

**Testimony of Susan Shinkman, Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Before the
Senate Committee on Homeland Security and Governmental Affairs
Subcommittee on Regulatory Affairs and Federal Management**

Thursday, February 11, 2016

Mr. Chairman, Ranking Member Heitkamp, distinguished Members of the Subcommittee, I am Susan Shinkman, Director of EPA's Office of Civil Enforcement. The Office of Civil Enforcement, or (OCE), is an office within the Office of Enforcement and Compliance Assurance, responsible for developing and prosecuting civil administrative and judicial cases and providing legal support for cases and investigations initiated by EPA regional offices.

Thank you for the opportunity to testify about how the EPA meets the challenge of ensuring consistent implementation and enforcement of federal environmental laws and regulations. I will be focusing my remarks on how the EPA uses various tools to provide for consistency and transparency in the agency's enforcement and compliance program, and for flexibility to ensure fairness – particularly for small business – and a level playing field for the regulated community as a whole.

EPA's Mission

EPA's mission is to protect both human health and the natural environment across the varied national landscape by ensuring compliance with environmental laws of the United States. The EPA must accomplish these protections by implementing 28 different environmental programs contained in 11 different environmental statutes, each with its own mechanism for

achieving its goals. Because most of these laws also provide for states and tribes to implement these statutory programs, the EPA often has the dual role of maintaining a significant federal enforcement program while promoting effective state and tribal enforcement.

Consistency in Enforcement

Most EPA programs are implemented by the ten regional offices, with Headquarters maintaining responsibility for national program oversight and direction. The regional offices support the national programs while tailoring their expertise and work to address regional issues. They also work with their state, local and tribal counterparts to ensure that EPA's work, as appropriate, complements state and tribal environmental priorities.

The Enforcement and Compliance Assurance program employs statute-specific policies and guidance to address compliance monitoring, enforcement responses to violations, and penalty assessment, all of which were created to provide consistency across the regions and Headquarters. Cross-statutory policies include guidance on the use of expedited settlements with lower penalties for prompt compliance, guidance on evaluating a violator's ability to pay civil penalties, policies providing for substantial penalty reductions for large and small businesses and communities that self-disclose and promptly correct violations, the Supplemental Environmental Projects Policy, and model administrative orders and judicial consent decrees.

The Need for Flexibility

The EPA recognizes that unique or differing circumstances may be faced by different members of the regulated community. For example, the fact that enforcement actions in different locations for the same type of violation may result in different penalties does not necessarily indicate an inconsistency or disparity. Instead, the flexibilities inherent in the enforcement

program may allow for a lower penalty to reflect mitigation or a supplemental environmentally beneficial project that a settling party agreed to undertake, or that one party was a small business whose financial resources were taken into account as provided in our policies for determining penalties. A higher penalty could reflect exacerbating circumstances, such as the duration of the violation or the severity of any environmental damage that resulted from the violation.

While penalties are an important tool to encourage compliance and ensure that a violator does not obtain an unfair competitive economic advantage over its competitor who complied with the law – the ultimate goal of the program is to obtain compliance with the environmental laws of the United States. In addition, the EPA uses a range of strategies, including compliance assistance techniques, like web-based information, regulatory fact sheets and implementation manuals, webinars and workshops. We actively engage in compliance monitoring activities, such as collecting and reviewing compliance information reported by facilities, conducting inspections and performing compliance evaluations. The EPA offers compliance incentives, such as favorable settlements through EPA’s new e-Disclosure Audit Policy or its Small Business Compliance Policy. And, where necessary, we take enforcement actions.

Compliance Incentives and Support for Small Businesses

The EPA recognizes the role and position of small businesses in the nation’s economy, and the kinds of challenges they face. To that end, the Agency has developed innovative compliance assistance tools to help the regulated community understand and comply with environmental requirements – particularly small businesses. First, the EPA prepares Small Entity Compliance Guides when a rule may have a significant economic impact on small entities, pursuant to the Small Business Regulatory Enforcement Fairness Act (SBREFA). These Compliance Guides explain in plain English the actions that a small entity must take to comply

with the rule. Second, the EPA works with outside organizations to operate 15 web-based Compliance Assistance Centers that have received over 2.5 million visitors in FY 2015. The EPA also maintains a number of topic specific hotlines for responding to requests for information.

