US Environmental Protection Agency

Office of Enforcement and Compliance Assurance (OECA)

Clean Water Act Action Plan

(Prior to February 22, 2010, known as the Clean Water Act Enforcement Action Plan)

October 15, 2009

Clean Water Act Enforcement Action Plan

EXECUTIVE SUMMARY

Despite progress reducing water pollution from the largest sources, our country still faces serious pollution challenges. Violations are still too widespread, and enforcement too uneven. We need to do better controlling pollution from large pipes, while we develop new strategies to address water quality threats from other sources. To follow through on the commitment of this Administration to clean and safe water, the Environmental Protection Agency (EPA) is revamping enforcement of clean water laws.

Target enforcement to the most important water pollution problems

Over the last 30 years, water enforcement focused mostly on pollution from the biggest individual sources, such as factories and sewage treatment plants. Now we face different challenges. The regulated universe has expanded from the roughly 100,000 traditional point sources to nearly one million far more dispersed sources such as animal feeding operations and storm water runoff. Many of the nation's waters are not meeting water quality standards, and the threat to drinking water sources is growing. To address these challenges, we must revamp federal and state enforcement to tackle sources posing the biggest threats to water quality while we intensify vigorous civil and criminal enforcement against traditional end-of-pipe pollution.

Strengthen oversight of the states

EPA is responsible for assuring that the protections of the Clean Water Act extend to all citizens. Many states have strong water quality protection and enforcement programs, but state compliance and enforcement vigor is uneven. Without consistent enforcement by EPA and states, there exists an unlevel playing field for businesses that do comply with the law, and also for our citizens who are not provided equal protection under our environmental legal framework. States labor under different political and resource constraints; nonetheless, EPA must ensure that states protect water quality and consistently apply the law by issuing protective permits and by pursuing vigorous enforcement. EPA must clearly articulate where the bar is for acceptable state programs, and consistently hold states – and EPA where it implements the law – accountable. Where states are not meeting these expectations, EPA needs to strengthen water quality protection by disapproving permits that are not protective and by pursuing federal enforcement against serious violators.

Improve transparency and accountability

The American public has a right to know what the threats are to water quality, where violations are occurring, and what we are doing about them. Moreover, the vastly increased and dispersed numbers of pollution sources require us to target enforcement to the biggest problems. We can work towards both goals by requiring reports to be submitted electronically. Using 21st century technologies will free up time to tackle pollution problems. At the same time, we can provide more complete, accurate and timely information to both regulators and the public, enlisting an informed public as a powerful ally to press for stronger performance and accountability from the regulated community.

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Introduction

On July 2, 2009, EPA Administrator Jackson charged the Office of Enforcement and Compliance Assurance (OECA) with revamping the clean water enforcement program to ensure it is protecting and defending our nation's waters. She asked OECA to raise the bar of federal and state enforcement performance, to inform the public clearly and fully about serious Clean Water Act violations and actions to address them, and to use 21st Century technology to transform the collection, use, and availability of EPA data. This Action Plan describes the challenges we face as a nation in improving our enforcement efforts to improve water quality and describes the actions we will take to overcome them.

I. Clean Water Act Water Quality and Enforcement Challenges

Much has changed concerning the state of water quality and water pollution control in the United States since the passage of the Clean Water Act (CWA) 37 years ago. While EPA and states have made notable improvements to water quality, challenges remain as we strive to meet the CWA's goal of providing fishable and swimmable waters and protecting the sources of our nation's drinking water. There are significant water quality problems facing too many communities; there are expanding universes of diffuse pollution sources, many which are not effectively regulated by the CWA; and there are significant limitations that affect EPA's ability to identify serious problems quickly and take prompt action to correct them. Among these limitations are two Supreme Court decisions – its 2001 decision in *Solid Waste Agcy. of Northern Cook Cty. v. United States Army Corps of Engineers*, 531 U.S. 159 (2001) ("*SWANCC*") and its 2006 decision in *Rapanos v. United States*, 547 U.S. 715 (2006) ("*Rapanos*") – that added layers of confusion regarding which water bodies are covered by the CWA in many parts of the country.

