

**Testimony of  
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**Before the  
Committee on Transportation and Infrastructure  
United States House of Representatives**

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Mr. Chairman and Members of the Committee, I am delighted to be here today to discuss the state of our nation's waters. I would like to focus my remarks on our Nation's water quality and the challenges we face to improve it, the Agency's implementation of the Clean Water Act, and the steps that we are taking to improve Clean Water Act compliance and strengthen our enforcement program.

We can all agree that having clean and safe water in our communities is a right for all Americans. We also know that clean water is essential to our health, our environment and our economy. As we commemorate the 37<sup>th</sup> anniversary of the Clean Water Act today, we must reflect on the progress that has been made over the past 37 years and also focus on the enormous challenges ahead.

Mr. Chairman, we have a long way to go.

The Clean Water Act was enacted to restore and maintain the chemical, physical, and biological integrity of the nation's waters and EPA is the agency that has primary responsibility to achieve these goals. As such, it is EPA's

mandate to use its resources effectively, including vigorously enforcing the rule of law, to achieve this result.

There are significant water quality problems facing too many communities. There are many diffuse pollution sources that are not regulated by the Clean Water Act. Inadequate information about some sources can limit the ability to identify serious problems quickly and take prompt actions to correct them. Adding to our challenges, recent Supreme Court decisions have increased the difficulty of determining which water bodies are covered by the Clean Water Act in many parts of the country.

The main tool that EPA has to achieve positive water quality results is the National Pollutant Discharge Elimination System or NPDES program. EPA established this program soon after the passage of the Clean Water Act, and its implementation by EPA and authorized states has resulted in significant water quality improvements throughout the country.

Under the Clean Water Act adopted in 1972, the universe to be covered by the NPDES permit program was estimated to be 100,000 point sources. Today, nearly 1 million point sources are covered by the NPDES program. This increase has significantly affected the ability of EPA and the states to administer and enforce the program. We are falling short of this Administration's expectations for the effectiveness of our clean water enforcement programs.

Simply put, Mr. Chairman, the time is long overdue for EPA to reexamine its approach to Clean Water Act NPDES enforcement to be better equipped to address the water pollution challenges of this century.

Data available to EPA shows that, in many parts of the country, the level of significant non-compliance with permitting requirements is unacceptably high and the level of enforcement activity is unacceptably low. For example, one out of every four of the largest Clean Water Act dischargers had significant violations in 2008. Many of these violations were serious effluent violations or failure to comply with enforcement orders.

The government's enforcement response to these violations is uneven across the country. For example, a violation in one state results in the assessment of mandatory minimum penalties, while in another state, no enforcement action is taken for the same violation. This situation creates a competitive disadvantage for states that are enforcing the law. We need to change this. Strong and fair compliance and enforcement across the country is vital to establishing a level playing field for industrial facilities, preventing some regions from attempting to achieve an economic advantage over others. And most importantly, having clean water is not a luxury. Rather, we need to make sure that all citizens, regardless of the state that they live in, should be able to drink safe water and swim and play in clean lakes, rivers and bays.

We need to address these key problems and that's why I am happy to announce EPA's new Clean Water Act enforcement plan.

EPA's Enforcement Office, led by Cynthia Giles, has recommended to me – and I have decided to act on – three crucial steps to strengthen federal and state Clean Water Act enforcement to better protect water quality.

First, we need to develop more innovative approaches to target enforcement to the most serious violations and the most significant sources. We need to ensure protective permits and appropriate civil and criminal enforcement for factories and large wastewater treatment plants that unlawfully discharge pollutants to waterways. We also need to reshape our enforcement program to be more effective in tackling violations from the many dispersed sources that continue to be serious threats to our waters and a major reason too many of our waters do not meet water quality standards. Some of the biggest threats are posed by concentrated animal feeding operations and by contaminated stormwater that flows from industrial facilities, construction sites, and urban streets into our waters.

Second, we need to strengthen our oversight of state permitting and enforcement programs. Many states have strong water quality protection programs and take enforcement to assure compliance. But we've seen great variability among the states in enforcement performance. EPA must clearly

articulate the acceptable “bar” for state clean water programs and consistently hold states accountable. In situations where states are not issuing protective permits or taking enforcement to achieve compliance, EPA needs to act to strengthen state programs and to pursue federal enforcement actions as necessary.

Third, we are and will continue to take immediate steps to improve transparency and accountability. We have a responsibility to “tell it like it is” to the American public.

We have already published the data and information that EPA has on Clean Water Act compliance and enforcement across the country on our website. We will continue this practice as new information becomes available. We also are working to accelerate the development of 21<sup>st</sup> century information technology tools to help us gather information more efficiently and to make it easier for the public to access and understand that information. For example, I am directing my staff to quickly develop a proposed rule requiring electronic reporting from regulated facilities, to replace the current paper based system. Electronic reporting could save regulated facilities, EPA and the states millions of dollars each year. At the same time, providing that information to the public shines a spotlight on facility performance.

We believe that making information on environmental discharges available to the public will increase the pressure on regulated facilities to self-police and reduce their pollution, as we have seen with the Toxics Release Inventory.

EPA plans to work closely with the states to implement these actions and make long-term improvements in our Clean Water Act enforcement and compliance program.

But I would also like to highlight actions we are taking right now to focus our enforcement efforts on violations that pose a serious threat to water quality. For example, we are strengthening our efforts to enforce existing rules limiting pollution from concentrated animal feeding operations. Where facilities or clusters of facilities with large numbers of animals are discharging without a permit or in violation of their permits, they can cause significant pollution problems of concern to communities. It is difficult to know where these facilities are when they do not apply for permits. However, we are working to develop innovative strategies that will identify the facilities that are violating our discharge requirements and present the most significant threats to water quality, and we will ensure that appropriate enforcement action is taken when we find these situations.

Mr. Chairman, enforcement is just one of the tools that we can use to address water quality problems. But long experience has shown that effective

enforcement is essential to the integrity of our Clean Water Act protections and makes a real difference in our ability to deliver the water quality that the American public expects.

Clean and safe water is the life blood of healthy communities, healthy ecosystems, and healthy economies. EPA is committed to building the nation's confidence that these resources will be protected and restored and that our recent lack of important progress is reversed.

We greatly appreciate the leadership of this Committee on the Clean Water Act and we look forward to coordinating with the Chairman and this Committee as we work to achieve these important goals.