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Electronic Green Journal

Title

Environmental Compliance Primer for Senior Federal Managers

Permalink

<https://escholarship.org/uc/item/9874p9hn>

Journal

Electronic Green Journal, 1(15)

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Publication Date

2001-12-01

Peer reviewed

Environmental Compliance Primer for Senior Federal Managers

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Senior federal managers especially those who have federal facilities under their direction have the responsibility to ensure that activities occurring at these facilities comply with numerous federal, state, and local environmental requirements. This is especially significant during times of fiscal restraint when trying to justify expenditures for environmental compliance along with competing programs tied to organizational missions. Selected federal environmental statutes and Executive Orders are briefly reviewed and the possible consequences if they go unheeded. Actions such as the implementation of environmental management systems and environmental auditing programs are recommended to assist senior federal managers in successful environmental management and to minimize their environmental liability. Finally, suggested resources are given for further information on environmental management at federal facilities.

It is often beneficial to remind senior federal managers, and especially those who do not have the benefit of an environmental background, about why environmental compliance is important. This is important especially during periods of fiscal restraint because, like their counterparts in the private sector, senior federal managers must balance scarce resources among competing programs tied to their organization's missions. Senior federal managers must also realize that compliance with environmental laws is part of the business of government and is part of fulfilling their public trust responsibilities.

Environmental Requirements

Environmental requirements are a complex system of statutes, regulations, and guidelines. Federal agencies, just like private industry, are required to comply with numerous federal, state, tribal, and local environmental requirements. In addition, for federal agencies, environmental requirements may be established by Executive Order from the President (Environmental Protection Agency [EPA], 1999a).

Federal environmental laws allow states to develop their own programs to carry out the law. When the U.S. Environmental Protection Agency (EPA) has determined that a state program meets federal requirements, EPA approves that state's program. Such programs are called delegated or approved programs. Under this arrangement, the states apply the national standards and regulations by issuing and enforcing their own regulations and issuing

their own permits. In general, state governments carry out the bulk of environmental enforcement actions and perform the majority of environmental inspections. While senior federal managers are not expected to know the details of environmental laws and regulations, they are expected to ensure that facilities under their jurisdiction are in compliance. Environmental requirements that affect federal facilities range from federal statutes and their implementing regulations to state and local laws and ordinances. A federal agency cannot hope to meet its regulatory requirements without direct involvement of its senior management.

Federal Facilities and Their Operations

There are approximately 14,000 environmentally regulated federal facilities nationwide (EPA, 2000a, pp. 5-6). However, when discussing the entire community of federal facilities, it is important to recognize that not all federal facilities are owned and/or operated by the federal government. At many federal facilities or public lands other parties (for example, contractors, concessionaires, and other federal agencies) may perform these functions, that further complicate questions pertaining to jurisdiction. This poses additional concerns for senior federal managers. The range of federal facility operations across the federal government is vast. Some federal facilities may be engaged in large-scale manufacturing and industrial type activities. Others may be involved in activities such as vehicle fleet management, construction, building maintenance operations, scientific and medical research, material storage and shipment, and so forth. The diversity of such activities presents a broad range of environmental compliance issues.

Environmental Compliance and Budget

Environmental compliance is a measure of a federal facility's status with respect to the many federal, state, and local environmental requirements. Both the EPA and the states monitor federal facilities for environmental compliance through inspections. These inspections may cover only one environmental media (for example, air) and are called single-media inspections or they may involve multiple environmental media (for example, air, water, and hazardous waste) and are called multimedia inspections.

Whether it is a single-media or multi-media inspection, a routine facility inspection will usually include a physical inspection of the premises of the facility, review of records, inspection of equipment, obtaining samples, and a review of facility operations. Also, non-routine inspections may result from a suspected violation arising from a complaint, spill or release of a contaminant, or through information contained in required environmental

reporting or through lack of reporting.

A federal facility's environmental compliance status can vary according to specific environmental requirements. For example, a federal facility could be in compliance with air quality regulations, while at the same time out of compliance with hazardous waste regulations. In Fiscal Year 1999, both the EPA and the states conducted 27 multi-media inspections at federal facilities and 1,516 single media inspections nationwide (EPA, 2000b, pp. 4-7).

