



OFFICE OF INSPECTOR GENERAL

*Catalyst for Improving the Environment*

## Special Report

# Congressional Request Regarding EPA Clean Water Enforcement Actions

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**Abbreviations**

CAFO	Concentrated Animal Feeding Operations
CSO	Combined Sewer Overflows
FTE	Full-Time Equivalent
FY	Fiscal Year
ICIS	Integrated Compliance Information System
NPDES	National Pollutant Discharge Elimination System
OECA	Office of Enforcement and Compliance Assurance
OIG	Office of Inspector General
SSO	Sanitary Sewer Overflows



# At a Glance

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## Why We Did This Review

This report responds to the March 2004 request that we further evaluate EPA's claim that the decline in clean water enforcement actions has been compensated for by a diversion of these resources to enforce against wet weather discharge violations. To address this question we needed to determine whether:

(1) it takes more resources to address wet weather clean water enforcement cases; (2) there has been a shift of EPA resources to wet weather priority areas; and (3) the number of enforcement actions declined over the last 5 fiscal years.

## Background

Concern was raised about the Agency's commitment to the clean water enforcement function when a 2003 internal report noted that "formal" NPDES enforcement actions against major facilities had declined over the previous 3 years.

**For further information, contact our Office of Congressional and Public Liaison at (202) 566-2391.**

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[www.epa.gov/oig/reports/2005/2005-S-00001.pdf](http://www.epa.gov/oig/reports/2005/2005-S-00001.pdf)

## ***Congressional Request Regarding EPA Clean Water Enforcement Actions***

### **What We Found**

According to respondents from the 10 EPA regions, wet weather enforcement cases require more resources to complete than traditional National Pollutant Discharge Elimination System (NPDES) enforcement actions. Further, 8 of the 10 regions said that conducting enforcement actions against combined sewer overflows/sanitary sewer overflows requires more resources than other types of wet weather actions.

Evidence suggests that EPA has shifted NPDES compliance and enforcement staff from traditional NPDES program activities to work on wet weather issues. All five of the EPA regions that provided information from Fiscal Year (FY) 1999 through 2003 delineating traditional and wet weather resources indicated that they have shifted resources to address wet weather violations of the Clean Water Act.

Contrary to the implicit assumption stated in the information request, the annual number of EPA formal NPDES enforcement actions slightly increased rather than decreased between FY 1999 to FY 2003. However, the change was not uniform over this period. A large increase occurred at the beginning of the period, followed by a large 1-year decline. Clean Water Act enforcement actions have increased in the last 2 fiscal years.

Based on these findings, we cannot conclusively support or refute EPA's claim that a decline in EPA formal NPDES enforcement actions has been compensated for by a diversion of these NPDES resources against wet weather discharge violations. Continuous, significant shift of resources toward addressing wet weather cases over the last 5 years has not been matched by a corresponding increase in the share of wet weather enforcement actions, which we would have expected to see if EPA's assertion were true. However, we could neither prove nor disprove EPA's 2003 assertion due to a lack of staffing data and the fact that other potential explanations may exist for the absence of a correlation. Other possible explanations include a lag between resource inputs and enforcement actions and a possible increase in non-enforcement-related activities by EPA staff.

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# Results of Special Review

## Introduction

Enforcement against Clean Water Act violations is an essential component of the nation's water pollution control program. The importance EPA places on enforcement is illustrated by its setting "compliance and environmental stewardship" as one of its five strategic goals. However, concern was raised about the Agency's commitment to the clean water enforcement function when a 2003 internal report noted that formal National Pollutant Discharge Elimination System (NPDES) enforcement actions against major facilities had declined over the previous 3 years. EPA officials explained the decline by declaring that an increasing share of EPA's clean water enforcement efforts are directed toward correcting more complex wet weather violations of the Clean Water Act. Because these cases are more complex in EPA's view, the Agency says the decline in actions does not reflect a decrease in the Agency's commitment to enforcing the Clean Water Act, since it has been compensated for by a diversion of NPDES resources to enforce against wet weather discharge violations. We reported on this issue in an October 2003 report. In a subsequent March 2004 letter, we were asked to further examine this claim.

EPA's Office of Enforcement and Compliance Assurance (OECA) is responsible for ensuring facilities comply with their NPDES permits. Under EPA's NPDES program, permits are issued to point source dischargers to control the levels of pollutants entering surface waters. Point source discharges include those coming from the traditional large major facilities as well as discharges associated with wet weather issues. Wet weather pollution is the result of excess water following a rainfall. Point source dischargers include those in the accompanying table.

