



# **CWA Action Plan Implementation Priorities: Changes to Improve Water Quality, Increase Compliance and Expand Transparency**

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# CWA Action Plan Implementation Priorities: Changes to Improve Water Quality, Increase Compliance and Expand Transparency

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## EXECUTIVE SUMMARY

EPA, in consultation with a working group of state CWA agency representatives, has developed a suite of new approaches to revamp the National Pollutant Discharge Elimination System (NPDES) permitting, compliance and enforcement program. These approaches are aimed at improving water quality by using 21<sup>st</sup> century information technology and “best practices” to more effectively and efficiently achieve greater pollution reductions at the universe of approximately one million NPDES water pollution sources. There are four key changes to how we implement the NPDES program:

1. Switch existing paper reporting to electronic reporting with automated compliance evaluations and improved transparency.
2. Create a new paradigm in which our regulations and permits compel compliance via public accountability, self-monitoring, electronic reporting and other methods.
3. Address the most serious water pollution problems by fundamentally re-tooling key NPDES permitting and enforcement practices, while continuing to vigorously enforce against serious violators.
4. Conduct comprehensive and coordinated permitting, compliance, and enforcement programs to improve state and EPA performance in protecting and improving water quality.

Some of the specific, creative new approaches included in these significant changes are:

- Require electronic reporting of key permitting, compliance and enforcement information to reduce resource burdens associated with a paper-based system.
- Secure better, more transparent accountability from regulated sources through innovations in regulatory and permit requirements and public information systems.
- Align EPA/State planning and improve performance metrics and accountability to effectively direct limited regulatory resources to serious water quality problems related to NPDES regulated sources.
- Systematically evaluate all NPDES sources and watershed-specific concerns to identify key water quality problems and associated violations, and deploy appropriate solutions. This evaluation should use all relevant existing water quality data to drive better decision-making.
- Use a new multi-tier violation classification framework to categorize violations for appropriate responses to more effectively remedy noncompliance.
- Deploy new tools for improving compliance at self-reporting sources.
- Improve transparency by providing the public with better, more complete information on pollutant discharges, whether such discharges are in compliance, and how the government is addressing noncompliance.

These new approaches represent fundamental overhauls to some of the tools, policies, and regulations by which the states and EPA implement the NPDES permitting and enforcement program. Major changes require time and effort to deliver: thus, EPA and states will be at work for several years to realize the vision and complete these changes. And, these changes do not reduce the need for continued vigorous enforcement of the Clean Water Act.

## INTRODUCTION

Since EPA Administrator Lisa Jackson issued *the Clean Water Act (CWA) Action Plan* in October 2009, EPA and state co-regulators have collaboratively researched and debated a wide range of new approaches for fundamentally changing how we implement the National Pollutant Discharge Elimination System (NPDES) permitting and enforcement program. This constructive dialogue between state Clean Water Act agencies and EPA has facilitated a long-term, goal-oriented commitment to improving compliance with the Clean Water Act. These approaches address numerous challenges facing EPA and state agencies as we implement the NPDES program in this decade:

- The type and number of significant water quality stressors have grown substantially since the CWA was enacted. Today's NPDES regulated universe includes approximately one million diverse and widely dispersed water pollution sources ranging from traditional wastewater treatment facilities to several acre construction sites to concentrated animal feeding operations (CAFOs);
- Many of our most serious water pollution problems involve pollutants from these sources, including nutrients.
- State and EPA resources are not adequate to ensure compliance across large regulated universes via the traditional individual inspection and enforcement action approach.
- Compliance information about many regulated entities is unavailable to regulators and the public without exhaustive on-site inspections and/or information requests;
- Many state and EPA compliance and enforcement tools and policies were designed for more traditional, end-of-pipe wastewater dischargers and do not work well for the broader universe, especially wet weather sources.
- The information we have on noncompliance for those dischargers submitting discharge monitoring reports that were evaluated in a nationally consistent, automated manner, indicates a high noncompliance rate: 22% of majors in serious noncompliance at least once in FY2009, while 46% of non-majors were in serious noncompliance at least once in calendar year 2009. And for many of these violations, there was no response from the government.<sup>1</sup>
- Permitting and enforcement programs are stove piped.