Our portfolio of water pollution threats has evolved from the very visible pipes coming out of factories and sewage treatment plants into rivers and lakes to the hundreds of thousands of sources of industrial and municipal storm water runoff, agricultural runoff, mining wastes and sewage spills from aging sewer system infrastructure. Some of these sources of contaminated runoff are known as point sources and are regulated by the National Pollutant Discharge Elimination System (NPDES) permit program, including concentrated animal feeding operations (CAFOs), industrial sites (including construction sites) and municipal separate storm sewer systems (MS4s). Many others are known as non-point sources and are not regulated by the CWA. These sources, such as suburban storm water or agricultural farm runoff, require new and innovative approaches to reduce their impacts on water quality. The sheer magnitude of the expanding universe of the NPDES program itself, from roughly 100,000 traditional point sources to nearly a million sources – 95 percent of which are covered by general permits – presents challenges in how we regulate and enforce the laws of this country.

National information on significant segments of the NPDES regulated universe, their violations, their specific impacts to local water bodies, and states' compliance and enforcement efforts is seriously deficient. States conduct monitoring to identify which waters are passing or failing state water quality standards, and the causes and sources of impairments, and report this information biennially to EPA under Section 305(b) and 303(d) of the Clean Water Act. Only 16 percent of the nation's river and stream miles, 39 percent of its lake and reservoir acres, and 29 percent of its bay and estuarine square miles have been monitored, according to the most recent state-reported assessment findings from 2004. This means we don't know the quality of the vast majority of the nation's waters. Those limited assessments show that 44 percent, 64 percent, and 30 percent respectively were impaired, meaning they were not clean enough to support their designated uses, such as swimming or fishing. EPA and states are also encountering significant impacts to sources of drinking water in many parts of the country due to contamination from many of these same dischargers (such as CAFOs) to surface waters. This is significant, as approximately 66 percent of the U.S. gets its drinking water from surface water sources. Thus, pollution in rivers and streams can make it harder for drinking water suppliers to meet standards for safe drinking water.

EPA established the NPDES program after the enactment of the CWA in 1972 to control discharges by establishing permits with discharge limits protective of water quality standards, and enforcing against those permits. With only a few exceptions, EPA has authorized states to implement and enforce these programs across the country.[1] EPA retains independent enforcement authority in authorized states and has responsibility to ensure that state programs are nationally consistent in writing quality permits and enforcing them. To secure the public health and environmental benefits of our regulations, enforcement programs must consistently apply the law and pursue vigorous, effective and fair actions to address violations and to protect water quality. Effective enforcement programs create incentives for compliance by penalizing those who do not follow the law. They establish a level playing field between those members of the regulated community who comply and those who do not. Enforcement ensures fair treatment – companies that compete against each other should not face wide disparities in treatment across the country, such as mandatory minimum penalties for a violation in one state and no enforcement in another. Ultimately, enforcement is critical to ensure that the public receives the services and protections promised by our laws. Unfortunately, data shows us that we are not getting the compliance envisioned by our laws to protect clean water. While many states have strong NPDES programs, EPA needs to take prompt actions where a state is not acting to issue protective permits or taking effective enforcement. EPA's goal in taking these actions is to ensure equal protection, to strengthen those state programs, and hold states accountable for needed improvements.

EPA's oversight of state NPDES programs has focused primarily on how well states are addressing the largest direct discharge facilities that have continuing problems. EPA has fairly complete information about these biggest facilities, as the facilities are required to submit monthly reports of their compliance with their permit limits in submissions called Discharge Monitoring Reports (DMRs). These reports, along with other information about these facilities and the actions that states take to ensure their compliance, are required to be reported by states to

[1] A list of the status of state authorization for the NPDES program can be found at: http://cfpub2.epa.gov/npdes/statestats.cfm.

EPA data systems. Even with this focus, the rate of significant noncompliance at these facilities is approximately 24 percent, meaning that one out of every four had significant violations. Significant noncompliance (SNC) describes violations that are considered to be more serious and significant to water quality, although the term only applies to the largest facilities under EPA's current policy. So, while many serious violations by smaller facilities or other point sources are not included in the term, it does provide some insight into the serious nature of violations at the largest facilities.

