

## **The Environmental Leadership Program (October 1997)**

As part of the U.S. Environmental Protection Agency's (EPA) ongoing efforts to improve environmental performance, encourage voluntary compliance, and build working relationships with stakeholders, EPA developed the Environmental Leadership Program (ELP). Initiated in April 1995, the one year pilot program has been completed, and EPA plans to launch its full-scale Leadership Program in late 1997.

### **What Are the Goals of the ELP?**

The goals of the Environmental Leadership Program include:

- Better protection of the environment and human health by promoting a systematic approach to managing environmental issues and by encouraging environmental enhancement activities (e.g., biodiversity, energy conservation);
- Increased identification and timely resolution of environmental compliance;
- Multiplying the compliance assistance efforts by including industry as mentors; and
- Fostering constructive and open relationships between agencies, the regulated community, and the public.

### **Who May Be Eligible to Be An ELP Participant?**

Any public, private, or federal facility that meets the following ELP criteria for environmental leadership can apply to be an ELP participant.

- A facility is expected to have a mature environmental management system (EMS) that conforms to the ELP EMS. The criteria for an ELP EMS are outlined in the ELP EMS fact sheet (EPA 305-F-96-011).
- A facility should have a compliance and EMS auditing program. This can be demonstrated by a facility submitting or making available facility-wide compliance audit results and EMS information (data or results documentation) obtained from the past 2 years. In addition, the application should include the dates and a summary of the findings from any agency regulatory inspection(s) conducted in the past 2 years.
- As part of its EMS, a facility should implement community outreach/employee involvement programs. Such programs foster the development of relationships between facilities and two of their major stakeholders--local communities and employees.
- Federal facilities need to verify that their parent Agency endorses the Code of Environmental Management Principles (CEMP) and briefly describe how the applying facility is implementing the CEMP. ELP has been adopted as the Model Installation Program for federal facilities under EO 12856.

### **What Are the Benefits of the ELP?**

Benefits to the Environment are anticipated from the Program's focus on encouraging environmental enhancement activities, such as environmental restoration projects and product stewardship.

The Program will facilitate an exchange of information and encourage the implementation of best practices related to environmental management systems and pollution prevention activities.

The ELP provides an opportunity to foster constructive relationships between the ELP participants, regulators, and the public. Building productive working relationships among environmental stakeholders may lead to tangible benefits for the environment and public health, especially if regulatory resources can be effectively redirected to focus on environmental "bad actors" and expanded compliance assistance efforts.

The Formal Recognition include:

- ⟨ Public Recognition - EPA will issue certificates of participation in the ELP and develop programs and activities designed to publicly recognize ELP facilities at federal, regional, state, and local levels.
- ⟨ Logo Usage - Participant facilities can use the EPA-issued ELP logo in facility (but not product) advertising, on facility equipment and structures, and internally, on stationery, coffee mugs, T-shirts, jackets, etc.

The Inspection Discretion benefits include:

- ⟨ Through the use of their enforcement discretion, participating regulatory entities will reduce and/or modify discretionary inspections.

Due to the leadership and exemplary environmental performance of ELP participants, other benefits, such as expedited permits, longer permit cycles, and streamlined permit modifications may become available at a future time.

### **How Will Noncompliance Issues Be Addressed?**

The following outlines the proposed approach in addressing issues of noncompliance during participation in the full-scale ELP:

- ⟨ ELP participants will follow all reporting requirements mandated by federal and regulatory entities' law, permit conditions, consent decree or order. The ELP Leadership Agreement may include modifications to such requirements consistent with other Agency policies. Participants must also disclose all instances of environmental noncompliance detected and corrected in the Annual Report. EPA or the appropriate participating regulatory entity will inform the participant facility in writing whether penalty mitigation for the disclosed noncompliance is appropriate.
- ⟨ Participants will have 60 days to correct noncompliance, unless participants are required by law to correct noncompliance in a shorter period of time. The correction period applies to noncompliance detected during any EPA, State or local inspection, identified through the facilities' management system, or recognized during ELP required audits. The 60-day correction period will begin on the date of detection of the noncompliance. During that period, participants shall correct the noncompliance, including prevention of recurrence and remediation of harm to human health or the environment. Where the facility detects noncompliance that presents imminent and substantial endangerment to human health or the environment, the facility must notify all the signatories to the Leadership Agreement immediately, and correct the noncompliance immediately, including prevention of recurrence and remediation of harm.
- ⟨ Within 60 days of detection, participants must describe in writing any noncompliance (required to be reported or otherwise) that cannot be corrected in 60 days, to EPA and the participating regulatory entities. If the noncompliance cannot be corrected within 60 days of detection, each case will be reviewed to determine if the correction period may be extended for an additional 60 days, or other appropriate time period. The extension must be requested in writing and be submitted to the federal and other participating regulatory entities.

