

**Draft - Introduction of Thomas Burack For ERP
By Terri Goldberg
June 20, 2013**

Tom Burack has served as the Commissioner of the New Hampshire Department of Environmental Services since November 2006. He has brought a customer service and continuous improvement focus to all of his agency's programs, which has included strong support for innovative efforts to enhance compliance with environmental laws.

At the national level during the past year as President of the Environmental Council of the States, Tom devoted substantial attention to the issue of compliance assurance as well as opportunities to enhance collaboration between the states and EPA. Now in his year as Immediate Past President of ECOS, Tom is serving as State co-chair (with Commissioner Dick Pedersen of Oregon) of the EPA-ECOS working group that is developing the E-Enterprise for the Environment initiative.

This morning in his capacity as NHDES Commissioner, Tom is going to share some thoughts on compliance and enforcement, and what the future could like in a new era of environmental protection.

**REMARKS BY TOM BURACK, COMMISSIONER,
NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES,
TO THE NATIONAL MEETING ON ENVIRONMENTAL COMPLIANCE
ASSURANCE AND PERFORMANCE MEASUREMENT STRATEGIES**

June 20, 2013, Arlington, Virginia

Good morning. I want to say a special thank you to Terri Goldberg for inviting me to share some thoughts with you this morning and for that kind introduction.

The work that all of you do everyday to help protect and restore our nation's environment is vitally important. It's also work that has seen many changes over the years, and that will, of necessity, see more change in the future.

We all got started in this work in different ways, and I want to share with you a brief story, that perhaps a few of you have heard before, that may somehow explain how I ended up in the business that for the past forty years we've called environmental protection.

Some years ago, my siblings and I were walking in a public park with my mother on a hot day when ahead we spied a large fountain gushing water. Parked next to the fountain was an ice cream truck, and thoughts began to run in my head about what kind of ice cream I'd ask for. As we approached the truck, a young man stepped out of the back door carrying a large tub and walked right into the fountain with it, where he proceeded to wash out its milky contents. It's hard to say who was most surprised by what happened next, but my mother ran over to the young man, grabbed him by the collar, screamed at him that he should not be washing out the ice cream tub in the fountain, and pulled him and the tub from the fountain. The young man began running away down the path, with my mother in hot pursuit. Fortunately my mother returned a few minutes later, but of course we didn't get any ice cream that day.

I call that my ice cream story, and while you could draw various lessons from it, we'll start with the simple point that the traditional way of achieving compliance with environmental laws is through the inspection and enforcement process, making people scared that if they were caught polluting the fountain there would be a high price to pay. When this event actually occurred, way back in the 1960s, that was how people thought to enforce the few environmental laws that we had. And that command and control approach was incorporated into numerous laws and regulations adopted since that time and has been the backbone of our nation's approach to environmental protection right up into the second decade of the 21st century. In truth it has worked quite well in many situations, but we've also come to see that it has its limitations.

To stretch the story a little more, we've come to realize now that pollution comes not just from the proverbial ice cream factories, but also from the vast number of proverbial ice cream trucks out there. The size and diversity of the regulated universe is such that we simply can't expect to have enough inspectors out there to make all of the small operators scared that they're going to get caught washing their buckets in the fountain. In other words, we have a resource scarcity problem here. But it's more than that, because if people don't think they're likely to get caught, then we've also lost the effectiveness of general deterrence in achieving compliance.

And that's a real problem because in our role as regulators, we must establish and maintain a regulatory system that attains our collective overarching mission of protecting human health and the environment. And when you only have limited resources you need to use them in ways that are going to most effectively ensure compliance. The economic downturn of the past few years and the likely funding challenges that we will face in the years ahead as the nation continues to deal with large deficits and substantial debt suggest that we should not expect to have sufficient financial and human resources to achieve significant compliance

assurance solely through traditional monitoring (also known as inspection) and enforcement methods.

Fortunately, EPA has been seeing these changes in the ice cream markets and elsewhere, and in its Next Generation Compliance initiative has proposed five key components:

- 1. Designing and writing regulations and permits to build in compliance (so-called regulatory design)**
- 2. Use of advanced emissions and pollutant detection technology**
- 3. Electronic reporting by regulated entities**
- 4. Expanding transparency**
- 5. Adopting innovative enforcement approaches**

I applaud these ideas, but I believe there at least two additional key components that must be added and a broader framework in which this work should be undertaken:

First, I believe EPA needs to significantly increase the flexibility that it provides to state regulatory programs. And, second, we will need to increase our focus on effective education and outreach to the regulated community, perhaps through such innovative approaches as certification, mandatory training, and self-certification programs. Perhaps most importantly, we need to start thinking about working under a new business model – a way of getting things done that focuses on improving our business processes, using technology to help us be more efficient, timely and transparent, and emphasizing the goal of long-term, sustained compliance that is motivated by all of the right reasons, not just by the fear of getting caught washing out your ice cream buckets in the public fountain.

