

**State Program Review Framework for
District of Columbia Department of the Environment
EXECUTIVE SUMMARY**

Introduction

The EPA Office of Enforcement and Compliance Assurance (OECA), all ten EPA Regions, the Environmental Council of States (ECOS) Compliance Committee and state representatives have jointly developed a method to assess state performance in the enforcement and compliance assurance program. The purpose of the assessment is to provide a consistent mechanism for EPA Regions, together with their states, to ensure agreed upon minimum performance levels and provide a consistent level of environmental and public health protection across our Nation.

In short, the assessment consists of 13 questions comparing actual compliance and enforcement practices with U.S. EPA policies and guidance. The 13 evaluation areas posed by this framework are consistent with evaluation areas delineated in the 1986 guidance memorandum signed by Jim Barnes entitled "*Revised Policy Framework for State/EPA Enforcement Agreements.*" Additionally, the framework utilizes existing program guidance, such as our EPA national enforcement response policies, compliance monitoring policies, and civil penalty policies or similar state policies (where in use and consistent with national policy) to evaluate state performance and to help guide our definitions of a minimum level of performance.

Overall Picture

Region III conducted an evaluation of the District of Columbia Department of the Environment's (DDOE) Air Enforcement and RCRA Enforcement programs. The review began in December, 2006. The State Review Framework usually covers the Air, RCRA and Water enforcement programs. DDOE has not be delegated the authority to implement the Water Enforcement program. EPA's Region III office is responsible for the direct implementation of this program and was evaluated by OECA. The review period for this evaluation was FY-2005. Staff from Region III's Air Enforcement Program reviewed the Air program and staff from the Office of Enforcement, Compliance and Environmental Justice (OECEJ) reviewed the RCRA enforcement program.

Both programs worked with their counterparts at DDOE to determine the number of files to be reviewed. The number of files to be reviewed was determined based on the number of facilities in the state and enforcement activity in each program. The Air Enforcement program reviewed 20 files and 23 files were reviewed for the RCRA Enforcement program.

The review of the Air and RCRA enforcement programs discovered deficiencies in many of the fundamental aspects of an enforcement program. This report contains findings of the review for each program, and areas of concern with a full explanation of these

concerns along with recommendations for resolution. EPA Region III briefed managers in Headquarters Office of Enforcement and Compliance (OECA) during their February, 2007 visit to the Regional Office. Both EPA Headquarters and Region III's management have concerns regarding the deficiencies discovered during the State Review Framework. To address these deficiencies, the Region in conjunction with DDOE began an assessment of DDOE's entire enforcement program beginning in April, 2007. The assessment is being conducted by DDOE representatives and representatives from Region III's Waste and Chemicals Management Division, Hazardous Site Clean-up Division, Water Protection Division, Office of State and Congressional Relations, and OECEJ. OECEJ is responsible for the coordination, reporting, and monitoring the implementation of the study. The assessment is a 60 day in-depth study of the enforcement program which includes interviews of DDOE managers and staff to determine deficiencies in the District's enforcement programs and the root causes. The report resulting from the 60 day study will form the bases of a plan and agreement between EPA Region III and DDOE to address deficiencies discovered during the State Review Framework and will be memorialized in a Memorandum of Agreement to be signed by EPA and DDOE in September, 2007.

In Fiscal Year 2006, the environmental programs, then in the District Department of Health (DDOH), were consolidated under a new District Department of the Environment. This brought greater emphasis to the environmental programs that were sometimes overshadowed by other programs within the Health Department. A new Mayor of the District of Columbia, Adrian Fenty, was inaugurated on January 2, 2007. As such, a new senior management team has been appointed on an interim basis to the new organization. From the Mayor on down, a renewed sense of purpose has been introduced into the new Department of Environment. Managers at the highest levels have expressed a sincere interest to EPA in promoting change, revitalizing programs, and improving environmental protection.

Summary of Findings and Recommendations:

The Air Enforcement program wrote an in-depth report following the traditional format for the SRF review documenting deficiencies, but did not provide a specific recommendation for each deficiency. They did provide recommendations to benchmark and incorporate in the final report discussed above. Listed below is a summary of deficiencies discovered in the Air Enforcement program during the State Review Framework:

- Communications between personnel in Permitting and Compliance Monitoring/Enforcement programs are dysfunctional;
- Compliance monitoring reports (CMRs) for Full Compliance Evaluations (FCEs) completed did not include all the elements required;
- Standard Operating Procedure do not exist for identifying HPVs nor communicating these to the Assistance Attorney General;
- Deviations from the Compliance Monitoring Strategy (CMS) Plan were not discussed with the Region nor documented in AFS before changes were made;

- A FCE had not been completed by DDOH in almost 10 years at the largest wastewater treatment plant discharging to the Chesapeake Bay;
- Data errors in AFS continue to be prevalent despite repeated training efforts on the part of EPA and its national contractor;
- Current salary structure for permitting and compliance monitoring and enforcement personnel may be affecting staff communications and impacting overall performance;
- Procedures are not in place to ensure that equipment necessary to conduct safe and effective compliance monitoring activities is available and used by all inspectors; and
- Procedures for inspectors to plan and secure appropriate training, such as Individual Development Plans were not in use.

Recommendations to Benchmark:

- Finalize proposed organization structure.
- Complete hiring process to staff all relevant management positions in the DDOE.
- Region III Air Protection Division to thoroughly brief the new management team on all noted areas of vulnerability and help prioritize their significance to program performance.
- Both agencies to identify training needs and develop a plan to ensure training is included in the path forward.

Region III Air Protection Division to provide copies of State

- Enforcement Manuals to help in the preparation of necessary standard operating procedures.
- DDOE to effectively staff the Data Management Position and begin to correct longstanding data problems with Air Facility System (AFS).
- Begin to address the causes behind the lack of communication between the Permits and Enforcement Engineers.
- Develop a plan to improve the quality of the Compliance Monitoring Reports to ensure all violations are identified and supported with appropriate document. EPA Air Protection Division to provide copies of well written inspection reports.
- Ensure that all inspectors are provided with necessary safety equipment and clothing.

- Invite District Air Inspectors to accompany EPA staff when conducting Full Compliance or Partial Compliance Evaluations as a means of enhancing inspector skills.
- Begin to address the file management problem.

All of these recommendations are expected to be implemented within one year of receipt of the final report. The EPA will closely monitor the District's progress until all identified areas of vulnerability have been addressed.

Overall there were four major areas of concern in the RCRA program. 1) None of the files reviewed contained full and complete inspection reports. RCRA inspectors use an inspection checklist when conducting an inspection. The checklists do not include a narrative describing observations, photographs, or sampling results. This information is needed to make a determination of compliance/non-compliance. Without this information it was difficult for the reviewers to determine if a violation was discovered or missed and the seriousness of the violation, making it difficult to determine if a violation met the criteria for significant non-compliance (SNC). 2) There was only one SNC identified in FY-05. The FY-05 mid-year identified the failure to identify SNCs as a deficiency in the RCRA enforcement program. 3) According to the FY-05 mid-year DC did not have the legal capacity to fully carry out its authorized Subtitle C and Subtitle I enforcement programs. 4) There was one formal enforcement action taken in FY-05 against a SNC with an assessed penalty, however the file did not contain a penalty calculation which included gravity and economic benefit.

The RCRA portion of the report follows the traditional format for the SRF review and provided specific recommendations where deficiencies were discovered. Listed below are areas for which a recommendation for improvement was provided.

Inspection Implementation (Summarizing findings and recommendations for Elements #1, 2 & 3)

Element #1 Completing universe of planned inspections – DC exceeded national averages for inspection coverage except for TSDs. The one TSD in DC was inspected by EPA in FY-05.

Element #2 Document of inspection findings

Recommendation: None of the files reviewed contained full and complete inspection reports. All inspections should be documented in an inspection report. The inspection report should include appropriate checklist, narrative describing observations at the facility including but not limited to the type of operations, conditions of hazardous waste management containers and practices, violations and/or concerns observed, how long the violation has been occurring, and pictures.

Element #3 Compliance Monitoring Reports completed in a timely manner, including timely identification of violations

Recommendation: The identification of violations documented on the checklist that were included in some of the files were timely, however, the checklist itself does not constitute an inspection report. Further, inspection reports should be part of the file to assure all violations are identified and addressed in a timely manner.

Enforcement Activity (Summarize findings and recommendations for Elements #4, 5,6,7 & 8)

Element #4 High priority violations and supporting information are accurately identified and reported to EPA national databases in a timely manner

Recommendation: Inspection reports should contain sufficient information about the violations to make an appropriate decision regarding whether SNC exists. Additionally, these violations should be discussed with EPA during your regular oversight calls in order to assure the SNC violations are being identified, reported, and addressed in a timely and appropriate manner.

Element #5 State enforcement actions include required corrective action or complying action (injunctive relief) that will return sources to compliance in a specified time frame.

Recommendation: Include required corrective complying actions/injunctive relief in all formal and informal enforcement actions.