EPA recognizes that some noncompliance can and should be corrected immediately, while others (e.g. where capital expenditures are involved), may take longer than 60 days to correct. When reviewing the extension request, EPA and the regulatory entities will review each case to determine if substantial steps were taken to ensure correction and remediation efforts were taken promptly. Substantial steps include applying for necessary permits, securing financing, ordering equipment, and other similar actions.

If the request is approved, the EPA, the other participating regulatory entities, and the facility will commit in writing to a new schedule that will include the necessary facility actions to ensure compliance with the law, prevent recurrence of the violation(s), and remediate any environmental harm caused by the

violation(s). EPA and the other participating regulatory entities reserve the right to verify, through inspection or other means, that the noncompliance has been corrected.

- < EPA and participating regulatory entities will not proceed with a civil penalty action unless the violations:
  - < Are criminal in nature
  - < Result in serious actual harm
  - < May present imminent and substantial endangerment to the public health or the environment
  - < Are recurrences of violations for which a prior enforcement response has been taken or for which the facility has previously received penalty mitigation by EPA, State or local agency
  - < Are of a specific term(s) of any order, consent agreement or plea agreement
  - < Remain uncorrected after the 60 day extension
  - < Result in an economic benefit which has accrued or been realized as a result of the noncompliance. (Economic benefit will be determined under the applicable EPA policies on a case-by-case basis. EPA and other participating regulatory entities may choose to waive a penalty due to the insignificant amount of any economic benefit).
- < EPA and the other participating regulatory entities retain their enforcement discretion to review all noncompliance (whether they are reported under the ELP Enforcement Response Guidelines or discovered otherwise) to determine whether an enforcement response is appropriate. If an enforcement response is determined to be appropriate during participation in the ELP, the applicable Agency enforcement response policies will apply.

#### **What Roles Will EPA and Other Regulatory Entities Play in the ELP?**

For the ELP to be truly effective, facilities should be recognized as environmental leaders by EPA and other participating regulatory entities, as appropriate. The program has been designed with the expectation that EPA and the State, at a minimum, (but also other applicable levels of government) will work in participation to review applications, participate in on-site reviews, select facilities, and implement the program. It is anticipated there will be a signed agreement between EPA and other participating regulatory entities detailing respective roles and responsibilities. A model EPA-State agreement has been developed.

Several States have or are in the process of developing their own environmental leadership programs. It is hoped that EPA and State efforts can be coordinated to provide the greatest benefit to qualified facilities, minimize duplication of effort and confusion resulting from multiple, similar programs, and conserve limited regulatory resources.

To partner in the implementation of ELP, other interested regulatory entities are encouraged to sign an Agreement with EPA agreeing to the program requirements. If a regulatory entity wishes to add requirements or identify additional benefits, this may be included in the Agreement.

Besides selecting the facilities, EPA and the States will maintain an oversight role. It is important to remember that EPA and States are not surrendering or diminishing their authority to administer/enforce environmental laws. EPA will inspect facilities in cases of:

- < Imminent and substantial endangerment to public health or the environment
- < Natural resource damage
- < Receipt of a tip, complaint, or other information concerning potential civil or criminal violations
- < Due cause.

EPA hopes to partner with the States to offer benefits (recognition, reduced inspections, expedited permitting, etc.) from both EPA and the State to the facilities.

#### **NEXT STEPS:**

- < Federal Register notice of proposed full-scale program in Fall 1997

- ⟨ Anticipated availability of the application for the program in late 1997/early 1998 through the Pollution Prevention Information Clearinghouse (PPIC) or via the ELP web site.  
(<http://es.inel.gov/elp>)

**FOR MORE INFORMATION CONTACT:**

Tai-ming Chang, Director  
Environmental Leadership Program  
U.S. EPA  
OECA/Office of Compliance  
401 M Street, S.W. (2223-A)  
Washington, DC 20460

tel.: (202) 564-5081  
fax: (202) 564-0050  
E-Mail: [chang.tai-ming@epamail.epa.gov](mailto:chang.tai-ming@epamail.epa.gov)  
Internet: <http://es.epa.gov/elp/>