Most SNC is related to illegal or unpermitted discharges to the environment. Of facilities designated in SNC in 2008, 46 percent were due to effluent violations – or exceedances for multiple months of their permit limits, which were set to be protective of water quality. Eleven per cent of the 2008 SNC were due to violations of a compliance order and thus related to exceedances of their permit limits as well. Forty-one per cent of the facilities were in SNC because EPA had not received the required discharge monitoring data. This means that EPA lacked critical information on whether these facilities were complying with their limits. Some of these facilities may have submitted their DMRs in a timely manner to the state, but the state did not provide these data to EPA as required. Reporting violations are important as they are the only indicator of the compliance level of a facility with its permit. If a facility isn't reporting, we don't know whether it is violating its permit limits.

Enforcement across states in responding to SNC violations is another important gauge of performance. Both the Permitting for Environmental Results and the State Review Framework found that enforcement levels across states varied considerably. Some states rarely take enforcement action against facilities in significant noncompliance, while other states do pursue timely and appropriate formal enforcement actions. Still, state and EPA data indicate that formal enforcement action was taken against only approximately 26 percent of the facilities in SNC in 2008.

For smaller facilities that submit DMRs, EPA has not required the same focus from states and has not required states to submit data about these facilities to EPA. EPA does not, therefore, have a national rate for significant noncompliance for these facilities. However, 28 states (and 4 territories and the District of Columbia) have entered some of these data into the national system, and these data show a rate of serious noncompliance at these facilities of around 45 percent; states report taking enforcement action against less than six percent of these facilities with a serious noncompliance problem. As with the larger facilities, there is significant variability across states, with some pursuing formal enforcement at a much greater rate than others.

State enforcement response to serious violations, whether at large or smaller facilities, is not what it should be. Without complete and accurate data, it is hard to know how critical the noncompliance at smaller facilities is to water quality. It is likely that these smaller but more numerous sources are of critical concern, especially where there are clusters of permitted facilities around impaired waters. EPA and states need consistent, national data to be able to formulate appropriate strategies for ensuring compliance from these facilities, and to target enforcement resources to the sources most affecting water quality.

Critical information concerning "wet weather" sources – or sources that discharge during storms or other wet weather events – is also missing. There is an incomplete inventory of CAFOs, industrial and municipal storm water entities, occurrences of significant sewer overflows and very limited information concerning actions states are taking to address violations at these sources. Obtaining data for these sources and for state actions is essential to ensure adequate oversight and transparency. This Plan is an opportunity to address concerns about high noncompliance, low enforcement rates, and absence of data across regulated NPDES sources and states.

EPA must bring together whatever existing data the Agency and states have on water quality, permitting and violations to help target our enforcement actions to those that will have the most impact. The Agency has created some important links to other EPA databases, such as Ask Waters, to improve our ability to show regulated sources with respect to the water bodies into which they are discharging and whether those bodies are impaired by pollutants discharged by those sources. These comparisons of water quality and compliance and enforcement information are important to make sure that an increased focus on enforcement does not create the incentive to make permit limits easier to comply with. Both protective permits and enforcement of permit limits should help to attain improved water quality. Linking information and making information more available and transparent can help engage the public in pressing businesses to improve compliance and be more accountable. However, much work remains to be done to create the integrated data set that holistically supports our scientific water quality work and legal work.

Surface waters that serve as drinking water sources can also be negatively affected by the permitted facilities, such as CAFOs, whose illegal or unpermitted discharges are impairing our water bodies. EPA and state tools under the Safe Drinking Water Act (SDWA) also may not be adequate to address these issues, requiring the need for new approaches. Solving many of these problems will require further Agency-wide collaborative efforts between OECA, the Office of Water, EPA regions, states and tribes to strengthen water quality assessment, monitoring, permitting, and enforcement, and to create an information network vital to all stakeholders. Solutions to these sources of pollution, whether point sources regulated under the NPDES program or non-point sources, are paramount to the protection of our waters and their critical uses.