Element #6 State takes timely and appropriate enforcement actions in accordance with policy related to specific media

Recommendation: The RCRA enforcement program mentioned in the end-of-year report that DC had a deficiency in identifying SNCs. According to the FY-05 mid-year report DC did not have the legal capacity to fully carry out its authorized Subtitle C and Subtitle I enforcement programs. During FY-05 DOH did not have a position within the Department of Health and the Attorney General's Office dedicated to providing legal support to the District's Hazardous Waste and Underground Storage Tank Program. DC and EPA should have more thorough discussion during their monthly/quarterly enforcement calls to assure that SNC violations are being identified and reported in a timely manner, as well as assuring that SNC violations are being appropriately addressed.

Element #7 State includes both gravity and economic benefit calculations for all penalties, appropriately using BEN model or similar model

Recommendation: All formal enforcement actions should contain penalty calculations which include gravity and economic benefit in accordance with applicable penalty policy

Element #8 Penalties in final enforcement actions include economic benefit and gravity in accordance with applicable penalty policies

Recommendation: All formal enforcement actions should contain penalty calculations which include gravity and economic benefit in accordance with applicable penalty policy.

District of Columbia State Review Framework Executive Summary for the Air Program

Purpose: The purpose of the program assessment and this report is:

- **to evaluate the overall effectiveness of the District of Columbia Department of the Environment (DDOE), Air Quality Division's air enforcement and compliance program;**
- **to determine areas of potential vulnerability which may adversely affect program performance;**
- **to provide a consistent level of environmental and public health protection across the nation; and**
- **to provide a consistent mechanism by which EPA Regions, working collaboratively with their agencies, can ensure that each agency meet agreed upon performance levels.**

This report provides the DDOE officials the opportunity to identify, within their own governmental structure, areas of vulnerability, salary structure, training, resource capabilities, data integrity, and policies and procedures necessary to fully accomplish the mission of the Air Quality Division. This report also helps the EPA Region III's Air Protection Division (APD) to improve its oversight authorities to better complement the DDOE's Air Quality Program. The APD also sees this report serving as a cornerstone for future dialogue between our respective offices on compliance and enforcement matters. The Air Protection Division thanks the DDOE for its hospitality and complete cooperation throughout the review process.

Results-in-Brief: In Fiscal Year 2006, the environmental programs, then in the District Department of Health (DDOH), were consolidated under a new District Department of the Environment. This brought greater emphasis to the environmental programs that were sometimes overshadowed by other programs within the Health Department. A new Mayor of the District of Columbia, Adrian Fenty, was inaugurated on January 2, 2007. As such, a new senior management team has been appointed on an interim basis to the new organization. From the Mayor on down, a renewed sense of purpose has been introduced into the new Department of Environment. Managers at the highest levels have expressed a sincere interest to EPA in promoting change, revitalizing programs, and improving environmental protection. As to be expected in the early days of any new administration change, many of the senior management positions remain either vacant or are staffed by interim personnel. The Acting Director of DDOE was appointed in May 2007 and began the confirmation process September 24, 2007. At the time of our review, the Associate Director position of the Air Quality Division had been vacant for almost a complete year. As of the writing of this final report, the Associate Director position has been filled and the position of staff assistant to the AQD

Associate Director has been advertised. Four branches have been collapsed into two branches under the new proposed organization. The Engineering and Planning Branch has been merged with the Compliance, Enforcement and Asbestos Abatement Branch. The position for Chief of that new branch is vacant but recently has been advertised.

EPA's Air Protection Division had completed a comprehensive evaluation of the District's Air Compliance Program in April 2000. Many of the noted areas of vulnerability in April 2000 remain problems today. Since there was a complete management team in place when the first report was concluded and many of the problems remain today, it may be unreasonable to assume that an entirely new management team will be capable of addressing these problems quickly. The APD understands that we will need to work closely with the District's new organization and help them understand the issues firstly, and then help prioritize the significance of the areas of vulnerability to the overall success and mission of the program.

Unlike past reviews completed by the APD under the State Review Framework, where EPA made recommendations to improve program performance and expected timely resolution to correct these issues, we are proposing a somewhat different approach in the District of Columbia. Rather than identify each and every problem with an associated recommendation, EPA believes it is more appropriate to spend time working with the new management team to educate senior leadership, assist in providing training for staff where appropriate, help shape the program's infrastructure, and benchmark progress on an annual basis until both agencies feel it no longer necessary. Nonetheless, to ensure consistency of review, EPA evaluated all of the associated metrics and has made principal recommendations as a step forward. As the District's management team is put in place and begins to understand the issues, more and more issues, with recommendations, will be introduced on an annual basis until all such problems have been corrected.

Recommendations to Benchmark:

- **Finalize proposed organization structure.**
- **Complete hiring process to staff all relevant management positions in the DDOE.**
- **Region III APD to thoroughly brief the new management team on all noted areas of vulnerability and help prioritize their significance to program performance.**
- **Both agencies to identify training needs and develop a plan to ensure training is included in the path forward.**
- **Region III APD to provide copies of State Enforcement Manuals to help DDOE in the preparation of necessary standard operating procedures SOPs.**
- **DDOE to effectively staff the Data Management Position and begin to correct**

longstanding data problems with Air Facility System (AFS).

- **DDOE to begin addressing the causes behind the lack of communication between the Permits and Enforcement Engineers.**
- **DDOE to develop a plan to improve the quality of the Compliance Monitoring Reports to ensure all violations are identified and supported with appropriate document. Region III APD to provide copies of well written inspection reports.**
- **DDOE to ensure that all inspectors are provided with necessary safety equipment and clothing.**
- **Region III APD to invite District Air Inspectors to accompany EPA staff when conducting full compliance or partial compliance evaluations as a means of enhancing inspector skills.**
- **DDOE to begin to address the file management problem.**

EPA expects all of these recommendations to be implemented within one year of receipt of the final report. DDOE has agreed to implement most¹ of the above actions, but has expressed concern that a one-year time frame may be overly ambitious. DC has proposed to address training for AQD enforcement staff and to develop SOPs for compliance monitoring activities. DDOE has advised EPA that they will create an Office of Enforcement and Environmental Justice that will coordinate, centralize, automate and standardize all enforcement within DDOE. DDOE expects that this new office will help address problems such as the lack of standard report formats and lack of follow-up on enforcement cases. The EPA will closely monitor the District's progress until all identified areas of vulnerability have been addressed.

Please note that DDOE comments dated September 18, 2007 state that EPA noted a need for more enforcement staff within AQD. Whereas this comment may have been transmitted from EPA in another report, the Review Team does not recommend, herein, that additional AQD enforcement staff is needed, nor does the 2006 CMS Evaluation indicate that more staffing for Air enforcement appear to be needed.

¹ DDOE did not comment specifically on the above recommendation to provide necessary safety equipment and clothing.

District of Columbia State Review Framework Air Program Review

On December 15, 2006, the Region forwarded to the District of Columbia Department of Environment (DDOE) data metrics that had been downloaded from the State Review Framework (SRF) website, along with materials provided in previous training sessions made available to the states on the SRF process. From January 16 to January 18, 2007, officials from the Environmental Protection Agency (EPA) Region III Office of Enforcement and Permits Review (OEPR)² and one official from EPA's Headquarters Office of Enforcement and Compliance Assurance (OECA)³ conducted a review of the DDOE Air Compliance Monitoring and Enforcement Program files at the District office located at 51 N Street, NE in the District of Columbia. This is the only office in the District for the DOE that houses personnel and files. During the review period, EPA officials interviewed the Assistant Attorney General as well as four inspectors. Because the Acting Program Manager of the Air Quality Division was unavailable during the review period, officials from OEPR and OECA returned on January 31, 2007 to complete the interview process. This interview was finished by phone on February 14, 2007. DDOE provided no comments on the data metrics. DDOE provided comments on the draft report on September 18, 2007.

The Region has been supportive of the District's Air Quality Division through such things as providing technical, policy, and data management training, conducting periodic and routine enforcement oversight discussions, and coordinating inspections with the District. Despite these efforts, the Region has failed to recognize any noticeable improvement in performance. Quite the contrary, parts of the program have become almost dysfunctional.

Most SRF data metrics in this report appear to portray a relatively high functioning Air Compliance Monitoring and Enforcement Program in the District of Columbia, compared to national averages. However, file reviews show significant operational deficiencies resulting in serious vulnerabilities that are not captured through the data metrics. These deficiencies appear to be primarily related, but not limited to: the absence of standard operating procedures (SOPs) and/or policies to serve as guidance, the absence of processes to ensure accountability at all levels, inadequate supervision and management, inadequate training comprehension, and organizational obstacles tied to the former operations within the District Department of Health.

