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***USEPA Office of Compliance Update:
90 CWA Action Plan,
State Review Framework, &
OECA National Priority Selection***

Presentation to NACAA
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Clean Water Act Enforcement 90-Day Action Plan

- Memo from Administrator
 - Need to signal a bold, new approach to ensuring compliance and enforcement actions contribute to water quality improvements
- Steps in the Process:
 - Outreach to States, State Associations, Tribes, Environmental groups, Industry, EJ Communities
 - Blog
 - AA for OECA makes recommendations to Administrator September 30
 - Web site with stakeholder comments and other background info up early October
 - Administrator decision date TBD

What Should NACAA be Thinking About?

- It is likely that a similar effort will be undertaken for CAA and RCRA enforcement
 - E.g., Release of upgrade to ECHO site to include CAA and RCRA data searching for SRF data

Key State and EPA Performance Issues Identified by SRF

- 2007 completed review of 50 states, 4 territories
- 2008 contractor & internal evaluations identified four issue areas prevalent across states/programs:
 1. Data entry and reporting
 2. Identification and reporting of significant noncompliance/high priority violators
 3. Timely and appropriate enforcement
 4. Calculation and documentation of penalties

SRF National Issue Papers

- 4 issue papers developed in stages
- First stage developed following sections and shared with states for feedback:
 - Problem Statement/Issues
 - Scope and Importance
 - Bases for Performance Requirement
 - Causes
- Work on CWA Enforcement Action Plan has caused delay in issue papers to ensure the efforts are coordinated
- Next section being developed: **Recommended Actions**
 - Will be shared with states very soon
- Final section, added because of CWA Action Plan, will be **Clarification of Performance Expectations Under Existing Policies and Guidance for State and Direct Implementation Programs**

Scope of Problems Identified

- Programs with Data Entry and Reporting Issues:
 - 42 CAA
 - 47 CWA
 - 41 RCRA

- Programs with SNC/HPV Identification and Reporting Issues:
 - 30 to 31 states have problems identifying CAA HPVs & RCRA SNCs
 - 31 states report HPVs untimely
 - 37 states report RCRA SNCs untimely
 - 39 states don't report CWA SEVs.

- Programs with Timely and Appropriate Enforcement issues:
 - CAA-40
 - CWA-39
 - RCRA-36

- Programs with Penalty Calculation and Documentation issues:
 - CAA-38
 - CWA-45
 - RCRA-37

Common Themes Among Causes

- Policy
 - State lacks equivalent policy
 - Differing interpretations/EPA policy not clear
 - State disagreement with EPA policy
- Lack of Standard Operating Procedures governing data entry/reporting
- Lack of understanding/training/capacity
- State lacks sufficient process support to implement policy
- Lack of resources

Next Steps

- Provide Draft Issue Papers with Recommended Actions to States for review – 10/09
- Develop new section: “Clarifications of Expectations”, distribute for review
- Finalize and begin implementation of actions

OECA National Priorities

- OECA activities allocated to either Core Program or National Priorities.
- Core program comprises compliance assistance, incentives, monitoring and enforcement in 28 programs under 10 distinct federal statutes
- National Priorities focus on industry sectors, regulations, or communities, where **a Federal enforcement presence is necessary to address significant environmental problems, risks, or noncompliance patterns**

Criteria for National Priorities

- Significant Environmental Benefit: significant environmental problems, risks to human health.
- Pattern of Noncompliance: identifiable patterns of noncompliance among specific regulated entities, sectors, geographic areas, or within environmental statutes or programs.
- Appropriate Federal Enforcement Responsibility: EPA is best suited to take action, or pursue a collaborative approach.

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OECA's FY 2008 – 2010 National Priorities

- **CAA:**
 - NSR/PSD
 - Air Toxics
- **CWA**
 - CSO
 - SSO
 - Stormwater
 - CAFO
- **RCRA:**
 - Mineral Processing
- **Tribal**
- **RCRA/CERCLA**
 - Financial Assurance, Financial Responsibility

State Role in Priorities

- Priority areas are identified because Federal role is appropriate,
 - generally national in scope, e.g, homebuilders, NSR/PSD, or
 - areas where legal basis is being developed, e.g., mineral processing – mixed Bevill wastes
- EPA regions inform states of priority areas and work to align priorities where possible
- During Priority implementation, direct state involvement dependent on priority scope and strategy. Coordination is key
- An important aspect of most strategies is to develop state capacity through training.

Priority Selection Process

- For first priority cycle, FY05-FY07,
 - Priorities identified through process involving states, tribes, EPA regions and national programs, as well as public comment.
 - National selection meeting in DC in January 2004 included states, tribes, EPA.
- For 08-10 cycle, EPA solicited input from states, tribes, EPA regions, program offices.
 - Consensus was that much more work to do in current priority areas, so no changes were made.
- Will there be new priorities this cycle?
 - Depends on EPA capacity. Some current priorities, or sectors within the priority area, may have been addressed by end of FY10, while others will have work into or beyond the next cycle
 - Depends on direction from Administration

Process to select 2011-2013 Priorities

- **Selection of FY11-13 priorities launched this summer**
 - Solicited and have received input from states, tribes, other stakeholders
 - Blog another conduit for public input
- EPA will review input and propose a “short list” of priorities to states, stakeholders later this fall
- National meeting w/ states, stakeholders in early January
- Selections by OECA AA in late January 2010