UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

Subject: Clean Water Act National Pollutant Discharge Elimination System Compliance Monitoring Strategy for the Core Program and Wet Weather Sources

From: Granta Y. Nakayama
Assistant Administrator

To: Regional Administrators
Deputy Regional Administrators
Regional Enforcement Division Directors
Regional Water Division Directors

This Compliance Monitoring Strategy (CMS) memorandum provides inspection frequency goals for the core National Pollutant Discharge Elimination System (NPDES) program and for wet weather sources. Your leadership and close coordination by your staff with our state and local program partners will be essential as full implementation of the CMS occurs at the start of FY 2009.

Compliance monitoring is a cornerstone of EPA's program to achieve clean water. The primary goal of the combined EPA and state compliance monitoring efforts -- on-site inspections plus evaluation of permittee self reported Discharge Monitoring Report (DMR) data -- is to ensure and document whether entities possessing NPDES permits are complying with their Clean Water Act (CWA) obligations. EPA and state compliance monitoring programs should accurately identify and document compliance and noncompliance, support the enforcement process, monitor compliance with enforcement orders and decrees, establish presence in the regulated community, support the permitting process, and further the broad watershed improvement goals of the NPDES program.

Achieving these goals has always been a challenge. The challenges have increased as the program has increased emphasis on addressing water quality degradation, particularly stemming from wet weather discharges, while resources at all levels of government have been limited. Given these competing challenges, both EPA and state NPDES inspection programs must be increasingly innovative and efficient, directing resources toward the most important noncompliance and environmental problems. To better meet today's challenges, OECA is updating inspection frequency goals for the core NPDES program and is articulating goals for the wet weather program areas. Regulations found at 40 CFR Part 123.26 set forth requirements for compliance

evaluation programs for states seeking to obtain or retain program authorization.[1] Analogous regulations for the pretreatment program are set forth in 40 CFR Part 403.10(f) (2). This memorandum provides benchmarks for core program and wet weather inspection frequencies which, from a national perspective, EPA believes constitute a strong and balanced compliance monitoring program.

We recognize that achieving these frequencies may be an ambitious goal. As a result, we would expect that there will be a dialogue between regions and individual states about annual program commitments and potential resource trade-offs. Goals are a starting point for negotiations, and flexibility allows adaptation to particular situations as necessary. We note that EPA's Annual Commitment System (ACS) provides opportunities for program commitment flexibility. ACS allows regions and states to address the unique mix of regulated entities and environmental issues in particular states, and to identify and document state-specific NPDES inspection frequency goals that differ from the frequencies recommended in this memorandum. States and regions may utilize flexibility to alter inspection frequency goals for facilities with good compliance records that are not contributing to water quality impairments. Trade-offs should be considered in the context of supporting overall NPDES program integrity. Where state programs have demonstrated that they have met the inspection frequency goals in this memorandum and would like to seek flexibility outside that which is offered in this strategy, states may make proposals under Element 13 of the State Review Framework (SRF). It is expected that these proposals will be strategic in nature (focused on particular sources, watersheds or water bodies) and result in additional compliance and environmental gains. In general, proposals under Element 13 should be monitored over time and limited in duration (i.e., should be evaluated after one planning cycle).

We recognize that we are reducing longstanding inspection frequency goals in some NPDES program areas in order to direct resources toward other non-compliance and environmental problems that are currently not well addressed. These changes are appropriate to ensure an effective balance across the NPDES compliance monitoring program. We believe that

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[1] This regulation includes, in part, the requirement that a state maintain:

(1) A program which is capable of making comprehensive surveys of all facilities and activities subject to the State Director's authority to identify persons subject to regulation who have failed to comply with permit application or other program requirements. Any compilation, index or inventory of such facilities and activities shall be made available to the Regional Administrator upon request.

(2) A program for periodic inspections of the facilities and activities subject to regulation. These inspections shall be conducted in a manner designed to:

  (i) Determine compliance or non-compliance with issued permit conditions and other permit requirements

  (ii) Verify the accuracy of information submitted by permittees and other regulated persons in reporting forms and other forms supplying monitoring data; and

  (iii) Verify the accuracy of sampling, monitoring and other methods used by permittees and other regulated persons to develop that information;

(3) A program for investigating information obtained regarding violations of applicable program and permit requirements; and

(4) Procedures for receiving and ensuring proper consideration of information submitted by the public about violations.

this balancing provides deterrence to noncompliance in the most significant environmental areas. In addition, these changes will allow increased effort in other important NPDES program areas that we expect will result in water quality improvements in priority watersheds and water segments.

Planning Process

Attachment 1 addresses inspections for the Core NPDES program: major permittees, minor permittees, pretreatment, oversight, and biosolids. Attachment 2 addresses planning for inspections of Wet Weather sources: Combined Sewer Overflows (CSO), Sanitary Sewer Overflows (SSO), Concentrated Animal Feeding Operations (CAFO), and Storm Water.

Core and Wet Weather programs may be quite different. The suggested overall planning process to implement the program areas addressed in the Attachments is one that separately identifies core program inspection needs and wet weather program needs and then strikes an appropriate balance between the two by considering factors including: noncompliance trends, water quality considerations within individual states, and state and EPA resources. The suggested process is not intended to disrupt or replace existing EPA and state planning processes that are working well. The purpose of this CMS is to better focus inspection resources overall; it is not intended to draw resources from other NPDES program areas. These inspection planning expectations are intended to promote joint planning where such processes do not exist or need to be strengthened. The planning process, guided by the goals articulated in Attachments 1 and 2, is also intended to provide an opportunity to identify state-specific circumstances and encourage dialogue on the approaches the state expects to implement.

EPA regional NPDES programs should work closely with each of their states to plan for core program and wet weather priority inspections, and to ensure a reasonable inspection presence in each program area. Where a state chooses a different mix of inspection frequencies from those recommended here, it will be useful for regional EPA NPDES programs to identify and describe these different approaches. At the conclusion of the EPA and state inspection planning process, regions and states should prepare a brief document describing the rationale for any deviations and tradeoffs to which the region and states agreed.

EPA's Annual Commitment System (ACS) provides an opportunity, at the beginning of the fiscal year and at mid-year, to review plans and commitments, and should be used to communicate to OECA the variations from the frequencies contained in this memorandum that are agreed to by the regions and states. Proposed revisions to numerical end-of-year commitments contained in the plans that regions and states request at mid-year will be reviewed by OECA based on information in ACS justifying the change (i.e., issues related to staffing, funding, etc.) supplied by the region and/or state. The CMS will be fully effective in FY 2009 planning cycle. The CMS may be utilized in FY2008 if a state wishes to negotiate the flexibilities available in the Strategy with their region. Regions will be asked to consider beginning implementation of the Strategy in FY2008 if a state so requests.