Federal agencies are under enormous pressure to cut spending and increase staff-to-management ratios. The up-front costs associated with environmental compliance projects may be difficult to justify to executive-level agency management. Also, they may not realize the costs associated with unexpected emergencies such as a chemical spill or a release of air contaminant. Coordination of environmental management in federal facilities is not only necessary for complying with federal, state, and local requirements but also for benefiting an agency's mission by keeping operations on schedule and maintaining good public relations with surrounding communities. This is very important because most environmental statutes authorize citizens to file a lawsuit against any party, including a federal agency, for alleged violations of a statute.

Enforcement

The EPA and the states have wide latitude when contemplating an enforcement response against a violator. EPA firmly believes that federal agencies and their facilities should be treated the same as the private sector. Therefore, federal agencies and their facilities are not immune to enforcement actions, which differ from one environmental law to another. They are subject to fines and penalties by EPA, state and local regulatory agencies for violations of environmental requirements. The levels of enforcement are described below beginning with the least in terms of enforcement gravity to the most severe (EPA, 1999a).

Informal response: These are administrative actions that are advisory, such as a notice of noncompliance or a warning letter. EPA advises the manager of a federal facility what violation was found, what corrective action should be taken, and by what date it must be corrected. Informal responses carry no penalty or power to compel actions, but if they are ignored, they can lead to more severe actions.

Formal administrative responses: These administrative actions are stronger enforcement tools, which may require the federal facility to take some corrective or remedial action within a specified period of time, to refrain from

certain behavior or to require future compliance. If a manager violates an order, EPA may go to U.S. Federal Court to force compliance.

Civil judicial responses: These are formal lawsuits brought in federal court by the U.S. Department of Justice (DOJ) at EPA's request. They are normally used against the more serious or recalcitrant violators of environmental laws or to seek prompt correction of imminent hazards. Civil judicial cases generally result in penalties and court orders requiring correction of the violation and specific actions to prevent future violations.

Criminal judicial responses: Criminal responses are used only when a manager or facility has knowingly and willfully violated the law. In a criminal case, the DOJ prosecutes an alleged violator in federal court, seeking criminal sanctions including fines and imprisonment. Criminal actions are often used to respond to flagrant and intentional disregard for environmental laws and deliberate falsification of documents or records.

Enforcement actions require a remedy to the violation, and in most cases EPA and states seek both a remedy and a penalty. These may result from either administrative or judicial cases, from a settlement or from a final decision in court, or through an administrative action. The remedy includes returning the violating facility to compliance and sometimes other remedial actions. Ultimately, the facility will be required to comply with the law. If the violation has not already been corrected, the facility is usually placed under a court ordered schedule, with severe penalties for failure to comply with the order (Sullivan, 1999).

When penalties are assessed they include sanctions intended to deter the violator from falling back into noncompliance. In some cases, the violator is permitted to carry out a Supplemental Environmental Project (SEP), which will yield environmental benefits partly offsetting the harmful effects of the violation (Sullivan 1999). However, many SEPs may incur costs that far exceed the resulting penalty. Finally, in criminal cases, the violator may be sentenced to imprisonment or placed on probation.

In Fiscal Year 1999, EPA took 59 enforcement actions that were issued or finalized against federal agencies and government contractors for environmental violations. Of these 59 actions, 22 were penalty orders and the penalties assessed totaled \$544,922 including an additional \$4.2 million in required SEPs that these agencies must perform (EPA, 2000b).

The courts are holding federal employees responsible for violating environmental statutes. These statutes may impose legal duties on supervisors and managers who, though far removed from day-to-day

operations, are ultimately responsible for compliance, and senior federal managers should be aware of this. In general, federal employees have no personal liability for their actions within the scope of their official duties as long as they did not intentionally violate an environmental law (Sullivan, 1999). However, the agency or federal facility may be subject to enforcement actions and penalties.

The DOJ has brought criminal proceedings against individual federal employees, including senior federal managers, because federal facility compliance efforts were insufficient, attitudes were inappropriate, and budgetary constraints were being used as excuses for noncompliance (Sullivan, 1999). Federal employees are not immune from criminal prosecution by virtue of their federal employment. As in all matters pertaining to law, senior federal managers should seek legal counsel within their respective agencies to respond to enforcement actions by EPA and states.