Point Source Dischargers
<b>Municipal wastewater treatment facilities</b>
<b>Industrial wastewater treatment facilities</b>
<b>Wet weather sources:</b>
<ul style="list-style-type: none"><li>• Combined sewer overflows (CSOs)</li><li>• Sanitary sewer overflows (SSOs)</li><li>• Stormwater discharges</li><li>• Concentrated animal feeding operations (CAFOs)</li></ul>

This report responds to the request that we further evaluate EPA's claim that the decline in EPA formal NPDES enforcement actions has been compensated for by a diversion of these NPDES resources to enforce against wet weather discharge violations. We informed Congressional staff that we could respond to this request by answering the following questions:

1. Does it take more resources to initiate and resolve wet weather cases in comparison to traditional NPDES program enforcement cases?
2. Has there been a shift of EPA resources from the traditional NPDES program areas to wet weather priority areas?
3. Have the number of EPA formal NPDES enforcement actions declined over the last 5 fiscal years?

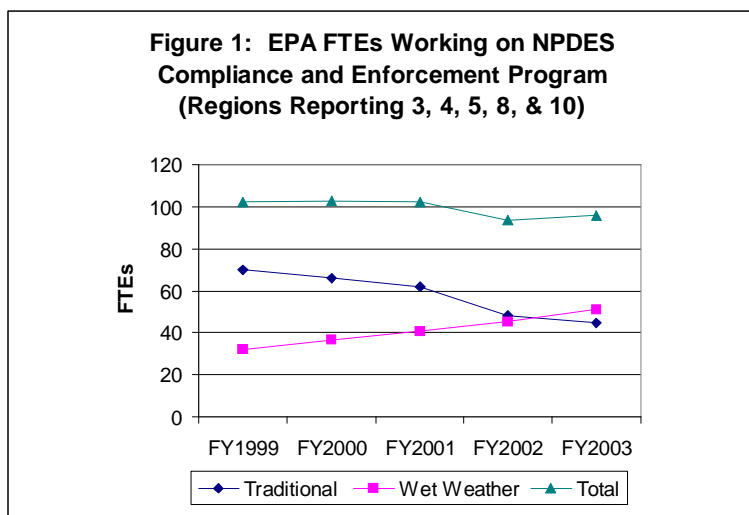
Due to the nature of the request, our results are based only on an analysis of formal NPDES enforcement actions and the number of compliance and enforcement staff. We interviewed OECA and regional officials and obtained information from (1) EPA’s Integrated Compliance Information System (ICIS) database, and (2) regional official responses to an OIG questionnaire. We did not conduct a review of management practices within OECA, nor did we evaluate the potential water quality improvements stemming from these activities. Appendix A provides additional background information. Our scope and methodology are presented in Appendix B.

## Regional Officials Indicate That Wet Weather Cases Are More Resource Intensive Than Traditional Actions

Based on responses from regional NPDES program officials, wet weather enforcement cases require more resources to complete than traditional NPDES program enforcement actions. EPA officials said that the case development process, negotiation process, and post-settlement oversight for wet weather cases are much more complex than for traditional NPDES cases. We asked each region to rank the different NPDES program categories in terms of the amount of resources needed to complete three key NPDES enforcement actions: (1) administrative orders, (2) administrative penalty orders, and (3) judicial orders. Eight of 10 regions identified CSOs/SSOs as requiring the most resources to complete under all three types of actions. The regions identified traditional NPDES program enforcement actions as requiring the least amount of resources. We did not evaluate possible lag times between resource inputs and corresponding enforcement actions.

## Evidence Suggests NPDES Compliance and Enforcement Staff Have Shifted to Wet Weather Activities

The evidence provided suggests EPA has shifted NPDES compliance and enforcement staff from traditional NPDES program activities to work on wet weather issues (see Appendix C, Tables C.1 and C.2, for a list of EPA NPDES resources). For the five regions providing data, EPA NPDES compliance and enforcement staff addressing wet weather issues, as measured by Full-Time Equivalents (FTEs), increased 59 percent from FY 1999 to FY 2003, while those addressing non-wet weather programs decreased 36 percent. FY 2003 was the first year in which more FTEs addressed wet weather issues than non-wet weather. See Figure 1. The shift in resources is particularly



Source: EPA regions’ responses to OIG questionnaire 7/30/04. See Table C.3. Note: Total line only includes FTEs addressing NPDES traditional and wet weather issues; FTEs addressing other support activities were not included.