These challenges demand that States and EPA adapt and retool many permitting and enforcement practices and approaches that were developed for more traditional industrial and municipal facilities to realize significant future gains in environmental performance and water quality. Collectively, these new approaches and tools will provide critical missing elements of the NPDES regulatory program and will improve the environmental performance of NPDES sources impacting water quality.

This document presents the four key changes needed for the revamped NPDES program and describes the new features of the retooled system, including the specific

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<sup>1</sup> See Annual NonCompliance Report (ANCR), Calendar Year 2009, at <http://www.epa-echo.gov/echo/ancr/us/>.

actions, tools, policies and regulations that EPA believes are most important for implementing the new system starting in FY2011.<sup>2</sup> The four critical changes are:

1. Switch existing paper reporting to electronic reporting with automated compliance evaluations and improved transparency.
2. Create a new paradigm in which regulations and permits compel compliance via public accountability, self-monitoring, electronic reporting, and other methods.
3. Address the most serious water pollution problems by fundamentally re-tooling key NPDES permitting and enforcement practices, while continuing to vigorously enforce against serious violators.
4. Conduct comprehensive and coordinated permitting, compliance, and enforcement programs to focus state and EPA efforts on improving water quality.

In general, many of the new approaches envisioned as key components of these bold changes are not quick or easy fixes. These are major changes that will require time and effort to deliver. Thus, EPA and states will be at work for several years to realize the vision and complete these changes.

## **NEED FOR CHANGE**

Originally, the NPDES permitting, compliance, and enforcement program focused on pollution from the large individual sources, such as factories and sewage treatment plants. These sources, called “majors” (approximately 6,700 facilities) are subject to detailed national regulations and policies that govern permitting, compliance monitoring, violation classification (e.g., reportable and significant noncompliance (RNC and SNC)), enforcement response and national information collection. We now face more complex challenges. The NPDES regulated universe has expanded from the roughly 100,000 traditional point sources to approximately one million dispersed and sometimes transient sources, such as CAFOs, construction sites, and other types of storm water dischargers. Many of these sources discharge pollutants that cause serious water quality problems. The NPDES regulations, policies, and tools that EPA and states use to set permitting, compliance, and enforcement priorities, plan activities, and provide benchmarks and performance standards have been modified in a piecemeal manner over the last 25 years with each change to the scope of the NPDES program (e.g., CAFOs, pretreatment, biosolids, storm water, vessels, and pesticides). A strategic revision of the appropriate permitting, enforcement and water quality assessment policies, practices and, where needed, key regulations, to better aim and leverage our resources and fully utilize 21<sup>st</sup> century information technologies is overdue and vital to our success in securing better water quality for our communities and ecosystems.

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<sup>2</sup> While there were numerous good ideas identified by EPA and the states for improving the NPDES permitting and enforcement program, EPA recognizes the practical need to focus EPA and state resources. This document identifies the changes to the NPDES permitting and enforcement program selected for development and implementation in FY2011 and FY2012.

## FUNDAMENTAL CHANGES

EPA has identified four fundamental changes needed to revamp the NPDES permitting, compliance and enforcement program to better address today's serious water quality problems. EPA and states will take specific actions to implement these changes to enhance and retool the NPDES program over the next several years as described below.

### 1. Switch existing paper reporting to electronic reporting with automated compliance evaluations and improve transparency.

EPA and states will use electronic reporting and 21<sup>st</sup> century information technology to increase the speed, quality and scope of the information that EPA, states, regulated facilities, and the public receives on permits, water pollution, water quality, and government agencies' actions to implement the NPDES permitting, compliance, and enforcement program. Electronic reporting is a key component of the new system and will greatly reduce the burden on states, EPA, and regulated facilities involved in submitting, processing, reviewing, and evaluating traditional paper forms. To improve transparency, EPA and States will undertake a series of actions in FY2011 to provide nationally consistent information on NPDES regulated sources, the applicable permits, the pollutants they are permitted to discharge, their compliance status and the actions of regulatory agencies (permit renewals, inspections, enforcement actions).