Highlights of Selected Federal Environmental Statutes and Executive Orders

The intent is not to provide a comprehensive analysis or listing of federal environmental statutes and Executive Orders but only to illustrate the breadth and variety of federal environmental statutes and Executive Orders. As previously mentioned, there are state and local regulations as well. Listed below are highlights of some selected major federal environmental statutes and Executive Orders (EPA, 1999a).

Selected Environmental Statutes

Clean Air Act. This Act gives the states primary responsibility for implementing air quality levels consistent with the National Ambient Air Quality Standards.

Clean Water Act. This Act provides for the control or prevention of discharging pollutants into surface waters. It addresses permits for wastewater discharge, spills and spill prevention, and storm water discharge.

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or commonly known as "Superfund." CERCLA regulates the release or threatened release of hazardous substances and environmental cleanup activities. Primarily a federal program, many states have enacted their own CERCLA programs.

Emergency Planning and Community Right-to-Know Act (EPCRA). EPCRA

concerns itself with emergency planning, emergency notification of releases, community-right-to-know requirements, and toxic chemical release inventories.

Endangered Species Act (ESA). ESA regulates the protection of threatened and endangered terrestrial and marine species, and prohibits the import, export, possession, or sale of such species.

Federal Facility Compliance Act. This Act which amended RCRA (see below), allowed state environmental agencies and EPA to impose civil penalties and administrative fines on federal facilities for violations of federal, state, and local solid and hazardous waste laws. Federal facilities were placed in the same position as the private sector for purposes of environmental enforcement.

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). FIFRA addresses the registration and application of pesticides approved for use by the Environmental Protection Agency.

Federal Land Policy and Management Act. This Act requires the regular inventory of public lands and their resources and the development of land-use plans to guide present and future use.

Hazardous Materials Transportation Act (HMTA). HMTA regulates the labeling, packaging, emergency response, and spill reporting provisions for hazardous materials in transit. Shippers must certify that they are in compliance with Department of Transportation regulations and that shipment of EPA-regulated hazardous wastes must be accompanied by a manifest.

Marine Mammal Protection Act. This Act prohibits the taking and import of marine mammals and marine products by people and vessels under U.S. jurisdiction unless a specific permit is granted.

National Environmental Policy Act (NEPA). NEPA requires federal agencies to prepare detailed environmental statements before commencing major actions (for example, building a dam).

Oil Pollution Act (OPA). OPA regulates oil spill emergency response plans; oil pollution spills, and establishes damages for oil spills into the water.

Pollution Prevention Act (PPA). PPA established pollution prevention as national policy where pollution should be prevented or reduced at the source; pollution that cannot be prevented should be recycled in an environmentally safe manner and disposal or other release into the

environment should only be employed as a last resort.

Resource Conservation and Recovery Act (RCRA). RCRA is the primary federal statute regulating the generation, transportation, treatment and disposal of solid and hazardous waste. Most of the enforcement authority under RCRA has been delegated to the states.

Safe Drinking Water Act (SDWA). SDWA addresses the protection of drinking water sources including monitoring of contaminants, such as lead, and permits for underground injection of wastewater.

Toxic Substances Control Act (TSCA). TSCA regulates chemical substances that are hazardous to human health and the environment. It addresses testing of chemical substances, national chemical inventory, premarket notification of chemicals, and hazardous substance restrictions (for example, polychlorinated biphenyls).

Wilderness Act. This Act established the National Wilderness Preservation System and limits the development and use of wilderness areas.

Selected Executive Orders (E.O.)

E.O. 12088: Federal Compliance with Pollution Control Standards. This order requires federal agencies to be in compliance with environmental laws and to cooperate with federal, state, interstate, and local agencies to prevent, control, and abate environmental pollution.

E.O. 12856: Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements. This order requires federal agency compliance with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 and the Pollution Prevention Act of 1990. The order also mandates that federal agencies practice pollution prevention strategies that promote source reduction.

E.O. 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. This order requires federal agencies to identify and address, as appropriate, any disproportionately adverse human health or environmental impact that federal programs, policies, and activities may have on minority populations and low-income populations.

E.O. 13148: Greening the Government Through Leadership in Environmental Management. This order requires agencies to implement compliance auditing programs and environmental management systems. It also established

agency goals to reduce the use of particular toxic chemicals, reduce the emissions of reported chemicals under EPCRA, and to use environmentally beneficial landscaping.