This Program Review documents the information compiled under the SRF criteria, as well as captures the Region's experiences with the District's Air Compliance Monitoring and Enforcement Program in recent years. It builds upon our recent Compliance Monitoring Strategy review (CMS Evaluation) of the District's Compliance Monitoring Plan implementation for fiscal years 2004 and 2005. Major findings of the CMS Evaluation included:

- Communications between personnel in Permitting and Compliance

² Gerallyn Duke (State Liaison Officer), Danielle Baltera (State Liaison Officer), Kurt Elsner (State Liaison Officer), and Louvinia Madison-Glen (AFS Manager)

³ Robert Lischinsky (Attorney Advisor)

- Monitoring/Enforcement Programs are dysfunctional;
- Compliance monitoring reports (CMRs) for FCEs completed did not include all the elements required;
 - Standard Operating Procedures do not exist for identifying HPVs nor communicating these to the Assistant Attorney General;
 - Deviations from the CMS (Compliance Monitoring Strategy) Plan were not discussed with the Region nor documented in AFS before changes were made;
 - A full compliance evaluation (FCE) had not been completed by DDOH in almost ten years at the largest wastewater treatment plant discharging to the Chesapeake Bay;
 - Data errors in AFS continue to be prevalent despite repeated training efforts on the part of EPA and its national contractor;
 - Current salary structure for permitting and compliance monitoring and enforcement personnel may be affecting staff communications and impacting overall performance;
 - Procedures are not in place to ensure that equipment necessary to conduct safe and effective compliance monitoring activities is available and used by all inspectors; and
 - Procedures for inspectors to plan and secure appropriate training, such as Individual Development Plans, were not in use.

As part of the CMS Evaluation, Region III reviewed the District's CMS Plans for Fiscal Years 2004 and 2005, AFS reports and facility files, and conducted staff interviews with emphasis on compliance monitoring activities. The CMS Evaluation confirmed many problems already recognized by the Region. In recognition of the serious problems already identified through FY2005 files reviewed and findings developed in the CMS Evaluation, this SRF Review further develops those issues as they relate to enforcement.

In FY2005 (the period for this review), the District's Air Compliance Monitoring and Enforcement Programs were managed under the District of Columbia Department of Health (DDOH). As described further in the CMS Evaluation Report, three Branches comprised of Compliance, Enforcement and Asbestos Abatement, Engineering and Planning, and Technical Services made up the principal organizational components of the Air Quality Division. The Compliance, Enforcement and Asbestos Abatement Branch (CEB) was responsible for conducting compliance inspections, initiating enforcement actions, where appropriate, and reporting compliance monitoring and enforcement information into the national data base. CEB also was responsible for review of stack tests performed and oversight of continuous emission monitors in the District. The Engineering and Planning Branch (EPB) was responsible for management and oversight of all air permits (construction and operating).

Beginning FY2006, the District formed a new Department of the Environment. As of the drafting of this report, several key management positions remain either vacant or are headed by interim personnel – including that of the Director. Under the authority of DC Law 16-51, the new DDOE was formed through a merger of the DC Government's Environmental Health Administration, the DC Energy Office, policy functions of the Tree Management Administration, and policy functions of the Office of Recycling. The District Council formed this new Department to consolidate the administration and oversight of programs, to heighten awareness of environmental protection

programs, and to conserve natural resources of the District into one cabinet-level agency. Region III is hopeful that this SRF report's findings and recommendations can assist the new management team in addressing the long-standing problems related to the Air Compliance Monitoring and Enforcement Program.

In addition to the Program deficiencies found through the CMS Evaluation, the SRF Review Team found that High Priority Violations (HPVs) generally are not identified, reported or addressed in a timely manner. The Review Team found that the primary reason for these significant vulnerabilities relates to the inadequacy of the inspections performed. According to the District's Assistant Attorney General, the original documentation of violations is routinely inadequate. Consequently, additional information gathering must be undertaken to develop evidence in support of each claim.

The Review Team attempted to characterize the District's core compliance assurance and enforcement programs consistent with the national guidance. However, strict adherence to protocol for the SRF was made difficult for several reasons. First, the District's files were found to be incomplete. Secondly, the data reported to AFS was found to be inaccurate in many cases as well as incomplete. Thirdly, the District's former management team, Compliance Manager and Division Program Manager, had separated from their positions and were, therefore, unavailable for comment or explanation. The Acting Program Manager was too new to his position to have any historical frame of reference.

Files were found to be excessively disorganized. No central location for files exists nor is there a file clerk assigned to secure and manage the files. Instead, current compliance monitoring files are maintained in individual inspectors' offices. Older files are stored in the basement, while enforcement files are maintained by the Assistant Attorney General. Files were provided to the Review Team in cardboard boxes, consolidated by facility name but with no consistent internal organization within each facility file. About half the files needed by the Review Team were not included in the original cardboard boxes. At our request, many of the missing files were eventually located but some were never provided.

No DDOE SOPs are in place for the development and maintenance of a filing system. When a request for files is received under the Freedom of Information Act (FOIA), administrative personnel obtain pertinent records from the basement and supplement these with files provided by the technical staff. No identification of available files exists other than a list of permits issued. No provisions were observed for special handling of confidential business information, nor were there and guidelines in how to properly respond to FOIA requests to ensure full and complete disclosure.

As found in the CMS Evaluation, the SRF Review Team found considerable data entered into AFS to be untimely, incomplete and inaccurate. No quality assurance or control processes were reported to the Review Team.

These problems, along with those identified in the CMS Evaluation, appear to stem from systemic and managerial problems that were endemic to operations under the DDOH. As a new organization, under a new Administration, DDOE is presented with a unique opportunity to correct problems of

the past. Internal conflicts can be eliminated, communication problems can be vastly improved, and a new management team has the opportunity to develop new policies and procedures to address the noted areas of vulnerability.

The EPA is pleased with what it has observed thus far under the new administration. While much work still remains to be done, there appears to be a renewed commitment to environmental protection. Under the new organization proposal⁴, the Air Quality Permitting and Air Compliance Monitoring and Enforcement Programs would be grouped in one branch within the Air Quality Division called the Planning and Enforcement Branch. This proposal should dramatically enhance the communication void that existed under the former organizational structure. The Acting Director of the Air Program Division has already pledged to eliminate the pay differential between the Permits and Compliance Engineers. This was considered to be one of the major reasons behind the communication problem noted.

At the time of the SRF Review, several key management positions in the DDOE remained either vacant or staffed by an Interim Manager. They included the Directors of the DDOE, the Office of the Environmental Protection Administration, and the Office of the Air Quality Division. The Chief of the Planning and Enforcement Branch was also serving as the Acting Director of the Air Quality Division.

Although a new web-site existed for the new DDOE, a search of compliance monitoring, permitting, and enforcement information still linked to the DDOH. Final plans for the location of the new DDOE offices had not been developed. The DDOE offices are still located at 51 N Street, N.E, the same building as the DDOH.

The data metrics presented in this Air Program Review represent the 35 major air sources and activities that are reported to EPA by DDOE through Air Facility Subsystem (*AFS*), which contains compliance and permit data for stationary sources regulated by EPA, state, and local air pollution regulatory agencies. These metrics were retrieved from EPA's On-Line Information Tracking System (*OTIS*), a web-based data reporting system which reports data in *AFS* as well as several other national databases operated and managed by EPA.

Unlike the data metrics, the file review metrics only characterize 20 files reviewed in the DDOE offices. The Review Team attempted to select files to be reviewed in accordance with the protocol specified in the "State Review Framework Implementation Guidance – EPA/Environmental Council of States Work Group – Washington, DC 6/29/05." However, 15 files had been reviewed in the recent CMS Evaluation, so these 15 files were included and the remaining five files were selected primarily on technical complexity, i.e., four of the remaining five files were considered to be technically complex.

According to the SRF Guidance, this Program Review should cover one fiscal year and include 15 to 30 files for a state the size of the District of Columbia. However, the CMS Evaluation upon which

⁴The final organizational structure was not in place at the time of the file review.

this SRF builds spans FY2004 and FY2005, and DDOH completed only eight FCEs in FY2005. Therefore, the Review Team reviewed five files⁵ with compliance monitoring reports (CMRs) completed in FY2005, two files with no CMRs completed in FY2005 or FY2006, and 13 files with CMRs completed in FY2004 or FY2006. Enforcement information generated in FY2006 and FY2007, if any, as a result of the CMRs reviewed was reviewed as well. The Review Team felt that review of FY2006 files, as well as those through January, 2007, would best ensure that this Program Review addressed relatively current activities while also efficiently utilizing information gained from the CMS Evaluation. Eight of the 20 files reviewed included sources where violations were found.

Prior to the file review (on December 4, 2006), OEPR informed DDOE of the 20 sources that had been selected for file review. These 20 sources included:

- Seven files with sources identified as high priority violators (HPVs),
- One major source file where violations were found but the violations were not listed as HPVs,
- Five major source files where continuous emission monitors (CEMS) were installed and no violations were found,
- Six major sources without CEMS where no violations were found, and
- One major source recently designated as a major source and not yet permitted under Title V.

All files reviewed were for major sources. As discussed above, fifteen of the files selected were the same sources already reviewed in the CMS Evaluation. The additional five sources were selected to balance the representation of files according to the categories listed above. (Note an attempt was made to include more major sources with violations but not HPVs, but only one existed for the FY2005/2006 time period.)

Twenty files out of a universe of 35 major sources is viewed as an excellent representation of the District's major source universe. Characteristic of the universe of air sources in the District, eight files reviewed were for federal facilities. Four universities, three hospitals, three hotels, one power plant, and one wastewater treatment plant also were included in the files reviewed.