- a. *EPA will propose an NPDES Electronic Reporting Rule by Fall 2011 and a final rule by Fall 2012.* This proposed rule is anticipated to contain five key provisions as set forth below. The plan for how these provisions will be phased in will be addressed in the proposed rule.
  - i) Require all facilities subject to discharge monitoring reports (DMRs) to submit this information electronically to the states and/or EPA using the Exchange Network to ensure that EPA and states have immediate access to the information without duplicate data entry.
  - ii) Convert existing paper program reports, currently required of regulated sources through permits, to electronic reports and require their electronic submission to EPA and states using the Exchange Network. This electronic conversion will not substantively change what information must be reported pursuant to the existing paper reporting requirement. The existing paper reports that are under consideration for conversion to electronic include:
    - (1) Annual reporting requirements for concentrated animal feeding operations (CAFOs). 40 CFR§122.42(e)(4). This subsection requires CAFO permittees to submit an annual report regarding their operation.
    - (2) Combined sewer overflow (CSO), separate sewer overflow (SSO), and bypass incident reports in the context of twenty-four hour and five-day reporting of noncompliance. 40 CFR§122.41(l)(6). This subsection

requires the permittee to report orally within 24 hours any noncompliance that “may endanger health or the environment.” This oral report would then be followed by an electronic (rather than written, as currently required) submission within 5 days of the time that the permittee became aware of the circumstances.

- (3) Annual pretreatment reports from publicly owned treatment works (POTWs). 40 CFR§403.12(i). This subsection requires POTWs with approved pretreatment programs to provide a report at least annually to the pretreatment approval authority describing their pretreatment implementation and enforcement activities.
  - (4) Annual biosolids reports for land application, surface disposal or incineration of sewage sludge. 40 CFR§§503.18, 503.28 and 503.48. These subsections require all sewage sludge management facilities (e.g., POTWs and treatment works treating domestic sewage [TWTDSs]) that prepare biosolids (sewage sludge) for land application, apply sewage sludge to the land, prepare sewage sludge for surface disposal, or incinerate sewage sludge, to submit a biosolids annual report.
  - (5) Annual reports by municipal separate storm sewer systems (MS4s). 40 CFR §§122.34(g)(3) and 122.42(c). These sub-sections require annual reports from the MS4 operators and identify what these reports must include.
  - (6) Pretreatment reports by significant industrial users located in cities without approved local pretreatment programs: periodic reports on continued compliance for categorical industrial users, as required by 40 CFR §403.12(e), and periodic reports on continued compliance for non-categorical industrial users, as required by 40 CFR §403.12(h).
- iii) Using the Exchange Network, require all facilities subject to a general permit (state or EPA issued) to electronically submit notices of intent to be covered to a national or state electronic information system (similar to EPA’s existing eNOI system), and then make this information publicly accessible.
  - iv) Using the Exchange Network, require States and EPA regions to electronically exchange more complete NPDES program performance and results information for majors and non-majors, including basic facility and permit information (e.g. facility name, location and limits), inspections, violations and enforcement actions.
  - v) After states provide EPA with more complete information electronically, EPA will eliminate the state obligation to provide paper versions of the Quarterly Non-Compliance and Annual Non-Compliance Reports in 40 CFR§123.45. EPA may integrate and modernize these two reports to reduce redundancy and support new ways to identify, categorize and respond to the most serious violations pursuant to the fundamental change #3 described below.

b. ***EPA will implement six projects to improve transparency of the NPDES program:***

