategies (CMSs) and grant workplans.

When adjustments to inspection commitments become necessary, we request that partner agencies follow the enclosed “Recommended Processes for Adjusting Inspection Commitments Due to the COVID-19 Public Health Emergency” (*see* Enclosure). These processes have not changed from previous guidance. As a reminder, please be mindful of the following:

- OECA continues to request that partner agencies keep track of inspections, where there is an authorized inspector on-site, separately from off-site compliance monitoring activities.
- Partner agencies should document off-site compliance monitoring activities in the appropriate EPA database of record, where practicable, or other reporting mechanism.²

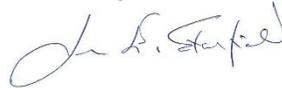
¹ The term “inspection” refers to on-site government compliance monitoring activities performed by an authorized inspector for the purpose of assessing compliance at a regulated entity. The term does not refer to other on-site activities such as those providing technical assistance, compliance assistance, or site assessments (e.g., Safe Drinking Water Act sanitary surveys; Comprehensive Environmental Response, Compensation and Liability Act site assessments.)

² Examples of other usual reporting mechanisms include compliance monitoring plans, end of year reports, Federal Insecticide, Fungicide, and Rodenticide Act and Toxic Substances Control Act grantee end of year narratives, etc.

- The recommendations in this letter are not intended to supersede specific direction provided by other EPA National Program Managers (NPMs) regarding compliance monitoring programs they oversee (i.e., Underground Storage Tank and Underground Injection Control programs).
- For State Review Framework reviews performed in federal fiscal year 2021 and beyond, OECA and regional Enforcement and Compliance Assurance Division Directors will work with partner agencies to make necessary adjustments to evaluate commitments where partner agencies utilize either the flexibilities described in this letter and its Enclosure or the existing flexibilities inherent in each CMS.

Thank you for your continued efforts to ensure compliance with our environmental laws during these challenging times. Please contact Anthony Miller (miller@anthony@epa.gov) at 303-312-7161 if you have questions regarding this letter in general or Chris Knopes (knopes.christopher@epa.gov) at 202-564-2337 for any questions concerning OECA's State Review Framework inspection metrics.

Sincerely,



Lawrence E. Starfield
Acting Assistant Administrator

Enclosure

cc: Environmental Council of States, Executive Director and Officers
Executive Directors of Program-Specific State Associations (Association of Clean Water Administrators, Association of American Pesticide Control Officials, Association of State and Territorial Solid Waste Management Officials, Association of Air Pollution Control Agencies, National Association of Clean Air Agencies)
EPA-Tribal Partnership Groups (Tribal Pesticide Program Council, National Tribal Caucus, National Tribal Water Council, National Tribal Toxics Council, National Tribal Air Association, Tribal Waste and Response Steering Committee)
Regional Enforcement and Compliance Assurance Division Directors and Deputies
National Program Managers (OW, OLEM, OAR, and OCSPP)
Office of Enforcement and Compliance Assurance, Office Directors and Deputies
Office of Compliance, Division Directors and Deputies

ENCLOSURE

Office of Enforcement and Compliance Assurance
Recommended Processes for Adjusting Inspection
Commitments Due to the COVID-19 Public Health Emergency
[Revised on December 30, 2021, Applicable through March 31, 2022]

There are a variety of processes used to establish and adjust inspection commitments that vary by program and sometimes by region. The U.S. Environmental Protection Agency's Office of Enforcement and Compliance Assurance (OECA), regional EPA Enforcement and Compliance Assurance Divisions (ECADs), and states, tribes, territories, and local agencies (hereafter referred to collectively as "partner agencies") should follow the appropriate processes for adjusting inspection commitments for OECA compliance monitoring programs. This is a summary of the processes that should be followed in adjusting inspection commitments:

1. For the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Toxic Substances Control Act (TSCA) compliance monitoring programs, OECA allocates funding to EPA regions, which then issue State and Tribal Assistance Grants for FIFRA and TSCA compliance monitoring activities. These inspection commitments are negotiated with the EPA regional project officer and placed in grant workplans. These grant workplans may be renegotiated with your regional project officer in accordance with grant guidance provided by the Office of Grants and Debarment ([see Frequent Questions about Grants and Coronavirus \(COVID-19\)](#)). More specifics on reporting adjustments to inspection commitments and the use of off-site compliance monitoring activities can be found in the appropriate EPA grant/cooperative agreement guidance.
2. Other cooperative agreement and grant programs funding inspection activities under the Safe Drinking Water Act, Clean Air Act (CAA), Clean Water Act (CWA), Resource Conservation and Recovery Act (RCRA), and the Underground Storage Tank programs are administered by other National Program Manager (NPM) offices. Partner agencies should contact their regional grant project officers who administer those grant programs for their guidance on how to address COVID-19-related impacts on programmatic grant commitments and/or the appropriate contact within each regional ECAD.
3. For compliance monitoring commitments established through the five OECA Compliance Monitoring Strategies (CMSs) (CAA Stationary Source Program, CWA National Pollutant Discharge Elimination System (NPDES) Permit Program, FIFRA, TSCA, and RCRA Subtitle C Hazardous Waste programs) ([see OECA's Resources and Guidance Documents for Compliance Monitoring Webpage](#)), OECA recommends that partner agencies discuss with the appropriate regional contact whether off-site compliance monitoring activities can count towards commitments for on-site inspections. Effective off-site compliance monitoring approaches can help maintain the integrity of programs and deter noncompliance during the COVID-19 public health emergency. Any agreements to adjust inspection coverage and frequency, or to count offsite compliance monitoring activities towards on-site inspection commitments because of the COVID-19 public health emergency, should be discussed with the appropriate regional contact (e.g., grant project officer) and documented by the partner agency. Please note that there are instances in which there is a statutory or regulatory inspection requirement reflected in the CMS goals (e.g., treatment, storage, and disposal facilities under RCRA Subtitle C and significant

industrial users under the NPDES Pretreatment Program) for which EPA does not have authority to grant flexibilities. Additionally, over time, the RCRA Subtitle C, CAA Stationary Source and NPDES CMSs have evolved to provide our partner agencies with flexibility to address local pollution and compliance concerns while maintaining national program integrity. OECA is not recommending that partner agencies submit an alternative compliance monitoring plan mid-course during the performance period to adjust their on-site inspection commitments under those CMSs based solely on the impact of the COVID-19 public health emergency. Rather, the need for offsite compliance monitoring activities to substitute for on-site inspections in the CMS plan should be discussed between partner agencies and the appropriate EPA regional contact at the time those adjustments are envisioned. Discussion forums and end- of-year reporting will provide an opportunity for each partner agency and EPA regional staff to discuss and document the adjusted compliance monitoring commitments that they implemented to maintain a robust compliance monitoring program given the challenges of the COVID-19 public health emergency.