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

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OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

**MEMORANDUM**

SUBJECT: Revised Environmental Management Review Policy and Guidance for Federal Facilities

FROM: Sylvia K. Lowrance
Acting Assistant Administrator

TO: Deputy Regional Administrators, I-X
Regional Enforcement Coordinators, I-X
Regional Federal Facilities Program Managers, I-X
OECA Office Directors

By this memo, EPA is issuing a revised policy for Environmental Management Reviews (EMRs) for Federal Facilities to be consistent with the EPA Audit Policy (Incentives for *Self-Policing*, 65 FR 19618, April 11, 2000). This revised EMR Policy and Guidance includes an Incidental Violations Response Policy (IVRP) which details how violations will be treated that are incidentally uncovered at a federal facility that is participating in the EMR program. To make the EMR Policy consistent with the EPA Audit Policy, the time periods to disclose and correct violations discovered through an EMR mirror those periods in the Audit Policy. The EMR Policy shall follow any subsequent changes to the EPA Audit Policy.

**Background.** In accordance with Executive Order (E.O.) 12088, EPA's National and Regional federal facility program has the responsibility to provide technical advice and assistance to federal facilities to ensure cost effective and timely compliance with applicable requirements. In addition, the President called on the federal government to be the leader in "achieving and maintaining a clean environment." The provision of an EMR by EPA is one increasingly effective means of providing this technical assistance for federal sector leadership.

On April 26, 2000, a new Executive Order was published that requires Federal Agencies to review their environmental management systems, engage in pilot projects, and implement Environmental Management Systems (EMSs). This Order, E.O. 13148 -- Greening the Government Through Leadership in Environmental Management, has made EMRs more valuable in helping Federal Agencies with their EMS responsibilities. EMRs are sought after by Federal agencies to assist in developing or improving their EMSs at Federal facilities and installations.

An Interim EMR Policy was first issued in May, 1996, and a pilot program was undertaken to test out the Interim Policy. Numerous EMRs were conducted as part of the pilot program, and a final EMR Policy was issued in December 1998 which included revisions determined to be necessary after the pilots. This revised EMR Policy lays out the definition of an EMR, the operating principles under which EMRs are to be conducted by the EPA Federal Facility Program, and the context in which EMRs will be conducted by EPA. The EMR Guidance is a technical accompaniment to the EMR Policy, and is intended to assist EPA personnel in conducting EMRs.

# A. EMR Policy

## I. Definition and Benefits of an Environmental Management Review

An Environmental Management Review (EMR) is 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 towards environmental excellence. Because of the programmatic nature of an EMR, the focus of EPA's review is on the quality and/or implementation of the program, not on actual compliance requirements. EMRs provide the federal facility information pertaining to:

a. Strengths and areas for improvement of environmental management systems and programs at federal facilities;

b. Identification of underlying causal factors which may contribute to the occurrence of compliance deficiencies;

c. Development of long-term environmental compliance by helping to build an environmental management program foundation;

d. Review of each of the individual components of an environmental management system (such as those listed below); and

e. Assistance on the effectiveness of their systems, bench marking their performance, and identification of opportunities for improvement.

EMRs are <u>not</u> compliance inspections, and the fact that a facility volunteers for an EMR will not increase their likelihood of being targeted for an inspection. EMRs are technical assistance site visits at active, operating federal facilities. They differ from a compliance inspection or audit, which aim to capture a facility's compliance picture at a given point in time. EMRs attempt to facilitate an understanding of the underlying causes of current or potential compliance problems and to develop suggestions for actions to correct them. They attempt to facilitate an understanding of the environmental management system (EMS) approach to

managing environmental programs, and to identify some of the more obvious weaknesses and strengths of the facility's existing EMS. EMRs assist federal facilities in developing long-term environmental compliance by helping to build an environmental management program foundation. EMRs are intended to help facility personnel understand how real environmental improvements can be achieved, by probing beyond the immediate symptoms of non-compliance and attempting to identify and address underlying causes such as management system deficiencies. Further, they are not intended nor should they replace a facility's own efforts to self audit. Finally, an EMR is not a Pollution Prevention Opportunity Assessment, although a review of a facility's Pollution Prevention (P2) program as it relates to their EMS may be conducted during an EMR.