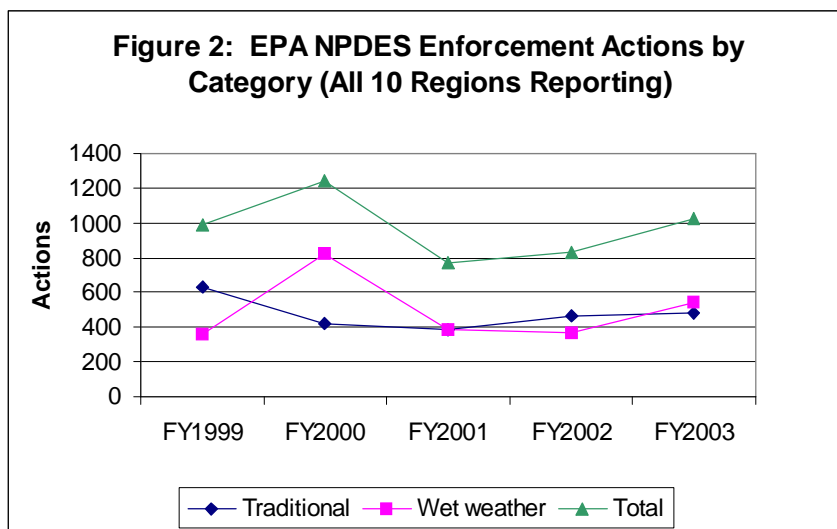
evident when analyzing the ratio of NPDES compliance and enforcement staff addressing wet weather issues in comparison to the total number of staff working on the NPDES compliance and enforcement program for the five regions providing data. The ratio nearly doubled from 32 percent in FY 1999 to 59 percent in FY 2003 (see Appendix E, Table E.3). These five regions were only responsible for about 30 percent of the completed enforcement actions during this period.

However, because the other five regions (including Regions 2 and 6, which were responsible for more than half of the enforcement actions during this time period) did not provide data for all 5 years, we could not conclude that this shift in FTEs reflects a national trend (see Appendix C, Table C.3). Our findings would have additional support if EPA tracked compliance and enforcement staff working on different segments of the NPDES program. We did not evaluate non-enforcement activities conducted by NPDES compliance and enforcement staff.

### Enforcement Actions Have Increased Slightly in Last 5 Years

The number of EPA formal NPDES enforcement actions slightly increased from FY 1999 to FY 2003. However, the movement was not uniform over this period. A large increase occurred at the beginning of the period, with a subsequent large 1-year decline in FY 2001. The number of clean water enforcement actions then increased in FY 2002 and FY 2003. See Figure 2.

The vast majority of the increase in FY 2000 and the decrease in FY 2001 was due to changes in the number of enforcement actions to correct stormwater violations. Fifty-two percent of all formal enforcement actions completed in FY 2000 were stormwater actions, compared to only 38 percent in FY 2001. See Appendix D, Tables D.1 and D.2, for a complete list of enforcement actions for each category and for each region from FY 1999 to FY 2003.



Data Source: ICIS 6/15/04, verified by EPA region officials 7/30/04. See Table D.1.

For the 5 fiscal years analyzed, total EPA NPDES formal enforcement actions, wet weather actions, and non-wet weather actions exhibited the following results:

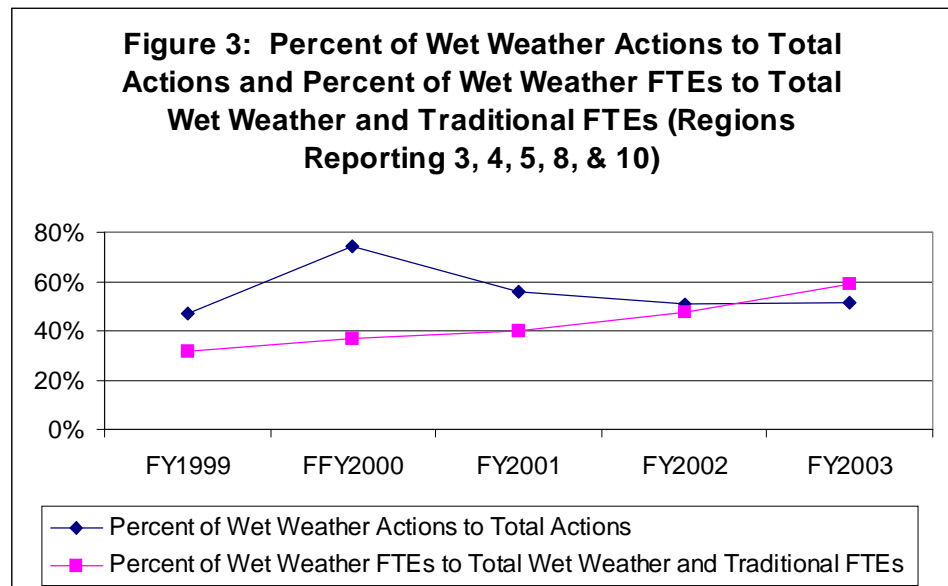
**Table 1: EPA NPDES Formal Enforcement Actions by Category**

	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	Total
<b>Wet weather</b>						
CSO/SSOs	75	100	57	53	70	355
CAFOs	63	71	34	22	41	231
Stormwater	<u>225</u>	<u>648</u>	<u>293</u>	<u>294</u>	<u>430</u>	<u>1,890</u>
Subtotal	363	819	384	369	541	2,476
<b>Non-wet weather</b>						
All non wet weather	626	421	385	462	485	2,379
<b>Total</b>	<b>989</b>	<b>1,240</b>	<b>769</b>	<b>831</b>	<b>1,026</b>	<b>4,855</b>

Source: OECA officials pulled enforcement actions from ICIS, 6/15/04; verified by EPA regions 7/30/04.

