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Thank your for asking me to join you today to discuss federal and state environmental enforcement.

I will address today what I see as the role of states and the federal government in environmental enforcement. I will also give you a picture of our national priorities for the next fiscal year. Finally, I will review state and EPA performance and how we are working together.

The partnership between the federal government and the states is always changing and evolving. That is good, because the environment is best served by a dynamic and cooperative federal-state partnership. When we are able to maintain our flexibility, we can respond most quickly to environmental priorities and to changing resources.

In fact, the sheer size of the regulated universe requires a partnership. In the United States, the federal government, states, and tribes regulate approximately 8 million entities. About 1.3 million of these entities are facilities such as municipal wastewater treatment plants or large manufacturing operations for which performance is closely tracked. The remaining 6.5 million entities range from small facilities to small property owners.

To put this in perspective, the number of stationary sources of air emissions number well over 400,000. Regulated sources that impact water quality number over 250,000.

Clearly neither the federal government nor the states can cover all of these entities, so we must work together to reach and influence as many as possible. Both the federal government and the states need to leverage our respective resources to respond to problems so that we get a bigger bang for our buck. We must target the most serious environmental problems and the areas of largest noncompliance.

Some of you may wonder why I say we still need strong enforcement. We hear that the most companies want to do the right thing and support environmental protection. Some companies assert that those few “bad actors” who break the laws are not mainstream companies and need help, not penalties.

I am here to tell you that our docket is full of cases involving prominent companies that have sophisticated management systems and terrific codes of behavior on their walls. They tout themselves as “green” and when there is a problem they explain that it was unavoidable and a mistake of minimal importance. Over and over again we see companies cutting environmental corners to save money, make money, and get a competitive advantage in the marketplace.

For example, here's what we've seen and heard:

A senior official of a large Fortune 50 company contemptuously dismissing the need to comply with underground tank standards, saying that his competitors ignored the law and were not penalized.

A Fortune 100 company with a gold-plated environmental management system, but no Clean Air Act permits for its major modifications.

Discharge from land dumping by corporate hog farms so toxic that miles of stream life is wiped out.

Documented leaks from petroleum refineries that consistently seem to be 4 to 5 times the average level for the industry, and which could be releasing an additional 80 million pounds of VOCs into the environment every year.

EPA is taking acting to address these types of violations and doing so with great success. Through our enforcement actions this year we achieved a record 3.6 billion dollars towards requiring environmental cleanup, installation of pollution control equipment, pollution prevention, improved

monitoring, and carrying out environmentally beneficial projects.

This includes a record 236.8 million dollars in supplemental environmental projects, up from \$90 million in FY 1998, targeted at improving air quality, conducting public health assessments, and creating greenway corridors.

A record \$166.7 million in civil penalties was assessed, including the largest Clean Air Act settlement ever against the seven diesel engine manufacturers who used illegal devices to disable their emission control systems. The \$142.7 million in civil judicial penalties was the largest ever.

Our strong criminal enforcement program reflects our goal of punishing those who callously disregard our nation's environmental laws and who put the public at serious risk when they do so. Most significantly in FY 1999, a record 208 years of jail time was imposed on criminal defendants.

Although we have built a successful enforcement program, we must continue to work with the states to maintain an enforcement and compliance presence in all areas, especially those areas that EPA and the states view as priorities.

Most of the environmental statutes give EPA the authority to permit states to administer federal programs, though there are some programs that are federal only, such as part of the Emergency

Planning and Community Right to Know Act and the Toxic Substances Control Act. Because of this authorization process, states carry out the bulk of the permitting, administration, and enforcement of the environmental laws.

Historically, States have conducted over 80% of the total number of inspections and are responsible for over 80% of formal enforcement actions.

In many instances, states are the primary mechanism for delivering on-site compliance assistance to regulated sources, especially small ones but again no measures.

EPA's enforcement program, meanwhile, oversees state administration of environmental laws, provides compliance assistance, works with the states to develop national and regional enforcement policy, and takes enforcement actions in appropriate cases.

EPA focuses its attention on the following: cases with multi-state impact, cases involving large corporate violators, cases with national significance, cases necessary to promote a level-playing field within the regulated community, and among states, and those cases where the federal government has exclusive jurisdiction.

