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AND  
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U.S. ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE COMMITTEE ON  
ENVIRONMENT AND PUBLIC WORKS  
UNITED STATES SENATE**

**June 28, 2006**

Good morning Mr. Chairman and Members of the Committee. I am Granta Nakayama, Assistant Administrator for Enforcement and Compliance Assurance, U.S. Environmental Protection Agency (EPA). I am joined by Donald Welsh, Regional Administrator for Region III. I appreciate the opportunity to discuss with you how EPA meets the challenge of ensuring consistent implementation of federal environmental laws and regulations.

**SCOPE OF THE CHALLENGE**

The United States encompasses a wide range of geographies, climates, and economic conditions, with a wide array of industries, agricultural enterprises, and commercial and governmental entities. EPA's mission is to protect both human health and the natural environment across this varied landscape.

It is not a simple task. EPA must accomplish these protections by implementing 28 different environmental programs contained in eleven separate environmental laws, each statute with its own mechanisms for achieving its goals. In addition, because most of these laws allow EPA to authorize states and tribes to carry out the statutory

programs, EPA often has the dual role of maintaining a significant federal program while ensuring the effectiveness of the state and tribal programs.

The Agency has responded to this complex situation by developing fundamental principles, a framework of management systems, and a range of policies that provide nationwide consistency in environmental and human health protections. Within this structure, Regions, states and tribes are actively engaged in both the planning and the implementation of EPA's programs. A critical strength of this system is the balance and flexibility that has been built in to accommodate, as appropriate, the inevitable variations in environmental, economic and other circumstances that arise.

Let me be clear, flexibility is not an excuse for disparity. EPA does not condone enforcement activity that is arbitrary, that results in vastly different responses depending upon the location as opposed to the nature of the violation, or that springs from animosity toward a business, sector or individual. Disparity of this type is counterproductive, and does not lead to increased compliance or a level playing field for regulated entities.

While individual cases are composed of specific facts and circumstances, differences in enforcement responses do not necessarily equate to disparities. After taking these case-specific factors into account, what may appear to be a disparity in EPA's response to a violation may, in fact, simply reflect those facts and circumstances. Managed flexibility allows EPA to maintain consistency while accommodating case-specific differences, as may be appropriate.

## **CONSISTENCY THROUGH PLANNING**

EPA's Strategic Plan, developed in accordance with the Government Performance and Results Act of 1993, is the foundation used by EPA managers nationwide to determine the highest priority environmental issues that the Agency must address. Developed by EPA after input from stakeholders, it articulates measurable goals and objectives against which the Agency's performance is measured, and describes the means and strategies that will be used to achieve results. Routine measurement of the progress being made under each goal enables the Agency to identify and make any needed adjustments to achieve better results.

Our Plan is built around five annual goals, centered on the themes of clean air and global climate change; clean and safe water; land preservation and restoration; healthy communities and ecosystems; and compliance and environmental stewardship. It discusses the strategies that the Agency applies across the five goals, in areas such as science, human capital, innovation, information, homeland security, partnerships, and economic and policy analysis. The Office of Enforcement and Compliance Assurance (OECA) supplements the Strategic Plan's goals with National Enforcement and Compliance Priorities.

The key mechanism for implementing EPA's Strategic Plan is the National Program Managers Guidance and Annual Commitment System, administered Agency-wide by EPA's Chief Financial Officer. It orients all of EPA's activities to meet a single set of strategic goals and objectives. The Guidance and Commitment System contains

specific directions and expectations for running EPA's five major programs (air, water, solid waste, toxics and pesticides and enforcement and compliance assurance), effectively governing the activities of 95 percent of EPA's personnel. Within the system, EPA programs make detailed commitments to conduct certain activities over a three-year time frame (*e.g.*, fiscal years 2005 - 2007). For the enforcement and compliance assurance program, there are commitments to undertake activities such as the number and type of inspections that each EPA Regional office will perform. These activities are reviewed twice each year by Headquarters.

### **CONSISTENCY: THE REGIONS**

Most EPA programs are carried out through ten Regional offices, with Headquarters responsible for national program oversight and direction. Given the breadth of environmental issues across the country, EPA must balance both national consistency and Regional flexibility in program implementation.

With respect to specific enforcement cases, the Regions conduct inspections, make initial compliance determinations and provide compliance assistance. EPA's Regional offices function as specialists on the environmental concerns within their jurisdictions; their strength is in supporting the national programs while tailoring their expertise and work in response to regional issues. They are also highly effective in working with their state counterparts to ensure that their work, as appropriate, complements state environmental priorities.

