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Mr. Chairman and members of the Subcommittee, I appreciate this opportunity to testify today. I am John Peter Suarez, Assistant Administrator for the Office of Enforcement and Compliance Assurance (OECA) at the U.S. Environmental Protection Agency (EPA). I am here today to report that our water enforcement program is on the right track and is protecting our Nation's waterways from illegal and harmful discharges of pollution. A key component of any managed program is a continuing effort to identify problems within the system so that we can concentrate on correcting any deficiencies. That is what we have done and are doing in my office.

In this testimony, I will provide a review of the Smart Enforcement initiative currently being implemented throughout OECA and explain how Smart Enforcement relates to the NPDES enforcement program. I will also provide recent examples of successes in the water enforcement program that are helping to improve water quality throughout the United States.

SMART ENFORCEMENT

Upon starting at EPA, I launched the Smart Enforcement initiative throughout the enforcement and compliance assistance programs at EPA. Smart Enforcement requires that we

use the most appropriate enforcement or compliance tools to address the most significant problems to achieve the best outcomes as quickly and effectively as possible. The principle is the culmination of our work and experience within the enforcement and compliance assurance program. It crystalizes the lessons we've learned over the years into a strategy for action. Smart Enforcement incorporates five key areas of focus.

The first and foremost priority within Smart Enforcement is to ensure that we are addressing the most significant environmental, public health, and compliance problems. The problems we face range from raw sewage being discharged into our waterways to air pollution being released from refineries and coal-fired power plants operating in violation of permits and everything else in between. Smart Enforcement focuses our efforts on the most significant cases. It forces us to ask: where can we make the biggest difference in protecting human health and the environment.

For example, I personally place great importance in ensuring that the concepts of environmental justice are properly addressed in everything we do. In line with our focus on targeting those who are putting the environment and public health at risk, I am of the firm conviction that no community, regardless of race, color, national origin, culture, education or income, should have to bear more than their fair share of environmental burden. That is why environmental justice is a high priority in my office and a key part of Smart Enforcement.

The second component is to measure our enforcement success by not only looking at the numbers of enforcement actions we can produce at the end of a given year, but to measure our success on whether our actions produce cleaner air, purer water and better protected land. We see this as measuring the real outcomes from enforcement activity as opposed to simply counting

numbers. Measuring the real outcomes, I believe, is the most appropriate way to determine if we are fulfilling our obligation to the public.

The third area of concentration is to use data to make strategic decisions in order to target and discover the most egregious violators and ensure better utilization of our resources. Over the years EPA and the States have amassed a huge storehouse of data. As we analyze this data, we are able to uncover valuable intelligence that leads us to the most significant areas of non-compliance.

The fourth area of focus is to continually improve the management of the enforcement program. This is done by honestly and openly assessing the effectiveness of current and past program activities to ensure continuous program improvement. An example of this is the recent OECA analysis of the NPDES majors portion of the Clean Water Act enforcement and compliance assurance program. The report, *A Pilot for Performance Analysis of Selected Components of the National Enforcement and Compliance Assurance Program*, identified patterns of noncompliance and enforcement activity levels from 1999 to 2001. These types of reports allow managers within OECA to improve the program and ensure that the environment and public health are not being compromised. To be successful, we are continually assessing the effectiveness of our program activities to ensure top performance and continuous improvement.

The fifth factor within Smart Enforcement is to communicate the environmental, public health and compliance outcomes of our activities more effectively. This is done, in part, by making information of our program readily available to the public through the internet, publications, and public meetings. An example of making compliance information readily available is the Enforcement and Compliance History Online (ECHO) system. Through the ECHO system the public has facility compliance history right at their finger tips. The system

provides information on compliance inspections conducted by EPA or State/local governments, whether or not violations were detected, what enforcement actions were taken, and whether penalties were assessed.

OECA Review of the NPDES Enforcement Program

Turning to the specific issue of water enforcement, we are improving upon previous water enforcement programs. In February 2003, OECA developed a report entitled *A Pilot for Performance Analysis of Selected Components of the National Enforcement and Compliance Assurance Program*. The purpose of this report was to identify patterns of noncompliance and enforcement activity levels from 1999 to 2001. The report analyzed the NPDES majors program, which is only one component of the water enforcement program. Consistent with the principles of Smart Enforcement, this report is being used as an internal tool to provide us with information that will help us better manage the NPDES majors program. The analysis provided OECA managers with an opportunity to strategically develop recommendations designed to improve the NPDES majors program.

