

EPA AND STATE REGULATORY FRAMEWORK FOR EMS PILOT PROJECTS

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The growing use of environmental management systems (EMSs) is a significant development in environmental protection practices, especially with the development of voluntary standards for evaluating the quality of such systems, such as the ISO 14000 series. There is broad agreement that the use of these systems warrants careful study to assess their implications for future approaches to environmental protection. [EPA recently stated its view on the importance of research in its "Position Statement on Environmental Management Systems" (63 Fed. Reg. 12094, March 12, 1998)]. Accordingly, EPA and many states already are engaged in a variety of research efforts, including facility-level pilot projects.

The U.S. EPA and the undersigned states agree that a coordinated approach to these pilot projects will maximize the value of these efforts, and therefore agree to work together to evaluate the efficacy of EMSs as a means of achieving environmental results. We will do this first through establishing a national database to gather data from EMS pilots and common data gathering protocols. In addition, to facilitate state and federal EMS pilots, and to ensure consistency in our approach to these projects as regulators responsible for the administration of environmental laws, we agree to adhere to the following principles in all state and federal EMS pilot projects.

1. EMS pilot projects will take place in conformance with all applicable state and federal statutes, rules and regulations. Proposals to provide regulatory relief from federal laws or regulations in connection with a state project (including state regulations, implementing a federally authorized or delegated program) will be evaluated through the process in the EPA/ECOS Regulatory Innovation Agreement.

2. One aim of EMS pilots is to assess if EMSs result in continuous and improved environmental performance. A commitment to achieve a higher level of performance is not necessary but may be a component of some pilots.

3. The specific nature of innovative strategies and their application will be fully transparent so as to engender openness and accountability of all participants. EMS

pilot participants will not be allowed to claim a statutory or common law privilege as a basis for declining to submit data called for in the pilot projects or pilot project agreements. With respect to information in the database that is released to the public, EPA and States will take steps to ensure the confidentiality of participants and to protect confidential business information to the maximum extent permitted by law.

4. EPA will not increase its targeting or scrutiny of regulated entities basis on their participation in an EMS pilot project. EPA will exercise normal federal oversight with respect to state EMS pilot projects as with any other state environmental program. EPA retains the right to bring independent enforcement actions in appropriate circumstances against regulated entities that violate federally enforceable environmental requirements.

5. Any alternative approaches for reporting or monitoring in an EMS pilot project should be at least as reliable for enforcement purposes as those currently in practice.

6. Unless a state law limits a state agency's authority to obtain fines or penalties for specific violations, States will not agree in advance to forego fines or penalties for the following types of violations: criminal conduct, violations resulting in actual harm or/and imminent and substantial endangerment, repeat violations, or violations of a judicial or administrative order or consent agreement.

7. EPA and States should continue to exercise their authority to vary their inspection priorities based on factors such as likelihood of noncompliance and risk.

8. In the event that questions, misunderstandings or disagreements arise during the implementation and operation of the EMS pilot projects, EPA through the Office of Reinvention and the affected State or States will attempt to resolve issues arising under these principles speedily and to facilitate harmonious relationships among EPA and the States.

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