EPA has conducted technical assistance visits at federal facilities as part of its pollution prevention opportunity assessments program. By conducting EMRs, EPA hopes to cooperatively provide facilities with advice about effective environmental management. The facility has the choice as to whether and how to use the advice, but EPA believes that engaging in an EMR will foster a good working relationship between the Agency and the federal facility, encourage a continued dialogue on environmental issues, and help improve environmental performance.

## II. Scope of an Environmental Management Review

The scope of an EMR includes several disciplines or principles, which generally assumes that some form of environmental management program is in place at the facility. The seven EMR disciplines, or five Code of Environmental Management Principles, are based on key characteristics and elements of effective environmental management systems. There are a number of common elements for most all EMS models. For example, the Code of Environmental Management Principles for Federal Agencies (CEMP), developed in 1997 by EPA in response to Executive Order 12856 and in conjunction with representatives from 16 federal departments and agencies, includes management commitment, compliance assurance and pollution prevention, enabling systems, performance and accountability, and measurement and development. The ISO 14001 EMS standard includes environmental policy, planing, implementation and operation, checking and corrective action, and management review.

The seven EMR disciplines listed on the next page (along with the corresponding CEMP Principles and ISO 14001 Sections) are from Phase 3 of the *Generic Protocol for Conducting Environmental Audits of Federal Facilities*.[1]

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[1]This document (EPA Document No. 300-B-96-012 A&B) can be obtained by contacting U.S. EPA Federal Facilities Enforcement Office (FFEO) at 202-564-2461 or can be downloaded from FFEO's web site at www.epa.gov/oeca/fedfac/fflex.html.

| EMR DISCIPLINE [1,2] | CEMP PRINCIPLE | ISO 14001 SECTION [3] |
|---|---|---|
| Organizational Structure | 1 | 4.4.1 |
| Environmental Commitment | 1 | 4.2, 4.6 |
| Formality of Environmental Programs | 2 & 3 | 4.4.4, 4.4.6, 4.4.7, 4.5.3 |
| Internal & External Communications | 3 | 4.4.3 |
| Staff Resources, Development and Training | 3 & 4 | 4.4.2 |
| Program Evaluation, Reporting & Corrective Action | 3 & 5 | 4.5.1, 4.5.2, 4.5.4 |
| Environmental Planning & Risk Management | 2 & 3 | 4.3.1, 4.3.2, 4.3.3, 4.3.4 |

1. From the Generic Protocol for Conducting Environmental Audits of Federal Facilities (EPA 300-96-0128, 3rd Edition December 1996).

2. Environmental Protection Programs - the 8th Discipline, is part of the Generic Protocol (see #1 above), however, it has been removed from the EMR process because of regulatory compliance implications.

3. ISO 14001 Sections 4.4.5 and 4.5.3 apply to all seven EMR Disciplines.

While the wording of the EMR disciplines and the principles of CEMP and elements of ISO 14001 are not identical, the overlap, correlation and similarity are great. An EMR is a tool that can help facility personnel attain the CEMP and move toward conformance with ISO 14001. This is because an EMR will provide a review of the individual components of the facility's EMS, as well as provide the facility with information regarding areas for improvement of the EMS, feedback on the effectiveness of their systems, and bench marking their performance.

An EMR is not a full-fledged environmental management system audit. A full-fledged environmental management system audit would provide a thorough, systematic evaluation of all elements of a facility's implementation of an environmental management system. EPA does not envision conducting in-depth environmental management system audits which may require extended time at a given facility and significant resources depending on the size and type of facility. EPA envisions that an EMR may cover anywhere from one to seven disciplines, or their CEMP or ISO 14001 equivalents, depending on EPA resources and the needs of the facility. The determination of this need can be accomplished through consultations between EPA and the federal facility.