EPA's enforcement policies and practices are also designed to accommodate small businesses. For example, whenever the EPA conducts an inspection of a small business, we provide a handout with information related to the rights of a small business under SBREFA, and other information and opportunities for assistance. In addition, each of the statute-specific penalty policies can be scaled according to the size of the business, ensuring that the penalties sought for a violator are proportional. Moreover, under our Small Business Compliance Policy, the EPA will eliminate or significantly reduce penalties for small businesses that voluntarily discover violations of environmental law and promptly disclose and correct them. In recognition of these efforts, the Small Business Administration has given EPA's Enforcement and Compliance Program as it affects small businesses an "A" rating every year since 2005.

Overview of the Enforcement Process

EPA's regional offices, together with their state, local and tribal partners, monitor compliance through inspections of facilities and other activities to gather compliance-related information. During an inspection, inspectors record observations of fact and identify any areas of concern. At the conclusion of the inspection, the inspector will discuss those observations with the regulated entity and answer questions. After an inspection is completed, the results of the inspection will be reviewed by the inspector's supervisor. If follow-up is determined to be appropriate under the statute-specific enforcement response policy, the EPA will work with the regulated entity to remedy the violation and resolve the enforcement action. The vast majority of

all cases brought by the EPA are resolved on consent, through a mutually agreeable settlement. Most cases, approximately 90 percent, are handled administratively, while larger, more complex matters are usually handled as civil judicial cases, in conjunction with the U.S. Department of Justice. Civil judicial cases are often brought jointly by both the EPA and states. EPA's objective in all cases is to secure compliance with the law in order to protect the environment and to safeguard communities from exposure to unhealthy pollutants and to ensure a result that is fair – to the defendant, to the defendant's competitors, and to the public affected by the violations.

In light of constrained budgetary resources, the EPA is continuing to seek new and innovative ways to increase compliance and reduce pollution in our enforcement and compliance cases. As an example, Next Generation Compliance includes innovative approaches to settlements, permits and rulemaking with compliance drivers built in, such as fenceline monitoring of air emissions, e-reporting, and public posting of environmental monitoring data to increase transparency. These tools promote efficiency and cost savings to industry, small businesses, and the government. Real time data enables increased protection of public health and the environment.

Penalties

Deterrence is an important goal of penalty assessment. Penalties seek to achieve deterrence by removing any significant economic benefit resulting from noncompliance – this levels the playing field by preventing companies that break the law from having an unfair competitive advantage over companies that are in compliance with the law. In addition, a penalty includes an amount beyond recovery of the economic benefit to reflect the seriousness of the violation. The portion of the penalty that recovers the economic benefit of noncompliance is referred to as the “economic benefit component;” that portion of the penalty which reflects the

seriousness of the violation is referred to as the “gravity component.” The EPA is guided in assessing penalties under the environmental statutes by EPA’s enforcement response and penalty policies which seek to ensure that the EPA assesses fair and equitable civil penalties and provide consistency across the regions and Headquarters. EPA's existing penalty policies for air, water and hazardous waste have always provided for a reduction in penalties based on "ability to pay."

Conclusion

The EPA has made tremendous progress toward achieving cleaner air, water and land over the last four decades. We will continue to work with states, tribes and local governments to make smart choices about priorities, to take advantage of innovations, and make sure that the most important work is done first. That goal cannot be achieved without a flexible enforcement and compliance program that acknowledges and allows for the diversity in our nation’s environmental, economic and demographic conditions. EPA’s enforcement program is designed to produce consistent and fair results that achieve compliance, cure noncompliance, deter future violations, and benefit human health and the environment.

Thank you for the opportunity to testify. I would be happy to answer any questions.