



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

MAY 15 1993

OFFICE OF ENFORCEMENT

MEMORANDUM

**SUBJECT:** Enforcement Role in the 33/50 Program (Industrial  
Toxics Project)

**FROM:** Raymond B. Ludwiszewski  
Acting Assistant Administrator  
Office of Enforcement

**TO:** Regional Administrators  
Assistant Administrators  
Associate Assistant Administrators  
General Counsel  
Inspector General

Vigorous enforcement of existing requirements and a new focus on prevention of pollution at its source have been and will continue to be two of the highest priorities of the Agency. The two objectives are mutually reinforcing. A strong enforcement program can do much to foster pollution prevention by creating general incentives for the regulated community to eliminate or significantly reduce pollutants to avoid liability, reduce costs of compliance, and reduce the possibility of incurring penalties for failure to comply with applicable requirements.

The attached paper on the "Enforcement Role in the 33/50 Program (Industrial Toxics Project)" clarifies how the Agency plans to reconcile the relationship between strong enforcement of existing requirements with the voluntary nature of the 33/50 Program. In summary, no company or facility will be singled out for enforcement because of its participation or decision not to participate in the 33/50 Program. Conversely, vigorous enforcement will proceed, regardless of participation in the 33/50 Program where we have discovered violations of environmental requirements. The companies from which EPA is seeking voluntary reductions in the 17 chemicals are also being apprised that participation in the Program will not shield them from any regulatory or enforcement action or risk-based targeted enforcement initiatives.

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We also will be implementing our recently issued "Interim Policy on the Inclusion of Pollution Prevention and Recycling Provisions in Enforcement Settlements". This policy encourages enforcement personnel to favor pollution prevention and recycling as a means of correcting violations or as supplemental environmental projects agreed upon during settlement negotiations.

If you have any questions or concerns about this matter, please feel free to contact Cheryl Wasserman, Chief, Compliance Policy and Planning at (202) 382-7550.

Attachment

cc: Deputy Assistant Administrators  
Headquarters Compliance Office Directors  
OE Managers  
Daniel Esty

3/21/91

**ENFORCEMENT ROLE IN THE 33/50 PROGRAM (INDUSTRIAL TOXICS PROJECT)**

This paper describes how the Agency's enforcement authorities can foster the goals of the 33/50 Program (Industrial Toxics Project) and steps that EPA Headquarters and Regional personnel should take to ensure that implementation of the project is consistent with Agency compliance and enforcement goals.

The 33/50 Program (Industrial Toxics Project) is a non-regulatory Agency-wide effort to achieve, voluntarily, overall reductions in a group of seventeen toxic chemicals reported in the Toxics Release Inventory (TRI). Individual facilities are not singled out for reductions, nor are specific pollutants per se. Rather, the Administrator is seeking commitments from the contributors of these pollutants to achieve reductions of at least fifty percent of the pollutants, as a group, nation-wide over the next five years. This Program is a pilot program to determine what can be achieved cooperatively, and perhaps in a more expeditious manner than through reliance only on regulation and permitting of pollutants or individual facilities respectively.

First, the Agency will continue efforts to regulate, permit, and enforce reductions for the targeted chemicals, where appropriate. Nothing in the 33/50 Program (Industrial Toxics Project) is intended to impede or interfere with existing regulatory and enforcement activities at facilities which are releasing these substances or otherwise violating the law. The project is designed to add to, not detract from, these ongoing programs. To the extent that releases of the listed pollutants are regulated at particular facilities, EPA and the States will continue to closely monitor adherence to reductions which are enforceable requirements under regulatory permits or enforcement settlements. For example, EPA's lead enforcement initiative which focuses on violations of existing requirements, and regulatory clusters will proceed as planned, as will other efforts designed to reduce these chemicals based upon health and environmental factors generally or at particular sites.

Second, enforcement can play an important role in project integrity by creating consequences for and deterring false or inaccurate reporting. Enforcement can provide some assurance:

- 1) that those that are releasing these chemicals have, in fact, reported the releases; and

Ongoing EPA efforts to identify and pursue enforcement against those who have failed to report, or failed to report releases of particular toxic chemicals, under the Toxics Release Inventory will continue. In particular, industrial sources which are likely contributors of the seventeen high priority pollutants but have not reported under the TRI are

candidates under the neutral inspection scheme for inspection. Such facilities may be screened by EPA Regional staff in cooperation with the States during planned inspections at such facilities for other purposes to determine if the absence of reporting appears appropriate.

2) that claims of reductions by facilities and companies are accurate.

Data quality audits, now a routine part of the compliance program for the Toxics Release Inventory, will be used to ensure proper reporting of baseline TRI releases and overall reported levels following reductions. The program should continue to explore opportunities to coordinate such reviews with other Agency inspections.

Third, enforcement can provide a further impetus for voluntary reductions through enforcement settlement negotiations. The Agency plans to use the opportunity presented by settlement negotiations for related violations to encourage consideration of changes to existing operations and processes which would either eliminate or reduce these and other pollutants. EPA will use its enforcement case screening process to identify current violators who are potential candidates for such pollution prevention conditions in federal enforcement settlements to achieve desired reductions.

Fourth, the conduct of the Agency's enforcement program will be entirely consistent with the voluntary nature of the 33/50 Program. The credibility of the 33/50 Program (Industrial Toxics Project) will depend upon on number of factors, particularly the ability to maintain its voluntary nature.

1) Companies and facilities which choose not to participate in the 33/50 Program will not be singled out for inspections or other enforcement activities because of their non-participation.

2) Companies and facilities that do make commitments to the 33/50 Program will not be subject to special data quality audit activities based on that commitment.

Company facilities participating in the 33/50 Program may be subject to inspections to corroborate the quality of report under the Toxics Release Inventory (as noted in Principle 3.2 above) only to the same extent as any other facilities might be inspected, but will not be subject to inspections specifically for the purposes of the 33/50 Program such as to review their baseline commitments, reduction plans proposed, or achievement of reduction goals.

One exception to this will be voluntary participation of companies who would like to be considered for the Agency's award and recognition program. The recognition system will

include an activity to insure the credibility of the company's application for the award.

Finally, in implementing the 33/50 Program we must follow three principles to ensure that a clear and consistent message is conveyed that we will continue to pursue vigorous enforcement and regulatory action against such facilities or pollutants where appropriate, that voluntary agreements cannot shield signatories from enforcement and regulatory requirements and approaches, and that opportunities to use pollution prevention conditions in enforcement settlement agreements are not foreclosed. To do this:

- 1) 33/50 Program correspondence to companies, States, and facilities should include a caveat that nothing in the implementation of this project in any way substitutes for compliance with existing State, local and Federal regulatory and permit requirements, nor would it define future enforceable levels of control required of the companies by States, localities or the Federal government to address concerns about toxic releases.
- 2) Any 33/50 Program activity at the facility level should be preceded by careful review of the status of any pending regulatory and enforcement actions at the site. Involved personnel at the Federal, state and local levels should be identified and consulted as to the merits of pursuing facility-specific voluntary reduction agreements before proceeding. Regions should specifically cross-reference the list of facilities on the 33/50 Program list with those who are current violators under any of the statutes and subject to enforcement before contact at the facility level.
- 3) The purpose(s) of the voluntary commitments should be clearly articulated and distinguished from traditional requirements to reduce toxic releases through permits and enforcement actions.