- i) **Pollutant Loadings Tool**. In December 2010, EPA launched the beta version of a new analytic tool that shows the pounds of pollution (pollutant loads) being discharged from sources submitting discharge monitoring reports. This tool provides the public, EPA, and states with more understandable information about who is discharging what pollutants and to where. Later in FY2011, EPA will: a) convert the “beta” version to a “final” version; b) provide more recent facility pollutant discharge and watershed data; and c) integrate compliance data (ECHO) with the loadings data which will allow users to view pollutant releases and violations on one screen. (See [www.epa.gov/pollutantdischarges](http://www.epa.gov/pollutantdischarges).)
- ii) **General Permits Web Inventory**. EPA and states use general permits to regulate over 90 percent of NPDES regulated sources. Information about these permits, including what each permit requires, who is covered, and where they are located is not readily available nationally. In FY2012, EPA will release a national web-based inventory of all non-stormwater general permits issued by states and EPA. The inventory will provide the public, EPA, and states for the first time with easily accessible information on master general permits, such as: permit numbers, sector/activities subject to the permit, issuance and expiration dates, and estimated number of facilities covered by each master general permit. Where a general permit is available on state websites, the web inventory will provide links so that the specific terms of the general permit can be easily reviewed by the public. Where a general permit is not already posted on the state website, EPA will encourage states to make them available. EPA will use existing data sources to build this inventory. As information becomes available on the specific facilities covered by general permits (e.g., thru electronic reporting of eNOIs), EPA may enhance this Web inventory or use other tools provide public access to facility specific information.
- iii) **Quick Fixes to NPDES SNC Information**. EPA will correct two data problems that make the use and analysis of quarterly information about violations difficult. The first change will be to update software in the national systems to not present stale noncompliance data pertaining to missing old DMRs as a current SNC violation. The second software upgrade will create a distinction between facilities that have reported their DMRs (but the state was not able to enter the data into the national system in time), and violators that have not submitted their DMRs. These corrections are expected to be implemented in FY2012. These two changes will save resources, improve public transparency, and allow states and regions to more effectively focus on water quality.
- iv) **Make existing NPDES data easier to access, understand and appropriately use**. To improve information access and transparency, in FY2010 EPA launched a new interactive state map with information about non-major dischargers subject to an individual NPDES permit. In March

2011, EPA made several improvements to this site including: a) expanding mapping to majors, b) incorporating trends information, and c) adding state dashboard reports. EPA's plan for future years is to continue adding more data content for other segments of the NPDES universes. (See <http://www.epa-echo.gov/echo/ancr/us/>.)

- v) **EPA will provide a single public repository of EPA and state Memoranda of Agreement (MOAs)**, which are used to define baselines and collaborative expectations for enforcement and compliance activities, to improve transparency and access to these important agreements.<sup>3</sup>
- vi) Promoting use of electronic reporting prior to final promulgation and implementation of E-Reporting Rule. EPA will promote voluntary use of electronic reporting of DMRs using NetDMR and similar state tools while the electronic reporting rule is under development. EPA will also, as appropriate, require e-reporting of key compliance information as injunctive relief in its federal enforcement actions.

## 2. Create a new paradigm in which regulations and permits compel compliance via public accountability, self-monitoring, electronic reporting and other methods.

EPA, states, and the public can no longer primarily rely on the traditional single facility inspection and enforcement approach for assessing and ensuring compliance. With approximately one million regulated NPDES facilities, EPA and states cannot rely on on-site inspections and enforcement actions as the primary way to identify and remedy noncompliance, and promote compliance. Instead, we must consider structuring key regulations and permits so that facilities are required to take periodic, objective actions to self-monitor, maintain and/or demonstrate their compliance pursuant to objective standards and provide that information electronically to states, EPA and the public. This will offer a new level of transparency and accountability and yield accompanying pressure for facilities to comply, regardless of when a government inspector arrives.

- a. ***In FY2011, EPA will choose key regulated sectors that have both the potential for significant water quality impacts and sparse compliance information to evaluate whether one or more of the approaches described below are appropriate to include in new regulations.*** In doing these evaluations, EPA will consider that there are many ways to enhance and promote compliance and one approach may not fit all situations. Some options to consider include:
  - i) Self-monitoring, including continuous emissions monitoring and ambient monitoring. The obligation to periodically monitor (sample and test) using established, objective methods is often an effective way to compel

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<sup>3</sup> This implements Recommendation 2-4 in the OIG report, "EPA Should Revise Outdated or Inconsistent EPA-State Clean Water Act Memoranda of Agreement," Report No. 10-P-0224, September 14, 2010.

compliance. The NPDES DMR is one such example. In contrast, self-monitoring in which there are not established test methods and/or the criteria are subjective is not likely to be as effective. The threat of criminal liability for submitting false or fraudulent information is also an important part of this tool.