EPA and state inspection planning will rely on compliance data obtained from PCS and ICIS-NPDES, and on citizen tips and complaints. To support attainment of water quality goals, the inspection planning process should increasingly be influenced by information on nonattainment of water quality standards to which facilities may be contributing (pursuant to listings under CWA Sections 303(d) and 305(b)). As discussed further in Attachment 1, Section 1.A.1 and Section 1.B.1., to support a more data driven planning process, OECA will develop two software tools to assist the regions and states in preliminary screening, identification of inspection targets, and inspection plan development based on data taken from PCS, ICIS-NPDES, and the AskWATERS database from the Office of Water. The first versions of these On-line Tracking and Information System (OTIS) based tools are expected to be available for testing in during the Spring of 2008. Refinements to the tools will be made over time as regions and states use them and identify additional needed analytical functions.

Oversight

No changes in current oversight practices are contemplated; however OECA will generate new data reports from PCS and ICIS-NPDES to assess progress in implementing the goals contained in this memorandum. Existing procedures such as mid-year and end-of-year reviews and periodic State Review Framework evaluations will be utilized to assess regional and state performance. The goal of performance assessments should be to improve regional or state compliance monitoring programs, identifying strengths and weaknesses of regional and state programs, and developing mutual commitments to achieve ongoing program improvement.

Reporting and Measurement

State and regional compliance monitoring activities described in this memorandum should be reported into the appropriate national information system, either PCS or ICIS-NPDES, in accordance with documents which establish data requirements and reporting timeframes for those systems. Measurement relative to CMS goals will commence at the beginning of FY 2009. Reporting at the end of FY 2009 and each fiscal year thereafter will provide cumulative state-specific data on accomplishments for each goal over the relevant timeframe for each goal (e.g., the percent of the major universe inspected for the FY 2009 – FY 2010 timeframe; the percent of the "traditional" minor universe inspected for the FY 2009 – FY 2013 timeframe, etc.). Under this cumulative approach to reporting over the relevant timeframe of the individual goal, for example, the results at the end of FY 2009 for "traditional" minors could show that more or less than 20% of the universe has been inspected, and at the end of FY 2010 the data might show that more or less than 40% of the universe has been inspected.

Conclusion

At the conclusion of FY 2011, after three years of implementation of these revised NPDES inspection frequencies, OECA will evaluate whether the CMS is achieving the desired results and will adjust it as appropriate for any areas that may not be producing the desired results.

I want to thank the individuals in the states, state associations, EPA regions and Headquarters who have helped in developing this set of new and revised inspection frequencies for the NPDES program. My staff and I will regularly monitor and evaluate implementation of these revised NPDES inspection frequencies. If needed, in advance of the FY 2009 inspection commitment setting process, we will modify and refine the frequencies to address any components which are not producing the desired results.

Lastly, in addition to the CMS, OECA has worked with the states and EPA regional offices to develop two additional policies that align with the current NPDES program regulatory structure. The two additional policies are the Wet Weather Significant Noncompliance Policy, and the Integrated Compliance Information System for NPDES (ICIS-NPDES) Policy Statement. Attachment 4 discusses how the three policies relate to one another and next steps for each of them.

If you have any questions or concerns regarding this memorandum please contact Rick Duffy (202-564-5014) or Mike Alushin (202-564-2300). Thank you in advance for your cooperation as we implement the revised NPDES inspection frequency goals.

Attachments

Attachment 1 - Core NPDES Program Inspection Frequencies
Attachment 2 - Wet Weather Programs
Attachment 3 - Inspection Type Descriptions
Attachment 4 - Next Steps for the Three NPDES Policies: the ICIS NPDES Policy Statement, the Wet Weather Significant Noncompliance Policy, and the NPDES Compliance Monitoring Strategy

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Attachment 1 - Core NPDES Program Inspection Frequencies

1.A. Major Permittees

Major NPDES permits cover discharges from Publicly Owned Treatment Works (POTW) facilities with designed discharge flows of greater than 1 millions gallons per day and active major industrial facilities scoring more than 80 for the six factors on the "NPDES Permit Rating Work Sheet". As of March 2006, there are 6,524 active major NPDES permits (4,200 active major POTW permits, 2,230 active major industrial permits, and 94 active Federal permits).

OECA's revised goal for state and regional inspection of major permittees is a minimum frequency of at least one comprehensive inspection every two fiscal years. This modifies the existing measure of inspections of major permittees which expresses the goal of inspecting 100% of major permittees annually (also known as the "inspection coverage measure"). The existing measure for major permittee inspections does not stipulate a minimum frequency for conducting comprehensive, in-depth Compliance Evaluation Inspections (CEI), Compliance Sampling Inspections (CSI), Performance Audit Inspections (PAI), Diagnostic Inspections (DI), Compliance Bio-monitoring Inspections (CBI), and/or Toxics Sampling Inspections (XSI). Data from the Permit Compliance System (PCS) indicate that nearly one-fifth (~20%) of major permittees have not received a comprehensive inspection within the most recent two years.

1.A.1. Goal and Measure for Major Permittee Comprehensive Inspection

The goal for inspections of major permittees is revised as follows: 100% of major permittees should receive at least one CEI, CSI, PAI, DI, CBI, and/or XSI every two fiscal years. At the end of each federal fiscal year, data will be taken from the appropriate automated national information system (either ICIS-NPDES or PCS) to report on both a regional and state-by-state basis ~~on~~ the percentage of majors that have received a CEI, CSI, PAI, DI, CBI, or XSI within the most recent two completed federal fiscal years. Inspections coded in PCS as either C, S, A, D, B, or X will be counted for this measure. Inspections coded in ICIS-NPDES as either AU1, CBI, CEI, DIA, SA1, or TX1 will be counted for this measure. Inspections of major POTW's inspections may be conducted in conjunction with inspections of the Sanitary Sewer Systems (and their satellites) and Combined Sewer Systems are connected to the POTW.

OECA will develop an inspection targeting model to assist regions and states in targeting inspections at major permittees. This model will be available on OTIS, will integrate data from PCS, ICIS-NPDES, AskWATERS, and other systems. OECA will convene a workgroup including regional and state participants to provide input to OECA in developing the model. A separate memorandum will be sent to regions and states to solicit membership on the workgroup. The purpose of this model is to distinguish between facilities that have strong records of compliance and those who have records indicating compliance problems, particularly for effluent violations for pollutants that may be contributing to water quality impairments reflected in Section 303(d) or 305(b) listings. States that use this targeting model can adjust the inspection frequency for NPDES major facilities that are in compliance and are not contributing to Section 303(d) or 305(b) listings to one comprehensive inspection every three (3) years. Facilities that

do not meet these criteria will remain subject to a minimum comprehensive inspection frequency of once every two fiscal years. Flexibility relative to the goal in this section is available for major permittees participating in the Performance Track program. Regions and states should refer to current EPA issued documents addressing inspection frequencies for permittees participating in the Performance Track program.

1.A.2. Activity Indicator for Major Permittee Inspection and Compliance Assessment

EPA will continue to report data on the total number of inspections that are conducted at major permittees each fiscal year. This will be an activity indicator only and will not be compared to a numerical goal or target. This indicator will use the CEI's, CSI's, PAI's, DI's CBI's, and XSI's that are counted under measure A.1. above, and will add to it other types of inspections that are conducted, including reconnaissance (R), enforcement follow-up (@), oversight (O), and sludge-biosolids (Z) inspection types. Inspections coded in PCS as C, S, A, D, B, X, R, @, O, and Z will be counted for this measure. Inspections coded in ICIS-NPDES either as AU1, CBI, CEI, DIA, SA1, TX1, RWS, ROS, FLP, OVS, or, for sludge/biosolids, sludge/biosolids CWAS program and the appropriate compliance monitoring type (i.e., CEI for evaluation or SA1 for sampling inspection) will also be counted for this measure.