An EMR is based on a combination of staff interviews, pre-site visit document reviews and a site visit at the facility. Interviews are especially important in conducting an environmental management review. They provide the primary means of understanding the organizational relationships, roles and responsibilities, policies, and systems that form the framework for the management of environmental matters. More importantly, they often reveal differences in the actual versus the documented practices. Document review is important to verify the formality of the system and confirm interview information. A site-visit is necessary to verify EMS implementation and effectiveness.

Depending on the characteristics of the federal facility, such as the degree of sophistication of the environmental management program, the EMR could take place over the course of a day's visit or up to a week. Those conducting the EMR may include representatives from the EPA Regional Federal Facility program, Headquarters and Regional technical assistance offices, other federal agencies, contractors, and/or state environmental agencies. As appropriate, EPA regional offices can conduct joint EMRs with their states, and should contact the appropriate state technical assistance program as part of the development process for an EMR.

**Where EMRs Are Likely to Be Conducted**

Federal facility participation in an EMR under all circumstances is voluntary. In general, EPA will conduct EMRs at facilities where there is a potential for environmental impact (e.g., facility is a permit holder or notifier under one or more environmental statutes), and/or at facilities that have limited resources for hiring a private consultant or where their Agency does not already have an internal environmental management system audit program. This is more likely to be the case at smaller agencies such as civilian federal agencies (CFAs). This is consistent with the nature of the overall findings of the "Strategy for Improving Environmental Management Programs at CFAs," which recommended training, technical support, and compliance assistance for CFAs. However, EPA may conduct an EMR at larger facilities, especially if an EMR will be useful to identify root causes of non-compliance.

There may be some factors that could prohibit EPA from conducting an EMR at a facility. If a facility is subject to an open criminal investigation or open enforcement action, it should not be selected for an EMR. However, if a facility was the recipient of a state or EPA enforcement action, but such action is closed/completed, the facility may be selected for an EMR. In fact, an EMR may be helpful in determining the root cause(s) of the violation(s). In cases of a state enforcement action, EPA should contact the state as part of the development process for the EMR.

## III. Operating Principles

The success of the EMR program will depend on the technical assistance provided by the review process and not on enforcement. The products and services provided to federal facility participants, the willingness of federal facilities to embrace the program by volunteering and working with EPA, and the results of the federal facility implementation of EMR recommendations, will also determine the success of the EMR program. The following list is intended to provide EPA staff and federal facilities with general guidelines and operating principles concerning EMRs at federal facilities:

- An EMR visit is not a regulatory inspection.

- Participation in an EMR by a federal facility is voluntary, and facilities are invited to request an EMR. A federal facility may also be contacted by EPA to solicit their interest in an EMR. Once an EMR is scheduled, EPA may contact the facility at least one to two months in advance of the EMR site visit to ask for appropriate written documentation of their environmental management system.

- While the primary focus and intent of the EMR program is at the facility level, EMRs may also be appropriate at the regional and/or agency headquarters level. Agencies are encouraged to contact EPA about having an EMR conducted at the headquarters and/or regional level. It would be helpful if agency headquarters would encourage individual facilities to participate in an EMR.

- The date for the EMR is mutually arranged between the federal facility and EPA. Information regarding the topics that will be covered in the review will be discussed prior to the visit.

- Once an EMR is mutually agreed upon, the facility will receive a confirmation letter prior to the EMR visit which will generally lay out the ground rules for the EMR. The confirmation letter will be signed by the appropriate EPA Regional management, and may be co-signed by the facility manager, and returned to EPA as well (see Attachment One for examples of suggested components of a confirmation letter). The confirmation letter serves to ensure that the review staff have access to the appropriate personnel and documents at the facility. The letter also summarizes the conditions of the Incidental Violations Response Policy (See Section IV).