- ii) Self-certifications for qualitative requirements. If a regulated entity is subject to requirements that cannot be quantified and monitored with established test methodologies, having the regulated entity periodically certify that it is in compliance with the specific requirements (such as nutrient management plans) may enhance compliance. Further, having the regulated entity publicly document this compliance certification information may enhance the effectiveness of such self-certifications.
- iii) Third party verification of a regulated source's compliance can be effective if the program is structured appropriately. For example, a recent article identified six factors to consider in evaluating whether information reporting from a third party will be effective in promoting compliance.<sup>4</sup> One key factor is whether there is an arm's length relationship between the regulated entity and the third party certifying agent such that the possibility of collusion is minimized. Another key factor is whether the third party certification is based on objective standards and established methodologies. Some states, such as New York, have already implemented such programs for NPDES.
- iv) Direct public disclosure. The public disclosure of objective compliance information by regulated entities to their customers, ratepayers, investors, and the local community has been shown to generate real reductions in pollution.<sup>5</sup> If objective information on compliance status is not available, public disclosure of who is regulated and their compliance plans (e.g., best management plans for stormwater management) may create new incentives for compliance.
- v) Electronic reporting to government, and subsequent public access. The submission of paper reports and forms by regulated entities to EPA and the states should be avoided. Thus, where a rule requires reporting, electronic reporting should be considered as the preferred choice if feasible. To be effective, electronic reporting must be carefully developed and implemented with objective data elements, electronic signature requirements, automatic data validation checks, and clear user interfaces.

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<sup>4</sup> Leandra Lederman, "Reducing Information Gaps to Reduce the Tax Gap: When is Information Reporting Warranted", 78 Fordham Law Review, 1733, March 2010.

<sup>5</sup> The 1998 Safe Drinking Water Act amendments required larger utilities to directly mail annual Consumer Confidence Reports (CCRs) to water consumers. An analysis of Massachusetts facilities showed total violations reduced by 30%-44% and more severe health violations reduced by 40-57% based on this new reporting requirement. The study concluded: "The public disclosure of compliance status information, in and of itself, can generate real, measurable, and significant additional deterrence even when underlying substantive regulatory requirements are unchanged." Bennear & Olmstead; The Impacts of the "Right to Know" Information Disclosure and the Violation of Drinking Water Standards, JEEM Vol. 50, Iss. 2; pp. 117-130 (2008).

The approaches set forth above should be used strategically based on the specific regulatory requirements, the technology practically available for monitoring compliance, and other considerations.

b. ***EPA will continue research on identifying new ways to compel compliance using the above tools and other tools.*** EPA will consult with the states in doing this research. In FY2011, we will provide training for EPA staff engaged in developing new regulations and general permits to promote these new regulatory approaches for compelling compliance. In FY2012, EPA will provide training to the states on how to apply this to the rules and permits the states issue. This research and training will not be restricted to the CWA, but will be applied to all environmental programs.

c. ***In FY 2011, EPA will identify options for modifying the EPA rule development process so that new proposed regulations are better structured to ensure that regulated entities have a strong incentive to comply via self-monitoring, self-certification, public accountability, electronic reporting and other tools.***

***3. Address the most serious water pollution problems by fundamentally re-tooling key NPDES permitting and enforcement practices, while continuing to vigorously enforce against serious violators.***

To effectively manage, analyze, and prioritize violations, compliance, enforcement and permitting actions that are critical in improving water quality, EPA and states will change how we identify and address serious water pollution violations by deploying a suite of new approaches, including using improved analytical tools, implementing new national policies, and where needed, revising federal regulations starting in FY2011 and beyond.

Too many sources submitting DMRs are in violation today and receive limited to no government responses. In addition, many existing policies, metrics and tools have been developed in a piecemeal fashion over the past twenty-five years and focus only on a narrow piece of the NPDES regulated universe, the traditional majors group. EPA will need to deploy the “next generation” of analytic tools and approaches to address/respond to remaining serious water quality problems. Important NPDES water pollution stressors today can include clusters of smaller regulated sources in particular watersheds (including sources who have failed to apply for NPDES permits altogether), in addition to large factories and municipal POTWs. The transient nature of construction sites, vessels and pesticides applications points to the need for new techniques and strategies. New information technologies present us with many opportunities to create these exciting new capabilities for identifying serious water quality problems, exposing those regulated entities who fail to obtain required authorization to discharge their pollutants, and showing the magnitude of the pollutant contributions from the full spectrum of

regulated NPDES point sources. While state water quality assessments (e.g., impaired waters) provide useful information on water quality problem areas, significant variations in state assessment methodologies and a large percentage of unassessed watersheds limits the effective use of this information for setting regulatory priorities. To improve national consistency in using some of these new approaches and tools, EPA needs to restructure national policies, guidance, and regulations to ensure that limited resources are focused on the most important water pollution problems and violators.