EPA's challenges in protecting the nation's waters have been increased by recent court decisions in *SWANCC* and *Rapanos*. EPA supports legislative changes to remove the barriers these decisions have created in clean water enforcement. A May 20, 2009 letter from the EPA Administrator, along with other members of the Administration, to Senator Boxer, Chair of the Senate Committee on Environment and Public Works, stated that "enactment of legislation amending the Clean Water Act that will broadly protect the nation's waters, make the definition of covered waters predictable and manageable, promote consistency between Clean Water Act and agricultural wetlands programs, and recognize long-standing practices, would go a long way toward addressing the substantial confusion and uncertainty arising from those decisions." These decisions have negatively impacted EPA's ability to enforce by significantly increasing the amount of time and resources it takes to bring enforcement actions necessary to protect our waters.

II. Outreach for Ideas on How to Revamp the NPDES Enforcement Program

To garner a full range of ideas from different perspectives, OECA reached out to other EPA program offices, the Agency's regional offices, state environmental commissioners and state water program managers, Indian Tribes and tribal organizations, environmental and environmental justice community groups, industry representatives, and the academic community. EPA held face-to-face and telephonic listening sessions with each of these groups of interested stakeholders, and also received written comments from a number of the participants. EPA also solicited comments directly from the general public through an EPA blog site. Many of these ideas have been captured in the Action Plan.

There were common themes that emerged from this outreach. One theme was a common desire for greater transparency in EPA's enforcement and compliance program through an increase in the amount, detail and quality of data. Stakeholders expressed an interest in understanding a holistic picture of environmental conditions and actions that EPA and states are taking in order to determine how best to engage in helping to protect our water resources.

Suggestions for upgrading EPA's data systems included methods for presenting more understandable data, and making inspection reports and discharge monitoring reports publicly available. Environmental organizations and academics advocated posting information about the frequency of exceedances of CWA permit limits at individual facilities to allow better linkage of water quality data with compliance information. Industry and the National Association of Clean Water Agencies were particularly interested in EPA doing a better job of correcting data errors. States also agreed with the need for transparency, but expressed a desire to find ways to make sure that data is both accurate and presented in useful context.

Most commenters also endorsed strengthening state and federal enforcement programs, both in terms of particular changes in program focus and through improved state and federal program performance overall. Specific activities cited by the public and environmentalists for increased enforcement were curbing discharges from concentrated animal feeding operations and addressing construction and industrial storm water violations.

There was extensive and thoughtful input on improving overall program performance, from revision of EPA enforcement policies to reworking the structure of the state/federal enforcement relationship and establishing more accountability for underperforming programs. Ideas were submitted by academics, environmentalists, environmental justice community organizations, the Environmental Council of States, the Association of State and Interstate Water Pollution Control Administrators, and others with respect to stronger oversight, improved coordination, more frequent communication, more joint planning, and the ability to tap into more federal resources to produce better environmental results. Tribes advocated that EPA do more to increase tribal enforcement capacity-building while, at the same time, building a greater federal enforcement presence in Indian Country.

III. Improvements to the NPDES Compliance and Enforcement Program

New approaches in enforcement can and must play a pivotal role in ensuring that permitted dischargers comply with their permits, thus achieving the maximum benefits to water quality from our existing laws and regulations. But enforcement is not the only answer, as many of the sources contributing to water quality impairments are not covered by current regulations. Enforcement can play a key role now to better address the expanded NPDES universe and improve compliance of those sources with their permits, while EPA tackles the hard issues surrounding the currently unregulated pollution challenges. To begin to address the serious water quality problems we now face, EPA's enforcement program must work hand-in-hand with the Office of Water, EPA regions, states, and tribes.

In order to fulfill our responsibilities, we must find new, resource efficient ways of collecting, using, and making public information about where these sources are, what pollution they produce, their relationship to water quality, and where violations are most severe. These sources are vastly greater in number from our traditional focus on the 6,700 biggest industrial and municipal sources – for example, there are an estimated 19,000 concentrated animal feeding operations, 89,000 industrial storm water sources and over 200,000 construction storm water sites. These challenges call for EPA programs and states to work together to ensure that the limited civil and criminal enforcement resources available to regulatory agencies at all levels are used effectively to address the most serious water issues. EPA must do everything it can to support strong state programs and fulfill its oversight responsibilities by taking action where states underperform.

The input that EPA received from its outreach efforts was surprising in its coalescence around the following three major themes for action. This Action Plan describes these themes and identifies key actions to advance the protection of our nation's waters.