It should be understood that states accomplish the vast majority of compliance assurance work today and are, therefore, best positioned to determine how to target limited inspection and compliance resources most effectively. Continuing on the ice cream theme, it's not enough for us to just focus on inspecting the big trucks selling chocolate, vanilla and strawberry ice cream. There's a huge

number of other flavors and smaller trucks out there, and the states should be given very substantial flexibility to decide where, when and whom to inspect, and how to allocate limited resources. Of course we can't enable states that want to shield bad ice cream trucks from ever being inspected, and there are ways to protect against that kind of abuse. Importantly, EPA has acknowledged in its Next Generation Compliance initiative that small sources are important contributors to pollution, yet policies continue to insist that inspection resources be focused on larger sources that often have much better rates of compliance than the small sources.

Turning to the need for greater emphasis on education and outreach, in recent years the states have demonstrated that outreach programs that connect regulators with the regulated community in a constructive and non-threatening setting are more effective and more efficient than traditional inspection and enforcement methods, especially when compared to situations in which those traditional approaches are the only ones being employed. For example, in New Hampshire we have a robust Hazardous Waste Coordinator Certification program that brings together our staff and nearly a thousand individuals face-to-face for a minimum of 8 hours of mandatory annual training. The two-way learning and relationship-building that occur result in a level of communication and trust that increases compliance beyond what any amount of traditional inspection and enforcement on their own could ever hope to achieve. Hour for hour, and dollar for dollar, these kinds of educational efforts are in my view the most effective and efficient method of compliance assurance. This is because the regulated community is far more likely to change its behavior if it's told not only what the rule is, but also why the rule is necessary in terms of the harm or risk that must be prevented or avoided, and how a facility might best meet the regulatory requirement.

The concerns that I've heard from EPA in recent years about these kinds of training and certification programs are: first, that we don't have statistically valid data to demonstrate their effectiveness; second, that, like Environmental Results Programs (ERPs), they are highly resource intensive; and, third, that training

programs should not be considered the equivalent of an inspection, so at a minimum a different set of measures of success are needed for such approaches.

Time this morning won't permit a detailed response to each of these concerns, but let's recognize that we don't actually have a lot of data demonstrating the long-term effectiveness (in terms of either general or specific deterrence) of our traditional inspection and enforcement approach. The data that are starting to come in from states like Colorado on their self-certification programs in fact demonstrate impressive and sustained levels of compliance that surely rival if not exceed what traditional approaches have achieved standing on their own. In fact, as you also heard yesterday from Sue Bangert of Wisconsin, these kinds of innovative approaches are an excellent complement to the traditional approaches because they enable the states to identify the non-participants and thereby to target the traditional enforcement tools on those facilities that aren't doing the right thing. In other words, we're not talking about simply replacing traditional inspection and enforcement with training and certification programs, but instead adjusting the allocation of limited resources across this broadened set of tools and approaches to achieve the best mix of tools to enable the overall highest levels of compliance.

And that brings us to the issue of measures. It's widely understood that for many years EPA has measured success in this realm by counting things like the number of enforcement cases filed, the amount of fines paid, or the theoretical amount of pollution prevented. While those kinds of data are an important part of the story, there's also a growing recognition that they are just that – only a part of the story. The way that we really achieve environmental protection is through compliance with the laws and regulations, so a vital measure should be the actual rate of compliance. Beyond that, we need to be able to measure the impact of different compliance strategies, and combinations of compliance strategies, on the actual compliance rates of all of those ice cream trucks. Certainly there are other measures as well that need to be part of the mix. And one of the challenges that we will need to face collectively will be to educate Congress, the regulated community,

and the environmental community on why these additional measures are important and how they can help us to better direct and deploy our limited state and federal environmental protection dollars.

Overarching all of this talk is one more vital theme, and that's the recognition that now, in the 21st Century, and more than 40 years into our nation's cooperative federalism approach to environmental protection, we have evolved to a point at which the states and EPA must see and accept each other as true co-regulators. The states have developed substantial capabilities, knowledge and expertise that in many areas, particularly when taken collectively, matches or even exceeds what EPA is able to bring to the table. Combine this increased capability with the funding reductions of recent years and the rapidly expanding universe of regulated entities, and the points all line up to suggest that together the states and EPA need to find a new model for jointly achieving environmental protection in this country, one that avoids duplication of effort and that makes the best use of limited resources.

