

Attachment 3
Next Steps for the Three NPDES Policies:
the ICIS-NPDES Policy Statement, the Wet Weather Significant Non-
Compliance Policy, and the NPDES Compliance Monitoring Strategy
September 28, 2007

Overview

The Clean Water Act National Pollutant Discharge Elimination System (NPDES) program has evolved through the years to include important wet weather pollution sources. To keep the enforcement and information management components of the NPDES program in alignment with the current NPDES program regulatory structure, EPA has been working with the States to update its policies, guidance, and database. The relationship between the program's regulatory structure, EPA's past policies and their revision, and program implementation and management was explained in an April 30, 2007 paper.¹ On this same date, EPA distributed the following three NPDES policies to States, the Environmental Council of States (ECOS) and the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) for review and comment:

- the Integrated Compliance Information System for NPDES (ICIS-NPDES) Policy Statement;
- EPA's Significant Non-Compliance (SNC) Policy for CWA Violations Associated with Combined Sewer Overflows (CSOs), Sanitary Sewer Overflows (SSOs), Concentrated Animal Feeding Operations (CAFOs), and Stormwater Point Sources (aka "Interim Wet Weather SNC Policy"); and
- CWA NPDES Inspection Frequency Guidance for the Core Program and Wet Weather Sources (aka "NPDES Compliance Monitoring Strategy").

There are several commonalities between these policies. Each policy:

- Promotes both national consistency and flexibility in NPDES program management and implementation.
- Focuses resources to the most critical programmatic and environmental areas.
- Updates and strengthens existing NPDES program decision-making and management policies that were out-of-date.
- Prompts changes in current NPDES business practices among the authorized states and territories to reflect the changes in the program over the last 20 years.

EPA received comments from 30 States, the majority of which dealt with resource or program oversight issues. EPA received few specific substantive comments on any of the three policies.

¹ Relationship between three NPDES Policies: the ICIS-NPDES Policy Statement, the Wet Weather Significant Non-Compliance Policy, and the NPDES Compliance Monitoring Strategy, U.S. EPA, April 30, 2007.

On September 12, 2007, EPA sent ECOS a letter outlining EPA's next steps on the 3 policies based on the States' comments. This document expands on the initial paper about the relationships of the three NPDES policies to include EPA's current approach for proceeding on these policies.

Compliance Monitoring Strategy

Objective: Both the Permitting for Environmental Results and the State Review Framework reviews highlighted the need to revisit the inspection frequency goals set in the Enforcement Management System (EMS) written in 1989. The revised Compliance Monitoring Strategy (CMS) will establish new goals for all parts of the current core program, while acknowledging the emergence of wet weather sources and "traditional" minor facilities that may be contributing to non-attainment of water quality standards. The NPDES CMS is intended to guide this decision-making process, and focus resources on the most critical environmental areas. The NPDES CMS includes flexibility to set priorities in annual agreements between EPA regional offices and States that take into account resource constraints.

Comments: State comments received focused on three major recommendations: (1) accommodate limited State inspection resources; (2) maintain adequate presence in core program areas as attention turns toward wet weather issues; and (3) ensure that the flexibility that is built into the CMS is actually implemented.

Next Step: OECA has accommodated many of the comments that States and regions have made in the review periods of the CMS, which have improved the clarity of the document and increased the flexibilities the CMS now offers. OECA will finalize the CMS in the fall of 2007. The CMS may be utilized in FY2008 if a State wishes to negotiate the flexibilities available in the CMS with their region, but will be fully effective in the FY2009 planning cycle. Regions will be asked to consider beginning implementation of the strategy in FY2008 if a State so requests.

Interim Wet Weather SNC Policy

Objective: The Interim Wet Weather SNC Policy supplements the existing 1986 NPDES SNC Policy and will provide EPA and States with a tool to better manage the current NPDES program by providing guidance on prioritizing and tracking violations in EPA's Clean Water Act wet weather national enforcement priority areas. The objective is the same as EPA's original policy – to help focus limited enforcement resources with some degree of national consistency. A critical part of implementing this Policy includes the ability to track and manage the identification of violations and follow-up actions by EPA and States on a national level.