- Each EMR visit will include an in-briefing and an exit-briefing. At the exit-briefing or close-out session, preliminary EMR results are shared with the host facility. Provisions for additional technical assistance such as a future Pollution Prevention (P2) assessment may be discussed at this time.

- Within 60 days after the visit, the EPA regional office conducting the EMR will provide the facility with a written final EMR report. The final report provides findings related to recommendations for further action. Draft findings are usually shared by EPA with the facility prior to issuance of the written final EMR report. The facility should raise any concerns about the draft findings at that time and prior to the 60-day time period for issuing a final EMR report. The final EMR report will not contain information on incidental violations. All communication with the federal facility with respect to incidental violations will be conducted separate from the EMR process.

- The facility will, no later than six months after receipt of the EPA final EMR report, produce a response plan that lays out how the facility plans to address the EMR findings and report on progress made to that point. The EPA regional office may also request an interim status report from the facility prior to the six-month point the facility's response plan is due.

- During the six-month period referred to above, EPA generally will not conduct regulatory inspections at the facility receiving the EMR unless such inspection is required by statute, regulation, or EPA policy involving compliance with environmental statutes, or unless good cause exists including belief of misrepresentation or falsification of any report required by law, to determine whether the facility may present an imminent and substantial danger to public health or the environment, or to investigate a tip, complaint or other information concerning potential civil or criminal violations at the facility. This period of decreased inspection priority includes the six-month period the facility has to produce a response plan, as well as the 60 days EPA has to provide the facility with a final EMR report.

- To better inform the federal facility's headquarters office about the potential resource needs that may result from implementation of the EMR recommendations, EPA may share a copy of the final EMR report with the federal facility's headquarters, unless the federal facility requests EPA to do otherwise.

- Within approximately twelve months of the EPA final EMR report, the EPA regional office will make a courtesy contact with the facility to determine the usefulness of the EMR and whether there is a need for additional assistance. The courtesy contact may include, for example, discussion of an update on the areas of change that resulted from the EMR, any staffing or resource changes, and any other appropriate information regarding the facility's response to the recommendations made in the EPA final EMR report.

## IV. Incidental Violations Response Policy (IVRP)

The purpose of an EMR is <u>not</u> to assess the compliance status of a federal facility. There may, however, be circumstances when an EMR incidentally uncovers non-compliance either

through document review or while on site. EPA's Office of Enforcement and Compliance Assurance (OECA) has developed enforcement response policies for several programs with industry such as the Environmental Leadership Program, the Common Sense Initiative, and Project XL that detail how violations will be treated if they are discovered as part of these programs. The Incidental Violations Response Policy (IVRP) described below details how violations will be treated that are incidentally uncovered at a federal facility that is participating in the EMR process. The final EMR report will not contain information on incidental violations. All communication with the federal facility with respect to incidental violations will be conducted separate from the EMR process. As previously stated, EMRs are not enforcement inspections. In fact, situations presenting enforcement issues have occurred very infrequently in the EMRs conducted at federal facilities to date.

The EMR Policy/IVRP is consistent with and essentially tracks the EPA Audit Policy. Since the EPA Audit Policy was modified in 2000 (Incentives for Self-Policing, 65 FR 19618, April 11, 2000), it was necessary to make a corresponding update to this revised EMR Policy. The EMR Policy shall follow any subsequent changes to the EPA Audit Policy.

**Imminent and Substantial Endangerment**

In that rare instance where the EMR team finds a situation that may cause an imminent and substantial endangerment to public health or the environment or serious actual harm, the facility must address the situation immediately and EPA retains the right to respond as necessary.

**Other Violations**

Federal facilities, like all regulated facilities, are responsible for complying with environmental requirements. OECA's Federal Facilities Enforcement Office (FFEO) works with federal agencies to help them comply with environmental requirements and take all necessary actions to prevent, control and abate environmental pollution. FFEO assists federal facilities in complying with environmental requirements and preventing pollution and takes enforcement actions against federal facilities to remedy and deter their non-compliance.