EPA also recognizes that in many instances the largest stressors to water quality may involve non-point sources, not regulated by the NPDES program. The Agency is examining other strategies to address these issues as described in EPA's March 2011 strategy *Coming Together for Clean Water*.<sup>6</sup>

EPA is moving forward with the following set of actions over the next several years to implement these changes:

- a. **EPA will develop and implement the “next generation” of analytical tools and approaches aimed at uncovering serious water quality problems related to the compliance and regulation of the full universe of NPDES point sources.** These tools will use 21<sup>st</sup> century information technologies and will serve multiple priority-setting and transparency needs related to permitting actions, compliance monitoring efforts, enforcement actions and water quality assessments.
  - i) Loadings Tool (see description in #1 above). In FY2011, EPA will provide training on how EPA and states could use this tool for enforcement targeting purposes as well as prioritizing permitting and water quality assessment work.
  - ii) Better use of existing water quality monitoring and assessment data to drive improved decision-making. There are substantial limitations today to using and understanding existing water quality information. While state water quality assessments (e.g., impaired waters) provide useful information, there are significant variations in state assessment methodologies and wide variation across states in how many waters have been assessed for purposes of determining whether a water is impaired. Thus, using impaired water data by itself can lead to uneven targeting for permitting and enforcement. To overcome these limitations and improve the ability of states and EPA to use watershed monitoring data in setting priorities for permitting and compliance oversight activities, in FY2011, EPA will develop options for new tools to array, analyze and use existing water quality monitoring data, in addition to assessment data, to identify vulnerable waters for prioritizing the use of state and EPA permitting and enforcement actions. These tools could help states identify when monitoring data supports the delisting of impaired waters and help states prioritize future assessment work. EPA will develop these water quality tools in consultation with the State-EPA Monitoring and Assessment

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<sup>6</sup> See <http://blog.epa.gov/waterforum/>

Partnership. EPA began this effort with the presentation of a straw proposal to this Partnership in February 2011. This effort is neither intended to alter state water quality standards nor how states perform water quality assessments.

iii) EPA and the states need to improve the infrastructure for collecting and geo-referencing state water quality attainment decisions per CWA Sections 303(d) and 305(b). In FY 2011, EPA will identify the necessary steps for streamlining the collection and geo-referencing of state water quality attainment decisions reported under CWA Sections 303(d) and 305(b). EPA will then work with the states to develop a data standard for this data flow for more consistent and timely reporting while allowing states flexibility in implementing their programs. EPA will improve the Exchange Network data flow for Integrated Reporting (assessed and impaired waters), and will streamline the geo-referencing of attainment decisions.

**b. In FY2011, EPA will deploy new approaches for improving compliance at NPDES sources who self-report their pollutant discharge amounts to EPA and states.**

Compliance rates at segments of the NPDES universe reporting discharge monitoring reports to states and EPA need to be improved.<sup>7</sup> A preliminary analysis indicates that there are a large number of self-reported violations, and that a focused use of administrative enforcement authorities can be an effective approach to improving compliance rates.

i) In FY2011, EPA will analyze self-reported DMR noncompliance and launch tailored compliance and enforcement strategies to address a range of compliance problems, including those that are sector (e.g., mining) and watershed (e.g., Chesapeake Bay) focused. EPA will also take administrative enforcement actions (including issuing penalty orders) to augment state enforcement efforts where warranted.

ii) In FY 2012, EPA will pilot a program for using expedited administrative compliance/penalty actions to improve compliance at selected sources.