A. Target Enforcement to the Most Important Water Pollution Problems

State and Federal water enforcement programs must reshape their efforts to address significant new threats to water quality. New approaches are needed to revamp our enforcement program to tackle violations of existing law by the sources of pollution posing the biggest threats to water quality and public health, while we maintain and improve on the progress we have already made. The program's existing focus on the biggest facilities and the associated policies for designating and addressing violations do not consider the full range of the NPDES regulated universe and may not always allow for responses to be tailored to the type of violation and its impact. New approaches, policies and procedures to focus enforcement on the most serious violations adversely affecting water quality are long overdue.

Specific Actions:

To bring about long term change, EPA will <u>develop and implement a new approach</u> for ensuring appropriate responses to water quality problems and related violations of NPDES permits across the full universe of regulated facilities. The existing focus on the biggest (or "major") facilities with individual permits and on enforcement responses to significant

noncompliance are not easily applied to the expansion of the regulated universe and to the expanding use of general permits. When these policies were developed in the 1980s, the universe totaled around 100,000 facilities. Today, the universe has expanded roughly tenfold to nearly one million facilities, and 95 percent of dischargers are regulated through general permits. This growth demands new approaches and new tools to focus limited resources toward addressing these challenges to our water quality.

We will work with states to develop this new approach. We will establish an EPA/State Work Group to assess the regulated universe and determine appropriate responses. Analysis of sectors will determine whether problems related to water quality are due to regulatory issues, inadequate permits, or compliance related issues. Once problems are defined, responses can be tailored to the specifics of that sector and the specific water quality challenges. Responses might include enforcement actions, fixes to unclear or problematic regulations, or permit modification or reissuance to be more protective of water quality. Associated with this review, the effect of clusters of permitted facilities and their cumulative impact on water quality also needs to be reviewed.

This new approach will require the creation of new tools to integrate information and assist in targeting dischargers for compliance monitoring and enforcement, the establishment of clear and transparent expectations for state programs in implementing this new approach, and the design of regulatory changes necessary to implement this new approach.

A critical first and immediate step we will take to initiate this new approach is to link environmental information to compliance data to inform the targeting of our compliance and enforcement efforts. EPA will incorporate data about water quality standards, existing water quality status (including information developed in conjunction with establishing Total Maximum Daily Loads for impaired water bodies), permit limits and effluent violations to evaluate where violations contribute to water quality impairment. These data currently reside in different systems and have not been routinely used together to help target serious problems. This effort would also include analyzing newly available information on pollutant loadings and toxicity against compliance history and watershed impairment information to identify facilities that require additional compliance monitoring or civil or criminal enforcement attention. This analysis will identify where good compliance performance at the biggest facilities may allow a shift of enforcement attention on other sources that are causing more significant water quality impacts. Where there are significant information gaps concerning water quality, the locations of point source discharges, or compliance, EPA will work with states to fill these gaps in order to make informed decisions on how to deploy limited enforcement resources.

Once we have identified significant point source violations across the spectrum of regulated facilities that adversely affect water quality, we will work with state programs to commence appropriate federal and state civil and criminal enforcement actions.

During the process of developing its new approach, EPA commits to making timely, easily accessible and understandable information available to the public concerning violations/violators, actions EPA and states are taking to address them, and the effects of our actions on water quality.

B. Strengthen Oversight of Clean Water Enforcement Performance

EPA has a responsibility to assure that the protections of the CWA extend to everyone. Although EPA has authorized 46 states to run the NPDES program, including enforcement of its requirements, EPA retains the responsibility to ensure that states are protecting water quality and consistently applying the law through vigorous enforcement. In those states where EPA retains primary enforcement responsibility, the Agency will set the same expectations for its own compliance and enforcement programs as those for authorized states. EPA also has direct implementation responsibilities for territories and Indian Country and must ensure that its performance meets these same expectations. EPA recognizes that it must be sensitive to the need to tailor its compliance and enforcement programs for territories and Indian Country to address the unique challenges faced in these areas.