The District had no synthetic minor sources in FY2005, although plans are underway to change the District's Title V source fee structure and begin to permit an approximate 20 sources as synthetic minor sources. No formal enforcement action was taken in FY2005 at sources that were not HPVs.

As part of the CMS Evaluation, DDOE had provided the Review Team with its *Air Quality Division Enforcement Guidelines*, dated March, 2003. These guidelines, while not perfect, provide sound guidance on the enforcement tools available in the District. According to those interviewed in the SRF, these Guidelines are the only written DDOH Environmental Health Administration policy or guidance available in FY2005 that addressed enforcement actions. This is, reportedly, a public

⁵ The Review Team chose not to review all eight FCEs completed in FY2005 in order to select a representative portion of sources that met the full array of criteria for file selection, described in Element I.

document. However, attempts by the Review Team to access these Guidelines through the DDOE website, as well as the DDOH website, were unsuccessful. Other guidelines provided by DDOE included:

- *Draft Standard Operating Procedures for Chapter 2 Permitting Activities*, dated January 4, 2000, prepared by the Engineering and Planning Branch of the Air Quality Division.
- A template entitled, "AQD Enforcement Action Memo," (undated)
- A template entitled, "Full Compliance Inspection Check List,"(undated) and
- A template entitled, "FY__ Full Compliance Inspection Report" (undated).

The Region hopes that this SRF may provide a focus for new management, as well as the Region. The metrics discussed below list concise items to be addressed by the new management. With the exception of Data Metric 6a, the data metrics were downloaded from *OTIS* on 11/17/06. Data Metric 6a was retrieved from *OTIS* after the subsequent monthly *OTIS* upload in December, 2006. All measure types are discussed in this report with the exception of "Information-Only" metrics.

Element 1 - Degree to which a State program had completed the universe of planned inspections/compliance evaluations (addressing core requirements and Federal, State, and Regional priorities).

Clean Air Act Source Universe	Number of Sources in DDOH Universe in FY2005
Universe of Major Sources (Title V)	35 ⁶
Universe of Synthetic Minor 80% Sources	0
Total Number of Major and Synthetic Minor Sources	35
Number of inspection files for review	20

Data Metrics:

		National Average or Total	DDOH
Metric 1a1	% of CAA active major sources receiving full compliance evaluation (FCE) by DDOE in	78.40%	88.6%

⁶Metric 1a1: AFS operating majors with air program code = V in FY2005. Blue Plains Treatment Plant became a major source in FY2005 but the CMS Plan for FY2004/2005 does not include that source.

	FY2004/2005.		
Metric 1a2	% CMS major sources receiving FCEs by DDOE in FY2004/2005.	84.5%	91.2%
Metric 1b	% CAA synthetic minor 80% sources (SM-80) FCE coverage in FY2002 through FY2005. State only.	76.9%	0%
Metric 1f	% Review of self-certifications completed.	79.4%	96.9% ⁷
Metric 1g	Number of sources with unknown compliance status.	NA	6

File Review Metric:

Metric 1r	Percent of planned FCEs completed at major and SM-80 sources		20 FCE files reviewed
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Findings:

Metrics 1a1 and 1a2: For this State Program Review, reviewers assessed DDOH's FY2005 Compliance Monitoring Strategy (CMS) accomplishments. Note that CMS Plans actually cover two fiscal years. The data presented in Metric 1a1 represents FCEs completed in fiscal years 2004 and 2005 compared to the universe of major sources. The data presented in Metric 1a2 represents FCEs planned and completed in fiscal years FY2004 and FY2005, in accordance with the *April 2001 Clean Air Act Stationary Source Compliance Monitoring Strategy (CMS Policy)*.

FCE coverage exceeds national averages of 78.4 percent for major Clean Air Act (CAA) active sources and 84.5 percent for major CMS sources. All DDOH's FCEs include on-site visits. This frequency well exceeds the minimum frequency that is recommended in the *CMS Policy* of one on-site visit every five years, provided that the State may effectively complete an FCE using self-reported information. However, FCEs were not completed in accordance with the years scheduled in the CMS Plan and, as discussed in Element 2, many of the FCEs appear to be seriously deficient in thoroughness.

Out of its major universe of 35 sources, DDOH reported conducting FCEs at 31 sources in fiscal years 2004 and 2005. Four Title V major sources did not receive FCEs during those two years. One of those four sources was not listed on DC's CMS Plan because DDOH had not determined, at the time the CMS Plan was developed, that the source was a major source. A second source became a major source in FY2005 but had not been entered into the CMS Plan (this source was shut down in

⁷ Original metric was 90.6%. The Review Team found two data errors entered into AFS. See Element 11. Final metric is 30/31 = 96.9%.

FY2006). FCEs were scheduled in the CMS Plan for the third and fourth sources but DDOH did not inspect these until FY2006. Reportedly, one of these was not inspected during the FY2004/2005 CMS cycle because its Title V permit had not been reissued. The Review Team believes this is not a sufficient basis for not inspecting this source for two years; in fact, a pending permit provides an even stronger reason to conduct an inspection. No explanation was provided about why the fourth source was not inspected on schedule.

The District's original CMS Plan proposed completing 18 FCEs each year but DDOH reported that 23 FCEs were completed in FY2004 and eight FCEs were completed in FY2005. The District provided no explanation for this deviation from their CMS Plan. The *CMS Policy* does not require an even split of FCEs performed each year, provided that all major sources are subject to an FCE every two years. However, Region III has requested its state and local agencies to show, in the CMS Plan, the scheduled year for each planned FCE so that alternate schedules may be discussed with EPA prior to the CMS two-year cycle beginning. EPA recommends in the CMS Evaluation that the District provide written notification explaining any deviation from the CMS Plan and also that EPA be notified with appropriate explanation when CMS commitments are not met.

Metric 1g: To help EPA and state/local agencies flag sources that may not have been inspected according to schedule, AFS automatically changes compliance status to "unknown" approximately two years after its last inspection. As of 11/17/06, six sources in the District are listed in AFS with an "unknown" compliance status. According to AFS all six had not been inspected since FY2004. This may relate to the disproportionate number of FCEs completed in FY2004 compared to FY2005; compliance status for those 28 sources inspected in FY2004 would revert to "unknown" unless inspected by the end of FY2006. Because Blue Plains Treatment Plant was not listed in the FY2004/2005 CMS Plan, it is not listed with an "unknown" compliance status, even though the last FCE conducted occurred in 2003 (by EPA). As stated in the CMS Evaluation, the Region continues to be concerned that DDOE has not conducted an FCE at Blue Plains for approximately ten years.

Noting that only eight FCEs were completed in FY05, the Review Team inquired what other compliance monitoring and enforcement activities were undertaken that year. DDOE management told Reviewers that other work included responding to complaints, work to support cases already in court, inspections at auto body shops, inspections at area MACT sources such as gas stations, dry cleaners, solvent cleaners, engine idling enforcement (in summer only), and PCEs at major sources.

Two FCEs were each conducted at two different sources within several months of each other during the FY2004/2005 CMS Plan cycle. Timing FCEs within such a short timeframe of each other appears unnecessary, especially when several sources had not received FCEs within the FY2004/2005 CMS Plan cycle. On-site inspections in response to complaints are generally considered on-site PCEs. Should a follow-up inspection be needed after an FCE, a PCE is likely to be appropriate instead of an FCE. One of these FCEs was completed in FY2005 and reviewed as part of this SRF; in fact, the Team determined that the CMR was incomplete. The Review Team now questions whether all four reported FCEs were actually FCEs and not individual PCE or PCEs that together comprise one FCE. When several PCEs are performed in a CMS year and they together include all the components of a CMR, the last PCE should be reported as an FCE. All prior

PCEs that year should be reported as PCEs. Beginning FY2007, such PCEs that are actually part of the FCE may be “linked” to the final FCE in AFS⁸.

From the file review the Review Team learned that one FCE reported as completed in FY2006 did not involve completion of a compliance monitoring report (CMR). No CMR was found in the file and the inspector interviewed indicated that no CMR was completed. Since the *CMS Strategy* requires completion of a CMR for each FCE completed, the Review Team determined that this FCE was not only inaccurately reported in AFS as completed in FY2006, but even more importantly, a flagrant deviation from the *CMS Policy*.

Metric 1b: Metric 1b shows that 0 percent, or none of the District’s 80-percent-synthetic-minor sources received FCEs in fiscal years 2004 and 2005. This is because DDOE has issued no synthetic minor permits in the District. Please note that Data Metrics 1b and 1c cover four years even though the *April 2001 CMS Policy* requires completion of an FCE at each SM-80 source every five years. Only four years are represented here because data is only available since FY2002.

Recent changes in Attainment Status for ozone in the District have reduced the threshold for classifying sources as major sources. Sources whose emissions now exceed the stricter limits for NO_x and VOC are expected to meet the criteria of “major source” under Title V. District personnel reported that they expect these additional Title V sources to accept operation limits which will enable these sources to be designated as synthetic minor sources. District personnel further indicated that emissions from these new Title V sources will be less than 80-percent of the major source threshold. Any new “SM-80 sources” would otherwise be required, under the *CMS Policy*, to be added to the District’s CMS Plan.

