

CP-34 / Using EMSs and Other Environmental Performance Improvement Tools in Department Programs

New York State Department of Environmental Conservation

DEC Policy

Issuing Authority: Erin M. Crotty, Commissioner

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I. Summary:

This policy identifies the use of environmental management systems (“EMSs”) as a desirable objective in the Department’s regulatory programs and directs the Pollution Prevention Unit to develop programs that promote the implementation of EMSs where feasible. While promoting EMSs, the Pollution Prevention Unit shall structure its programs to ensure that these systems are focused on better rates of compliance with environmental laws and regulations, pollution prevention, beyond compliance performance, and sustainable business practices.

This policy also identifies the use of EMSs as a desirable objective in the Department’s enforcement programs. This policy directs the Division of Environmental Enforcement to promote this and other environmental performance improvement tools and integrate the use of these tools with other divisions and programs.

In addition, this policy also identifies the use of EMSs as an effective tool to reduce the environmental impacts of the Department’s operations and directs the Division of Operations, in consultation with the Pollution Prevention Unit, to test and develop an EMS model that is appropriate for Department operations.

II. Policy:

A. Statement of Policy

The Department will promote voluntary development and use of EMSs, as appropriate, in its regulatory programs and will develop options for the use of various environmental performance improvement tools, as appropriate, in its enforcement programs. The Pollution Prevention Unit is also directed to develop an Environmental Leadership Program (“ELP”) that encourages the use of EMSs by developing incentives for those facilities that can demonstrate the implementation of pollution prevention, beyond compliance performance, or sustainable business practices as a result of their EMS adoption. In addition, the Division of Environmental Enforcement is directed to develop options the Department can use in its enforcement programs for the development and use of environmental performance improvement tools. The regulatory programs will actively assist in these efforts.

The Department will also utilize EMSs to mitigate the environmental impacts from its own facility development, operations, and maintenance activities. Accordingly, the Division of Operations, in consultation with the Pollution Prevention Unit, will develop policies and procedures to use EMSs, as needed, to better manage Department activities. These policies

and procedures will be guided, in part, by the experience gained in pilot efforts. Other Department divisions and programs will cooperate with these efforts.

B. Applicability

This policy applies to the Department's regulatory programs and to the exercise of its enforcement discretion in administrative and civil enforcement programs. This Policy does not apply to any matter that, as of the effective date of this document, has been resolved.

This document is not a final agency action and is intended as guidance. It does not create any rights, duties, obligations, or defenses, implied or otherwise, in any third parties. To the extent that this Policy may differ from the terms of the applicable enforcement response policies (including penalty policies) under media-specific programs, this document supercedes those policies.

C. Definitions

The following definitions apply to this document:

- 1. Environmental Requirements** - "Environmental Requirements" are federal, regional, state and local environmental statutory and regulatory requirements and the requirements of any permits, licenses, or administrative orders that were issued pursuant to those laws and regulations to which the facility is subject.
- 2. Environmental Management System** - An "Environmental Management System," or "EMS," is a set of management processes, procedures, and auditable performance objectives that allows a facility to continuously analyze, control, and reduce the environmental impact of its activities, products, and services by utilizing pollution prevention measures, performing beyond minimum compliance levels, or integrating sustainable business practices. The EMS shall be implemented in a manner that ensures full compliance with Environmental Requirements.
- 3. Environmental Performance Improvement Tools** - "Environmental performance improvement tools" are mechanisms that, at a minimum, are designed to maintain compliance with environmental requirements in a systematic manner. Examples of environmental performance improvement tools include:
 - a. environmental compliance audit ("ECA"): a process that, on a one-time basis, assesses the state of compliance with the environmental requirements pertaining to the facility/organization that is the subject of the audit and that brings the facility into full compliance with those Environmental Requirements,
 - b. environmental compliance system ("ECS"): a set of management processes and procedures that allows a facility to identify and maintain compliance with Environmental Requirements and changes to them, and
 - c. environmental enhancement system ("EES"): an ECS, or an EMS, augmented by specific actions to which the respondent subject to an enforcement action must commit to carry out in order to achieve specific reductions in the adverse environmental consequences associated with the conduct of respondent's activities and an associated management system that ensures successful implementation of all those actions and attainment of all the reduction commitments under the schedule(s)

set forth in the consent order in which the environmental enhancement system's development and implementation is found.

- 4. Environmental Leadership Program** - An "Environmental Leadership Program," or "ELP," is a voluntary program that is open to organizations with a commitment to compliance, that have a demonstrated success in improving their performance and preventing pollution, and that commit to continually improve their environmental performance. By design, such a program will recognize organizations that participate and provide them with incentives in order to motivate the adoption of EMSs, beyond compliance performance, pollution prevention, and sustainable business practices. The recognition and incentives shall be proportionate to the organization's existing level of performance and overall commitment to improving their performance. Such a program shall be open only to organizations that are able to document their improvements through the use of established performance measures and operate in an open and transparent manner.
- 5. Pollution Prevention** - "Pollution Prevention" includes practices that reduce or eliminate the creation of pollutants. This includes source reduction practices which reduce the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and reduce the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants. Pollution Prevention also includes other practices that reduce or eliminate the creation of pollutants through increased efficiency in the use of raw materials, energy, water, or other resources; or protection of natural resources by conservation.
- 6. Beyond Compliance Performance** - "Beyond compliance performance" is performance that either exceeds regulatory minimums or is focused on improvement in areas that have environmental impact that are not currently regulated.
- 7. Sustainable Business Practices** - "Sustainable business practices" are those practices which strive toward resource use that does not exceed the rate of replenishment, and waste generation at a pace that does not exceed the rate at which they can be reabsorbed by the environment. An organization should be focused on implementing sustainable business practices in order to provide customers with goods and services for living a satisfying life, while maintaining both a healthy balance sheet and a healthy balance with the natural world.