Generally, EPA bases its initial response to a violation on the type of violation and the potential risk posed by the violation. Although the pertinent statute/regulation and media-specific or program-specific guidance governs the type of initial EPA response, they can vary from a Notice of Violation (NOV)/Notice of Noncompliance (NON), to an Order or Compliance Agreement without penalties, to a Complaint or Order assessing penalties.

Consistent with EPA's Audit Policy (*Incentives for Self-Policing: Discovery, Disclosure, Correction, and Prevention of Violations*, 65 FR 19618, April 11, 2000), and any subsequent modifications to EPA's Audit Policy, in the context of the EMR program and the IVRP,

following the identification of a violation(s) as a result of an EMR,[2] the federal facility will be required to disclose the violation(s) in writing to EPA within the time periods in EPA's Audit Policy and any subsequent revisions. In addition, the federal facility must correct the violation(s) within the time periods in EPA's Audit Policy and any subsequent revisions, certifying in writing that the violation(s) has been corrected, and take appropriate measures as determined by EPA to remedy any environmental or human harm due to the violation(s)[3]. EPA retains the authority to order a federal facility to correct a violation within a specific time period shorter than this period whenever correction in such shorter period of time is feasible and necessary to protect public health and the environment adequately.

If more than 60 days will be needed to correct the violation(s), the federal facility must notify EPA in writing before the 60-day period has passed. As expeditiously as practicable, the facility then must enter into a written compliance agreement that:

- establishes a specified period for correcting all outstanding violations; and
- incorporates interim milestones that demonstrate reasonable progress toward compliance and sets forth the additional correction period and any additional steps to be undertaken by the facility to achieve compliance.

The total period of time for correction is not to exceed one-year,[4] except in cases where pollution prevention is used as the means of correction, in which case the facility could have a total of 18 months for correction. The correction period may be limited based on statutory/regulatory requirements, as well as media-specific policy and guidance regarding significant non-compliance.

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[2]Identification of a potential violation can either occur during the EMR visit or after the EPA staff on the EMR team consults with other appropriate regional staff. EPA will generally take no longer than 10 days after the EMR visit to notify the federal facility about any additional violations that result from this consultation. The federal facility will then have 21 days from the date of EPA's notification to disclose the violation(s) in writing.

[3]Where possible, violations should be addressed upon detection and corrected while the EMR team is on-site or as soon as practicable.

[4]In special cases an EPA region may grant a facility more than a year to correct violations due to the particular nature of the violation. A region should make the Federal Facilities Enforcement Office aware of the situation when granting additional time to the facility. A region should also make a facility aware that such facility may be inspected to verify that the facility has corrected violations pursuant to this IVRP.

Consistent with EPA's Audit Policy,[5] this IVRP does not apply to criminal violations, repeat violations,[6] violations that resulted in serious actual harm, or may have presented an imminent and substantial endangerment to human health or the environment, violations of the specific terms of any judicial or administrative order or consent agreement, or actions to address recurrences of violations.

In those instances where the media-specific or program-specific guidance calls for the assessment of a penalty for violations of federal environmental requirements, under this IVRP EPA generally will not seek the gravity-portion[7] of such penalty for federal facilities that disclose and correct violations detected during the EMR as described above. Consistent with EPA's Audit Policy, EPA retains its full discretion to recover any avoided costs(sometimes referred to as economic benefit) gained as a result of noncompliance. Avoided costs may be waived, however, where EPA determines that it is insignificant.

Where EPA or the state is concerned about appropriate response from the facility, EPA reserves its rights to respond as it deems appropriate to instances of non-compliance. Except where explicitly noted, nothing in this policy should be construed to limit any legal authority EPA may have.

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[5]See also the "Audit Policy Interpretive Guidance" for additional definitions and information concerning the EPA Audit Policy.