The Regions and Headquarters collaborate on policy applicability and interpretation issues; this collaboration is required on issues of national significance. Although the Regions have the authority to conclude most cases independent of Headquarters, approval by Headquarters is required when settlement terms deviate from policy or when the settlement addresses a precedential legal issue.

EPA Headquarters ensures that national priorities are met and that the Regions adhere to national program goals, standards, practices and policies. To this end, the formal mechanism used by Headquarters is the National Program Managers Guidance and Annual Commitment System, as I mentioned earlier. In the Enforcement and Compliance Assurance program, national consistency is achieved on a less formal, continuous and interactive basis. Along with senior members of my management team, I travel to each Region at least once a year to conduct management reviews.

The Enforcement and Compliance Assurance program employs a host of national policies and guidance that ensure consistency across the Regions. Statute-specific policies address compliance monitoring, enforcement responses to violations, penalties and responsibility for cleanup of hazardous waste sites, all of which were created to provide consistency across the Regions and Headquarters.

Cross-statutory policies include EPA's Audit Policy, the Supplemental Environmental Projects Policy, our Small Business Policies, and model administrative orders and judicial consent decrees. EPA's Audit Policy, for example, encourages companies to implement self-audits for compliance with all environmental laws by

substantially reducing, and in some cases eliminating, penalties for violations that are promptly reported and corrected. EPA encourages multi-facility companies to enter into auditing agreements that provide for the review of corporate-wide compliance, while providing certainty about liability for self-disclosed and corrected violations. EPA also has special compliance incentive programs that reduce or eliminate penalties for small businesses and municipalities that discover, disclose, and correct environmental violations. In fiscal year 2005, based on the national plan and program guidance, Region III's resolved 37 Audit Policy cases involving self-disclosed and corrected violations at 156 facilities. In addition to mitigating 100% of the penalty in most cases, each of the companies corrected its violations, and committed to improve its management procedures to prevent recurrences of the violations.

For several years, EPA's enforcement program has used National Enforcement Priorities to achieve some of our most significant environmental and human health benefits. Three criteria are used in selecting national priorities: there is a pattern of non-compliance; there is the potential to achieve significant environmental or human health benefits; and there is an appropriate federal role in addressing the problem. The selection process involved input from EPA Headquarters, the Regions, states and tribes.

Each national priority has an implementation strategy and a national team to carry out the strategy and accomplish consistent results. Quarterly, a nationally based Planning Council of senior managers reviews the progress on each strategy and

addresses concerns that have emerged. The strategies are adjusted as needed to accommodate any unanticipated developments.

We also maintain national “core” program activities: the day-to-day work of ensuring compliance with the environmental laws. In this context, flexibility actually provides the enforcement program with the ability to recognize unique or differing circumstances. As an example, two ordinary actions to enforce failure to install pollution control equipment, taken in different Regions resulted in markedly different penalties. Is there necessarily an inconsistency or disparity in treatment? No, a lower penalty amount may reflect mitigation for supplemental environmentally beneficial projects that a settling party agreed to undertake. It could reflect the fact that one violator was a small business, whose financial resources are taken into account in our policies for determining appropriate penalties. There may be exacerbating circumstances, such as the severity of the environmental damage caused or the duration of the violation.

The ultimate goal of our program is to obtain compliance with the environmental laws of the United States. To achieve this, we use a range of compliance assistance techniques, from web-based information to workshops and site visits. We actively engage in compliance monitoring, such as collecting and reviewing compliance information reported by facilities, conducting inspections and performing compliance evaluations. We offer compliance incentives, such as favorable settlements through EPA’s Audit Policy or its Small Business Policy. And we take enforcement actions.

Which tools EPA uses to achieve compliance, alone or in combination, depends upon our assessment of the severity of a problem and the technique that is most likely to achieve the most effective results. New tools and techniques are often piloted on a limited basis before they are employed nationally. In any event, we do not expect that every Region will address each compliance situation simultaneously using the same tool. However, our policies and management systems are designed to ensure a reasonable level of consistency nationwide.

At the Regional level, the importance of consistency as well as the value of flexibility are clear. Consistency is essential to provide fairness to the regulated community and citizens, as well as ensure progress toward national goals. Occasionally, flexibility is necessary to allow us to be responsive to individual states' needs, as well as to address issues that are unique to specific geographic areas.

### **THE NEED FOR FLEXIBILITY**

As mentioned, the vast majority of Regional activities are undertaken to achieve specific national commitments. However, there are circumstances in which the flexibility that was mentioned earlier has been crucial in addressing environmental concerns unique to a Region or state. For example, in dealing with the extraordinary regional challenge of restoring the Chesapeake Bay, Region III is working closely with the Commonwealth of Virginia to carry out an Integrated Storm Water Initiative for the Bay. The purpose of this initiative is to accelerate environmental results in this area by combining several regulatory and voluntary approaches in a targeted fashion. EPA is

applying municipal storm water permit enhancements, compliance audits, and voluntary recognition tools to promote Low Impact Development to achieve greater pollutant reductions from the developing areas of the state.