III. Purpose and Background:

This policy establishes the development and implementation of an ELP to motivate the regulated community to implement EMSs as a desirable agency objective. In addition, the policy also establishes the development and implementation of environmental performance improvement tools in the Department's enforcement programs as a desirable agency objective. Finally, the policy establishes the development and implementation of EMSs at Department operated facilities as a desired activity. Implementation of this policy is intended to promote environmental protection and improve compliance rates by:

- increasing the regulated communities' knowledge of applicable environmental requirements and a clear commitment to comply with them.

- improving environmental awareness throughout all aspects of an organization's operations and business areas.
- improving environmental performance on non-regulated activities having an environmental impact.
- motivating organizations to utilize pollution prevention measures, perform beyond minimum compliance levels, and integrate sustainable business practices.
- leading the regulated community by example in demonstrating EMS use at Department operated facilities.

IV. Responsibility:

The Pollution Prevention Unit shall have responsibility for developing, in consultation with appropriate agency programs and with third party stakeholders, a program to encourage the development and implementation of EMSs through an ELP.

The Division of Environmental Enforcement shall have the responsibility of developing, in consultation with appropriate agency programs, options for the use of environmental performance improvement tools in the Department's various enforcement programs.

The Division of Operations shall have the responsibility of developing, in consultation with the Pollution Prevention Unit, a pilot program to demonstrate the use of EMSs at Department operated facilities.

Divisions and regions shall fully and actively cooperate with the Pollution Prevention Unit and the Divisions of Environmental Enforcement and Operations in their efforts to develop the above-described programs. This will include providing specific opportunities in program training, guidance, rule making, and permitting to promote greater use of EMSs in regulated organizations. Environmental Quality Divisions shall reflect these opportunities in their annual work plans.

V. Procedure:

A. Developing and Implementing an Acceptable EMS

The programs developed by the Pollution Prevention Unit will set forth the framework for an ELP that motivates further adoption of EMSs by providing incentives to those organizations that can document the implementation of pollution prevention, beyond compliance performance, or sustainable business practices resulting from their EMS. The programs developed by the Pollution Prevention Unit will establish those EMS elements which ensure that the EMS's systems and procedures put into place a process constantly seeking to reduce the environmental impacts of a facility's activities while remaining in full compliance with applicable Environmental Requirements. Department programs should focus on promoting EMSs that, at a minimum, consider the following:

- 1. Views of Stakeholders** - The EMS should include mechanisms to consider the views of Stakeholders as decisions are made.
- 2. Measurable Improvements in Performance** - The EMS should focus on identifying opportunities and implementing programs that are focused on improving performance by going beyond compliance, utilizing pollution prevention, or establishing sustainable

business practices. In addition, the EMS needs to incorporate a means to measure the outcome from the EMS implementation.

- 3. Credibility** - The EMS implementation should maximize the use of independent professionals to ensure that the systems, and the resulting information and measures, are credible.
- 4. Public Disclosure and Communication** - To have public value, the EMS must be implemented in a transparent manner. To facilitate this, the EMS must have a means to report critical information to the public in a manner that is accessible and easily understood.
- 5. Comprehensive Approach** - The EMS should be comprehensive in its scope, addressing all aspects of the entity's operations and business areas. Specifically, this should include: 1) use of raw materials; 2) processes, technology, and facility employed to fabricate a product; 3) the form in which the finished product is delivered and offered to purchaser; and 4) conditions or terms under which end use occurs. For service oriented organizations, the EMS shall also be comprehensive and will consider the entire scope of the organization's services.
- 6. Integrated Approach** - The EMS shall be effectively integrated into the day-to-day operations of the organization. This will require the active involvement and support of high level management, as well as all staff at the organization.

B. Developing and Implementing Environmental Performance Improvement Tools

The traditional method to enforce compliance with environmental laws and regulations has been to justifiably penalize those who fail to comply with those laws and regulations. This approach of deterring non-compliance exclusively through penalties, however, does not provide alternatives that could achieve significant health, safety and environmental benefits over the long term, even beyond those needed to return a violator to full compliance with Environmental Requirements.

The Division of Environmental Enforcement will develop options for use of tools such as EMSs, where appropriate, to not only help resolve violations but to potentially improve overall environmental performance. Systems and tools can be put in place to help ensure long-term compliance as well as to enhance the opportunity for violators to go beyond compliance.

C. Using EMSs in Department Operations and Activities

The Department manages numerous maintenance, recreation and support operations. The potential environmental impacts of certain operations may be more effectively managed through the use of EMSs. The Division of Operations and the Pollution Prevention Unit will work with one or more regional offices and involved programs to put in place a program to pilot the use of EMSs, evaluate the results of these efforts and make recommendations on the future utilization of EMSs in the Department, based on the results of the pilot.