Some state data system users have defined fields to count "operations and maintenance" inspections (O & M). O & M inspections may be more detailed than a reconnaissance inspection, but not as in-depth as a CEI, CSI, or diagnostic inspection. O & M inspections are not an officially recognized inspection type. O & M inspections will not be counted toward the 1.A.1 inspection targets, but will be counted under the 1.A.2. activity indicator. States will need to provide the appropriate region and OECA with information on which user defined field they are using to store information on O & M inspections. States utilizing ICIS-NPDES should use the OPM (alternative) code for O & M inspections.

In lieu of conducting an on-site inspection under this indicator measure, as new reporting capabilities in ICIS-NPDES come on-line, regions and states may receive credit for conducting thorough off-site compliance and engineering evaluations of major permittees that meet certain qualifying standards. The purpose of off-site evaluations is to ascertain compliance with the terms and conditions of the permit, self monitoring reports, and other information. Off-site evaluations are intended for use solely at facilities that have a consistent track record of being well operated and in compliance with permit terms and conditions. Determination of facilities that are candidates for off-site evaluations should be based on the knowledge of the inspector, and in conjunction with information obtained from DMR's and prior on-site inspections from PCS and ICIS-NPDES. Off-site evaluations are not appropriate for facilities that: (1) are currently subject to enforcement actions or compliance schedules that are the result of concluded enforcement actions; (2) have been reported in Significant Noncompliance (SNC) within the previous eight (8) quarters; (3) have one or more late/missing DMR submissions in the previous eight (8) quarters; (4) have unresolved single event violation(s) identified in prior inspection(s); (5) discharge to CWA 303(d)/305(b) listed waters for pollutant(s) contributing to the listing; or

(6) have known potential to impact drinking water supplies (discharge points or outfalls within 2 miles of drinking water intakes).

OECA will convene a workgroup consisting of regional and state compliance officers and inspectors to develop further policy on conducting off-site evaluations. Off-site evaluations are expected to be more detailed than the monthly and quarterly Discharge Monitoring Report (DMR) reviews that states and regions already conduct. Off-site evaluations are a broad and comprehensive examination of information, data, records, facility annual reports, and engineering information to ascertain compliance. Routine review of DMR data and phone contacts with the facility would not qualify for credit as an off-site evaluation. ICIS-NPDES has capability to record these off-site evaluations. For states reporting through PCS, OECA will provide instructions on how report these evaluations, most likely through user defined fields.

1.B. Minor Permittees: Goal and Measure for "Traditional" Minor Permittee Inspection

Minor NPDES permits (also sometimes referred to as "traditional" minor permits) cover discharges from POTW facilities with designed discharge flows of less than 1 million gallons per day (1 MGD)(generally serving communities with populations of less than 10,000 persons) and active minor industrial facilities (facilities scoring less than 80 for the six factors on the "NPDES Permit Rating Work Sheet"). As of March 2006, there are 40,210 active minor NPDES standard permits (10,750 active minor POTW permits, 28,800 active minor industrial permits, and 660 active minor Federal permits). These permit data do not include facilities that are minor POTWs or industrial sites operating under General Permits, however, inspection frequency goals under this section ~~is~~ are intended to apply to such facilities.

There are no current inspection type or frequency goals for "traditional" minor NPDES permittees. EPA reports annual totals for the number of EPA and state inspections conducted at minor permittees from data obtained from PCS. While EPA has not previously set goals or reported minor permittee inspection coverage rates, or reported data by inspection type, an OECA analysis indicates that more than half of the universe of "traditional" minors has not received a comprehensive inspection (CEI, CSI, PAI, DI, CBI or XSI) within the previous five years.

Separate goals are contained in Attachment 2 to address individual inspection frequencies for the Wet Weather program areas (Combined Sewer Systems, Sanitary Sewer Systems, Storm Water, and Concentrated Animal Feeding Operations).

"Traditional" minor permittees include POTWs with daily flows of less the 1 MGD, and industrial facilities scoring less than 80 for the six factors on the "NPDES Permit Rating Work Sheet." <u>OECA's goal is state/regional inspection frequency for each "traditional" minor permittee of at least once in each five (5) year permit term</u>. In the early years of strategy implementation, the screening process should be attentive to facilities that do not appear, based on the data, to have been inspected in more than 5 years. In addition, a preference for early

inspection attention should be given to facilities with histories of noncompliance, citizen complaints, and/or facilities that may be contributing to water quality violation(s). Inspections of "traditional" minor POTW's may be conducted in conjunction with inspections of the Sanitary Sewer Systems (and their satellites) and Combined Sewer Systems are connected to the POTW.

To facilitate the targeting of inspections for "traditional" minors, OECA will develop a software tool to assist the regions and states in preliminary screening and identification of inspection targets. The first version of this On-line Tracking and Information System (OTIS) based facility sorting tool is expected to be available for testing in mid-2008. Refinements to the tool will be made over time as regions and states use the tool and identify additional needed analytical functions. The sorting tool will not utilize weightings (differing from the model described under 1.A.1 for targeting majors) due to concerns about the current completeness of data for traditional minors and how that might affect the results obtained from a weighted model. The sorting tool will allow regions and states to sort facilities based on factors including: information on water quality impairments; associated pollutants that may be discharged by the permittee; SNC within the most recent two years; unresolved Single Event Violations; days since last comprehensive inspection; days since last inspection (all types), and current enforcement actions. The use of the sorting tool will be optional. States that achieve and maintain sufficiently good quality for their universe of "traditional" minors in PCS or ICIS-NPDES will have the option of utilizing the inspection targeting model described in 1.A.1 above. EPA Regional Offices will determine the adequacy of the data. Whether using the sorting tool or the inspection targeting model, the goal to inspect traditional minors at least once in each five (5) year permit term will not be altered by use of either tool.

a. "Traditional" minor permittees that do not discharge to water bodies listed on the CWA Section 303(d) list of impaired waters. This indicator will count the following types of inspections: CEI, CSI, PAI, DI, CBI, XSI, reconnaissance, enforcement follow-up, oversight, and sludge-biosolids. The corresponding PCS codes will be used for data retrievals: C, S, A, D, B, X, R, @, O, and Z. The non-comprehensive R, @, O, and Z inspections will be counted under this measure because these facilities are not discharging to CWA Section 303(d) listed waters. In addition, user specified fields such as those discussed in Section 1.A.2. (e.g., O & M inspections) above will be counted under this measure. Inspections coded in ICIS-NPDES either as AU1, CBI, CEI, DIA, SA1, TX1, RWS, ROS, FLP, OVS, or, for sludge/biosolids, sludge/biosolids CWAS program and the appropriate compliance monitoring type (i.e., CEI for evaluation or SA1 for sampling inspection) will be counted for this measure. States utilizing ICIS-NPDES should use the OPM (alternative) code for O & M inspections.