Comments: Only a few States submitted substantive comments on the policy approach, including: 1) appreciation of the flexibility built into the policy with some concern that it may also lead to inconsistent interpretations of the SNC criteria and

response options in the policy, 2) the desire to establish specific thresholds within some of the definitions in the policy, and 3) the elimination of the CAFO section because EPA does not have a final revised CAFO rule yet.

Next Step: The draft Interim Policy did not identify the related data elements that are critical to tracking and managing these activities, as it relied on a small subset of the data elements set out in the Requisite ICIS-NPDES Data Elements (RIDE) in the draft ICIS-NPDES Policy Statement. Because of the multi-step approach EPA is taking to resolve ICIS-NPDES Policy Statement issues (see below), OECA will be initially issuing the Interim Wet Weather SNC Policy only at the federal level in the fall of 2007. OECA welcomes any State's interest in piloting the Interim Wet Weather SNC Policy, and recommends that those States contact and work through their regions.

EPA will, in consultation with the ASIWPCA State-EPA NPDES Advisory Group, develop an approach for tracking and reporting wet weather SNC information. Full implementation of this policy will be coordinated with the implementation of the new ICIS-NPDES data system and associated policies.

ICIS-NPDES Policy Statement

Objective: The ICIS-NPDES Policy Statement will reflect the move from the Permit Compliance system (PCS) to the new Integrated Compliance Information System (ICIS-NPDES) as the national database for the NPDES permitting and enforcement programs. The ICIS-NPDES Policy Statement will provide EPA and NPDES-authorized States with guidance on information management practices and responsibilities to ensure that ICIS-NPDES contains accurate, complete, consistent, and timely information, which will support effective management of the NPDES program. The Policy Statement also identifies a set of data, the Requisite ICIS-NPDES Data Elements (RIDE), which will allow EPA to manage the national NPDES program.

Comments: State comments on this Policy centered on the following areas on concern: resource implications related to the number of data elements; the amount of time to transition to this policy; and sharing State data to maintain a national NPDES data base.

Next Steps: In consideration of the States' concerns about the draft Policy Statement, EPA developed an approach that will allow provide the necessary guidance to the States already using ICIS-NPDES while allowing additional time to work on issues concerning what new data to exchange and how to exchange it. There are currently 21 States, 2 Tribes and 9 Territories that directly use ICIS-NPDES; 9 hybrid States (that use ICIS-NPDES but also batch some data to PCS) that will begin using ICIS-NPDES in FY2008; and 23 full batch States (that use their own data system and currently send data to PCS). It is critical that the approach taken ensures fair and equal treatment of all states, regardless of what system they use, as well as the continuance of a consistent national data set for the NPDES program.

EPA intends to pursue a rule-making approach to establish the required data elements in ICIS-NPDES and the reporting requirements for the full NPDES program. Since this can be a lengthy process, EPA will, in the interim take the following steps:

- Issue an Interim ICIS-NPDES Policy Statement for direct users of the ICIS-NPDES system that will require them to submit the equivalent set of data that is now required to be submitted to PCS.
- Continue to work with the hybrid States to migrate their data from PCS and develop the batch data flow through the Exchange Network. Once these States are on ICIS-NPDES, the Interim ICIS-NPDES Policy Statement will apply.
- Continue to work with Texas and 10 other States on a net DMR tool that will allow facilities to directly submit DMR data to ICIS-NPDES. The NetDMR tool and other electronic DMR tools are the key way of reducing data entry burden since 90% of the burden associated with the data elements identified in the ICIS-NPDES Policy Statement is associated with DMRs.
- Continue to work with States through Integrated Project Teams (IPTs) on how data will flow from States with their own systems through the Exchange Network and the Central Data Exchange into ICIS-NPDES.

Conclusion

The business needs of the national CWA NPDES permitting and enforcement program build a strong case for these policies and for having this data available at the national level. These policies are important to keep the information management components of the NPDES program in alignment with the current NPDES program regulatory structure as it has evolved over the past 20 years. EPA's approaches outlined above for updating its permitting and enforcement policies take into consideration the input and concerns of our State partners and provide EPA with a path forward for meeting EPA's national NPDES program management needs.