Internal 2005 correspondence reviewed states that the District has concluded that Blue Plains Treatment Plant is a major source and should apply for a Title V permit. This source was not scheduled for an FCE as part of the CMS Plan during the FY2004/2005 CMS period. The last state-lead FCE was conducted in 1996. The Review Team believes this prolonged omission of an FCE is completely inappropriate, since this source is the largest advanced sewage treatment system in the world, the largest discharger to the Chesapeake Bay, and the source of numerous odor complaints from citizens. The DDOE inspector told the Review Team that PCEs had been performed; PCEs were only required to be entered into AFS when violations are found, none are shown in AFS for this plant, and the only inspection report found by the Review Team for this plant was dated FY2006. That report appeared to be for a PCE.

Metric 1f: DDOE reviewed **100 percent** of all Title V Annual Certifications received in FY2005, which well exceeds the national average of 76.9 percent. However, out of 19 files reviewed which included Title V certification reviews, the Review Team found two certification reviews⁹ to provide insufficient documentation to support findings.

⁸ Such linking is optional.

⁹ Stack tests that are provided in the annual certifications for 2 sources insufficiently documents the review of these stack tests. No other files were provided that documented reviews of these two stack tests.

Citation of information reviewed for this criterion: *CAA Stationary Source Compliance Monitoring Strategy*, April 25, 2001.

Recommendations:

(1) Blue Plains Wastewater Treatment Plant should be added to the District’s CMS Plan and scheduled for an FCE in FY2007.

Action: Done. Blue Plains Wastewater Treatment Plant is scheduled, in the FY2008/2009 CMS Plan, for an FCE in FY2008.

(2) As recommended in the CMS Evaluation, deviations from the CMS Plan should be communicated to EPA in writing and changes made to the CMS Plan in AFS as soon as schedules are expected to change. In the future, the District should provide to EPA a written explanation for each CMS commitment that is not met.

Element 2 - Degree to which inspection (Compliance Monitoring) reports and compliance reviews document inspection findings, including accurate description of what was observed to sufficiently identify violations.

	Clean Air Act Source Universe Information	Compliance Monitoring (FY2005)
Metric12d2	Full Compliance Evaluations - major and SM sources	8 FCEs
	Number of inspection files for review	20 files
	Number of compliance monitoring files for review	19 files ¹⁰ for major sources, 18 files with CMRs

File Review Metric:

2a	% of CMRs adequately documented in the files	1/18 CMR files = 5.5%
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Findings:

The *CMS Policy* requires CMRs to contain the following elements:

- general and facility information,

¹⁰ One file reviewed was at a source with no Title V permit; no CMR was found in the file for this source.

- applicable requirements,
- inventory/description of regulated units,
- enforcement history,
- compliance monitoring activities, and
- findings and recommendations.

Only one of the 18 CMR files reviewed contained all of the elements that are required in the *CMS Policy*. Few CMRs reviewed included all basic elements to sufficiently identify violations as set forth in the *CMS Policy* and few CMRs or other reports reviewed adequately documented compliance evaluation findings. One FY2006 FCE reported in AFS as completed did not include a written inspection report at all, which appears to be a blatant deviation from the *CMS Policy*.

Many CMRs appeared to follow a brief prescribed outline which lists the following elements:

- Purpose
- Personnel/Phone
- Inspector
- Pre-Inspection Meeting
- Some description of on-site work during the inspection.

From this format, these appear to be based on the “FY__ Full Compliance Inspection Report” that is cited in the Introduction to this Air Program SRF report. A “Compliance Status” checklist, which looks like it is based on the “Full Compliance Inspection Checklist” cited in the Introduction, also was found at the end of most CMRs reviewed. However, management personnel reported that no written procedures for preparing for and conducting compliance monitoring evaluations in the District existed in FY2005. The outlines described above and apparently used by the District included few of the required elements.

In addition to the FCE reported which did not include a written CMR, the Review Team considered fifteen CMRs to be substantially inadequate. Specifically:

- 7 of 18 CMRs reviewed did not include an adequate general and facility information section;
- 8 of 18 CMRs reviewed did not adequately describe the applicable requirements for the facility;
- 12 of 18 CMRs reviewed did not include a complete inventory and description of regulated units;
- One of 18 CMRs reviewed included a section on enforcement history;
- 10 of 18 CMRs reviewed did not include compliance monitoring activities; and
- 3 of 18 CMRs reviewed did not include findings and recommendations.

Of the seventeen “inadequate” CMRs reviewed, the reviewers found that twelve did not document an inspection which met the definition of an FCE as defined on pages 4 and 5 of the *CMS Policy*. Three CMR(s) were missing all of the required elements described in the above paragraph except for

the findings and recommendations. Another CMR lists one deficiency which appeared to be to be violations and possible HPVs but did not contain sufficient description of the deficiencies or documentation of the evidence to definitively develop a compliance finding. (DDOE subsequently explained to the Review Team why this was not in fact a violation.)

Some CMRs and off-site partial compliance evaluation reports were very good. The Review Team would have considered three of the seventeen “inadequate” CMRs reviewed to be “adequately documented” if they had included a section on enforcement history.

The Review Team found that all files of sources with Title V permits included a report that documented review of the Annual Title V Certifications. Separate review reports were found for Semi-annual Title V Certification Reports. These reports appeared to follow a somewhat prescribed format, but not all reviews included all the same elements and the level of documentation of findings varied extensively. Indeed, some Title V Certification Review reports showed extensive depth and thoroughness of review, including review of CEMs data. Nonetheless, others only listed permit requirements and included a general finding that the source complied with the requirement with minimal, if any, explanation for the basis of that finding.

Reports required under respective air permits typically provide key information about a source’s adherence to those requirements. Where Title V permits have been issued, the CMR should include a review of these reports or cite other files which document these reviews. Compliance status should reflect these off-site PCE compliance determinations. Of the 18 CMRs reviewed, none described compliance monitoring activities other than the on-site inspection and (in most files reviewed) the Title V certification review. Even though most CMRs reviewed referred to prior Title V certification reviews, in one instance where a Title V certification review led to discovery of a violation, the CMR did not refer to this discovery and stated that the source “passed” its annual inspection.

The 2001 *CMS Policy* introduced new terminology which reflected a new approach to compliance monitoring. Categories of compliance monitoring activities now include FCEs, PCEs, and Investigations and these include on-site as well as off-site work leading to a compliance determination. Although the *CMS Policy* was issued in 2001, the District’s 2005 and 2006 compliance monitoring reports do not include any reference to terms such as “full compliance evaluation,” “partial compliance evaluation” (on or off-site) or “compliance monitoring report.” Except that Title V certifications are now reviewed, it appears that little, if any, changes to how compliance monitoring is conducted were instituted in response to issuance of the *CMS Policy*.

Both inspectors whom were asked, during the file review, if they were familiar with the *CMS Policy* indicated they were not familiar with it. EPA conducted training on the new *CMS Policy* soon after it was released, sent the Policy to each State/local agency, and posted the Policy on EPA’s website. It is not clear why inspectors are not familiar with the *CMS Policy* but this unfamiliarity is evident in most CMRs reviewed.

Interviewees indicated that the inspectors’ supervisor reviewed draft inspection reports, but the

Review Team saw no documentation of such reviews. The Review Team found many spelling and grammatical errors in many reports, in addition to the substantive problems described above, which raised concerns about the level of supervisory review. Supervisory oversight should ensure that all completed work meets a minimal standard of quality. Furthermore, feedback to inspectors on their reports is important for the purpose of providing informal training and thereby continuously improving the quality of FCEs, PCEs, and the reports that document compliance monitoring. Documentation of this feedback ensures accountability on the part of both the inspector and the supervisor who reviewed the work.

Managers interviewed reported that no written training policy exists for compliance monitoring and enforcement personnel. Only asbestos inspectors are required to take OSHA safety training and this training is provided in neighboring states. No organizational entity responsible for medical monitoring or for tracking required certifications such as Method 9 certifications was identified through interviews with DDOE management. Whereas DDOH provided limited training for skills development such as computer proficiency, no technical training for inspectors was provided directly by the Department of Health. As discussed in the CMS Evaluation, most training provided to inspectors is that offered through EPA or the Mid-Atlantic Regional Air Management Association (MARAMA) in nearby states, and an onerous approval process under the Department of Health had precluded inspectors on numerous occasions from attending off-site training.

A supervisor may or may not advise that certain training would be desirable for certain staff. Forms are available for staff to design their own training development plans, gain supervisory approval and maintain these training plans on file in Human Resources but use of the training development forms for long-term training planning is reportedly rare.

The serious deficiencies found in most CMRs reviewed may be attributed to inadequate training, inadequate protocols for conducting FCEs and writing CMRs, and inadequate supervision. Management personnel whom were interviewed indicated that travel for training is expected to be more streamlined under the DDOE, but no new training programs, requirements or initiatives were described.