During the annual planning process, when determining which "traditional" minor facilities should be inspected using a comprehensive inspection, regions and states should inform that decision by carefully reviewing available information on the permittees, such as noncompliance information and information that is indicative of the completeness and currency of ambient monitoring information for the receiving waters to which the permittees discharge. Where information indicates patterns of noncompliance or uncertainty about the status of receiving waters, strong consideration should be given to utilizing a comprehensive inspection. In order to ensure a minimum level playing field, states and regions are encouraged to conduct a comprehensive inspection at least 5% of their "traditional" minor universe each year.

b. "Traditional" minors that discharge to CWA Section 303(d) and 305(b) listed waters. As of March 2006, more than 5,200 of the 40,210 "traditional" minors are indicated as discharging to water bodies on the CWA Section 303(d) impaired waters list. "Traditional" minor facilities that are permitted to discharge pollutants of concern corresponding to the Section 303(d) or 305(b) listing parameter should be inspected at least once in each five year permit term with a comprehensive inspection including CEI, CSI, PAI, DI, CBI, and/or XSI. Of the 5,200 permittees that discharge to Section 303(d) listed waters, OECA expects there are some that due to the nature of their discharges are not in fact contributing to the water quality conditions that have resulted in the Section 303(d) or 305(b) listings; such facilities on impaired waters that are not contributing to the impairment may be inspected with a less comprehensive inspection (e.g., a reconnaissance inspection). Comprehensive inspections coded in PCS as either C, S, A, D, B, or X will be counted for this measure. Comprehensive inspections coded in ICIS-NPDES either as AU1, CBI, CEI, DIA, SA1, or TX1 will be counted for this measure.

1.C. Pretreatment

1.C.1. Pretreatment Audits

For the pretreatment program, all approved active POTW pretreatment programs should receive at least one audit in each five year permit term, generally corresponding to an annual audit rate of 20% of approved active programs. Data retrievals for this measure will count audits coded in PCS as: G. The corresponding ICIS-NPDES code is AU1 with program code CWAPRTRT.

During each audit, oversight inspections should be conducted of at least two Industrial Users (IU) discharging to the POTW. The purposes of these oversight inspections include verifying that the IU permit correctly reflects the physical and operational conditions of the facility, validating whether the POTW has been correctly evaluating compliance (including correct sampling), and assessing the POTW's IU inspection procedures. Data retrievals for this measure will count the following inspection types: Pretreatment Compliance Oversight, IU Inspection with Pretreatment Audit, IU Sampling Inspection, IU Non-Sampling Inspection, IU Toxics Inspection, IU Sampling Inspection with Pretreatment, IU Non-Sampling Inspection with Pretreatment, and IU Toxics with Pretreatment. The corresponding PCS codes are: !, U, 2, 3, 4, 5, 6, 7. The corresponding ICIS-NPDES codes with program code CWAPRTRT are: OVS (alternative), AU2 (industrial), PSI (industrial), CE2 or PIU (industrial), TX2 (industrial), PSI (industrial), CE2 or PIU (industrial), and TX2 (industrial).

1.C.2. Pretreatment Compliance Inspections

Approved active POTW pretreatment programs should receive at least two (2) Pretreatment Compliance Inspections (PCI) during each five year permit term. Data retrievals will count the following types of inspections: Pretreatment Compliance Inspections, Pretreatment Follow-up Inspections, and Pretreatment Compliance Oversight. The corresponding PCS codes are: P, F, and!. The corresponding ICIS-NPDES codes with program code CWAPRTRT are: CEI (comprehensive), FLP (alternative), and OVS (alternative).

1.C.3. Significant Industrial User Inspections

For the industrial pretreatment program, the appropriate EPA or state permitting authority should track the submission of POTW reports made pursuant to C.F.R. 403.12(i) and review 100% of all submissions to determine if the POTW is correctly implementing the program, including, as appropriate, enforcement of SIUs. For SIUs discharging to non-authorized POTWs where EPA or the state are the direct implementing authority, EPA or the state should track submission of SIU semi-annual reports submitted pursuant to 40 CFR 403.12(e) and (h). The corresponding PCS codes are: !, U, 2, 3, 4, 5, 6, 7. The corresponding ICIS-NPDES codes with program code CWAPRTRT are: OVS (alternative), AU2 (industrial), PSI (industrial), CE2 or PIU (industrial), TX2 (industrial), PSI (industrial), CE2 or PIU (industrial), and TX2 (industrial).

For the industrial pretreatment program, 100% of SIUs permitted by approved POTWs should be inspected, and sampled subject to regulations or ERP requirements, by the approved POTW when required semi-annual self monitoring reports from SIUs show noncompliance, or based on tips or complaints received by EPA, state, or approved POTW. In the course of conducting audits of approved POTW's, states should evaluate POTW programs to ensure that follow-up to reports of noncompliance by SIUs routinely occurs. SIUs directly regulated by regional offices or states should be inspected annually, with sampling as appropriate, except where the SIU is designated with a reduction in monitoring and inspection frequency designated in 403.12(e)(3). Data retrievals for this measure will count the following inspections: Sampling Inspection, IU Non-Sampling Inspection, IU Toxics Inspection, IU Sampling Inspection with Pretreatment, IU Non-Sampling Inspection with Pretreatment, and IU Toxics with Pretreatment. The corresponding PCS codes are: 2, 3, 4, 5, 6, 7. The corresponding ICIS-NPDES codes with program code CWAPRTRT are: PSI (industrial), CE2 or PIU (industrial), TX2 (industrial), PSI (industrial), CE2 or PIU (industrial), and TX2 (industrial).

1.D. Oversight

OECA does not contemplate any changes to its oversight processes as a result of issuance of the CMS. Oversight inspections are described in the memorandum *Revised Policy Framework for State/EPA Enforcement Agreements* (August 1986) and an Office of Water memorandum *1987 National Guidance for Oversight of NPDES Programs* (April 1986). These memoranda establish that oversight inspections should: (1) assess how well the state inspectors are determining compliance; (2) be tailored to fit state performance; (3) provide incentives to strong state performance by reducing the number, level and/or frequency of some reporting requirements consistent with regulations or reducing the frequency of oversight inspections. In states where criteria for good performance are not met, EPA may suggest changes in procedures and the state use of resources or training, provide technical assistance, and/or increase the number of oversight inspections.

OECA reaffirms the principle that there is "no one size fits all way to do oversight." Regions will develop a state-by-state oversight proposal for each year. The OECA State Review Framework (SRF) is the major oversight activity for the NPDES compliance monitoring program, and the schedule of SRF reviews should be a significant factor in scheduling of

oversight inspections. EPA oversight inspections should ordinarily occur before an SRF review and the information from them should be considered in the SRF. A minimum of five (5) EPA oversight inspections should be conducted in each state where an SRF review is scheduled to take place in the subsequent fiscal year. These inspections may also include joint state/EPA inspections where the state has the lead role in the inspection.