In our analysis of enforcement actions, we expected to see a corresponding increase in wet weather actions as the staff addressing wet weather issues increased. However, when analyzing the percentage of wet

wet weather actions to total actions for the five regions with FTE data, the percentage of wet weather actions reached a peak in FY 2000 and then declined despite a steady increase in the percentage of wet weather FTEs to total wet weather and traditional FTEs. See Figure 3 and Appendix E, Tables E.1, E.2, and E.3.



Source: EPA regions' responses to OIG questionnaire 7/30/04.

## Conclusion

We were unable to assess the validity of EPA's claim that the decline in EPA formal NPDES enforcement actions is due to a diversion of these resources to enforce against more complex wet weather discharge violations. EPA regional officials stated that wet weather enforcement actions are more complex and resource intensive than traditional clean water enforcement cases. Moreover, it also appears likely that an increasing share of EPA's NPDES enforcement resources have been directed to address wet weather cases. However, the continuous, significant shift of resources toward addressing wet weather cases over the last 5 years has not been matched by a



corresponding increase in the wet weather share of clean water enforcement actions; we would have expected to see this if EPA's assertion were true. We could neither prove nor disprove EPA's assertion due to a lack of staffing data, and the fact that other potential explanations may exist for the absence of a correlation. These possible explanations include a lag between resource inputs and enforcement actions, and possible increase in non-enforcement-related activities by EPA staff. Moreover, it is important to note that our current review suggests that total NPDES enforcement actions have not declined; overall enforcement actions increased in both FY 2002 and FY 2003.

## ***Background***

Under EPA's NPDES program, permits are issued to point source dischargers to control the levels of pollutants into the waters of the United States. Permits are issued by States with approved NPDES programs and by EPA regions for non-delegated States. Presently, 45 States have approved NPDES programs.

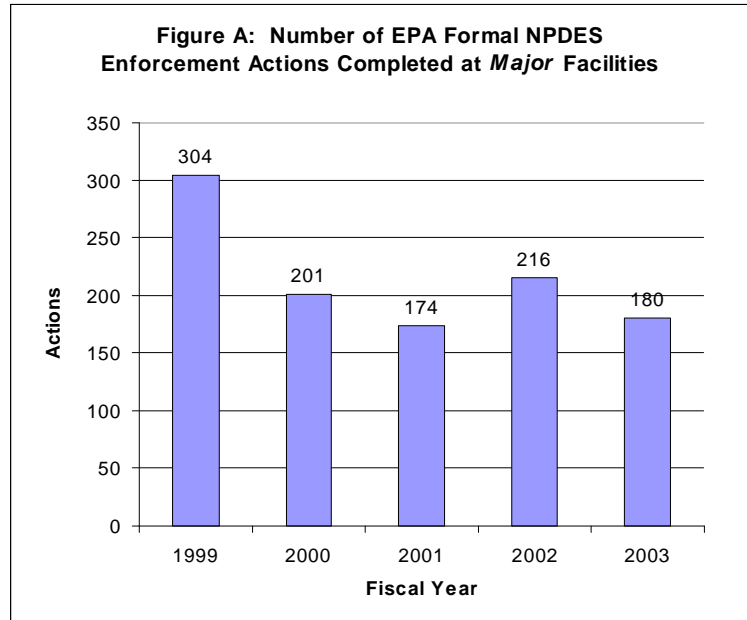
At the Federal level, EPA's Water Permits Division, part of the Office of Water, administers the NPDES program and provides program guidance to the regions and States. The Water Permits Division is responsible for regulating the discharge of pollutants into the waters of the United States through the NPDES program.

EPA's OECA is responsible for ensuring facilities comply with their NPDES permits. OECA ensures compliance with U.S. environmental laws by employing various approaches, including compliance assistance, compliance incentives, and civil and criminal enforcement. OECA sets forth the goals, priorities, and activities for the national environmental enforcement and compliance program through its memorandum of agreement guidance. This guidance provides the basis for development of individual agreements between OECA and each region identifying overall program direction and specific activities and expected results.