Let me give you an example of a nationally significant case involving large corporate violators. In FY 1999, seven diesel engine manufacturers settled charges that they illegally caused millions of tons

of pollution to be emitted into the air by selling engines equipped with “defeat devices” that disabled the engines’ emission control systems. The settlement is expected to prevent 75 million tons of nitrogen oxide (Nox) air pollution over the next quarter century. As part of the settlement the companies, among them Caterpillar and Volvo Truck Corporation, paid \$83.4 million in penalties. Thus, here we dealt with a whole sector of significant non-compliance which created significant environmental problems. In another example, we recently filed seven suits against electric utility companies and one administrative action against Tennessee Valley Authority, a federal agency, for violating the NSR/PSD provisions of the Clean Air Act. We allege that the total of 32 power plants illegally emitted tons of air pollutants when they failed to apply for permits for major modifications at their plants.

Some situations also call for EPA to take action in a state with an authorized program. EPA maintains an oversight role in authorized states to ensure states are taking timely and appropriate enforcement actions and monitoring facility compliance.

Understandably, there are some occasions where states do not have the resources to take necessary enforcement actions. In those situations, a state may request EPA to take action.

More troublesome are those occasions when a state is unwilling whether philosophically or politically, to carry out the kind of compliance monitoring or take the kind of enforcement actions necessary to protect human health or the environment.

When states fail to address major violations with real environmental consequences seriously, they make noncompliance with the law cheaper in their jurisdictions. This leads to an uneven playing field between those states that have strong enforcement and those that do not, and makes compliance cheaper for corporations located in the states with weak enforcement than in states with strong enforcement.

Citizens deserve clean air or water regardless of where they live. When states are unwilling to take the kinds of enforcement actions needed to protect those rights, it is our duty as a federal law enforcement agency to step in.

For example, we brought suit against the Smithfield Foods for discharging high levels of pollutants from its two slaughterhouses in Smithfield, Virginia. Smithfield argued unsuccessfully that it did not have to comply with its Clean Water Act permit because the state had issued consent orders waiving compliance with some of the permit limits. The district court found that EPA could enforce the terms of the NPDES permit because the state and the company had failed to go through permit modification procedures. The penalty was \$12 million the largest under the Clean Water Act at time.

The Fourth Circuit affirmed in September 1999, upholding the rationale for the penalty. The Fourth Circuit upheld the district court's finding that each kind of violation, whether a monthly or daily violation, could be counted separately, noting that "this method of counting violations creates the proper incentives for polluters to comply."

EPA also may take action after a state has acted because the state response:

- 1) fails to protect human health or the environment;
- 2) fails to appropriately address a major repeat violator; or
- 3) fails to recover substantial economic benefit of noncompliance.

These principles ensure that the enforcement action is sufficient to protect human health and the environment, deter other violations, and preserve a level economic playing field.

Just so you can get a sense of where we are headed in the next couple of years, I'd like to briefly outline the enforcement program's national priorities for Fiscal Year 2000 and 2001.

We are particularly concerned about wet weather under the Clean Water Act, microbial rules under the Safe Drinking Water Act, new source review/prevention of significant deterioration under the Clean Air Act, RCRA permit evaders, and the petroleum refinery sector. Some of these priorities overlap, such as the focus on NSR/PSD investigations in the petroleum refinery sector.

First, run-off from wet weather events, such as combined sewer or sanitary sewer overflow, discharges from concentrated animal feeding operations, and storm water events, remain a leading cause of water quality impairment. These wet weather events are addressed in the President's Clean Water Action Plan.



Another priority area in new source review/prevention of significant deterioration under the Clean Air Act. As I mentioned previously, we filed on November 3, 1999, against seven electric utility companies and the Tennessee Valley Authority for PSD/NSR violations.

We will also be addressing microbial contamination that threatens our public drinking water supplies and pursuing industrial facilities that have failed to obtain RCRA permits.

Finally, we continue our focus on petroleum refining, a national priority sector. Under the petroleum refinery sector, the Regions will concentrate on NSR/PSD investigations and leak detection and repair (LDAR) investigations. The new emphasis on LDAR is because TRI reports indicate that over 50 percent of emissions to the air from refineries come from fugitive sources.

While we emphasize these priority areas, we have to remain flexible enough to address unanticipated threats when they arise.