Additional factors that EPA may consider when scheduling oversight include: (1) significant changes in state program structures or personnel are taking place; (2) a new state regulatory structure is being implemented; (3) the state is reporting low violation identification rates; (4) the state is reporting low inspection coverage rates; or (5) patterns in complaints from citizens.

EPA's Annual Commitment System (ACS) contains a measure requiring the regions to project the combined number of oversight inspections and joint state / EPA inspections (state lead) that they will conduct. Data retrievals for this measure will count inspections under the following inspection types Compliance Evaluation Oversight, and state inspections designated under the inspector code for Joint/EPA Inspectors – State Lead that are at the level of CEI, CSI, PAI, DI, CBI, and/or XSI. The corresponding PCS codes are: ! and O. The corresponding ICIS-NPDES code is OVS (alternative). Compliance evaluation oversight inspections should be entered using the code OVS (alternative) and a program code different than CWAPRTRT. Pretreatment oversight inspections should be entered using the code OVS (alternative) and program code equal to CWAPRTRT.

1.E. Biosolids

The objectives of a sewage sludge inspection are to determine compliance with Federal sludge regulations for any facility engaged in a regulated sludge or disposal practice and to evaluate the permittee's compliance with sludge monitoring, recordkeeping and reporting, treatment operations, and sampling and laboratory quality assurance.

The inspection goal for sludge-biosolids inspections is that each major POTW receive at least one sludge-biosolids inspection every five years. POTW sludge land disposal operations should receive at least one sludge-biosolids inspection every five years. These inspections may be conducted in conjunction with compliance inspections at major and minor POTWs. Inspections may also be conducted to respond to citizen complaints. Inspection type counted for this indicator measure: sludge-biosolids. The corresponding PCS code is Z. To enter biosolids inspections in ICIS-NPDES use the CWAS program code and the appropriate compliance monitoring type code (i.e., CEI or SA1).

Attachment 2 - Wet Weather Programs

At the conclusion of FY 2011, after three years of implementation of these revised NPDES inspection frequencies, OECA will evaluate whether the CMS is achieving the desired results, will adjust the goals as appropriate for any areas that may not be producing the desired results.

2.A. Combined Sewer System

Combined Sewer System (CSS) inspections evaluate compliance with Combined Sewer Overflow (CSO) provisions present in the NPDES permit, an enforcement order, a consent decree, or another enforceable document. The inspector verifies that the permittee is preventing CSOs during dry weather, implementing the nine minimum CSO controls, adhering to a schedule for development, submission, and implementation of a Long-Term CSO Control Plan, eliminating or relocating overflows from sensitive areas, adhering to effluent limitations, and implementing a monitoring program.

As of the date of this memorandum, nationally there are 837 permitted CSS's. The CSS inspection goal is: Major CSS's should receive at least one CSO inspection every three (3) fiscal years. Minor CSS's should receive at least one CSO inspection every five (5) years. These inspections may be conducted in conjunction with compliance inspections at major and minor POTWs. Data retrievals for this measure will count the following inspection types: PCS: CSO Sampling (#), CSO Non-Sampling ($). The corresponding ICIS-NPDES codes are SA1 (comprehensive) with program code CWACSO, and CEI (comprehensive) with program code CWACSO. CSS inspections, as well as broader inspections that include connected satellite systems, may be conducted in conjunction with compliance inspections at major and minor POTW's. When entering EPA CSS inspections, the OECA National Priority "Wet Weather – Combined Sewer Overflow (CSO)" should be selected.

In the event that regions and states are not able to meet this goal, proposals for alternate frequency goals may be considered for particular systems based on information such as: overall history of good compliance based on information from prior CSO inspections (e.g., permit conditions, Nine Minimum Controls), no dry weather overflows (identified through inspections or record reviews), declining CSO activation rates, and status of receiving waters.

2.B. Sanitary Sewer Systems

Sanitary Sewer Overflow (SSO) inspections evaluate compliance with SSO provisions present in the NPDES permit, an enforcement order, a consent decree, or another enforceable document. The inspector collects information to verify that the permittee is complying with the NPDES permit conditions (duty to mitigate and proper operation and maintenance) and the required notification procedures. The inspector also determines whether there have been any unpermitted discharges, or discharges from a location other than the discharge point specified in the permit, to waters of the United States.

There is no set inspection frequency or goal for SSO inspections. Inspections are scheduled as needed based on information about overflow occurrences received directly by EPA,

or from other governmental organizations, citizens groups, or non-governmental organizations. SSO inspections, as well as broader inspections of Sanitary Sewer Systems (SSS) and their satellites, may be conducted in conjunction with compliance inspections at major and minor POTWs. Data retrievals for the indicator measure for SSO inspections will count inspections under the following inspection types: PCS: SSO Sampling (+), SSO Non-Sampling (&). The corresponding ICIS-NPDES codes are SA1 (comprehensive) with program code CWASSO, and CEI (comprehensive) with program code CWASSO. When entering EPA SSO inspections, the OECA National Priority "Wet Weather – Sanitary Sewer Overflow (SSO)" should be selected.

2.C. Storm Water

2.C.1. Municipal Separate Storm Sewer Systems (MS4)

a. Phase I Audits

Nationally, there are approximately 280 Phase I MS4 permits which covers approximately 1,000 permittees (the difference being that many MS4 permits include two or more co-permittees). Audits (definition contained in Attachment 3) of Phase I MS4's should be completed within five years of the issuance of this memorandum. After the first audit on the MS4 is completed, regions and states will determine future audit frequency based on permit compliance. If violations were discovered that require the issuance of an enforcement order, regions or states should conduct a follow-up audit within one year. If either minor or no violations were discovered, regions or states should conduct another audit within 5 years. Data retrievals for the indicator measure for MS4 Phase I audits will count under the following PCS code: Stormwater (MS4) Audit (>).The corresponding ICIS-NPDES code is AU1 (comprehensive) with program code CWASTMM. When entering EPA audits, the OECA National Priority "Wet Weather – Storm Water – MS4" should be selected.

b. Phase I Inspections

MS4 inspections (definition contained in Attachment 3) assess a subset of the MS4's permit compliance, respond to citizen complaints, or respond to requests or referrals from other governmental organizations, citizens groups, or non-governmental organizations. Inspections of Phase I MS4's should be conducted on an as needed basis. Many Phase I MS4's may technically qualify as "major permittees" per the "NPDES Permit Rating Sheet." The inspection frequency for major permittees under heading 1.A.1 is not intended to apply to Phase I MS4's. Data retrievals for the indicator measure for MS4 Phase I inspections will count under the following PCS codes: Stormwater (MS4) Sampling (<),Stormwater (MS4) Non-Sampling (-).The corresponding ICIS-NPDES codes are SA1 (comprehensive) and CEI (comprehensive) with program code CWASTMM. When entering EPA inspections, the OECA National Priority "Wet Weather – Storm Water – MS4" should be selected.

c. Phase II Audits and Inspections

The Office of Water estimates that there are approximately 5,000 Phase II MS4's nationally. There is a strong need for permitting authorities to assess the quality of these MS4 programs. Audits (evaluating all aspects of the MS4), on-site inspections (inspecting individual parts of the MS4 program), and review of annual reports are valuable tools to determine if the Phase II MS4s are in compliance with permit requirements.