Historically, the NPDES program has been focused on large (major) sources, including municipal and industrial wastewater facilities. Permits were issued to small facilities as well, but most of the inspection and enforcement activities were directed towards the major facilities. In the early 1990s, States began to report that the majority of their water quality problems were associated with wet weather issues, including stormwater, CSOs, SSOs, and CAFOs. During the 1990s, EPA developed programs to deal specifically with these wet weather sources. In the FY 1998/1999 Memorandum of Agreement, EPA made wet weather a priority enforcement area because States had indicated that these sources of pollution were contributing to impaired waterways. Wet weather continues as one of OECA's national priorities.

In February 2003, OECA completed an internal analysis of the major facilities of the NPDES compliance and enforcement program. Major facilities are generally defined as industrial facilities and municipal dischargers designed for flows of greater than one million gallons per day and represent the traditional component of OECA's NPDES program. OECA's data showed a 45-percent decrease in EPA formal enforcement actions at major facilities from FY 1999 to FY 2001. According to OECA officials, the decline in formal major NPDES enforcement actions was due to shifts in resources to OECA's wet weather priority area. See Figure A for the number of EPA formal enforcement actions completed at major facilities in the last 5 fiscal years.

In this report, we report on trends in EPA's NPDES formal enforcement actions including but not limited to majors. Our results differ somewhat from the OECA analysis because our analysis is based on all of EPA's NPDES formal enforcement actions including majors, wet weather, etc. OECA's analysis focuses only on the number of enforcement actions associated with major facilities.



Source: OECA data from EPA's Permit Compliance System, 5/15/04. Number of formal enforcement actions includes final administrative orders, final administrative penalty orders, consent decrees, and court orders.

## ***Scope and Methodology***

On March 30, 2004, Congress sent a letter to the EPA's Office of Inspector General (OIG) asking us to update an October 10, 2003, OIG report on the management, staffing, and funding needs of the EPA's OECA. The OIG is responding separately to each item in that letter. This report provides our response to the third item, which requested that we evaluate EPA's claim that the decline in formal NPDES enforcement actions has been compensated for by a diversion of these NPDES resources to enforce against wet weather discharge violations.

Our review looked only at formal enforcement actions and the associated staff resources, or FTEs, in EPA's NPDES program. We obtained information about EPA formal NPDES enforcement actions from EPA's Integrated Compliance Information System (ICIS) database. We asked each region to verify the information and to add any enforcement actions not previously listed in ICIS. We interviewed staff in OECA's Office of Compliance and Office of Regulatory Enforcement, as well as regional officials. OECA officials helped us develop and pre-test a questionnaire requesting data on enforcement actions, compliance and enforcement staff, and the amount of time required to conduct enforcement activities. We sent the questionnaire to OECA officials and EPA regions requesting compliance and enforcement data. We analyzed the data gathered through these activities and summarized our findings in this report.

We used the questionnaire to gain information on the amount of time needed to complete NPDES formal enforcement actions. We asked each region to rank the amount of resources needed to complete administrative orders, administrative penalties, and judicial orders for traditional NPDES programs, CSOs/SSOs, CAFOs, and stormwater.

To determine whether a shift had occurred in resources and to gain an understanding of available information, we interviewed OECA officials from the Office of Compliance and Office of Regulatory Enforcement, and regional officials. Subsequently, we sent a questionnaire to all 10 EPA regions and OECA Headquarters asking each entity to provide information on the total number of EPA FTEs working in the NPDES compliance and enforcement program for each fiscal year from FY 1999 through FY 2003. We also asked the regions to provide the number of FTEs working in each program sector for the same time frame. Program sectors included traditional NPDES programs, CSOs/SSOs, CAFOs, and stormwater.

To determine whether the number of EPA formal NPDES enforcement actions had declined from FY 1999 through FY 2003, it was necessary to define "formal enforcement action" and obtain enforcement action data. We spoke with Office of Compliance officials, who provided us EPA's definition of "formal enforcement actions." Office of Compliance provided us spreadsheets pulled from ICIS listing the number of formal EPA enforcement actions for each region and OECA Headquarters for each year for FY 1999 through FY 2003. While OECA engages in activities such as compliance assistance and compliance incentives beyond enforcement actions, the analysis provided only addresses formal EPA enforcement actions; the analysis does not include State NPDES enforcement actions.

Each ICIS spreadsheet contained the case name and number for the five different types of formal enforcement actions that we analyzed. We asked each region to review the spreadsheets to:

- ensure each case related to an NPDES formal enforcement action;
- ensure all cases were identified; and
- categorize the formal NPDES formal enforcement action into one of the following program categories: (1) non-wet weather, (2) CSOs/SSOs, (3) stormwater, or (4) CAFOs.