Many authorized states have strong water quality protection programs. As envisioned by Congress, states are the first line of environmental defense. States take the lion's share of inspection and enforcement actions in the programs they implement. States often act as laboratories where new ideas can be piloted and tested before national deployment. In the Chesapeake Bay, for example, states and EPA are working together to try new approaches to dealing with non-point sources that, if successful, might be implemented at the national level. We can work with and learn from states willing to take a leadership role. However, where states are not acting to issue protective permits or are not taking enforcement actions to achieve compliance and remove economic incentives to violate the law, EPA needs to act to strengthen those programs to protect public health and the environment.

EPA needs to address issues already identified in state performance. Reviews have been completed of state and regional permit and enforcement programs which have identified program weaknesses and prescribed steps to improve performance. EPA's Office of Water's Permitting for Environmental Results and Regional Permit Quality Reviews have evaluated performance in permit issuance and quality, and OECA's State Review Framework has been used to evaluate enforcement programs. While none of these reviews offer a definitive determination of the quality of a state or regional program, they have identified a lack of consistency in performance across states and highlighted common issues such as permit backlogs, failure to identify significant noncompliance, or to take timely and appropriate enforcement. EPA must consistently respond to these issues and press states and ourselves to make the appropriate improvements in order to achieve equitable protection to the public, a level playing field for competing businesses, and fairness across states in how our environmental laws are enforced.

Specific Actions:

Much of the regulatory framework, including policies and guidance, driving the CWA program was developed in the 1980s. Memoranda of Agreement were entered into between EPA and states when each of the 46 states and the 1 territorial agency received program approval. Thus, they were negotiated over a 30 year period, each reflecting what was viewed as most important to include in authorization agreements at the time. These agreements contain different provisions on a state-by-state and region-by-region basis. As new problems have emerged, as federal and state programs have matured and as program requirements have broadened, the

expectations for program implementation have become even more unclear. EPA needs to clearly articulate where the bar is set for acceptable state clean water programs, and hold states and ourselves accountable for achieving it. This requires clarity of expectations and more consistent and clear communications between EPA and states to make sure we are addressing the most important water quality problems and most serious violations. A formal and consistent planning and coordination process will help to accomplish this.

EPA needs to set clear expectations for what acceptable performance is and how performance will be measured. EPA will define and clarify expectations for water permitting and enforcement programs. Those expectations will be the basis for the development of performance metrics for permitting and enforcement, which will be made public to hold both EPA and states accountable. EPA will develop these expectations in dialogue with authorized states.

Once developed, EPA will use the standard set of expectations as a basis for negotiating consistent enforcement agreements with each state, remedying the outdated, inconsistent and sometimes problematic Memoranda of Agreement that were developed over time for state program authorizations. This consistent baseline will do much to assure that states understand expectations and have the appropriate tools to achieve them.

EPA will also incorporate these new expectations and metrics into a number of formal planning processes:

- EPA and state senior management will annually include water quality standards, permitting and enforcement in planning discussions about appropriate goals, performance expectations, permitting and enforcement program improvements identified in program reviews, inspection and enforcement targeting, roles and responsibilities, work sharing and the avoidance of duplication of effort.
- Progress will be reviewed periodically throughout the year in meetings between EPA and states to holistically discuss the attainment of annual water quality, permitting and enforcement goals and expectations.
- Water quality, permitting and enforcement expectations should be contributing to the achievement of the same environmental goals. Enforcement expectations should be a part of the Water National Program Managers Guidance, which already includes guidance for the use of CWA §106 grant funds for state water quality monitoring and permitting. Ensure that the inclusion of performance expectations for the enforcement program in the grant guidance results in commitments in annual (or biannual) grant work plans that will achieve both enforcement and water quality goals.

While new approaches and expectations are being designed, ongoing oversight can work to raise the bar of performance under our current system. Strong enforceable permits are the cornerstone for effective enforcement, and the two work together to protect the nation's waters. EPA will pull results together from permit quality and enforcement reviews to determine if states are meeting minimum expectations for NPDES program performance. In the short term, this will include the implementation of the State Review Framework and the permit quality reviews currently being conducted. In the longer term, these tools need to be assessed against the new

approaches that OECA and the Office of Water are contemplating to ensure alignment with new directions. Where a state is underperforming, EPA will disapprove permits that are not protective of water quality and initiate enforcement actions against dischargers to address serious violations and protect public health and the environment.