The goal is to conduct an appropriate combination of audits and inspections to determine compliance within seven years of the issuance of this memorandum. Given the overarching need to assess the Phase II programs, this goal provides flexibility to regions and states to determine the most appropriate approach to assess compliance within the Phase II universe. Since the size of the universe is large, if regions or states experience difficulty meeting this goal, priority should be given to auditing or inspecting Phase II MS4s located in priority watersheds that contribute to CWA Section 303(d) or 305(b) listings, and at Phase II MS4s located near high quality waters that the state has designated for higher levels of protection to prevent degradation. After the region or state has made compliance determination at individual Phase II MS4s the future assessment frequency should be based on whether the Phase II MS4 was or was not in compliance with the permit, and other information (e.g., review of annual reports, citizen complaints, etc.). If violations are discovered that require the issuance of an enforcement order, regions or states should conduct a follow-up audit or on-site inspection within one year. If either minor or no violations were discovered, regions or states should conduct another follow-up audit or inspection within 5 years.

Data retrievals for the indicator measure for MS4 Phase II audits will count under the following PCS codes: Stormwater (MS4) Audit (>), Stormwater (MS4) Sampling (<), Stormwater (MS4) Non-Sampling (-). The corresponding ICIS-NPDES codes AU1 (comprehensive), SA1 (comprehensive), and CEI (comprehensive) with program code CWASTMM. When entering EPA audits and inspections, the OECA National Priority "Wet Weather–Storm Water–MS4" should be selected.

2.C.2. Industrial Storm Water

Industrial storm water inspections are designed to ensure that regulated facilities have an NPDES permit for storm water discharge and a Storm Water Pollution Prevention Plan (SWPPP), and that the facility is in compliance with the permit and is implementing the SWPPP to ensure that the permittee is meeting technology and water quality based requirements. During the inspection the inspector reviews the permit and the SWPPP, reviews self-inspection reports and other records to verify that the facility is complying with its permit and is implementing the SWPPP, and walks the site to verify that the SWPPP is accurate and BMPs are in place and functioning properly.

Estimates indicate that there are more than 100,000 industrial storm water permittees nationwide, contained within 29 industrial categories. The long-term inspection goal for industrial storm water permittees is to inspect at least 10% of the universe each fiscal year. Given the size of the universe, if regions or states experience difficulty meeting this goal, priority

should be given to inspecting permittees of environmental concern and those located in priority watersheds that may discharge a pollutant(s) that contributes to CWA Section 303(d) or 305(b) listings, and permittees located near high quality waters that the state has designated for higher levels of protection to prevent degradation. OECA will work with the regions and states during FY 2008 – FY 2010 to incrementally improve information on the universe of industrial storm water permittees, particularly for the subset of industrial categories addressed in OECA's national storm water priorities: Ready-Mix Concrete; Sand and Gravel; Crushed Stone; Road Building; and Ports.

Data retrievals for the industrial storm water inspection indicator measure will count under the following PCS codes: Stormwater (Non-Construction) Sampling (:), Stormwater (Non-Construction) Non-Sampling (~). The corresponding ICIS-NPDES codes are SA1 (comprehensive) and CEI (comprehensive) with program code CWASTMN. When entering EPA industrial storm water inspections, the OECA National Priority "Wet Weather–Storm Water-Industrial-Non-construction" should be selected.

2.C.3. Construction

Storm water inspections are designed to ensure that regulated facilities have a NPDES permit for storm water discharge and a Storm Water Pollution Prevention Plan (SWPPP) and are following the specifications in each. During the inspection, the inspector reviews the permit and the SWPPP and determines whether the SWPPP meets the requirements set forth in the permit. The inspector also reviews records, such as self-inspection reports, to verify that the facility is complying with its permit and the SWPPP and walks the site to verify that the SWPPP is accurate and BMPs are in place and functioning properly.

a. Phase I (Greater than 5 acres)

OECA recommends a joint EPA and state annual goal to inspect at least 10% of the permitted Phase I construction sites, with priority given to sites located near Section 303(d) or 305(b) listed waters that are impaired for construction-associated pollutants, and at sites located near high quality waters that the state has designated for higher levels of protection to prevent degradation.

EPA estimates that there are approximately 157,500 Phase I construction starts nationwide annually. EPA and the states should establish the additional goal to inspect all Phase I sites where there is an indication (including tips and complaints) of unpermitted construction activity. Inspections conducted pursuant to a tip or complaint will count toward the annual Phase I universe coverage goal. For states that enter all construction storm water inspections in ICIS-NPDES, data retrievals for the construction storm water inspection indicator measure will count under the following PCS codes: Stormwater (Construction) Sampling ({), Stormwater (Construction) Non-Sampling (}). The corresponding ICIS-NPDES codes are SA1 (comprehensive) and CEI (comprehensive) with program code CWASTMC. When entering EPA industrial storm water inspections, the OECA National Priority "Wet Weather–Storm Water-Industrial Construction" should be selected.

Given the size and transient nature of the Phase I construction storm water universe, EPA has provided in the draft ICIS-NPDES Policy Statement that only the inspections that should be entered into ICIS-NPDES are those where the state, territory, or tribe issues a formal enforcement action, administrative penalty order, or informal enforcement action (but only if informal action addresses Significant Noncompliance). For estimating joint EPA and state progress relative to the joint annual goal at the end of the federal fiscal year, states should submit to the appropriate EPA regional office aggregate reporting of the total number of NPDES Phase I construction storm water inspections that have been conducted during the fiscal year. This report may also include separate numerical data on the NPDES Phase I construction storm water inspections conducted by counties or localities.

b. Phase II (1 to 5 acres)

OECA recommends a joint EPA and state annual goal to inspect at least 5% of the permitted Phase II construction sites, with priority given to sites located near Section 303(d) or 305(b) listed waters that are impaired for construction-associated pollutants, and at sites located near high quality waters that the state has designated for higher levels of protection to prevent degradation.

EPA estimates that there are 87,875 Phase II construction starts nationwide annually. EPA and the states should establish the additional goal to inspect all Phase II sites where there is an indication (including tips and complaints) of unpermitted construction activity. Inspections conducted pursuant to a tip or complaint may count toward the annual Phase II universe coverage goal. For states that enter all construction storm water inspections in ICIS-NPDES, data retrievals for the construction storm water inspection indicator measure will count under the following PCS codes: Stormwater (Construction) Sampling ({), Stormwater (Construction) Non-Sampling (}). The corresponding ICIS-NPDES codes are SA1 (comprehensive) and CEI (comprehensive) with program code CWASTMC. When entering EPA industrial storm water inspections, the OECA National Priority “Wet Weather–Storm Water-Industrial Construction” should be selected.