In fact, we're already moving in this direction, and one example of true collaboration in this new system of environmental management is what we're calling E-Enterprise for the Environment. This is a high-level ECOS – EPA collaborative that will, with time, fundamentally reshape the business of environmental protection in this country. From a technology-enhancement standpoint, you could think of E-Enterprise as the Next Generation of the Exchange Network, or perhaps the Exchange Network on steroids, but it's really far more than that and has the potential to significantly improve the utilization, value and effectiveness of a broad range of environmental compliance strategies.

The Vision Statement for E-Enterprise for the Environment describes the project as a joint initiative of States and EPA to improve environmental outcomes and dramatically enhance service to the regulated community and the public by maximizing the use of advanced monitoring and information technologies,

optimizing operations (using tools such as Lean), and increasing transparency. But again, this is not just another big IT project. Rather, this is about doing the hard work of looking at how we regulate, how we monitor, how we inspect, how we enforce, how we educate, and putting all options on the table for doing these things more efficiently and more effectively.

The Draft Design and Operating Principles for E-Enterprise include a partnership of environmental government regulators, a modernized legal and programmatic framework, advanced monitoring technologies and new data collection and analysis techniques, collaborative governance, respecting the sanctity of existing delegated authorities, and improving efficiency, data quality and environmental protection.

Importantly, the Draft logic model graphic identifies “new environmental management approaches” as one of the key elements for achieving improved outcomes and improved service. This means that the work you all are doing on compliance assurance and measurement is considered essential to the success of E-Enterprise.

We expect to establish a Joint Governance approach to E-Enterprise, engaging Commissioner-level State officials and high-level EPA officials and looking to give them as much leverage as possible within EPA and with States to affect change. This is building on the success of the Exchange Network partnership to shape a new and improved working relationship.

From a funding standpoint, it’s exciting to see that EPA was able to include \$60 million in the President’s FY 2014 EPA Budget for E-Enterprise. Specific projects proposed for immediate funding include, among others: \$16.1 million for a two-way portal for information exchange between regulated parties (the ice cream trucks) and their regulators in EPA and the states; \$15 million for Compliance Monitoring and Civil Enforcement Programs to reduce the reporting burden,

improve data access, and leverage new monitoring technology; \$11.6 million for environmental information grants to States, with an emphasis on supporting interactive and shared systems that reduce regulatory burden, improve services, and save money; \$4.4 million for e-Manifest; and \$2.2 million to support the National Enforcement and Inspection System (NEIS) in order to improve field data analysis and reduce time required for inspections.

In fact, many elements of EPA’s Next Generation Compliance Initiative will find a home under the E-Enterprise approach, including greater use of electronic reporting, use of advanced monitoring technology, and greater transparency. It’s more than a coincidence that the Environmental Council of the States has devoted substantial time and support to the E-Enterprise initiative, because there are huge opportunities for the states, and perhaps the best chance yet, to fundamentally change for the better the working relationship between the states and EPA and to promote innovative efforts to improve environmental protection. In light of my strong interest in ERP-type approaches, I have been persistent in pushing for their consideration in the foundational documents for E-Enterprise. Now the challenge and opportunity will be to demonstrate how these innovative approaches can and should be incorporated into the overall E-Enterprise initiative as it develops over time.

I’ve had a chance to review the draft straw strategic plan for the Next Generation ERP Consortium, and I want to commend those who worked on it for the careful thought that went into that document. I agree that it’s vitally important to expand the scope of what’s being looked at and worked on in the environmental compliance realm, and an expanded mission would help to attract a broader membership. One of the opportunities and challenges will be to develop and sustain a structure that can provide both a forum and a launching pad for innovative and true state-federal collaboration in this arena. As you undertake your brainstorming session later today, I want to encourage you to begin thinking about whether the next generation of this group should try to replicate the structure and the

relationships of the existing ERP consortium, or whether to obtain broad participation and high-level support, a different structure would be most beneficial.

The structure will likely be just as important as the substantive work that gets done, because I believe that to be truly successful, this effort must be fully integrated with some of the additional themes that I've raised here this morning, including the notions of building a new business model under the rubric of E-Enterprise, and recognizing that we are now in a new era of environmental protection – an era in which every ice cream truck should know the whys, whats and hows of co-existing and operating in harmony with the public fountains. If we do this right, and I am confident that we can, no child will ever again be faced with the disappointment of not getting an ice cream cone because the ice cream truck operator didn't understand that a healthy environment and profitable businesses can go hand-in-hand.