The report showed that of the 25% of NPDES majors that were in significant noncompliance ("SNC") during the study period, 48% of those were effluent-related, 36% were reporting violations, and 14% were compliance schedule violations. Additionally, EPA generated SNC rates and recidivism rates are often higher than State generated rates because of variability in how States treat facilities where an action has already occurred. SNC is defined as toxic discharge exceedances of over 20 percent and conventional discharge exceedances of over 40 percent for at least 2 out of the previous 6 months, or failure to meet certain deadlines or

fulfill reporting requirements. The SNC rate remained relatively steady at around 25% between 1994 and 2001. The SNC rate in 2002 was 20%.

Data shows an 11% nationwide decrease in State and EPA formal actions against NPDES majors (Administrative Orders, Administrative Penalty Orders and Judicial Actions) during the study period 1999-2001. This includes a 45% decrease in EPA formal actions likely due to shifts in resources to areas that OECA considers higher enforcement priorities, such as reducing and eliminating violations associated with wet weather events. This also includes a nine percent *increase* in state formal enforcement actions. States account for close to 75% of all enforcement actions for NPDES Majors, so the nine percent increase at the State level is encouraging. As noted above, it is important to keep in mind that the SNC rate has remained steady over the past seven years.

It is important to bear in mind that not all facilities designated in SNC require a formal action to return to compliance. EPA's enforcement guidance and policy identify two ways to resolve SNC: 1) facility returns to compliance on their own in a timely manner, or 2) formal enforcement action. Data show that 49% of facilities recover from SNC without formal action. Some facilities in SNC have pending investigations and enforcement actions which are confidential and are not reflected in the databases. Additionally, informal actions (such as dialog between the facility representatives and government officials to identify problems) and compliance assistance and incentives can be provided to return some SNC violators to compliance.

Our report also analyzed penalty data. It is important to note that States are not required to submit penalty data to EPA, therefore the penalty amounts used in the study are not complete or representative and are not adequate for measuring State performance. However, OECA

decided to look at the data that was available and included it in the report with limitations clearly stated, partly to glean any potentially useful information from the data but also as an incentive to improve data quality. The limited data indicate that penalties are generally modest, averaging around $5,000 - $6,000. They also suggest that between 39% - 44% of EPA and State formal actions result in penalties. OECA is committed to focusing on the escalation of enforcement actions over time as well as penalties issued when reviewing regional and State performance and will encourage States to report penalty data prior to implementation of the modernized PCS system. We expect that the modernized PCS system will incorporate State reporting of penalties.

While all of these number may be useful for different purposes, they are not the sole measure to assess in determining the success of an enforcement program. Numbers tell different stories depending on how they are viewed. From FY 2001 to FY 2002, the water enforcement program had the following increases in outputs:

- 741% increase in judicial and administrative injunctive relief;
- 258% increase in the value of supplemental environmental projects ("SEPs") that will be performed by defendants;
- 21% increase in administrative compliance orders;
- 20% increase in administrative penalty order complaints.

FY2003 numbers are currently being reported and are not yet available for public consumption.

Implementation of Corrective Measures within the NPDES Enforcement Program

The NPDES report was an internal management tool and has led to changes in the program. The analysis produced 13 recommendations intended to improve the NPDES majors enforcement and compliance assurance program. Some of the recommendations are already

incorporated into the program and others are being implemented. OECA is actively taking steps to reduce significant noncompliance in the NPDES majors and other programs through improved targeting, public access and enforcement. The following are examples of some recent efforts:

Targeting: Among the recommendations in the report is a recommendation to target SNCs with the worst compliance records and those which have not received effective enforcement. The goal is to ensure timely and appropriate responses to significant noncompliers or longstanding violators, especially those where potential environmental impacts are the most significant. OECA has already made significant progress with this through an effort to develop media-specific Facility Watch Lists.

The Facility Watch List is a management tool that enhances the enforcement program's ability to identify and track facilities with serious violations and no apparent formal enforcement response under the Clean Air Act, the Clean Water Act, and the Resource Conservation and Recovery Act. The goal of the Facility Watch List is to ensure the timely and appropriate response to significant noncompliers or longstanding violators through better data analysis and routine discussions between OECA, the Regions, and the States. Placing management attention on serious violators that have not received enforcement attention will ensure that these violations are properly addressed, and will significantly reduce the number of facilities that do not receive timely and appropriate action (leading to a diminishing Watch List in the future).

Public Access: OECA has increased public access to enforcement and compliance data through its online Enforcement and Compliance History Online (ECHO) data base. Making data available to the public increases accountability for facilities and encourages compliance. ECHO provides the public SNC data and further demonstrates EPA's commitment to use data to manage the program and focus on facilities identified with serious violations.

Enforcement: EPA and the States continue to enforce the Clean Water Act, while evaluating how best to direct limited resources to address and correct violations causing significant environmental and human health threats.