Given the size and transient nature of the Phase II construction storm water universe, EPA has provided in the draft ICIS-NPDES Policy Statement that only the inspections that should be entered into ICIS-NPDES are those where the state, territory, or tribe issues a formal enforcement action, administrative penalty order, or informal enforcement action (but only if informal action addresses Significant Noncompliance). For estimating joint EPA and state progress relative to the joint annual goal at the end of the federal fiscal year, states should submit to the appropriate EPA regional office aggregate reporting of the total number of NPDES Phase II construction storm water inspections that have been conducted during the fiscal year. This report may also include separate numerical data on the NPDES Phase II construction storm water inspections conducted by counties or localities.

2.D. Concentrated Animal Feeding Operations

The objective of Concentrated Animal Feeding Operations (CAFO) inspections is to verify that CAFOs are not illegally discharging to waters of the United States, as well as to verify that permitted CAFOs are in compliance with their NPDES permits.

2.D.1. Large and Medium CAFOs with NPDES permits.

EPA recommends that states and regions inspect at least once every five years to determine compliance with the permit, including terms of the nutrient management plan. More frequent inspections, including annual inspections, may be appropriate for facilities that meet any of the following criteria (Section 2.2.1 NPDES Permit Writers Guidance for CAFOs, December, 2003):

- Exceptionally large operations (existing and new)
- Operation that has historical compliance problems
- Operation that has significant environmental concerns
- Operation located in an area of significant environmental concern or with particular water quality impairment
- Operation subject to voluntary alternative performance standard
- Operation subject to additional state requirements that apply to specific areas of operations

Data retrievals for the large and medium CAFOs with NPDES permits inspection indicator measure will count under the following PCS codes: CAFO-Sampling (\ ), CAFO-Non-Sampling (=). The corresponding ICIS-NPDES codes are SA1 (comprehensive) and CEI (comprehensive) with program code CWACAFO. When entering EPA CAFO inspections, the OECA National Priority "Wet Weather–CAFO" should be selected.

2.D.2. Large CAFOs without NPDES permits.

If not inspected to date, inspect all unpermitted large CAFOs within five years to determine whether the facility discharges. Thereafter, as needed based on the possibility for an unauthorized discharge.

Data retrievals for the large CAFOs without NPDES permits inspection indicator measure will count under the following PCS codes: CAFO-Sampling (\ ), CAFO-Non-Sampling (=). The corresponding ICIS-NPDES codes are SA1 (comprehensive) and CEI (comprehensive) with program code CWACAFO. When entering EPA CAFO inspections, the OECA National Priority "Wet Weather–CAFO" should be selected.

2.D.3. Medium AFOs without NPDES Permits

Assess one-time initially to determine whether the facility is a medium CAFO, including whether the facility discharges. Prioritize assessments based on priority watersheds, nutrient

impairments, complaints, or other information. After the initial assessment if the facility is not a medium CAFO, States and regions should inspect and designate as needed based on citizen complaint or other information to determine whether facility is a significant contributor of contaminants and has a discharge through a manmade conveyance or there is direct contact by animals in the production area. *(Note: assessments evaluate whether the facility meets the definition of a medium CAFO -- manmade ditch, or pipe carries manure or process waste water from the facility to surface waters or animals come into contact with surface water that runs through the area they are confined).*

Data retrievals for the medium AFO assessment indicator measure will count under the following PCS codes: CAFO-Sampling (\ ), CAFO-Non-Sampling (=). The corresponding ICIS-NPDES codes are SA1 (comprehensive) and CEI (comprehensive) with program code CWACAFO. When entering EPA CAFO inspections, the OECA National Priority "Wet Weather–CAFO" should be selected.

2.D.4. Small AFOs

States and regions should inspect and designate as needed based on citizen complaint or other information to determine whether facility is a significant contributor of contaminants and has a discharge through a manmade conveyance or there is direct contact by animals in the production area.

Data retrievals for the small AFO inspection indicator measure will count under the following PCS codes: CAFO-Sampling (\ ), CAFO-Non-Sampling (=). The corresponding ICIS-NPDES codes are SA1 (comprehensive) and CEI (comprehensive) with program code CWACAFO. When entering EPA CAFO inspections, the OECA National Priority "Wet Weather–CAFO" should be selected.

Attachment 3 – Inspection Type Descriptions

(Source: National Pollutant Discharge Elimination System Compliance Inspection Manual, July 2004)

Compliance Evaluation Inspection (CEI)

The CEI is a nonsampling inspection designed to verify permittee compliance with applicable permit self-monitoring requirements, effluent limits, and compliance schedules. Inspectors must review records, make visual observations and evaluate treatment facilities, laboratories, effluents and receiving waters. During the CEI, the inspector must examine both chemical and biological self-monitoring, which form the basis for all other inspection types except the Reconnaissance Inspection.

Compliance Sampling Inspection (CSI)

During the CSI, NPDES permitted or unpermitted facilities, inspectors must take representative samples. Inspectors then verify the accuracy of the permittee's self-monitoring program and reports through chemical and bacteriological analysis; determine compliance with discharge limitations; determine the quantity and quality of effluents; develop permits; and provide evidence for enforcement proceedings where appropriate. In addition, the CSI includes the same objectives and tasks as a CEI.

Performance Audit Inspection (PAI)

The inspector conducts a PAI to evaluate the permittee's self-monitoring program. As with a CEI, the PAI verifies the permittee's reported data and compliance through a records check. However, the PAI provides a more resource-intensive review of the permittee's self-monitoring program and evaluates the permittee's procedures for sample collection, flow measurement, chain-of-custody, laboratory analyses, data compilation, reporting, and other areas related to the self-monitoring program. In a CEI, the inspector makes a cursory visual observation of the treatment facility, laboratory, effluents, and receiving waters. In a PAI, the inspector observes the permittee performing the self-monitoring process from sample collection and flow measurement through laboratory analyses, data workup, and reporting. The PAI does not include the collection of samples by the inspector. However, the inspector may require the permittee to analyze performance samples for laboratory evaluation purposes.

Compliance Bio-monitoring Inspection (CBI)

This inspection includes the same objectives and tasks as a CSI. A CBI reviews a permittee's toxicity bioassay techniques and records maintenance to evaluate compliance with the bio-monitoring terms of the NPDES permit and to determine whether the permittee's effluent is toxic. The CBI also includes the collection of effluent samples by the inspector to conduct acute and chronic toxicity testing to evaluate the biological effect of a permittee's effluent discharge(s) on test organisms. Each state should have the ability to conduct bio-monitoring inspections, have a designated contractor conduct inspections, or have an equivalent program to independently verify a discharger’s compliance with Whole Effluent Toxicity (WET) permit requirements.

Toxics Sampling Inspection (XSI)

The XSI has the same objectives as a conventional CSI. However, it places increased emphasis on toxic substances regulated by the NPDES permit. The XSI covers priority pollutants other than heavy metals, phenols, and cyanide, which are typically included in a CSI (if regulated by the NPDES permit). An XSI uses more resources than a CSI because sophisticated techniques are required to sample and analyze toxic pollutants. An XSI may also evaluate raw materials, process operations, and treatment facilities to identify toxic substances requiring controls.