Citation of information reviewed for this criterion:

- The Evaluation Team reviewed CMRs performed in FY2005 and FY2006 as well as CMRs associated with the selected HPVs identified in prior years as appropriate. Additionally, to evaluate timely and appropriate enforcement, FY2006 and FY2007 files were reviewed where FCEs in FY2005 resulted in violations being found but these were not addressed in FY2005. The Review Team also looked for FY2007 enforcement files where a violation was found but not addressed in FY2006 but no such enforcement files were found.
- *April 2001 CMS Policy.*

Recommendations:

(1) Processes should be instituted to streamline approvals for travel for training.

Action: DDOE has already instituted such new procedures.

Element 3 - Degree to which compliance monitoring reports are completed in a timely manner, including timely identification of violations.

	Clean Air Act Source Universe Information	Compliance Monitoring in FY2005
Metric12d2	FCEs completed in FY2005	8
	Number of inspection files for review	18 CMR files ¹¹

File Review Metric:

Metric 3a	% CMRs that are completed in a timely manner (i.e., within 60 days) including timely identification of violations	15/18 CMR files = 83%
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Findings:

DDOH directly responsible for conducting in a timely manner scheduled FCEs/PCEs, completion of CMRs, identification of violations, and issuance of Notice of Violations (NOVs). The CMS requires that FCEs should include a review of all required reports including stack tests where there is no other means of determining compliance.

Fifteen out of 18 CMRs reviewed appeared to be completed within a few weeks of conduct of each on-site inspection based on comparing inspection dates and dates of the reports in the files. This would conform to EPA’s *Timely & Appropriate Enforcement Response to HPVs, June 23, 1999* (“*HPV Policy*”). However, no District policy was provided to the Reviewers that sets forth any timeline for completion of such reports.

As set forth in the *CMS Strategy*, all compliance monitoring activities, including off-site reviews of stack tests, quarterly reports, Title V certification reviews, and reviews of excess emission reports should be included in an FCE. In one instance related to four HPVs, Reviewers found that off-site reviews had been performed more than 60 days after the information was available in the office for review. Some of these violations were found through off-site reviews as much as three years after the violation had occurred. In a second instance, the annual Title V certification report review was

¹¹ Out of 20 files reviewed, CMRs were only available for 18 sources. The 18 CMR files include one CMR from FY04 since none were available for FY2005 or 2006.

conducted four months after the Title V certification report was received. The FCE was conducted after the Title V certification report was received, yet the CMR includes no referral to that Title V certification report and the review occurred three months after the CMR was written. In a third instance, a Title V semi-annual certification report was submitted more than three months after its due date and after committing similar violations in 1999, 2000 and 2001, yet the violation is not noted on the Title V certification review report. Instead the violation is somewhat unclearly noted on the CMR for the FCE that was completed three months after the Title V semi-annual certification report was reviewed, the violation is never identified as an HPV (the Review Team believes this violation meets General Criteria 9), and no enforcement followed.

The two instances where CMRs were not prepared (See Element 3) are not counted in File Metric 3a, yet the failure to complete an FCE at a major source every two years is an even more egregious deviation from the *CMS Policy*.

This untimeliness in compliance monitoring is considered to be a serious vulnerability.

Citation of information reviewed for this criterion:

- *The Timely & Appropriate Enforcement Response to HPVs*, June 23, 1999
- District of Columbia *Enforcement Guidelines* compiled by the Office of Enforcement Compliance and Environmental Justice and Compliance and Enforcement Branch, Air Quality Division, March, 2003.

CMRs performed in FY2005 and FY2006 were reviewed as well as CMRs associated with the selected HPVs identified in prior years as appropriate. Where no FY2005 or FY2006 CMRs were available (one instance), the FY2004 CMR was reviewed. Additionally, to evaluate timely and appropriate enforcement, FY2006 and FY2007 files were reviewed where FCEs in FY2005 resulted in violations being found but these were not addressed in FY2005. The Review Team also looked for FY2007 enforcement files where a violation was found but not addressed in FY2006. However, no such enforcement files were found.

Element 4 - Degree to which significant violations (e.g., significant noncompliance and high priority violations) and supporting information are accurately identified and reported to EPA national databases in a timely manner.

	Clean Air Act Source Universe Information	Number of Sources/Pathways in Universe in FY2005
Metric 12g1	New High Priority Violations in FY2005 - State only	9 DDOH-lead

Metric 12g2	# of sources in HPV in FY2005 - State-only	6
	Number of inspection files for review	6 facility files with HPVs identified in FY2005

Data Metrics:

		National Average	DDOH
Metric 4a	FY2005 HPV Discovery Rate – per Major FCE Coverage (new major source HPVs/major sources with FCEs) - State only FY2006 HPV Discovery Rate	10.2% 9.2%	75.0% ¹² 0% ¹³
Metric 4b	FY2005 HPV Discovery Rate per Major Source Coverage (new major source HPVs/active major universe) - State only FY2006 HPV Discovery Rate	4.80% 4.3%	17% ¹⁴ 0%
Metric 4c	No activity indicator- # of new DDOE- or joint-lead HPVs	NA	FY2005: 9 HPVs FY2006:1 source
Metric 4d	Major sources designated as an HPV (DDOE or joint-lead) in FY2005 or the 3 rd and 4 th quarters of FY2004 and that received formal enforcement actions in FY2005/All major sources that received formal enforcement actions in FY2005	79.1%	100%

File Review Metrics:

Metric 4e	% HPV determinations that are identified in a timely manner	4/11 FY05 and FY06 HPVs reviewed = 31%
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¹² 6 sources with new HPVs /8 FCEs conducted in FY2005

¹³ DC discovered no new HPVs in FY2006. A new HPV with an FY2006 Day Zero was discovered by EPA through this SRF Review and is now a DC-lead HPV, but is not counted in this metric since it was not discovered by DDOE.

¹⁴ Original FY2005 metric used 6 sources as numerator and 38 sources as denominator. However, the CMS Universe actually is 35, so this metric is 6/35= 17%. Whereas EPA discovered one new FY2006 HPV as a result of this SRF Review and this is now a DC-lead HPV, DC discovered no new HPVs in FY2006.

Metric 4f	% HPVs determinations that are accurately identified	7/11 = 64%
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Metric 4A - DDOH's HPV discovery rate (**75 percent** of FCEs) in FY2005 appears to significantly exceed the national average. Please note that only eight FCEs were performed in FY2005 which drastically increases the discovery rate. Please note, also, that many of the HPVs found were not discovered through FY2005 FCEs. In FY2006 (and in FY2007 through January, 2007), no new HPVs were discovered. The one new HPV discovered in FY2006 was discovered by EPA through this SRF Review.

DDOE personnel reported that all on-site compliance evaluations are announced. One inspector said this practice stemmed from the perceived need to announce inspections at certain federal facilities that have security clearance requirements for entry. Because such a high percentage of the District's sources are federal facilities, the District reportedly adopted the procedure to announce all inspections to ensure access to all facilities on the day the inspector arrives on-site.

The practice of announcing inspections may account for the recent low HPV discovery rate. When sources are notified in advance of an inspection, they then have time to correct many violations.

Metric 4B - DDOH identified HPVs at **17 percent** of the District's active major universe in FY2005. This is more than three times the national average of 4.8 percent. Of the two files reviewed with FY2005 violations that were not initially reported as HPVs, both appeared to rise to the level of an HPV.

In FY2006 (and in FY2007 through January, 2007), no new HPVs were discovered by DDOE.

Documentation of decisions regarding HPV determinations was found only in certain CMRs; no documentation was found which showed management concurrence regarding HPVs in any files. DDOE had agreed that one violation should have been identified as an HPV and this was recently entered into AFS as such, in response to that determination.

Metric 4C – This data element is intended to represent the extent to which a state has been successful in identifying HPVs. Where no HPVs are found in a given year, this would be an area of concern. As shown above, DDOH discovered **nine new HPVs** in FY2005. However, in FY2006 (and in FY2007 through January, 2007), no new HPVs were discovered by DDOE. Recent HPV discovery activity is an area of serious concern.

Metric 4D – **One hundred percent**, or four out of four, formal enforcement actions taken by DDOH in FY2005 were at HPVs. See Metric 12h. This indicates that where formal enforcement is underway, these are being reported as HPVs as appropriate.

Metric 4E – **Nine of the 13 HPVs** reviewed were identified or reported to EPA more than 30 days after violation discovery. Reviewers noted that violations at one source which ultimately became

listed as four separate HPVs, spanning four years, were not identified until as late as three years after the violation occurred. Two other sources were reported with HPVs more than a year after Day Zero. From review of files and discussion with DDOE personnel, there appears to be a serious timeliness problem in identifying violations as well as identifying HPVs which stems primarily from lack of completeness in FCEs as well as an absence of protocols for identifying and communicating HPVs.

Metric 4F – Sixty-four percent of the HPVs reviewed were accurately identified as HPVs, based on files reviewed. Several were listed correctly as HPVs but the wrong HPV criteria were used for listing them. Three violations were found which the Review Team had reason to believe, at the time of the file review, may rise to the level of an HPV but were not identified as HPVs at the time of the review. One was subsequently confirmed to be an HPV and two were determined to not rise to the level of an HPV. The one inaccurately reported HPV appears to relate to inadequate understanding among DDOE personnel of the *HPV Policy* along with inadequate procedures to screen all violations found against HPV criteria.