It is important to keep in mind that in assessing any enforcement program, we cannot only look at total numbers (or beans collected) but consider the entire picture. On the National scale, the water enforcement program has accomplished, and is implementing, major milestones in protecting our waterways. When we look at the enforcement program from the Smart Enforcement perspective, we are on the right track to improving our environment and protecting public health. In particular, when assessing the Federal NPDES enforcement program, today's water enforcement program is responsible for obtaining approximately $2.8 billion in injunctive relief in FY2001 and FY2002. This is an enormous amount of money that will be invested in environmental controls and will be used to directly improve our waterways. The $2.8 billion is a substantial increase from the $1.2 billion in injunctive relief obtained in FY1999 and FY2000. Furthermore, in FY 2001 and FY 2002, the water enforcement program is responsible for removing 865,000,000 pounds of pollution from the Waters of the United States.

Commitment to Increasing Resources and Modernize Enforcement Tools

The Administration is committed to providing the resources necessary to maintain a vigorous and effective enforcement program that will encourage and ensure compliance with our nation's environmental laws. For FY 04, the President has requested $503 million for the enforcement and compliance assurance program at EPA, the highest level ever requested and a $21 million increase over the prior year's request. Included under the President's request is a $5 million investment to expand and modernize the Permit Compliance System (PCS), the chief

information management system used by the Agency and States to manage the Clean Water Act NPDES program. PCS allows the water enforcement program to identify possible violations and other compliance problems by accessing data submitted required by NPDES permits. The President's request also includes a budget of 3,411 full time equivalents (FTE) to implement the Agency's environmental enforcement program. This represents an increase of 100 FTE over the President's FY 03 request.

Wet Weather Enforcement Activities

A major initiative within OECA is to reduce, where possible, the discharge of raw sewage from municipalities during wet weather events through enforcement actions against municipalities that discharge such pollution. Sewer overflows that result in the discharge of raw or diluted sewage from the municipal collection system may pose significant public health and environmental risks.

In the NPDES Performance Analysis issued in February 2003, OECA analyzed, in part, formal enforcement actions related to NPDES majors facilities. The data showed an overall 11% decrease in total State and EPA formal enforcement actions, with a 9% increase for States and a 45% decrease for EPA. The decrease in EPA formal enforcement is due to shifts in resources to OECA's wet weather priority area, which includes combined sewer overflows (CSOs), sanitary sewer overflows (SSOs), storm water, and concentrated animal feeding operations (CAFOs). EPA made wet weather a priority enforcement area because States have indicated that sources of pollution such as storm water runoff, agricultural runoff, and municipal CSO and SSO discharges are having a significant impact on impaired waterways.

Pursuing wet weather cases are more complex, however, than traditional NPDES cases. The case development process, negotiation process, and post-settlement oversight in the wet

weather area are much more complex than in traditional NPDES cases. Although these cases can demand more resources, EPA has taken about 200 SSO and CSO formal enforcement actions since 1995. The Regions have issued over 135 administrative orders and several administrative penalty orders in this time period to address CSO and SSO violations.

Moreover, wet weather enforcement involves a more lengthy and complex process. Unlike the 6,000 NPDES permitted majors whose location and compliance status is tracked in PCS through self-reported data, many of the wet weather sources (e.g., SSOs, CAFOs, and storm water) do not have NPDES permits, are not required to submit self-monitoring reports, and have no information in PCS. As a result, identifying and documenting violators and specific violations for wet weather case development involves more extensive field work and case development. Finally, due to the complexity and length of implementation for many of the requirements in enforcement orders associated with CSOs and SSOs, enforcement resources continue to be expended post-settlement to ensure that the remedy is implemented correctly and on time.

Examples of Recent Cases

In June 2003, EPA announced a settlement with Washington D.C. Water and Sewer Authority (WASA), launching an extensive program to reduce illegal discharges of untreated sewage into the Anacostia and Potomac Rivers and Rock Creek. Pursuant to the settlement agreement, WASA will take several interim measures to reduce illegal sewage overflows and other violations of the Clean Water Act. The settlement also requires WASA to pay a $250,000 penalty for past violations, and undertake or fund $2 million in storm water pollution prevention projects.

In February 2002, we filed a judicial complaint against the Puerto Rico Aqueduct and Sewer Authority (PRASA) to remedy alleged unlawful discharges of untreated sewage into the environment of Puerto Rico and violations of its pollutant discharge permits issued by EPA under the Clean Water Act. We alleged that PRASA is responsible for discharges of raw sewage and other pollutants into Puerto Rico's waterways from 471 pump stations throughout the island, and that it had failed to properly operate and maintain the pump stations, among other violations. In March of 2003, we announced a settlement of that lawsuit that requires PRASA to complete construction and take other remedial actions to eliminate long-standing noncompliance at 185 sewage pump stations valued at approximately $8 million. PRASA will also develop and implement a comprehensive plan for the operation and maintenance of PRASA's entire system of more than 600 pump stations, and implement a system-wide spill response and cleanup plan. EPA has estimated the value of these required projects at over $300 million.

