Protecting Our Water Environment

Metropolitan Water Reclamation District of Greater Chicago

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March 26, 2003

Ms. Rebecca Kane
United States Environmental Protection Agency
Office of Enforcement and Compliance
Assurance, MC 2222A
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Ms. Kane:

Subject: Request for Comments, United States Environmental Protection Agency's (EPA) Pilot Enforcement and Compliance History Online, 68 FR 4777

The Metropolitan Water Reclamation District of Greater Chicago (District) has the following comments concerning the issues raised in the Federal Register notice regarding EPA's public information tool called Enforcement and Compliance History Online (ECHO).

Question: In general, are the compliance histories of your facilities and other information in ECHO accurate?

Response: Based on the discussion in the attachment to this letter, the data in ECHO regarding the District's facilities are inaccurate. More importantly, permittees are not provided with any mechanism to assess the accuracy of data and correct errors prior to publication.

Question: Are you concerned that the inclusion of demographic information puts an environmental justice overlay to the data, which may lead ECHO users to infer relationships between the compliance records of facilities and their health and economic situations?

Response: It is unclear what rationale EPA has for including the particular data listed for each facility and the format in which it is displayed other than to suggest a link between the compliance record of facilities and the health and economic conditions in the surrounding communities. Therefore, the inclusion of such data is a concern.

The District has no direct experience with this issue, but it is conceivable that ECHO users will infer linkages between a permittee's environmental performance and demographic data, or that permittee management decisions are based upon or influenced by demographic data. It is also

conceivable that similar inferences may be made with regard to oversight bodies such as state regulatory agencies or EPA regional offices.

Even if demographic information were not included in the ECHO database, this information can easily be obtained from other sources and used with the same results. However, the question is whether demographics are necessary information for a user accessing compliance histories on the ECHO database? This information may sway the user's viewpoint on the impact or importance of noncompliance/compliance of an NPDES or CAA permit holder.

Question: Do you believe ECHO should contain guidance to users on what the compliance data actually means?

Response: Yes. ECHO will be utilized by a host of individuals with differing levels of sophistication who may not understand the data and terminology contained therein, thereby creating the possibility of confusion or misunderstanding.

Based on the District's survey of ECHO records, the data format and content are sufficiently complex that many ECHO users would benefit from guidance on interpreting the data. This is particularly important to understanding violations reported on ECHO, as well as the actions taken by the permittee to attain compliance. Misinterpreted and misrepresented data can result in unwarranted assignment of guilt and unwanted publicity.

Question: Are you concerned that where federal and state enforcement compliance data conflict, the federal data will prevail in ECHO?

Response: The District has no direct experience with this issue. However, concern is certainly warranted that federal data would prevail in all cases where federal and state enforcement compliance data conflict. It would be irresponsible to have a blanket policy calling for federal data to override state data in every case. That determination should be based on sound science and the quality and quantity of each set of data. The public should be entitled to have access to both the state and the federal data along with an explanation as to why one set of data prevailed over the other.

Question: Are you concerned that the enforcement penalties listed in ECHO are in the amounts sought by EPA, as opposed to actual *obtained* amounts?

Response: The information concerning enforcement penalties would be more useful if it identified the penalties available under the law, the penalties sought by the EPA *and* the amount of penalties actually obtained.

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While it may be appropriate for the EPA to list *potential* penalties for enforcement actions that are at their early stages, it is inappropriate to list only potential penalties once *actual* penalties are assessed and collected, since actual penalties are frequently reduced based on mitigating circumstances that were not known at the time the enforcement action was initiated.

The public should be informed of both the amount sought for penalties in addition to the amount actually collected by the EPA. Listing only the amounts sought, gives the public a false impression of the enforcement process, its efficiency and effectiveness.

If you have any questions, please contact Mr. Richard C. Sustich, Assistant Director of Research and Development, Industrial Waste Division, at (312) 751-3030.

Very truly yours,

John C. Farnan
General Superintendent

JCF:RL:js
Attachment
cc: Association of Metropolitan Sewerage Agencies