EPA will also explore the concerns of citizen groups that some state enforcement actions have not been effective in achieving compliance. In their input into this Action Plan, some citizen groups voiced concern that in some cases when they provided a state notice of intent to file suit, some states would move to block their suit by issuing an administrative order that did not bring about compliance. To examine this issue, EPA will look into places where this practice is alleged to be widespread and determine if federal action is necessary.

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C. Improve Accountability and Transparency

EPA lacks nationally consistent and complete information on the facilities, permits, pollutant discharges and compliance status of most NPDES-regulated facilities. This affects the ability of EPA and states to identify violations, target their actions, connect violations to water quality impacts, and to share information with the public. Data problems between EPA and states include data quality, accuracy, and completeness. Responses to these problems are hindered by the reporting and data processing burden associated with the breadth and expanding scope of the NPDES regulated universe.

Analyses to identify additional data needs for EPA's permitting and enforcement program have estimated that, to obtain the level of facility-specific data needed to fully understand the impact of wet weather discharges and other universes of facilities subject to CWA requirements (such as biosolids or pretreatment) on our nation's waters, would cost over $100 million/year. Ninety per cent of the burden to enter the needed data is related to the DMRs, which are provided by permitees to states who then submit the information to EPA. While the burden can be whittled down considerably by phasing in sources and limiting reporting to when violations are found or enforcement actions are taken, it is still a considerable investment. In today's economic situation, where resources are scarce to conduct ongoing work, this state reporting burden is difficult to justify. EPA needs to explore new ways and new uses of technology to collect, analyze, use, and make information available to the public in a cost efficient and effective way.

Transparent information is a powerful self policing tool for reducing pollution and improving compliance. As we have seen with the advent and use of the Toxics Release Inventory, sharing information on environmental discharges with the public puts pressure on regulated facilities to increase compliance, limit environmental damage and be more accountable. Transparency is not a replacement for regulatory enforcement, but can be an effective driver for improved performance and accountability.

Specific Actions:

A consensus suggestion across co-regulators and stakeholder groups was to implement electronic reporting from facilities that are required to submit reports to a regulatory agency.

Electronic reporting utilizes 21st Century technologies to get information more quickly and efficiently, enables the real-time use of that information to target serious violations and sources of water pollution, improves data quality, and provides a more informative and complete picture to the public. The requirement for permitted facilities to report DMRs monthly results is a huge reporting burden – for facilities to submit paper DMRs, for states and EPA to manually enter DMR data into data systems, and for states to then transmit the data to EPA's national database. EPA and states are constantly dealing with data quality issues and struggling to meet data timeliness, completeness, and accuracy standards.

In order to ease the reporting burden, increase data accuracy, make real-time data available to regulators and the public, and allow the more efficient use of limited resources, EPA recently deployed a new electronic reporting tool called NetDMR (www.epa.gov/netdmr) that enables regulated facilities to submit their DMRs electronically to the national data system or to a state system. That information can then be shared immediately between state and federal systems through EPA's National Environmental Information Exchange Network. OECA can significantly increase the electronic submission of data by immediately encouraging the promotion and use of NetDMR or other electronic DMR reporting tools in direct implementation programs and authorized states. EPA will also initiate an aggressive marketing campaign to the regulated community to promote electronic reporting. This would include working with small business to develop capacity and incentives to ensure that they have the ability to electronically report.

To fully realize the transformation of reporting and data management into the 21st Century, OECA will develop a rule to require NPDES permittees to provide DMRs electronically to EPA or states, using either NetDMR or an equivalent state electronic DMR system, phasing out paper DMR forms. Pilot projects using electronic reporting tools show limited rates of success unless the tool is mandated. The full benefits of electronic DMR reporting can only be achieved when implementation is close to 100 percent. EPA estimates that conversion from hard copy to electronically-submitted DMRs may save EPA, states, and the regulated sources more than $50 million per year when fully implemented. Real-time information on discharges and compliance, and their connection to water quality, will increase accountability for results and enlist the public as allies in the push for better compliance.