In situations where discrepancies occurred between information provided from ICIS and the regional reported information, we used the regional information because we believe the regional officials are in the best position to provide information on enforcement actions completed. We used this methodology to determine enforcement actions for all regions with the exception of Region 6. Due to Region 6's large volume of enforcement actions, Region 6 provided us a list of formal enforcement actions and categorized each action into one of the following: (1) non-wet weather, (2) CSOs/SSOs, (3) stormwater, or (4) CAFOs. We matched Region 6's categorized list of formal enforcement actions with the Office of Compliance list and classified each action as a civil judicial referral, civil judicial settlement, administrative compliance order, administrative penalty complaint, or final administrative penalty order based on the Office of Compliance list.

The scope of our work consisted of gathering, providing, and explaining information requested by Congress, not audit or evaluation services. However, we did conduct our work in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States, with the following exceptions: we did not (a) evaluate management controls, (b) determine compliance with laws and regulations, (c) evaluate the controls over the systems that produced this information, and (d) selectively verify the data to source documents.

We provided a draft version of this report to the Agency for review, and the Agency did not provide any comments.

## ***EPA NPDES Compliance and Enforcement FTEs***

**Table C.1: EPA Headquarters NPDES Compliance and Enforcement Program FTEs**

	FY2001	FY2002	FY2003
Office of Compliance	19	20	22
Office of Regulatory Enforcement	16	14	14
<b>OECA Total</b>	<b>35</b>	<b>34</b>	<b>36</b>

**Source:** OECA Headquarters 8/20/04.

**Note:** FTE information was not provided for FYs 1999 and 2000.

**Table C.2: EPA Regional NPDES Compliance and Enforcement Program FTEs**

	FY1999	FY2000	FY2001	FY2002	FY2003
Region 1	18	18	19	19	18
Region 2	-	-	35	32	30
Region 3	31	33	31	30	28
Region 4	50	50	50	46	46
Region 5	42	40	39	36	38
Region 6	-	-	-	-	52
Region 7	-	15	16	14	13
Region 8	15	12	12	11	11
Region 9	-	18	16	15	15
Region 10	28	26	24	23	22

**Source:** EPA regions' responses to OIG questionnaire 7/30/04.

**Notes:** FTE information was not provided for those instances marked with a dash (-).

Region 3 FTE numbers were revised in order to use criteria consistent with other Regions.

**Table C.3: EPA Regional NPDES Compliance and Enforcement Program FTEs -  
Traditional and Wet Weather Issues**

		FY1999	FY2000	FY2001	FY2002	FY2003
Region 1	Traditional	-	-	-	-	4
	Wet weather	-	-	-	-	8
Region 2	Traditional	-	-	-	-	-
	Wet weather	-	-	-	-	-
Region 3	Traditional	5	3	2	3	2
	Wet weather	3	7	8	9	9
Region 4	Traditional	25	25	25	17	17
	Wet weather	13	13	12	14	14
Region 5	Traditional	23	22	20	16	15
	Wet weather	13	14	16	16	19
Region 6	Traditional	-	-	-	-	22
	Wet weather	-	-	-	-	18
Region 7	Traditional	-	8	9	8	4
	Wet weather	-	4	4	3	6
Region 8	Traditional	2	2	2	2	2
	Wet weather	1	1	2	3	5
Region 9	Traditional	-	-	-	-	2
	Wet weather	-	-	-	-	9
Region 10	Traditional	16	14	13	12	9
	Wet weather	3	3	3	4	5

**Source:** EPA regions' responses to OIG questionnaire 7/30/04.

**Notes:** FTE information was not provided for those instances marked with a dash (-).

In some situations, regions were able to provide us information on the number of FTEs working in the NPDES compliance and enforcement program; however, these regions were not able to delineate traditional and wet weather resources.

The FTE numbers presented in Table C.3 do not include region FTE numbers working on other activities, which include State oversight responsibilities, data entry etc. Therefore, the FTE numbers in Table C.3 will not sum to the FTE numbers in Table C.2.

## ***EPA NPDES Formal Enforcement Actions***

**Table D.1: EPA NPDES Formal Enforcement Actions by Region**

	FY1999	FY2000	FY2001	FY2002	FY2003	Totals	Percent
<b>Region 1</b>	55	34	23	40	47	199	4.1%
<b>Region 2</b>	140	185	137	221	192	875	18.0%
<b>Region 3</b>	59	130	69	49	78	385	7.9%
<b>Region 4</b>	119	129	97	75	133	553	11.4%
<b>Region 5</b>	59	42	51	44	55	251	5.2%
<b>Region 6</b>	442	571	247	299	346	1,905	39.2%
<b>Region 7</b>	37	40	23	12	54	166	3.4%
<b>Region 8</b>	10	12	36	22	50	130	2.7%
<b>Region 9</b>	21	44	32	55	41	193	4.0%
<b>Region 10</b>	46	53	54	14	30	197	4.1%
<b>OECA HQ</b>	1	0	0	0	0	1	0.0%
<b>Total</b>	<b>989</b>	<b>1,240</b>	<b>769</b>	<b>831</b>	<b>1,026</b>	<b>4,855</b>	<b>100.0%</b>