Two of the methods we are using to achieve results in these priority areas are: 1) expanding use of integrated strategies, and 2) broadening and improving over compliance assistance and compliance incentive programs.

Integrated strategies combine a variety of tools, including some or all of the following: compliance assistance, compliance incentives, monitoring, and targeted enforcement actions. For example, an integrated strategy may begin with compliance assistance and later be followed with select

enforcement actions, or it might combine incentives with select enforcement. These

integrated strategies allow us to consolidate our efforts in order to yield the greatest possible environmental impact.

An example of an integrated strategy is a university initiative being pursued by Regions I, III, and IX. Universities have numerous environmental compliance issues, ranging from hazardous waste violations to pesticide violations. While the Regional approaches differ, they serve as excellent examples of integrated strategies. For example, in Region I, the Region inspected and then brought a large enforcement action against the University of New Hampshire. The Region then sent 260 letters to all universities and colleges in Region I pointing out the UNH enforcement action and inviting school officials to an upcoming seminar.

In Region IX, the Region invited all colleges and universities in Arizona to participate in a compliance incentive program. The Region offered the schools the opportunity to conduct environmental audits and disclose the violations to EPA for consideration under the Audit Policy. This effort by Region IX followed an enforcement action against the University of Hawaii for illegally storing dangerous chemicals in the basement of the campus's main chemistry building. The University was fined a total of \$1.8 million in 1998 and 1999.

An example of where we have used a targeted initiative in combination with the EPA Self-

Disclosure Policy is the follow-up work that we have done encouraging disclosures from telecommunications companies as a result of the settlement we reached with GTE in January 1998. The GTE settlement involved 600 violations at over 300 facilities. To date, ten telecommunications companies have come forward and promptly corrected 1,300 violations, and additional settlements are being discussed.

In addition, we entered into a settlement recently with American Airlines that is expected to eliminate nearly 700 tons of pollutants from the air annually. American disclosed under EPA's Audit Policy that it had illegally used high-sulfur fuel in motor vehicles at 10 major airports around the country.

An example of where we have teamed with an industry association to encourage auditing and disclosure of violations is our agreement with the National Pork Producers Council to encourage environmental assessments at pork producer facilities under the Clean Water Act Compliance Audit Program (CAP). To date 144 pork producers have signed agreements to participate in the program, but we anticipate up to 10,000 may participate.

These integrated strategies complement our ongoing compliance investigations and enforcement actions that we take at other facilities to combat illegal run-off from CAFOs. For example we have intervened in a citizen suit action against Premium Standard Farms in Missouri, a large CAFO that we allege is violating the Clean Water Act with ongoing discharges.

In addition to employing more integrated strategies, we will work to promote greater use of compliance assistance and compliance incentives to foster innovative approaches and improve environmental results. A key part of this effort involves our positioning ourselves as “wholesalers” of compliance assistance rather than a direct or “retail” provider, a role better left to the states. Our “wholesale” activities - seminars, compliance assistance centers, mailings, and handouts – reached approximately 350,000 entities in FY 1999.

For example, four new on-line National Compliance Assistance Centers opened, bringing the total number to nine centers in operation by the end of FY 1999. These Internet-based centers provide compliance information and pollution prevention techniques for certain industry sectors, such as paints and coatings, metal finishers, and automotive. Currently the centers are being visited over 700 times a day.

We will retain a retail provider role in certain situations, such as in a targeted initiative that calls for on-site compliance assistance followed by enforcement.

Now I would like to turn to how EPA and state performance has been evaluated. The results of various IG reports underscore the philosophical differences that sometimes separate EPA and the states. For example, the IG performed six audits on EPA’s oversight of the states’ air enforcement data. The six states were located in four of EPA’s ten regions. Among the IG’s findings were that states failed to identify and report significant violators of the CAA. Without this

information, EPA could not assess the adequacy of the states' program or take action where necessary to enforce the statute.

Audits performed by the IG in 1999 found similar problems with state identification and reporting of significant violators in state hazardous waste programs.

We take these reports very seriously and have worked to respond to these concerns. In response to the IG audit of the air enforcement program, EPA worked with the states to define and identify significant violations and what needs to be reported to EPA. This effort resulted in a new policy on high priority violators that places greater emphasis on substantive violations of emission limits and provides more practical time frames within which to take an enforcement action.