The Air Quality Division *Enforcement Guidelines* refer to the HPV Criteria but do not identify specific means of determining whether a violation is an HPV or a means of documenting HPV determinations. Furthermore, the HPV Criteria that are described in the *Enforcement Guidelines* only include the General Criteria and not the Matrix Criteria.

Citation of information reviewed for this criterion:

- *The Timely & Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs)*, June 23, 1999
- Minutes of FY2005 and FY2006 Timely and Appropriate meetings
- District of Columbia *Enforcement Guidelines* compiled by the Office of Enforcement Compliance and Environmental Justice and Compliance and Enforcement Branch, Air Quality Division, March, 2003.

Recommendations:

(1) DDOE should evaluate whether the three violations that appeared to be HPVs are actually HPVs and address these accordingly.

Action: One of the HPVs has been formally identified as an HPV and entered into AFS as such. DDOE and EPA have reviewed the other two potential HPVs and determined that these do not rise to the level of HPVs.

(2) Most, if not all, on-site compliance monitoring evaluations should be unannounced.

Element 5 - The degree to which State enforcement actions include required corrective or complying actions (injunctive relief) that will return sources to compliance in a specified time frame.

Clean Air Act Source Universe Information	Number of Enforcement Actions
State formal enforcement actions in FY2005	4 ¹⁵ total at major and SM sources of which 4 address HPVs.
Number of enforcement files for review	Out of 8 files where violations had been reported, 5 HPVs (at 4 sources) and 0 non-HPVs with formal enforcement actions completed and 1 HPV addressed informally in FY2005 or FY2006.

File Review Metrics:

Metric 5a	% formal State enforcement actions that contain a compliance schedule or activities designed to return source to compliance	4/4 = 100%
Metric 5b	% formal or informal enforcement responses that return sources to compliance	4/5 = 80%

Findings:

The DDOH *Air Quality Division Enforcement Guidelines* outline responses that may be taken in response to discovery of a violation. Enforcement actions may include:

- issuance of a Directive for suspected deficiencies that can usually be corrected within 30 days, facilities that are infrequent violators, and minor violations that do not pose a threat to human or environmental health. These are issued on-site or shortly thereafter;
- written Notice of Violation (NOV) for minor violations that must be corrected within a specific time frame, where the facility is cooperative and no penalties are sought;
- Notice of Non-Compliance and Consent Agreement to correct serious violations that are persistent and to seek penalties exceeding \$10,000;
- Issuance of a Notice of Infraction for specific violations of District air quality

¹⁵ Original metric 12h1 lists 3 state formal actions taken in FY2005. However, an action taken at one facility was never signed by the source, so it is not actually a formal enforcement action. Additionally, the two HPVs were not included in the original metric. Thus, four of the five enforcement actions taken in FY2005 by DDOH were formal enforcement actions.

- regulations involving fines up to \$10,000; and
- Emergency cease and desist orders where immediate action to protect public health or welfare is required.

The District defines its “formal” and “informal” actions differently from a “formal addressing action” that would be defined under the *HPV Policy*. Under the *HPV Policy*, all actions above except the Directive may be considered a “formal addressing action,” provided they are enforceable, include appropriate injunctive relief or a compliance schedule, and include an appropriate penalty.

File Review Metric 5A: Completed formal State enforcement actions were associated with five of the eight HPV files reviewed. Four of these were addressed in FY2005 and one was addressed in FY2006. All five formal actions in FY2005 and FY2006 either involved the source returning to compliance before the violation was addressed or resulted in returning the source to compliance.

The sixth HPV was addressed informally because no settlement was reached regarding the liability of the new owner or manager of the source. The informal agreement included construction of new boilers (related to the original violation, but called a “SEP” by the District in this instance and called “Beneficial Environmental Projects” in AFS) and is still not completed. The Review Team considers the informal addressing action to be inappropriate.

File Review Metric 5B: Four out of five formal or informal enforcement responses taken in FY2005 resulted in returning the source to compliance or the source returned to compliance before the violation was addressed.

The fifth informal response in FY2005 has not resulted in the source returning to compliance because the “SEP” described above is not complete. Since this response is informal, no compliance schedule exists.

All formal enforcement actions taken in FY2006 did in fact return the source to compliance before the violation was addressed or included a schedule to return them to compliance.

Citation of information reviewed for this criterion:

- *The Timely & Appropriate Enforcement Response to HPVs*, June 23, 1999
- District of Columbia *Enforcement Guidelines* compiled by the Office of Enforcement Compliance and Environmental Justice and Compliance and Enforcement Branch, Air Quality Division, March, 2003.

The Evaluation Team reviewed eight files where violations were found and enforcement was completed or underway.

Element 6 - The degree to which a State takes timely and appropriate enforcement actions, in

accordance with policy related to specific media.

Clean Air Act Source Universe Information	Number of Enforcement Actions
State formal enforcement actions	4 ¹⁶ at major and SM sources in FY2005.
Number of enforcement files for review	8 files where violations were originally reported, of which seven are HPVs, plus files for four new HPVs found through the SRF

Data Metrics:

		National Average	DDOE
Metric 6a	% sources that were HPVs for at least one month in FY2005 and that remained unaddressed >270 days – State and joint-lead	55.8%	57.1% ¹⁷
Metric 6b	% of State-lead HPV pathways that exceeded the 270-day timeliness threshold in FY2005.	64.5%	60% ¹⁸
Metric 6c	All State formal actions taken during FY2005 at HPVs	NA	4 ¹⁹ by DDOH or jointly at HPVs

File Review Metrics:

Metric 6d	% of HPVs addressed or resolved appropriately	9/10 = 90% ²⁰
Metric 6e	% of HPVs addressed within 270 days	4/10 = 40% ²¹

¹⁶Metric 12h

¹⁷Original metric was an error. Actual numerator (4/7) . Actual denominator includes all four sources in the numerator plus 3 additional.

¹⁸Original metric listed 100%. Final metric is 6/10 = 60%

¹⁹Original metric lists 3 state formal actions taken in FY2005. However, the action taken at one facility was never signed by the source, so it is not actually a formal enforcement action. Thus, only two of the three enforcement actions taken in FY2005 by DOH were formal enforcement actions.

²⁰The FY2005 violation at one source is considered to not be addressed appropriately. Initially, there were 2 violations at 2 sources thought to also be HPVs that were not addressed appropriately, but the Review Team recently determined that these are not HPVs.

²¹There were six FY2005 violations which the Review Team believes are HPVs are considered to not be addressed in a timely manner.

Findings:

As defined in the *HPV Policy*, an “addressing action” is a legally enforceable and expeditious administrative or judicial order or a referral to the state attorney general or Department of Justice for an adjudicatory or judicial action. As discussed in Element 3, administrative (“informal” as defined in the District but counted as “formal” in this SRF) responses to discovery of a violation may include a Directive, a NOV, or a Notice of Non-Compliance with a Consent Agreement, and judicial responses include a Notice of Infraction, a Cease-and-Desist Order, or court proceedings to enforce a Consent Agreement.

As shown in data metric 12h, in FY2005 DDOH completed four formal enforcement actions, either as State or joint-lead enforcement actions. Five HPVs are listed in AFS as “addressed” in FY2005. The fifth HPV was addressed with an informal enforcement action in FY2005. No formal actions were reported against violators that were not HPVs.

Metrics 6a & 6b: **57.1 percent** of DDOE’s State or joint-lead source HPVs in FY2005 remained unaddressed for more than 270 days (see Metric 6a), compared to a national average of 55.8 percent. **60 percent** of the District’s HPV pathways that were State or joint-lead HPVs at any time in FY2005 were not addressed within the 270-day time line specified in the *HPV Policy* (See Metric 6b), compared to a national average of 64.5 percent.

Although “addressing actions” must be legally enforceable actions and draft agreements are not enforceable, in FY2005, EPA and the DDOH had agreed that an “addressing action” in the District may include a draft consent agreement. Thus, the period between when a formal enforcement action was initiated and then settled was not included in AFS as a period when the source is “unaddressed. In the spring of 2006, as a result of the CMS Evaluation, EPA and the DDOE agreed that only final actions will be considered “addressing actions.”

Based on the above analysis and despite the District’s timeliness in addressing HPVs, as reported, being approximately on par with the national average, DDOH’s timeliness in addressing HPVs appears to be a significant problem. The average number of days after Day Zero to address the “addressed” (which would no longer be considered actually addressed, as discussed above) HPVs reviewed is 280 days, not much more than 270 days, but still not considered to be timely. The District is directly responsible for addressing, in a timely appropriate manner, all violations identified in the District. DDOH Air Quality Division’s *Enforcement Guidelines*, dated March, 2003, explain the framework for addressing air violations. The DDOH *Enforcement Guidelines* do not specify a timeframe for issuance of NOVs, Notices of Noncompliance or initiation of formal enforcement action after a violation is discovered. The only timeframe mentioned in these Guidelines is a statement that informal proceedings are appropriate for suspected deficiencies that can usually be corrected within 30 days. While the Guidelines do refer to EPA’s *HPV Policy*, the Guidelines do not include any special timelines for resolving HPVs.