Diagnostic Inspection (DI)

The DI primarily focuses on Publicly Owned Treatment Works (POTWs) that have not achieved permit compliance. POTWs that are having difficulty diagnosing their problems are targeted. The purposes of the DI are to identify the causes of noncompliance, suggest immediate remedies that will help the POTW achieve compliance, and support current or future enforcement action. Once the cause of noncompliance is defined, an administrative order is usually issued that requires the permittee to conduct a detailed analysis and develop a composite correction plan.

Reconnaissance Inspection (RI)

The RI is used to obtain a preliminary overview of a permittee's compliance program. The inspector performs a brief visual inspection of the permittee's treatment facility, effluents, and receiving waters. The RI uses the inspector's experience and judgment to summarize quickly any potential compliance problems. The objective of the RI is to expand inspection coverage without increasing inspection resources. The RI is the briefest and least resource intensive of all NPDES inspections.

Pretreatment Compliance Inspection (PCI) and Pretreatment Audit

The PCI evaluates the POTW's implementation of its approved pretreatment program. It includes a review of the POTW's records on monitoring, inspections, and enforcement activities for its industrial users (IUs). The PCI may be supplemented with IU inspections. An IU inspection is an inspection of any significant IU that discharges to the POTW. The inspection can include sampling or not, depending on the reason for the inspection. If feasible, inspectors should conduct the PCI concurrently with another NPDES inspection of the POTW. Additional information is available in EPA’s *Guidance for Conducting a Pretreatment Compliance Inspection* (September 1991).

It should be noted that a related type of review procedure, the pretreatment audit, is also performed by Approval Authorities. The pretreatment audit is defined and discussed in Section 1.2, page 1-1, of EPA’s Pretreatment Compliance Inspection and Audit Manual for Approval Authorities (July 1986) and the Control Authority Pretreatment Audit Checklist and Instructions (May 1992).

Follow-up Inspection

The follow-up inspection is a resource intensive inspection conducted when a compliance problem is identified as a result of a routine inspection or a complaint. For a follow-up inspection, the appropriate resources are assembled to deal effectively with a specific enforcement problem.

Sewage Sludge (Biosolids) Inspection

The objectives of a sewage sludge (biosolids) inspection are to determine compliance with Federal 503 sludge regulations for any facility engaged in a regulated sludge or disposal practice and to evaluate the permittee's compliance with sludge monitoring, recordkeeping and reporting, treatment operations, and sampling and laboratory quality assurance. The PCI, CEI, and PAI are the most likely vehicles for evaluating compliance with sludge requirements.

Storm Water Inspection

Storm water inspections are designed to ensure that regulated facilities have a NPDES permit for storm water discharge and a Storm Water Pollution Prevention Plan (SWPPP) and are following the specifications in each. During the inspection, the inspector reviews the permit and the SWPPP and determines whether the SWPPP meets the requirements set forth in the permit. The inspector also reviews records, such as self-inspection reports, to verify that the facility is complying with its permit and the SWPPP and walks the site to verify that the SWPPP is accurate and BMPs are in place and functioning properly.

Municipal Separate Storm Sewer System (MS4) Audit

An MS4 audit is used to evaluate overall MS4 storm water program implementation, and identify problems the local government may have in implementing the program. MS4 audits involve a comprehensive review of the local government's MS4 storm water program including: a review of the program elements including structural and source control measures, detection and removal of illicit discharges and improper disposal into storm sewers, monitoring and controlling pollutants in storm water discharges, implementing and maintaining structural and nonstructural Best Management Practices (BMPs), verification of implementation schedules, assignment of appropriate individuals, review of the inspection and enforcement program for industrial facilities and construction sites, evaluation of the dry weather screening program, determination of whether controls are in place and are in good working order, and whether facilities have schedules for construction of structural control measures.

Municipal Separate Storm Sewer System (MS4) Inspection

An MS4 inspection involves reviewing some, but not all, elements of the MS4's permit. The MS4 inspection would involve some amount of field work to observe some of the MS4's operations. MS4 inspections may involve the following two activities designed to determine if the MS4 control authority is implementing an adequate program in one or more selected MS4 program elements. If the region or a state conducts either of the following two activities it would meet the definition of an MS4 inspection.

1. Review a limited subset of the MS4 control authority's permit elements. The subset would be determined by the region or a state after a review of the MS4 permit. The inspection could involve either a significant review of one specific aspect of the program (e.g., structural and source control measures), or a review of 2-3 specific MS4 permit program elements (see MS4 audit definition for program elements), depending upon the specific objectives laid out by the region or a state, or
2. Conduct an inspection at an individual site (e.g., construction, industrial) within the MS4's jurisdiction that is not linked to a specific MS4 audit. The specific purpose of this MS4 inspection would be to determine if the control authority has an adequate inspection program. In other words this would be an MS4 oversight inspection. Based on the general definition of oversight inspections, this MS4 inspection could be conducted at the same time with the MS4 inspector, or shortly after (within 2-3 weeks) the MS4 inspector visited the facility/site.

Combined Sewer Overflow (CSO) Inspection

During a CSO inspection, the inspector evaluates compliance with CSO provisions present in the NPDES permit, an enforcement order, a consent decree, or another enforceable document. The inspector verifies that the permittee is preventing CSOs during dry weather, implementing the nine minimum CSO controls, adhering to a schedule for development, submission, and implementation of a Long-Term CSO Control Plan, eliminating or relocating overflows from sensitive areas, adhering to effluent limitations, and implementing a monitoring program.

Sanitary Sewer Overflow (SSO) Inspection

During an SSO inspection, the inspector evaluates compliance with SSO provisions present in the NPDES permit, an enforcement order, a consent decree, or another enforceable document. The inspector collects information to verify that the permittee is complying with the NPDES standard permit conditions (duty to mitigate and proper operation and maintenance) and the required notification procedures. The inspector also determines whether there have been any unpermitted discharges, or discharges from a location other than the discharge point specified in the permit, to waters of the United States.

Concentrated Animal Feeding Operation (CAFO) Inspection

The objective of this inspection is to evaluate a CAFO’s compliance with permit requirements, permit conditions, applicable regulations, and other requirements. The three types of CAFO inspections are the Status Determination Inspection, the Permit Compliance Inspection, and the Settlement Agreement Inspection. The type of information that the inspector gathers depends on the type of CAFO inspection being conducted.

Summary

The inspector should plan all activities and coordinate with the appropriate compliance personnel in their office before the inspection. The type of inspection may serve as a basis for deciding what activities will be conducted onsite and for determining what additional information is to be gathered or verified during the inspection. Compliance personnel should choose the type of inspection to be conducted based on the compliance status and history of the facility, the

information needed from the facility, and the type of facility involved. Note that some types of NPDES inspections may encompass several elements of the primary inspection types (e.g., a storm water inspection may encompass elements from both a CSI and a PAI).

Attachment 4

Next Steps for the Three NPDES Policies:
the ICIS-NPDES Policy Statement, the Wet Weather Significant Noncompliance Policy, and the NPDES Compliance Monitoring Strategy

October 2, 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.[2] 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 Noncompliance (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.

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

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.

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 by the end of September 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 by the end of September 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.