EPA will explore other reporting from facilities and authorized states over the next year to determine if it is feasible and cost effective to implement electronic solutions. Some examples include: electronic Notices of Intent to Discharge for general permits, non-DMR compliance reports, inspection results, and electronic permits. Another idea to explore is whether electronic reporting may provide an opportunity to require a compliance certification by regulated facilities that currently do not have reporting requirements. This would fill a void by providing regular data about the discharges and compliance status of those facilities, and better inform regulators and the public of their status. This will provide a more complete picture of discharges to the environment and will help to link those discharges to water quality conditions.

Finally, EPA will move immediately toward making additional data that is not enforcement confidential available to the public, increasing the transparency of its enforcement program. We will consult users to help simplify EPA's Enforcement and Compliance History

On-Line (ECHO) public web tool, developing better ways to display data and trends that bring data to life – including interactive maps and new, simpler reports.

D. Short Term Actions

While we are working to revamp water enforcement to better protect water quality, there are actions we can take right now to address known compliance and water quality issues.

First, EPA will pursue new strategies to enforce existing rules limiting pollution from concentrated animal feeding operations (CAFOs), especially where they occur in areas close to imperiled waters. CAFOs have become larger and more densely located, placing more stress on waters in proximity to these locations. CAFOs result in a large pollution load to the environment[2] and have been cited as an environmental justice concern in some areas.[3] Where facilities with large numbers of animals are discharging without a permit or in violation of their permits, they can cause significant pollution problems of concern to communities. Many of the comments EPA received during its outreach for this Action Plan emphasized the need for EPA to move now to reduce pollution and address violations by these operations. EPA will review its existing enforcement tools to find ways to make progress in reducing violations and water pollution from these facilities, while additional solutions for reducing this pollution are being developed.

Second, EPA will revisit the division of work with states, many of which are facing near term serious resource problems. We will review with each state how best to target the resources we jointly have, so we make sure in the near term that we are addressing the most serious water pollution violations. As we revamp our enforcement program to more systematically address the new water pollution challenges, we will work with states now, utilizing the combination of existing data and targeting tools, to go after the violations we already know are serious problems for water quality.

Third, EPA will press aggressively for immediate electronic reporting. NetDMR is available now for facilities to use to electronically report their DMRs. We will urge facilities to shift to electronic reporting right away, to reduce data entry costs and increase the accuracy and timeliness of the information we make available to the public.

IV. Resource Issues

The NPDES permitting and enforcement program has expanded its regulated universe more than tenfold as water quality problems have shifted to smaller, less discrete sources. Problems have grown more complex, while at the same time court decisions have made our regulatory authorities less clear. During this expansion, program resources have generally remained static. Many states are experiencing large reductions in state resources which have seriously hampered compliance programs. In these tough economic times, it is especially important to protect responsible businesses that invest in complying with the law by taking

[2] An Urgent Call To Action: Report of the State-EPA Nutrient Innovations Task Group, August 2009
[3] Environmental Injustice in North Carolina's Hog Industry; Wing et. al.; Environmental Health Perspectives, Vol. 108, March 2000

enforcement against violators. We know that the existing level of resources at EPA and the states will not be enough to solve all of our water quality problems. In order to carry out this Action Plan, EPA and the states will need to engage in serious discussions on directing resources to the most important water quality problems and most serious violations. We need to ensure that we utilize the limited resources we do have on the most important sources of pollution and the most important violations that, if addressed, can result in improvements in water quality and in people's lives.

V. Conclusion

To help meet this country's expectation that the waters that sustain us are clean and safe, EPA must revamp its enforcement and compliance program to focus it on the most significant sources of water pollution and the most significant violations from those facilities. Our water pollution problems cannot be solved through enforcement alone, as we still do not have effective rules for many of the threats to clean water. But enforcement can make a significant difference in improving water quality and upholding our commitments to the rule of law and transparency in government. Through this Plan, enforcement will work hand-in-hand with water quality standards and permits to protect the environment and the American public. We will hold states, and ourselves, to a higher standard of performance. And we will make information about threats to clean water, violations, and enforcement actions available to the public. This information will serve as a powerful ally in encouraging businesses to do better, and giving the public the tools to demand greater compliance and accountability from the regulated community.