[6]Consistent with EPA's Audit Policy, the specific violation (or a closely related violation) can not have occurred previously within the past three years at the same facility, and can not have occurred within the past five years as part of a pattern at multiple facilities owned or operated by the same Agency. For purposes of a repeat violation, a violation is: (a) any violation of federal, state or local environmental law identified in a judicial or administrative order, consent agreement or order, complaint, or notice of violation, conviction or plea agreement; or (b) any act or omission for which the regulated entity has previously received penalty mitigation from EPA or a state or local agency.

[7]"Gravity-based penalties" are that portion of a penalty over and above the avoided costs., i.e., the punitive portion of the penalty, rather than that portion representing a party's avoided costs from non-compliance.

## B. EMR Guidance

### I. Purpose:

This guidance is intended as a technical accompaniment to the EPA Environmental Management Review Policy for Federal Facilities. Its purpose is to assist EPA Headquarters and EPA Regional personnel in conducting Environmental Management Reviews (EMRs). This document will outline key areas of performance that should be considered when EPA staff and contractors are conducting EMRs. The guidance refers the users of this guidance to the "*EPA Generic Protocol for Conducting Environmental Audits of Federal Facilities*" (EPA Document No. 300-B-96-012 A&B) for reference to expected performance criteria during the conduct of an EMR (performance objectives, key evaluative concerns, and criteria) and are therefore not restated within this guidance. The definition of an EMR as well as the scope of these reviews are discussed in Section II of the EMR Policy. This technical guidance will not define a specific technical approach to be followed in all circumstances. Instead, the guidance emphasizes the planning (Section II) and communications (Section III) aspects of the EMR process, and also provides discussion on the use of protocols and checklists during the EMR process (Section IV). These sections were developed to help ensure consistency in the quality of the work to be performed, and to ensure that the expectations between the EPA regions and the participating federal facilities on the outcome of the EMR process are one and the same.

To a great extent, the success of the EMR program will depend on the quality of the products and service provided to federal facility participants. For this reason, FFEO strongly recommends that EPA staff and EPA contractors participating in the EMRs are trained in environmental audit procedures, and especially in the techniques of auditing environmental management systems. To help ensure an appropriate degree of expertise, Section V of this guidance outlines training considerations (e.g., skills) needed by EPA staff and contractors.

### II. Planning:

EPA regional staff responsible for organizing and conducting the EMR should spend a significant amount of time planning for the site visit. To avoid conflicts with regularly scheduled compliance inspections, EPA regional EMR staff should coordinate the timing of EMRs with inspection staff at least annually. Careful planning is crucial to ensuring that the limited time typically available for the site visit is used most effectively. Careful planning also minimizes the time necessary for follow-up activities after the site visit, and reduces the burden on facility management by efficiently utilizing the time and talents of their staff during the EMR process. The factors to consider in planning an EMR are: 1) the goals and scope of the EMR; (2) the size and complexity of the facility operations; (3) the regional staff's familiarity with the site; (4) resources available for conducting the EMR; and (5) the desired form and content of the final EMR report.

Whether the EMR is being conducted by in-house regional staff exclusively or with an inter-agency team or contractor assistance, the Federal Facilities Program Manager (formerly Federal Facilities Coordinator) or other regional member in charge of the EMR should select appropriately-trained team members, establish protocols, and assign clear roles and responsibilities. Regardless of who performs the EMR, as part of the planning phase, EPA regional staff should ensure that the members of the EMR team:

1. clearly understand the goals and scope of the EMR;

2. upon reviewing preliminary information, are familiar with the facility's operations, environmental management policies, compliance history, waste streams and other environmental issues;

3. have the correct checklists and protocols and understand how to use them;

4. agree to follow the detailed EMR agenda formulated specifically for that facility;

5. are aware of potential health and safety issues and are prepared to handle them on-site; and

6. understand how information collected on-site will be presented in the EMR final report.