In April 2003, EPA announced yet another settlement with the City of Toledo, Ohio to address problems from CSOs and SSOs. The settlement requires the City of Toledo to end its long-standing practice of discharging raw sewage into Swan Creek and the Maumee and Ottawa Rivers. Under the settlement, Toledo will more than double its sewage treatment capacity, build a basin to hold excess sewage and improve their collection and treatment system. These activities, to be carried out under Federal and State supervision, should eliminate most of the raw sewage discharges from the City's treatment plant and sewers, even during peak flow times.

In September 2003, EPA announced a settlement with Bradford Sanitary Authority in McKean County, Pa. This will help prevent untreated sewage from being discharged into Tunungwant Creek and reduce the threat of contamination from abandoned oil and gas wells

nearby. EPA estimates that the corrective actions required by the agreement will reduce dangerous sewage overflows by approximately 5.1 million gallons per year.

As evidence of our continued diligence in protecting our waterways, just last week, EPA made public a draft settlement agreement with Hamilton County, Ohio. Under the agreement, if finalized, Hamilton County will be required to implement remedial measures addressing SSO and CSO violations, as well as the wastewater treatment plant violations. The agreement calls for the implementation of approximately $1.5 billion of construction activities to eliminate and reduce CSOs and SSOs. A reduction of greater than 85% is expected in the 6.2 billion gallons of highly diluted sewage that are annually discharged from the CSOs during wet weather. The settlement is also projected to result in the elimination of 100 million gallons of raw sewage overflows annually at 16 SSOs.

Other public actions taken in 2003 to address CSOs and SSOs include:

- continued litigation against the City of Los Angeles to address sewer spill incidents since 1994;
- filing of a judicial complaint against the City of San Diego for its sewage spills and illegal discharges to waters; and
- monitoring compliance and implementation of past settlement agreements.

I am extremely proud of the environmental results achieved via these settlements and enforcement activities. The environmental results achieved by our work in the wet weather arena are critical to protect the environment and mitigate the possible public health risks. These efforts are well worth the time and energy that EPA is devoting to this aspect of the water enforcement program.

Region 1 has been a leader in the Nation in addressing wet weather issues through its innovated water enforcement program. My colleague, Robert Varney, will address the accomplishments in Region 1's program to improve the water quality throughout New England.

Other Water Enforcement Priorities

Even though CSO and SSO issues are a high priority for EPA's water enforcement program, other core programs are continuing to be implemented effectively. On the EPA Headquarters level, we are working with our Regional offices to implement a comprehensive approach to controlling waterway impairment caused by storm water runoff. The 1987 Amendments to the CWA established phased NPDES permit requirements for municipal and industrial storm water discharges. The total number of storm water dischargers is unknown but expected to be several hundred thousand. Storm water run-off poses a significant threat to the environment, and remains a leading cause of water quality impairment.

EPA developed the *2003 Storm Water Compliance and Enforcement Strategy* to address continued non-compliance across the country. The *Strategy* provides sector- and watershed-based models for EPA Regions and States to use as they implement their own enforcement and compliance plans. Furthermore, EPA conducts targeted investigations of many large-scale construction operations, including national developers of large residential and commercial complexes. To address small business violators, EPA recently-developed an expedited settlement offer program that allows the EPA Regions to return small violators to compliance and resolve violations expeditiously.

In light of these activities, EPA continues to maintain an effective water enforcement program throughout the United States. I have provided an overview of our accomplishments, but

this is only the tip of the iceberg. So much else happens in our Regional Offices and other enforcement programs that further our mission to protect the environment and public health.

Conclusion

Under the banner of Smart Enforcement, we are measuring the success of the enforcement program through the eyes of the environment and public health. As with any major National program, there is always room for improvement and or modification. I will continue to implement the Smart Enforcement approach and continue to conduct reports similar to the *Pilot for Performance Analysis of Selected Components of the National Enforcement and Compliance Assurance Program*. This is the only way that we will continue to improve upon our successes.

Thank you for the opportunity to testify today. I look forward to working with you as we continue to promote water enforcement activities with EPA. I am very proud of our accomplishments in improving water quality for all Americans. These efforts are essential in protecting the environment and addressing possible public health risks.

I look forward to responding to any questions you might have.