Possible Reasons for Declines in Inspection/Enforcement and Ideas for Reversing
Internal Deliberative Draft as of June 14, 2018

OVERVIEW:

Our analysis of midyear FY18 enforcement initiations, conclusions and inspections show large declines in almost all programs and almost all regions. There are likely a variety of reason for these declines, and while no single reason may be the main driver, the cumulative impact should be considered. Our focus now is what could we do to reverse these declines.

POSSIBLE REASONS FOR DECLINE

1) State deferral:
   a) The FY18 and FY19 President Budget contains multiple statements that EPA will "focus compliance assurance and enforcement resources on direct implementation responsibilities."
   b) Regions are appropriately deferring more to states in delegated programs, due to state requests and in accord with January 2018 Interim Guidance.
   c) Interim Guidance is being incorrectly interpreted by some as meaning EPA should do no inspections and enforcement in authorized states; inconsistent messaging on this by some RAs.
   d) Even correct interpretation on Interim Guidance that there should be specific discussion by regions with its state whenever EPA is considering an inspection and enforcement action in the state takes effort, and slows the work.
   e) Defendants in EPA cases are approaching states and asking the state to take over the case.
   f) Some staff may be less motivated to go the extra mile if they know that their hard work in developing a case could be turned over to the state, and perceive the state may not resolve the violations as effectively as EPA would have.
      i) While this information is only anecdotal, it becomes more powerful as it spreads among regional enforcement managers.
   g) Establishment of pilot measure for "state assists" in FY2018 could lead to further reductions in traditional EPA enforcement.

2) Resources: Gradual impact of declining EPA enacted budgets from Congress over the past 8 years, plus loss of expertise due to buyouts and extremely limited new hiring, has reduced resources for inspections and enforcement.
   a) VERA/VSIP in August 2017 specifically impacts FY 18 results
   b) Agency was operating under a CR for more than half of FY 17, with the prospect that the final budget could be much lower than the CR budget – specifically impacted spending travel and contract dollars to develop cases.

3) Chilling effect of various actions/perceptions of shifts in enforcement direction, particularly during first 6 months in new Administration:

   a) Consistent message in the first 6 months of the new Administration was to slow enforcement

b) Landing Team wanted to pause all enforcement, which then evolved to reviewing all cases, and the Green Red Blue charts.
c) While very few cases were intentionally stopped, the compilation of information and the reviews took resources, and made staff and managers in the regions very cautious on moving forward with inspections and enforcement.
d) Questions and emails from senior Agency leadership passing on regulated entity complaints about EPA enforcement, with perception that EPA was at fault
e) Spring 2017 request for HQ review of all regional information requests was perceived as indicating should be less of these.

4) HQ is asking more detailed questions about the nature of specific enforcement cases earlier in the process than historically has been done. While this has legitimate purpose, it may send unintentional signal that certain types of cases are not appropriate.

5) Anticipated changes in program direction may result in less enforcement now – e.g., WOTUS, air policy changes.

6) Perception of industry that new Administration would reduce enforcement or become friendlier, as amplified by willingness of some senior political leaders to meet directly with defendants, led some companies to believe that they have more leverage to push back on EPA settlement demands. Thus, some settlements are taking longer to conclude.

7) Decline over past few years in HQ interest in ACS measures and regional performance may have facilitated regional declines in inspections, especially since ACS targets have become low floors.

POSSIBLE IDEAs FOR RESPONDING

1) June 2018:
   a) Strong AA memo to the RAs highlighting the important role of federal inspections and enforcement actions.
   b) Share detailed mid-year analysis with regions and ask for QA, explanation and projections.

2) Early July: AA Memo announcing the conversion from NEIs to NCIs with strong message that EPA's role in NEIs as they convert to NCIs is still important and enforcement remains an important tool.

3) Carve out a set of violations that are considered both a priority and "bread and butter" and that prior OECA HQ review is not needed unless NSI kicks in.

4) Revise the ACS measures for FY2019 to ensure they are focused on setting forth consistent national expectations for inspections and NEI/NCI work, as well as a few other things.