## III. Communications With Facility Management:

Once contact is initiated by either EPA, the facility management, or federal agency headquarters staff who have expressed an interest in having an EMR conducted at a particular site, EPA staff and federal facility management should discuss, in detail, the purpose and scope of the EMR, especially the ground rules for engaging in the process. Additionally, facility management should be briefed on the Operating Principles contained in Section III of the EMR Policy, including the outcome of the process (i.e., development of a written report) and the time frame under which that occurs. Following these discussions, a confirmation letter/ground rules letter will be sent to the facility prior to conducting the EMR planning process and site visit (see Section III (e) and Attachment One of the EMR Policy) to ensure that all parties understand the conditions under which the EMR will be conducted. This letter should also serve to ensure that the EMR team has access to the appropriate personnel and documents at the facility, and also document that all participants are aware of terms and conditions of the Incidental Violations Response Policy (IVRP) discussed in Section IV of the EMR Policy. Examples of suggested components of a sample confirmation letter are included as Attachment One of the revised EMR Policy and Guidance.

EPA regional environmental staff should also use the confirmation letter to confirm the scope and dates of the EMR site visit, and to establish points of technical contact (POC) for both parties. In addition, EPA staff involved in the EMR will have an opportunity to propose an

agenda for the site visit, and to send a pre-site questionnaire which will be helpful in determining the specific focus of the EMR. All EPA regional staff members involved in the EMR should be mindful of the fact that the facility to be visited is volunteering for this effort and, therefore, developing and maintaining a positive relationship with the facility POC is vital to the success of the EMR. Taking care to set the right tone when contacting facility personnel is critical. Important points to communicate to facility management include:

1. **The purpose of the EMR:** Both facility management and staff and EPA regional staff members assigned to conduct the EMR should be fully aware of the EMR's goals and scope, and the EPA EMR Policy document. In addition, facility management and staff should understand how the EMR results will be used both by their agency headquarters personnel (if appropriate) and by EPA. Facility understanding of how the EMR results will be used and how it may impact facility operations and relationship with EPA are particularly important.

2. **Information needs and critical persons needed for interview:** The EPA team conducting the EMR should work with facility management to develop a list of information needs and persons to be interviewed as part of a site visit, including management and line staff at all levels at the facility. To accomplish this task, a questionnaire should be forwarded to facility management in advance of the site visit. After reading the facility's response to the pre-site visit questionnaire, EPA may request additional documents from the facility. Both the pre-site questionnaire and the document review help the EMR team understand the management systems in place, and determine the individuals to be interviewed during the site visit. A timely and well crafted pre-site visit questionnaire will save EPA regional staff considerable time by answering fundamental questions about the facility practices and policies, and allowing the regional staff to focus the site visit on the critical issues and matters requiring a more in-depth review. To assist personnel in pre-site visit planning, FFEO has provided an appendix to Phase 3 of the "*EPA Generic Protocol for Conducting Environmental Audits of Federal Facilities*". The appendix is entitled " Selecting Documents to Review and Individuals to Interview for Environmental Management Assessments."

3. **Time schedules:** Regional environmental staff should work with the facility to develop an appropriate agenda and schedule for the EMR. The time schedule will depend on the size and complexity of the facility and the number of individuals that need to be interviewed.

## IV. Protocols/Checklists:

Because the scope of the EMR site visit will likely involve a review and assessment of more than one of the environmental organizational disciplines outlined in Section II of this technical guidance and Section II of the EMR Policy, FFEO recommends that Phase 3 of the

EPA *Generic Protocol For Conducting Environmental Audits of Federal Facilities* (a.k.a. *Phase 3 Protocol*) be consulted by EPA regional staff when developing the actual working documents and specific tools for a given site. The *Phase 3 Protocol* will provide specific guidance to EMR team members in evaluating the facility activities, and in documenting the procedural elements that are to be reviewed during the EMR. The *Phrase 3 Protocol* also identifies performance objectives, and key evaluative concerns and criteria related to each of the organizational disciplines to be evaluated. Once the scope of the EMR is agreed upon by EPA regional staff and facility management, the EMR team conducting the review should select the appropriate performance objectives and criteria needed from the *Phase 3 Protocol*, and develop the appropriate protocols and checklists for that site. The *Phase 3 Protocol* is not the only authoritative source. EPA Region 1 has also developed an EMR protocol which incorporates many items from the *Phase 3 Protocol,* and is organized around the Code of Environmental Management Principles for Federal Agencies (CEMP). Both of these documents may be helpful to EMR team members in other Regions developing protocols and checklists for a specific site. Other Regions have designed similar protocols or checklists based on their experience in conducting EMRs.

