

Chairman Doug Ose
Opening Statement
EPA Water Enforcement: Are We On The Right Track?
October 14, 2003

I am pleased to come to Ipswich today to discuss a very important topic: protection of our nation's waters. Massachusetts is well suited for this discussion, as it faces the challenge of providing safe drinking waters and clean lakes and oceans in one of the nation's oldest industrial centers. Our focus today is the Environmental Protection Agency (EPA), and its efforts to enforce the Clean Water Act. The hearing will explore the mutually reinforcing relationship between EPA's strategy of compliance assistance and formal enforcement.

Both compliance assistance and traditional enforcement methods are fundamental tools to ensure successful environmental protection. As former President Clinton stated in his 1995 "Reinventing Environmental Regulation" report, the adversarial approach that has often characterized our environmental system precludes opportunities for creative solutions that a more collaborative system might encourage. Since the mid-1990's, EPA has increasingly used compliance assistance programs, in conjunction with traditional enforcement tools, to help facilities comply with Federal environmental laws and regulations.

Evaluating whether EPA's and the States' efforts actually achieved results is a more difficult undertaking. My background memorandum for today's hearing (located on the table) contains statistics on traditional enforcement performance measures. However, merely tabulating the number of enforcement actions - or outputs - does not measure actual results. For example, the collaborative work done by EPA Region I on the Charles River would not be reflected in the enforcement numbers for Region I. Collaborative efforts can only be measured by more meaningful outcome performance data, such as the changes in the quality of the water. The Bush Administration has made a concerted effort to rate all Federal programs and activities to ensure that they are actually achieving their stated goal. At EPA, this means setting goals for cleaner air and water rather than measuring how many permits are issued and fines assessed. I commend the Bush Administration for focusing on results and looking for new and innovative ways to protect the environment.

EPA's Office of Enforcement and Compliance Assurance (OECA) recently completed an internal management review to understand the successes, failures, and data gaps in its decade old National Pollutant Discharge Elimination System (NPDES) "Majors" program. EPA's efforts resulted in a report that makes significant steps towards gathering and analyzing meaningful data. EPA did not just gather data. It analyzed policy implications, and is taking steps to improve data collection and compliance rates.

EPA's data show that the number of NPDES Majors facilities in significant noncompliance has remained effectively the same since the program was first initiated

under the Clinton Administration in 1994. EPA came to its own conclusions that, while repeated noncompliance rates have been declining, overall compliance can be improved. Similarly, EPA also determined that toxic exceedance levels and the percentage of facilities in perpetual noncompliance can also be decreased.

As a result of EPA's findings and desire to reduce violations of the law, EPA has taken concrete actions by establishing a "Watch List" to systematically lower the number, frequency, and severity of repeat violations. Moreover, the Watch List will not be limited to enforcing the Clean Water Act. It will also include repeat violators of the Clean Air Act and the Resources Conservation and Recovery Act, which is intended to control storage and disposal of hazardous waste. I applaud EPA's efforts to vigorously pursue facilities that repeatedly refuse to obey the law.

This topic is particularly appropriate here in Massachusetts where EPA has aggressively promoted innovative compliance assistance programs to tackle its environmental challenges. EPA and the regulated community have essentially achieved this goal not by aggressive formal enforcement actions but by a collaborative effort to understand and eliminate the causes of pollution and monitor water quality to determine success. I applaud EPA's and the communities' efforts to cleanup the Charles River. It should serve as a model for other regions around the country.

I would like to welcome the following witnesses to our panels: J.P. Suarez, Assistant Administrator, Office of Enforcement and Compliance Assurance, EPA; Robert Varney Regional Administrator, Region I, EPA; Steve Thompson, Executive Director, Oklahoma Department of Environmental Quality; Shelley H. Metzenbaum, Visiting Professor, University of Maryland School of Public Affairs and Director, Environmental Compliance Consortium; Roberta (Robbi) Savage, Executive Director, Association of State and Interstate Water Pollution Control Administrators; Scott H. Segal, partner at Bracewell & Patterson LLP; J. Charles Fox, Vice President of Public Affairs, Chesapeake Bay Foundation; Pam DiBona, Vice President for Policy, Environmental League of Massachusetts; and, Eric Shaeffer, Director, Environmental Integrity Project.