**Source:** ICIS 6/15/04, verified by EPA region officials.

**Note:** OECA Headquarters' low number of NPDES formal enforcement actions occurred because, while OECA Headquarters assists in many enforcement actions, OECA allows the regions to count these actions.



**Table D.2: EPA NPDES Formal Enforcement Actions by Category and Type of Enforcement Action**

		FY1999	FY2000	FY2001	FY2002	FY2003
<b>Wet Weather</b>						
<b>CSOs/SSOs</b>	Civil Judicial Referrals	3	10	9	2	16
	Civil Judicial Settlements	2	1	0	8	8
	Administrative Compliance Orders	61	75	32	35	35
	Administrative Penalty Complaints	9	5	6	4	8
	Final Administrative Penalty Orders	0	9	10	4	3
	Subtotal	75	100	57	53	70
<b>CAFOs</b>	Civil Judicial Referrals	5	2	1	2	1
	Civil Judicial Settlements	0	0	0	4	1
	Administrative Compliance Orders	34	38	14	12	30
	Administrative Penalty Complaints	12	19	3	2	5
	Final Administrative Penalty Orders	12	12	16	2	4
	Subtotal	63	71	34	22	41
<b>Stormwater</b>	Civil Judicial Referrals	22	11	6	3	29
	Civil Judicial Settlements	0	2	5	4	2
	Administrative Compliance Orders	98	239	139	147	244
	Administrative Penalty Complaints	89	205	53	77	84
	Final Administrative Penalty Orders	16	191	90	63	71
	Subtotal	225	648	293	294	430
<b>Non-wet Weather</b>						
<b>All Non-wet weather</b>	Civil Judicial Referrals	18	11	19	12	13
	Civil Judicial Settlements	15	15	16	14	11
	Administrative Compliance Orders	355	246	199	295	249
	Administrative Penalty Complaints	77	63	75	81	115
	Final Administrative Penalty Orders	161	86	76	60	97
	Subtotal	626	421	385	462	485
<b>Totals</b>						
	Civil Judicial Referrals	48	34	35	19	59
	Civil Judicial Settlements	17	18	21	30	22
	Administrative Compliance Orders	548	598	384	489	558
	Administrative Penalty Complaints	187	292	137	164	212
	Final Administrative Penalty Orders	189	298	192	129	175
	<b>Total</b>	<b>989</b>	<b>1,240</b>	<b>769</b>	<b>831</b>	<b>1,026</b>

**Source:** OECA officials pulled enforcement actions from ICIS, 6/15/04; EPA region officials categorized type of action, 7/30/04.

## **Definitions**

EPA "Guidance for Oversight of NPDES Programs" defines a formal enforcement action as one that requires actions to achieve compliance, specifies a timetable, contains consequences for noncompliance that are independently enforceable without having to prove the original violation, and subjects the person to adverse legal consequences for noncompliance. EPA classifies the following five types of actions as formal enforcement actions:

**Civil Judicial Referrals:** A request from EPA to the Department of Justice for a "Civil Judicial Action," which is a formal lawsuit, filed in court, against persons or entities that have failed to comply with statutory or regulatory requirements or with an Administrative Order.

**Civil Judicial Settlements:** A settlement is generally an agreed-upon resolution to an enforcement case. In a judicial context, settlements are embodied in Consent Decrees signed by all parties to the action and the judge and filed in the appropriate court.

**Administrative Compliance Orders:** Corrective action proposed by the Agency for an alleged violator to undertake in a "Civil Administrative Action."

**Administrative Penalty Complaints:** Enforcement actions taken by EPA without involving a judicial court process. This initiates a ***Formal Administrative Action*** by EPA that seeks penalties to address alleged violations.

**Final Administrative Penalty Orders:** Resolution of a Civil Administrative Penalty Action to address an alleged violation. The matter is either settled or it is adjudicated before an EPA Administrative Law. An adverse initial decision may be appealed to the EPA Environmental Appeals Board.