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<sup>7</sup> EPA analyzed FY2008 available information and found that approximately 25% of the “majors” were in SNC for at least one quarter. A general explanation of why they were in SNC:

- 46% were in SNC because of effluent violations, meaning they discharged pollutants substantially above their permit limits for multiple months.
- 11% were in SNC because they violated a compliance order. These orders generally require facilities to upgrade their pollution control equipment to correct existing violations, and thus these violations often are associated with effluent violations as well.
- 41% 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 this data to EPA as required. We expect this problem to be partially fixed by implementation of our “Quick Fixes” proposal in 2011, and in the longer term, the NPDES Electronic Reporting Rule will fully fix this problem.
- 2% were in SNC because they failed to submit required reports pursuant to the terms of an enforcement order.

iii) Starting in FY2012, EPA will develop electronic methods compatible with expanded electronic reporting information to use compliance assistance and informal enforcement responses in responding to “minor” violations (to be defined by EPA). EPA may build this functionality into ICIS-NPDES for states to use, or states may implement this through their own systems. EPA will encourage states to use electronic methods to deliver compliance assistance and respond to “minor” violations.

c. ***In FY2011 and beyond, EPA will review, revise, and integrate current regulations, policies, and tools to guide how EPA and states prioritize permitting and enforcement actions and address serious problems.*** As described below, EPA will develop a detailed proposal for doing this in FY2011.

i) These regulations, policies, and tools include: the Significant Non-Compliance (SNC) Policy, Reportable Non-Compliance (RNC), the Interim Wet Weather Significant Non-Compliance Policy, the Quarterly Non-Compliance Report (QNCR), the Annual Non-Compliance Report (ANCR), the Watch List, the definition of priority permits, and the definition of majors. EPA and states will use these revised policies and tools in joint planning and performance discussions, including new sets of program performance criteria and metrics to guide more focused discussions on how to improve/correct specific water quality problems most impacting our nation’s communities and critical ecosystems.

ii) EPA will work with states to align and integrate the appropriate changes to policies and regulations implemented above in c(i) through a new multi-tier violation classification framework to categorize violations and drive appropriate and nationally consistent responses. Using more robust information obtained through electronic reporting and improved analytical tools that draw from a variety of information sources, including those outside of EPA and state data systems, this new classification framework will evaluate the seriousness of violations and water quality problems not just on an individual source basis, but at corporate, sector, watershed, and geographic levels. This will replace the current system which limits violation classification to an individual facility basis and only includes the “majors” universe. This new framework will facilitate better use of all tools for identifying serious violations and for responding to a variety of other violations, including compliance assistance, informal responses (e.g., NOV), administrative orders, administrative penalty orders, civil actions, criminal actions, and transparency (public disclosure).

d. ***In FY 2011 to 2013, EPA will implement CWA NPDES National Enforcement Initiatives and will continue to vigorously enforce against serious violators.*** These initiatives will use new, creative targeting approaches aimed at addressing serious, national noncompliance problems by requiring sustainable solutions to several of our nation’s biggest water quality challenges: getting raw sewage, polluted storm water runoff and animal wastes from illegal discharges out of our

communities' waterways. In addition to these national initiatives, EPA is currently pursuing targeted federal enforcement involving polluting sectors causing large-scale water quality concerns in certain geographic regions, such as Appalachia and the Chesapeake Bay.

#### **4. Conduct comprehensive and coordinated permitting, compliance and enforcement programs to improve state and EPA performance in protecting and improving water quality.**

EPA and states will integrate and improve how we set priorities for permitting, monitoring, and enforcement programs to solve serious water quality problems. There is considerable variation between EPA regions in how annual planning processes are conducted. In many cases, EPA and states conduct planning discussions and NPDES program performance reviews separately for permitting and enforcement program components, thereby missing critical opportunities to identify and implement more strategically coordinated solutions to water quality problems. On October 26, 2010, the Assistant Administrators for the Office of Enforcement and Compliance Assurance (OECA) and Office of Water (OW) invited States to engage with EPA in this effort.