A checklist is an actual on-site tool developed specifically for the facility that is being reviewed. A checklist is dynamic, and should reflect only the areas to be evaluated for a particular facility based upon information gathered from the pre-site visit questionnaire, and pre-site visit communications with facility management. FFEO recommends that EPA staff conducting EMRs either develop a unique checklist for each facility undergoing a review, or annotate and modify existing checklists to reflect the specific scope agreed upon for a particular facility visit. Points to consider in developing or using a checklist include:

- is the checklist applicable to the type of facility being evaluated?
- is it pertinent to the organizational disciplines being reviewed?
- is it consistent with the goals and scope of the EMR for that particular facility?

Protocols and checklists are essential tools for assuring that an EMR has adequately addressed all issues that need to be examined during an EMR. However, they are not static (i.e., one size fits all), and should reflect the unique considerations and differences attributable for each federal facility program and management system being reviewed. Protocols and checklists also are not a substitute for critical and independent judgement or decision making, and should only be used as a reference point to affirm that key criteria and evaluative areas have been examined.

## V. Training and Development of Expertise:

The success of the EMR program depends on the quality of the service being provided to facility management and staff. Since federal agencies and their facilities will be looking to EPA

for guidance in improving their overall environmental management systems, EPA staff and contractors conducting EMRs should be able to demonstrate having both appropriate knowledge of the issues included in the scope of the EMR, and sufficient training and proficiency prior to participating in EMRs.

The qualifications of the staff assigned to conduct EMRs should be commensurate with the objectives, scope and complexities of that particular EMR assignment. Although EMRs will vary in scope, they all require some degree of professional assessment of apparent problems as well as some verification and documentation of the facility's systems for the full range of potential hazards - not just those related to compliance requirements. While the balance between assessment and verification will vary, in general the EPA staff member's background should include at a minimum:

- technical training and experience appropriate to the work called for by the particular EMR;
- an understanding of basic auditing theory and procedures, and the experience needed to apply it in particular situations;
- a working knowledge of the EMR Policy, environmental regulations, evaluation criteria in the *Phase 3 Protocol*, and general EMS standards appropriate to the scope of the EMR; and
- general familiarity with the type of operations to be reviewed, and the issues likely to be encountered within the scope of the EMR.

While the precise mix of experience and knowledge that is desirable can vary, the EMR team as a whole should represent sufficient depth in these four areas of experience.

**Attachment One**
**Examples of Suggested Components of a Sample Confirmation Letter**

The confirmation letter for an EMR could include the following elements:

a. specific objectives of the EMR--a brief discussion of the components of an environmental management system on which the review will focus.

b. a statement that an EMR is not an inspection.

c. brief discussion of EPA's expectations of the federal facility with respect to requests for access to specific staff, parts of the facility, access to info, etc.

d. a brief explanation of the Incidental Violations Response Policy (IVRP) and any necessary definitions. Emphasize that instances involving the IVRP are very infrequent.

e. a brief explanation of how documents will be requested; when the list of facility personnel to be interviewed will be developed; how the site visit will be conducted; what documents will be requested in advance; what federal facility personnel will be interviewed, etc.

f. a disclaimer that the facility is responsible for compliance with all applicable regulations regardless of whether or not they have an EMR.

g. a statement that the facility will, no later than six months after receipt of the EPA EMR report, produce a response plan that lays out how they plan to address the EMR findings and reports on progress made to that point.

h. an optional statement, if appropriate, that the EPA regional office requests an interim status report from the facility prior to the six-month point the facility's response plan is due.