**Note:** The NPDES formal enforcement actions for CSOs/SSOs and CAFOs differ somewhat due to methodological issues from information reported in the OIG's October 10, 2003 report, *Congressional Request on EPA Enforcement Resources and Accomplishments* (Report No. 2004-S-00001). In the previous report, Tables 8.2 and 8.3 presented information on the number of civil administrative and judicial orders issued since 1995 concerning overflows of sanitary sewers or combined sewers and EPA Clean Water Act enforcement actions filed since 1997 against owners or operators of CAFOs. The information in the previous report was provided by the Office of Regulatory Enforcement. The information in this report was obtained from formal enforcement actions listed in ICIS. In addition, in this report, we defined formal enforcement actions to include civil judicial referrals, civil judicial settlements, administrative compliance orders, administrative penalty complaints, and final administrative penalty orders.

## ***EPA NPDES Formal Enforcement Actions and NPDES Compliance and Enforcement Staff (Data from Regions 3, 4, 5, 8, and 10 Only)***

Table E.1: EPA NPDES Formal Enforcement Actions

	FY 1999		FY 2000		FY 2001		FY 2002		FY 2003	
	Trad. Issues	Wet Weather Issues	Trad. Issues	Wet Weather Issues	Trad. Issues	Wet Weather Issues	Trad. Issues	Wet Weather Issues	Trad. Issues	Wet Weather Issues
<b>Region 3</b>	20	39	12	118	19	50	11	38	27	51
<b>Region 4</b>	63	56	10	119	8	89	30	45	52	81
<b>Region 5</b>	46	13	37	5	42	9	34	10	32	23
<b>Region 8</b>	10	0	11	1	27	9	17	5	32	18
<b>Region 10</b>	16	30	23	30	39	15	9	5	25	5
<b>Totals</b>	155	138	93	273	135	172	101	103	168	178
<b>Combined Totals</b>		<b>293</b>		<b>366</b>		<b>307</b>		<b>204</b>		<b>346</b>

**Source:** EPA regions' responses to OIG questionnaire 7/30/04.

**Note:** While the remaining five regions did provide some of the requested information, the table only includes information from those five regions that provided both enforcement actions and FTE data for the 5 fiscal years requested.

**Table E.2: NPDES Compliance and Enforcement FTEs**

	FY 1999		FY 2000		FY 2001		FY 2002		FY 2003	
	Trad. Issues	Wet Weather Issues	Trad. Issues	Wet Weather Issues	Trad. Issues	Wet Weather Issues	Trad. Issues	Wet Weather Issues	Trad. Issues	Wet Weather Issues
<b>Region 3</b>	5	3	3	7	2	8	3	9	2	9
<b>Region 4</b>	25	13	25	13	25	12	17	14	17	14
<b>Region 5</b>	23	13	22	14	20	16	16	16	15	19
<b>Region 8</b>	2	1	2	1	2	2	2	3	2	5
<b>Region 10</b>	16	3	14	3	13	3	12	4	9	5
<b>Totals</b>	71	33	66	38	62	41	50	46	45	52
<b>Combined Totals</b>	<b>104</b>		<b>104</b>		<b>103</b>		<b>96</b>		<b>97</b>	

**Source:** EPA regions' responses to OIG questionnaire 7/30/04.

**Note:** While the remaining five regions did provide some of the requested information, the table only includes information from those five regions that provided both enforcement actions and FTE data for the 5 fiscal years requested.

**Table E.3: Percentage of Wet Weather Actions to Total Enforcement Actions and Percentage of Wet Weather FTEs to Total Wet Weather and Traditional FTEs (Regions 3, 4, 5, 8, and 10 Only)**

	FY1999	FY2000	FY2001	FY2002	FY2003
<b>Percentage of Wet Weather Actions to Total Number of Enforcement Actions</b>	47%	75%	56%	51%	51%
<b>Percentage of Wet Weather FTEs to Total Wet Weather and Traditional NPDES Compliance and Enforcement FTEs</b>	32%	37%	40%	48%	59%

**Source:** EPA regions' responses to OIG questionnaire 7/30/04.

**Note:** While the remaining five regions did provide some of the requested information, the table only includes information from those five regions that provided both enforcement actions and FTE data for the 5 fiscal years requested.

## ***Distribution***

### ***United States Senate***

The Honorable James M. Jeffords  
The Honorable Frank R. Lautenberg  
The Honorable Patrick J. Leahy  
The Honorable Ron Wyden  
The Honorable Barbara A. Mikulski

### ***U.S. Environmental Protection Agency***

Acting Assistant Administrator for Enforcement and Compliance Assurance  
Acting Assistant Administrator for Water  
Agency Audit Followup Official (the CFO) (2710A)  
Agency Followup Coordinator (2724A)  
Audit Liaison, Office of Enforcement and Compliance Assurance  
Audit Liaison, Office of Water  
Associate Administrator for Congressional and Intergovernmental Relations (1301A)  
Associate Administrator for Public Affairs (1101A)  
Inspector General (2410)