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MISSOURI

COMMITTEES:

APPROPRIATIONS
SMALL BUSINESS
BUDGET
ENVIRONMENT AND
PUBLIC WORKS

United States Senate

WASHINGTON, DC 20510-2503

March 9, 2000

The Honorable Carol M. Browner
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Browner:

The purpose of this letter is to express my concern over the U.S. Environmental Protection Agency's (EPA/Agency) progress implementing key Agency recommendations to improve EPA's compliance assistance efforts. Last July, the EPA Innovations Task Force released a report entitled *Aiming for Excellence: Actions to Encourage Stewardship and Accelerate Environmental Progress* (Aiming for Excellence). It now appears, through independent reports, as well as, meetings with EPA officials, that Agency implementation of key compliance assistance recommendations contained in the report is faltering. Our environment, the regulated community, and especially small businesses, cannot afford the Agency allowing these efforts to fall by the wayside.

Compliance assistance is an essential tool for improving the environment. While traditional inspection and enforcement techniques should remain the dominant tools to ensure environmental compliance, compliance assistance plays a critical role in helping those who want to help the environment and wish to comply with applicable law. To the regulated community, and especially most small businesses, compliance assistance means helping people without threat of enforcement to know and understand the complex and voluminous obligations EPA places on their businesses. From the perspective of policy makers, compliance assistance helps ensure that our environment can be protected and cleaned up sooner and much more efficiently, rather than haphazardly after the damage is done and an enforcement action is required. Compliance assistance also covers the inevitable shortfalls of the Enforcement program. Compliance assistance reaches out to those, as high as 90 percent in some industries, who will never be visited or contacted by the limited numbers of EPA or state inspectors and thus escape the effective reach of the Enforcement program.

Aiming for Excellence contains several initiatives to improve compliance assistance to small businesses and the regulated community at large. Aiming for Excellence Action 4 pledges EPA to "support a network of public and private organizations that provide assistance on environmental compliance." The Action includes a task to assess EPA's current suite of environmental assistance services for small businesses and use those findings to improve EPA's assistance to small businesses. Aiming for Excellence Action 5 pledges EPA to deliver compliance assistance tools including compliance guides and checklists for each new "economically significant" rule before the new requirements take effect.

Hon. Carol M. Browner

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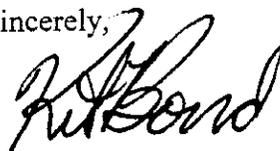
While EPA has made progress in implementing some Aiming for Excellence recommendations, EPA's implementation of the above compliance assistance recommendations ranges from woefully late to simply non-existent. A recent meeting between my staff and Agency personnel assigned responsibility for implementing the Task to assess and improve small business specific compliance assistance tools revealed that the senior official was unaware of the Task's specific implementation milestones. Indeed, the official could report neither progress on the November 1999 milestone to catalog small business compliance assistance tools nor on the March 2000 milestone to survey small business customers of compliance assistance tools.

Equally disturbing and disappointing was a report to my staff that the EPA official responsible for writing the recently finalized Toxic Release Inventory (TRI) rule lowering thresholds for Persistent Bioaccumulative Toxic (PBT) chemicals, was not even aware of the need to produce a set of compliance assistance tools for this new economically significant rule. The rule writer's lack of awareness occurred despite the Agency's July 1999 pledge to create tools for economically significant rules, finalization of the TRI PBT rule in October 1999, November 1999 listing of the TRI PBT rule as the first rule for which the Agency would develop compliance assistance tools, and mid-January 2000 passing of the deadline for the new rule's tools development. To add insult to injury, the Agency official responsible for implementing this flagship Aiming for Excellence Task was similarly unaware that this rule required tools development, the development deadline, and the passing and missing of the deadline.

EPA's missteps on these key Aiming for Excellence compliance assistance actions reveal fundamental failures which must be corrected promptly. It is insufficient for EPA to suggest change, it must manage the Agency to bring about that change. EPA management and the organization it controls must take the actions necessary and be accountable for achieving its goals and plans. To that end, I request the Agency respond in writing to the attached questions by March 22, 2000.

Too much time has passed since EPA published the Aiming for Excellence report last summer for these missteps to be considered start up difficulties. However, the Agency still has the opportunity to right this ship and proceed with successful implementation of all the report's recommendations, plans and goals. It is obvious that a considerable amount of thoughtful and creative hard work has been devoted to this initiative. The Agency owes its creators, the regulated community seeking to comply with environmental obligations, and the environment itself, the same effort and accountability necessary to enable the Aiming for Excellence initiative to live up to its name. If you have any questions regarding this matter, please contact John Stody of my staff at 224-5175. Thank you in advance for your attention to this matter.

Sincerely,



Christopher S. Bond

Enclosure

Information Request for the Aiming for Excellence Report

1. Provide the status as of March 1, 2000, of each Aiming for Excellence recommendation task and milestone in Actions 4 and 5.
2. Provide the names and positions of the senior-most Agency official, the senior-most program office official, and the name of the staff, section or team responsible for the implementation of each task and milestone in Actions 4 and 5.
3. For each task in Actions 4 and 5, provide a description of the Agency mechanism for:
 - a) informing responsible organizations, teams and individual staff members of their obligations under the report;
 - b) determining the on-going status of each organization's efforts;
 - c) coordinating, including at the staff level, implementation activity; and,
 - d) holding accountable those responsible for ensuring Aiming for Excellence tasks are accomplished.
4. Provide an estimation of the cost to the Agency or its partners, incurred directly or through contracts, to develop compliance assistance tools for the 608 Refrigerant Recycling rule and the RCRA Subpart cc rule.
5. Provide for each of the economically significant rules EPA will finalize in 2000 for which the Agency identified as requiring compliance assistance tools:
 - a) an estimate of the cost to produce compliance assistance tools for each of the rules;
 - b) the senior-most Agency and program office official responsible for each of the tools development as well as the name of the team, staff or organizational section responsible for developing each set of tools;
 - c) the date EPA notified the staff level team or organizational section responsible for developing each tool of its responsibility for developing the tools; and,
 - c) the current status of each rule's tools development.