E.O. 13123: Greening the Government Through Efficient Energy Management. This order directs the federal government to improve its energy management and promote energy efficiency, water conservation, and the use of renewable energy products, and to help foster markets for emerging technologies.

E.O. 13149: Greening the Government Through Federal Fleet and Transportation Efficiency. This order requires the federal government to exercise leadership in the reduction of petroleum consumption through improvements in fleet fuel efficiency and the use of alternative fuel vehicles and alternative fuels.

To summarize, the purpose of presenting these numerous federal environmental statutes and Executive Orders is to illustrate that federal facilities may be affected by any number of them. It is important for senior federal managers to know that they exist and to know where they can obtain assistance either through agency technical staff or resources outside of the agency.

How Senior Federal Managers Can Minimize Their Environmental Liability

Senior federal managers must ensure that both they and their employees understand and comply with all applicable regulatory requirements, such as terms specified in permits and satisfying record keeping and reporting requirements. Ignorance of the law is no defense. Some managers wonder whether they would be wiser to remain ignorant of violations at their facility in order to avoid liability. The answer is no. It is important for senior federal managers to remember that the federal government is held to a higher standard and managers are required to seek out and prevent violations.

Although senior federal managers can delegate duties, they cannot delegate away their responsibility. Also, supervisors must actively supervise their employees to ensure performance of assigned tasks. Therefore, senior federal managers can help to minimize their environmental liability by working with their staff to promote the environment as everyone's responsibility.

Federal facilities can actually reduce operating costs, waste, and pollution through source reduction, recycling, and conserving resources. For example,

facilities can reduce both hazardous materials use and generation of hazardous waste. Facilities can prevent pollution by using fewer toxic materials and conducting more environmentally acceptable operations, increasing efficiency, and preventing accidents that would damage the environment. Many times, these program elements will overlap and interact with other activities (procurement, building management, fleet management, and so forth). Two of the more successful approaches to environmental management are the establishment of environmental management systems and environmental auditing programs.

Environmental Management Systems

An environmental management system (EMS) is a system that helps an organization develop, implement, achieve, and maintain a successful environmental policy (Department of Energy [DOE], & EPA, 1997: 2-15). All organizations, federal facilities included, have an obligation to preserve the environment and their natural resources. An EMS helps facilities meet this responsibility through planning, tracking, and continually improving environmental performance. It focuses on management practices and operates at facilities of widely varying size, complexity, and missions, whether they are offices, laboratories, ships, facilities, programs, or agencies (DOE, & EPA, 1997). An EMS substitutes a mechanism for continuous management improvement in place of crisis management.

The EPA developed a set of five management principles called the Code of Environmental Management Principles (CEMP) to provide federal agencies with a framework for developing EMSs at federal facilities (EPA, 1997, pp. 3-10). The CEMP is modeled on common elements found in a number of EMS standards but with a stronger emphasis on regulatory compliance and sustainable development, that is, the judicious use of resources to ensure their continued availability. The CEMP principles emphasize the following: (1) top management commitment, (2) ensure environmental compliance and the use of techniques for preventing pollution, (3) enable personnel to perform their functions consistent with agency mission and regulatory requirements, (4) ensure full accountability of environmental functions, and (5) measure environmental goals and improve environmental performance (EPA, 1997).

Federal agencies can choose to directly implement the CEMP Principles at the facility level or use another alternative environmental management system (for example, ISO 14001). A typical EMS includes the following elements (EPA, 1997):

- A policy supporting the EMS.

- Identifying operations that may impact the environment.
- Setting goals and targets to reduce such impacts.
- Tracking regulatory requirements.
- An environmental monitoring plan.
- Established procedures for identifying and correcting problems.
- Tracking mechanisms for continuous cycle of improvement.

All EMSs must be documented and rigorous in reviewing existing environmental programs and management systems. They should incorporate continuous management review on improving performance. At federal facilities, review of EMSs can point to potential problems such as inadequate environmental staff, lack of training, lack of environmental targets and goals, and communication and feedback problems. According to Coglianesi and Nash (2001, p. 225), "managers can use EMSs to achieve important benefits in terms of environmental performance and cost reduction." With a strong EMS in place these problems can generally be avoided and a federal facility can increase the effectiveness of its environmental program.