- a. ***Beginning in FY2011, EPA Regions and states will develop joint annual NPDES work plans, which will consider all available resources and tools to get work done, such as federal and state work sharing and watershed/pollutant-based strategies.*** On June 22, 2010, OW and OECA jointly issued *Interim Guidance on Strengthening EPA and State Performance and Oversight* to begin implementing this new practice. See <http://www.epa.gov/compliance/resources/policies/civil/cwa/interim-guid-mpdes-062210.pdf>
- b. ***On October 22, 2010, OECA and OW jointly issued a memorandum "Using the Results of NPDES Permit and Enforcement Reviews to Address Significant Issues" which requested the regions implement three actions to enhance our oversight of state programs:*** (1) incorporate an evaluation of past permit and enforcement review results into the FY2012 planning process; (2) before conducting an SRF or permit quality review, to evaluate past performance issue and determine if progress has been made to improve those areas of performance; and (3) as part of regular state progress meetings (twice a year, or more frequently as appropriate), look at outstanding performance issues and work plan commitments to ensure that appropriate progress is being made to improve performance.
- c. ***In FY2011, EPA will begin to integrate and streamline NPDES enforcement and permitting oversight activities.*** On August 30, 2010, OW and OECA jointly issued a memorandum informing the regions that OECA's State Review Framework and OW's Permit Quality Review oversight tools should be integrated and streamlined. In FY2011 and FY2012, OW and OECA will develop and issue guidance and provide training to EPA Regions on how to integrate and streamline NPDES enforcement and permitting oversight activities. In FY2012, these integrated reviews will be piloted in selected states.

- d. ***In FY2011, EPA will initiate systematic efforts to improve permits by ensuring that lessons learned from permit quality reviews and compliance monitoring and enforcement actions are used to improve the quality, including the enforceability, of newly issued permits, especially general permits.*** In FY2011, EPA will implement a new permit feedback process for several general permits, most likely for the federal Multi-Sector General Permit (MSGP), and a subset of state and/or EPA general permits for CAFOs and MS4s.
- e. ***OECA has developed a High Priority Performance Goal (HPPG) as one initial measure of implementing the Action Plan in FY 2011.*** The goal, as publicly posted on OMB's website, states that by the end of FY 2011, EPA will increase pollutant-reducing enforcement actions in waters that do not meet water quality standards, and post results and analysis on the web. The HPPG applies nationwide, but only to enforcement actions taken by EPA. OECA issued final guidance to implement the HPPG in November 2010.

## CONCLUSION

EPA and states must ensure that vigorous enforcement continues to occur while these changes are being made to improve the effectiveness, efficiency and transparency of NPDES permitting, compliance and enforcement. These changes will better equip EPA and states to improve water quality through their regulatory efforts, provide the public with information it needs to understand and participate in water quality improvement involving sources in their communities, and motivate regulated sources to comply by creating a more certain level playing field that is more visible and transparent to regulators and the public. The end result of all these changes will be improved water quality for our citizens.

These changes offer a broad range of new approaches, going well beyond traditional end-of-pipe based compliance and enforcement programs, and better integrating key components of the NPDES regulatory program, including permitting, water quality assessments and standards, and compliance and enforcement.

The actions reflect thoughtful discussions between EPA and representatives of states which considered resource implications to states and EPA, and the need to re-think how EPA and states implement the NPDES program. A key foundation for these efforts is the use of 21<sup>st</sup> century technology to reduce resource burdens and facilitate more reliable information for decision-making and transparency. The goal of these efforts is to achieve better water quality and to provide the public with clear, understandable information about their water quality, the pollution sources impacting its quality and the actions taken by government officials to protect their waterways.

EPA and states recognize that many of today's water quality problems are predominately caused by nonpoint sources that are not regulated by the NPDES program. Thus, EPA held the April 2010 "Coming Together for Clean Water" event to identify federal and state efforts to address nonpoint source problems while recognizing

the importance of implementing more effective regulatory programs for point sources whose discharges can cause serious water quality problems if not properly controlled.

The *CWA Action Plan*'s series of new approaches and program improvements are aimed at critical NPDES pollution contributions, including those involving concentrated animal feeding operations, urban storm water discharges and municipal sewage treatment and collection systems. Some of these actions are already underway and will be completed and fully implemented this year. Others will require a longer-term effort and commitment to develop and complete over the next several years. EPA and states will continue their teamwork and commitment to implement the changes described above to protect and improve our nation's water quality. As technology and science is ever changing and evolving, so too must EPA's leadership and vision for the NPDES program if we are to provide the public with cleaner and better protected water.