What is important to understand is that the 50 states have diverse programs, diverse priorities and diverse performance. A state that may have had an excellent environmental enforcement record one year may not, for a variety of reasons, have that same record the next year.

EPA understands the resource problems that States often confront in meeting their environmental goals. We are ready and willing to work with States when these problems arise.

In order to fulfill our statutory duty to oversee states that are implementing federal environmental laws. We perform periodic audits and work cooperatively with the states to set priorities and establish plans to meet these goals.

We perform periodic programmatic audits of regional and state programs in order to uncover any patterns that we may need to address. Sometimes there are particularly areas that are not getting attention. For example, we discovered that we had a major compliance problem with combined animal feeding operations (CAFOs) in Region 10. We used a number of approaches, including direct enforcement actions and compliance assistance to try to reduce the discharges. We also provided information to the Washington State Legislature, which appropriated funds to hire ten state water inspectors.

EPA and the states have been working toward building a constructive EPA/ State relationship. While we've had some rocky moments, I can say that in the last few years we have made great progress toward improving our relationship.

In part this is because in 1995 EPA and the states instituted the National Environmental Performance Partnership System, through which EPA and the states enter into performance partnership agreements to outline respective roles and how to measure state progress in achieving clearly defined program objectives. We also offer performance partnership grants that allow a state more flexibility to direct program funds.

Through this EPA process, we emphasize work sharing, capacity building, and speedy resolution of legal and policy questions.

We work cooperatively with the states to set priorities and to establish work sharing arrangements, such as dividing inspection responsibilities. We also engage in ongoing consultation with the states on enforcement and compliance assurance activities and periodically meet to discuss program status and issues.

Region 5 and the WDNR have entered into their third Performance Partnership Agreement covering July 1999 through June 2001. In this agreement Region 5 and the WDNR continue to make progress toward developing a work sharing arrangement where more up-front communication and planning can occur. Specifically, Region 5 has agreed to conduct a number of air inspections (up to 40) for the SE District Office.

EPA and the states agree that it is important to measure not just “outputs” results of enforcement activities such as the number of civil cases filed, but also to measure “outcomes” the environmental results of enforcement actions, such as the amount of pollutants reduced or the rate of significant noncompliance.

Measuring the effects of our environmental performance is being aggressively pursued on the

federal level as part of the National Performance Measures Strategy. These measures will give EPA a better picture of the impact of our enforcement and compliance activities.

In FY 2000,. eleven states will report a number of outcome measures stemming from projects sponsored by cooperative agreements awarded by EPA.

Wisconsin is one of the states slated to receive a grant to develop outcome based performance measures. We have committed \$118,000.00 for the DNR's Bureau of Air Management to measure the results of some aspect of their enforcement and compliance program. Details of the project are currently being worked out.

We also try to work with the states to quickly resolve legal and policy differences. We have been working with states that enacted audit privilege and immunity laws to ensure that the states have sufficient legal authority to meet minimum federal requirements for authorized programs. Of the 24 states that have audit privilege and immunity laws, 12 have enacted statutory revisions and/or issued clarifying Attorney General's statements to satisfy requirements for federally authorized or approved environmental programs.

We are engaged in discussions with the remaining 12 states. I am confident that these discussions, which are aimed at ensuring that audit laws do not unduly impair a state's information gathering authority and penalty authority, will result in all states amending or interpreting their laws in



order to meet minimum federal requirements.

In addition, the Office of Enforcement and Compliance Assurance and the Region's are engaged in EPA's regulatory reinvention projects such as Project XL and EPA-State Innovation Projects. OECA and/the Regions ensure that the alternative regulatory requirements will be enforced; ensures public access to data and information about the project; provides for verification that commitments will be met; and ensures that at the conclusion of a project, a participating facility will return to compliance with all applicable requirements.

Wisconsin was the first state to partner with EPA to pilot state/EPA regulatory innovations agreements. Under the pilot program, the WDNR may enter into up to ten cooperative agreements with companies. Under the cooperative agreements, the state will grant the participating companies certain variances while the companies agree to implement an environmental management system.

In conclusion, I hope that EPA and the states continue to work cooperatively to strengthen our enforcement of the nation's environmental laws. I acknowledge that states have different priorities from one another and from the federal government, but I hope that we can all agree that both the states and the federal government have critical roles to play in environmental enforcement.