In addition to helping address unique state needs, flexibility is often needed to address Regional environmental problems. One example of this is the Vinyl Chloride Project. In order to reduce exposure to a known carcinogen, Region III developed a region-specific plan to address an environmental problem identified by technical staff, presented to management and coordinated through Headquarters. Interest in this project began when observations were made by field inspectors of movement of this particular pollutant, a known carcinogen, between air, soil and water at facilities in the Region. Based on these observations, further research was conducted using environmental, public health, industry and other data to identify the top chemicals of concern in our Region. Vinyl chloride was identified as one of these chemicals of concern. The Region next evaluated which industries had the greatest risk for pollutant transfers and for which non-compliance could be an issue. The field observations and data analysis were presented to EPA Headquarters. The data showed that several other Regions were likely to have similar issues with vinyl chloride. Based on Region III's information, Headquarters selected the Vinyl Chloride Project as a national pilot that would directly address a recommendation by the General Accountability Office (GAO) to employ strategic approaches to resource deployment in the compliance and enforcement program. The Project was selected because it addresses a significant

environmental problem that is a priority for some regions, uses a multi-regional process that demonstrates flexibility in sharing resources across regions, and can achieve measurable reductions in harmful air, water and hazardous waste pollution.

Region III led this effort, working in conjunction with four other regions, the National Enforcement Investigations Center of the Office of Enforcement and Compliance Assurance and our Headquarters Office of Civil Enforcement. To date, EPA has assessed the multi-media compliance status of more than 80% of the twenty-three PVC facilities nationwide. Inspections conducted under this Project focus on regulatory compliance and, when appropriate, seek innovative and measurable reductions in harmful air, water and hazardous waste pollution. In one case alone, a settlement has been reached that reduced vinyl chloride emissions by 26 tons. Without the flexibility to develop a Region-specific approach, this project, which is making significant progress in environmental improvements in reducing the presence of a known carcinogen, would not have happened.

### **CONSISTENCY: THE STATES**

EPA oversees state implementation of federal environmental programs through policy, guidance and effective working relationships between states and EPA Regional offices. The major environmental statutes have a mechanism for authorizing state implementation of environmental programs. States must demonstrate that they have the capacity to carry out program implementation. We use joint planning and priority setting to provide states resource flexibility and to foster use of innovative strategies for

solving state water, air, and waste problems, using a mix of environmental indicators and traditional activity measures for managing programs and measuring results.

With respect to enforcement, EPA is now implementing the State Review Framework, which was developed jointly with the Compliance Committee of the Environmental Council of the States, to ensure consistency both in state environmental enforcement program performance and in Regional oversight. It utilizes existing program guidance (such as national enforcement response and penalty policies) to evaluate state performance and help EPA determine the adequacy of a state's enforcement program.

Essentially, the Framework assesses a state's compliance monitoring, enforcement response and data management using agreed-upon performance metrics. Reviews are conducted by EPA Regions as cooperative efforts that describe a state's strengths and weaknesses under each element and make recommendations with respect to areas needing improvement. An additional element of the review provides the opportunity to give states credit for innovative approaches to achieving results in their programs. The Framework includes national tracking of recommendations for improvement, to ensure that they are timely made.

### **THE IMPORTANCE OF DATA**

Consistency would be extremely difficult to achieve in the complex world of environmental protection without sophisticated data systems. EPA has invested heavily in modernizing its data systems in order to improve our ability to identify compliance

problems and trends; help inform our decisions about program direction; enhance our ability to monitor results achieved across the EPA Regions; track progress toward achieving specific commitments; and improve the quality of the data we report to Congress, OMB and the public.

## **CONCLUSION**

Differences in enforcement responses do not necessarily equal enforcement disparities. An enforcement and compliance assurance program that is so rigid that it fails to acknowledge and allow for the diversity in our nation's environmental and demographic conditions would be counterproductive. EPA's enforcement program is designed to produce consistent and fair results that achieve compliance, cure noncompliance, deter future violations, and benefit human health and the environment. We accomplish this through a system of policies, procedures, and plans that achieve a high degree of national consistency while also allowing a necessary degree of flexibility. EPA remains committed to continuing to improve compliance. If disparities exist, we are committed to removing them, while retaining the flexibility we need to address differences.

Thank you for allowing me to appear before you. I would be happy, now, to take any questions you might have.