Environmental Auditing

Environmental auditing is the systematic, documented, periodic, and objective review of facility operations and practices related to meeting environmental compliance. It is based upon a set of standards or protocols (EPA, 1996). For example, the Environmental Assessment and Management (TEAM) Guide is a regulation based set of environmental protocols developed by the U.S. Army Construction and Engineering Research Laboratories and used by many federal agencies (Construction Engineering and Research Laboratories [CERL], 2001). The TEAM Guide combines the Code of Federal Regulations and management practices into checklists that show legal requirements and are supplemented by component-specific manuals (CERL, 2001). Both federal and state based-regulations are available through the TEAM Guide on a subscription basis. There are comparable commercial protocols available as well and auditors can use such protocols to evaluate a facility's compliance status.

Environmental auditing can help to provide a benchmark against which environmental programs can be measured. Environmental auditing programs should be comprehensive, systematic, and periodic. At a minimum, federal agencies should use an environmental auditing program to improve compliance with federal, state, and local regulations while carrying out their main mission. Environmental audit findings help to identify and address management, organizational, and operational issues that create inefficiency and allow environmental violations to occur.

Audit findings can be used to examine trends in facility compliance status and identify operational issues that allow environmental violations to occur. Finally, an established environmental auditing program not only improves on how a federal agency achieves compliance, but also facilitates moving beyond compliance into developing an agency-wide philosophy of environmental stewardship. The absence of either an environmental management systems or an environmental auditing program could indicate to regulatory agencies a lack of commitment on the part of agency management.

Towards Successful Environmental Compliance

There are several recommended actions that senior federal managers can do to promote successful environmental management and to ensure that an agency's facilities comply with environmental requirements. These recommended actions are as follows:

- Implement environmental management systems and environmental auditing programs.
- Provide environmental awareness training to all employees.
- Work closely with technical and legal staff.
- Correct violations as quickly as possible.
- Report promptly releases of contaminants and pollutants as required by law.
- Ensure that environmental programs are adequately staffed and have sufficient resources.
- If an accident occurs, be truthful, cooperate, and work in good faith to correct the problem.

Senior federal managers may also request EPA for technical assistance. For example, EPA has a program for Environmental Management Reviews (EMRs) at federal facilities. The EPA defines an EMR as "a review of an individual facility's program and management systems to determine the extent to which a facility has developed and implemented specific environmental protection programs and plans, which, if properly managed, should ensure compliance and progress toward environmental excellence" (EPA, 1999b: 48). The EMRs are technical assistance site visits that are made at a facility's request and are not enforcement inspections. They assist federal facilities in developing long-term environmental compliance by helping to build an environmental management program foundation. The EPA also offers similar technical assistance on request for pollution prevention opportunity site assessment visits.

Conclusion

Senior federal managers must maintain a proactive stance toward environmental management to ensure environmental compliance of facilities under their jurisdiction. They make daily decisions that affect an agency's compliance status. The results of these decisions determine the type and extent of environmental liabilities facing management today and in future years. The quality of these decisions will only be as good as the programs and training provided to agency personnel, and the level of commitment on the part of top-level agency management. Finally, environmental compliance of federal agencies and their facilities is part of the business of government. Senior federal managers must therefore exercise leadership in ensuring that compliance issues are addressed and that the resources are provided for in agency budgets as part of fulfilling their public trust responsibilities.

Additional Assistance on Environmental Management at Federal Facilities

Compliance Assistance Clearinghouse (<http://www.epa.gov/clearinghouse>). The Clearinghouse is a good source of contacts on compliance assistance for all sectors.

Environmental Audit information (<http://www.epa.gov/oeca/ccsmd/profile.html>). This website contains environmental audit protocols developed by EPA and other environmental audit information.

Environmental Management Systems (EMS) information (<http://www.epa.gov/ems>). This website contains good guidance and policy information about EMSs and links to CEMP and ISO14001.

Enviro\$en\$e (<http://es.epa.gov>). This website provides a wealth of information on pollution prevention, compliance and enforcement assistance, and innovative technology and policy options.

EPA Office of Environmental Compliance Assurance Federal Facilities Program (<http://www.epa.gov/oeca/fedgov/index.html>). This website contains information on federal facility compliance assistance and enforcement.

Federal Facilities Compliance Assistance Center (FedSite) (<http://www.epa.gov/fedsite>). FedSite is a virtual compliance assistance center providing information on environmental regulations, pollution

prevention, and policies affecting federal agencies.

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