Although the *Enforcement Guidelines* refer to the existence of the *HPV Policy*, this Guidance does not ensure that all violations that are subject to the *HPV Policy* are reported as HPVs nor that HPVs

are addressed with an appropriate formal enforcement action within 270 days of Day Zero as specified in the *HPV Policy*. In particular, the description of HPV criteria in the Guidance includes no reference to the timeline for addressing HPVs, which is set forth in the *HPV Policy*. Finally, whereas methodology for assessing penalties is described, no guidance on returning a source to compliance in a timely manner is discussed in the *Enforcement Guidelines*.

Citation of information reviewed for this criterion:

- *The Timely & Appropriate Enforcement Response to HPVs*, June 23, 1999
- District of Columbia Department of Consumer and Regulatory Affairs *Civil Infractions: Schedule of Fines and Amendments*, 16 DCMR Chapter 32, May 27, 2005
- District of Columbia *Enforcement Guidelines* compiled by the Office of Enforcement Compliance and Environmental Justice and Compliance and Enforcement Branch, Air Quality Division, March, 2003.

The Evaluation Team reviewed eight files where violations were found. CMRs for FCEs performed in FY2005 were reviewed as well as FCEs associated with the selected HPVs identified in prior years. FY2006 and FY2007 files were also reviewed where FCEs in FY2005 resulted in violations being found but not addressed in FY2005.

Element 7 - Degree to which the State includes both gravity and economic benefit calculations for all penalties, appropriately using BEN model or similar State model.

Clean Air Act Source Universe Information	Number of Enforcement Actions
State formal enforcement actions in FY2005	4 ²² total at major and SM sources, all of which address HPVs.
Number of enforcement files with formal enforcement action for review	8 files where violations were reported in FY2005, of which 7 are HPVs, plus files for three potential HPVs found through the SRF

File Review Metric:

Metric 7a	Percentage of formal enforcement actions that include calculation for gravity and economic benefit.	FY2005: 0/4 = 0 %
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²²Metric 12h

Findings:

Of the five FY2005 and FY2006 files reviewed with completed formal enforcement actions, none included a calculation for gravity and economic benefit. According to legal counsel interviewed, the District does not have statutory authority to assess penalties that include economic benefit.

The Mayor’s authority to assess fines and penalties for air quality control violations is set forth in 20 DCMR 105.2. The schedule of fines is provided in 16 DCMR Chapter 32. This schedule very clearly outlines how gravity may be considered in setting penalties, and guidance on how to assess gravity is further clarified in the Air Quality Division *Enforcement Guidelines*. The DDOH, and now the DDOE, has authority to assess penalties for each day, thus enabling DDOE to tally sizable penalties. However, DDOE’s authority is not consistent with EPA’s Penalty Policy which provides for consideration of economic benefit, along with other considerations, in calculating penalties.

Citation of information reviewed for this criterion:

- *EPA Clean Air Act Stationary Source Civil Penalty Policy (1991)*
- *District of Columbia Municipal Regulations, section 105.2 (20 DCMR 105.2)*
- District of Columbia Department of Consumer and Regulatory Affairs *Civil Infractions: Schedule of Fines and Amendments*, 16 DCMR Chapter 32, May 27, 2005
- District of Columbia *Enforcement Guidelines* compiled by the Office of Enforcement Compliance and Environmental Justice and Compliance and Enforcement Branch, Air Quality Division, March, 2003.

The Evaluation Team reviewed eight files where violations were reported in FY2005, of which seven are HPVs plus files for three potential HPVs found through the SRF.

Recommendations: (1) DDOE should institute procedures to gain statutory authority to assess penalties which are based on economic benefit as well as gravity, consistent with EPA’s *Penalty Policy*.

Action: DDOE has agreed to evaluate the feasibility of revising the penalty regulations to incorporate economic benefit.

Element 8 - Degree to which penalties in final enforcement actions include economic benefit and gravity in accordance with applicable penalty policies.

Clean Air Act Source Universe	Number of Enforcement Actions
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Information	
State formal enforcement actions	4 ²³ total at major and SM sources of which all address HPVs in FY05.
Number of enforcement files for review	8 files where violations were reported in FY2005, of which 7 are HPVs, plus files for three potential HPVs found through the SRF

Data Metrics:

		National Average or Total	DDOE
Metric 8a	No activity indicator – penalties – State	NA	4 (State-lead HPVs addressed w/ penalties in FY2005). 1 State-lead HPVs addressed w/penalties in FY2006.
Metric 8b	Penalties normally included with formal enforcement actions at HPVs in FY2005 – State and joint	79.4%	FY2005: 100% ²⁴

File Review Metrics:

Metric 8d	Percentage of final enforcement actions that appropriately document penalties to be collected	FY2005: 0/4 = 0 % FY2006: 1/1 = 100%
Metric 8e	Percentage of final enforcement actions resulting in penalties to be collected	FY2005: 4/4= 100% FY2006: 100%

Findings:

Metric 8b: All HPVs addressed in FY2005 with a formal enforcement action included a penalty. This well exceeds the national average of 79.4%. Assessed penalties for the four State-lead HPVs that were addressed in FY2005 with formal enforcement actions totaled \$8900. All of these addressed HPVs involved formal appeals, making reporting in *AFS* rather complex. It appears that the “final” penalty amount at one HPV was improperly changed in *AFS* to the appealed amount.

²³Metric 12h

²⁴Original metric was 66.7 because that incorrectly counted the enforcement action at one source as formal enforcement action and did include the two HPVs at another source. Thus, there were four formal enforcement actions for FY2005 which assessed penalties.

Metric 8d: Of the five FY2005 and FY2006 files reviewed with completed formal enforcement actions, one included well documented assessed penalties. The four FY2005 files did include some information on penalties, but no calculations were found. The Notice of Violation for the fifth file provided an explanation for the penalties assessed, but no internal notes comparing the violations to the penalty schedule were found. The absence of penalty calculation documentation in four out of five files reviewed is viewed as an area of vulnerability.

In addition to the four HPVs that were addressed in FY2005 with a formal enforcement action, one additional HPV was addressed informally with no penalties.

One informal enforcement action reviewed involved an action that is reportedly considered by DDOE personnel to include activities that are “Supplemental Environmental Projects” (“SEPs”; would be entered in AFS as “Environmentally Beneficial Expenditures”). However, this activity would not meet the definition of a SEP in EPA’s Program for a number of reasons but primarily because this activity had not been formally approved as part of a formal enforcement action.

The Air Quality Division *Enforcement Guidelines* include one page that described when a “SEP” should be part of an enforcement action. No guidance is included on how the cost of a “SEP” may be counted against a calculated penalty. DDOE personnel reported that they tell interested respondents that the District uses EPA’s SEP Policy for this purpose, but no written documents exist that outline such details for DC sources.

Citation of information reviewed for this criterion:

- *EPA Clean Air Act Stationary Source Civil Penalty Policy (1991)*
- *DDOE Bureau of Air Quality Guidelines for Identifying, Tracking, and Resolving Air Violations for Air Quality, dated March 19, 2005*
- *The Timely & Appropriate Enforcement Response to HPVs, June 23, 1999*
- *EPA Supplemental Environmental Projects Policy, March 22, 2002*
- District of Columbia *Enforcement Guidelines* compiled by the Office of Enforcement Compliance and Environmental Justice and Compliance and Enforcement Branch, Air Quality Division, March, 2003.

Recommendations:

(1) DDOE should evaluate whether the three violations that appeared at the time of the file review to be unreported HPVs are in fact HPVs. Formal enforcement should be pursued as appropriate.

Action: *One of these potential HPVs is now listed as a state-lead HPV. DDOE and EPA have*

recently determined that the other two potential HPVs do not rise to the level of an HPV.

(2) The District should correct its assessed penalties in AFS at Washington Hilton Towers I (Key Action 017) to reflect the unappealed penalty amount.

Element 9 - The degree to which enforcement commitments in the PPA/§ 105 Grant/categorical grants are met and any products or projects are completed.

Clean Air Act Source Universe Information	Number of Agreements
Performance Partnership Agreements	NA
Performance Partnership Grants	1 § 105 Grant
PPA/PPGs	NA
Categorical Grants (SEAs)	NA
Other applicable agreements (e.g. enforcement agreements)	NA
Total number of agreements	1
Number of agreements reviewed	1

Metric 9a	State agreements (PPA/PPG/SEA, etc.) contain enforcement and compliance commitments that are met.	DDOH met 7 out of 9 compliance monitoring and enforcement commitments
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Findings:

DDOE’s FY2005 Performance Partnership Grant (§ 105 Grant) lists the following compliance monitoring and enforcement commitments:

- Submit by 7/1/05 a FY 2006/2007 Compliance Monitoring Plan;
- By 12/30/04, review all relevant data resulting through 9/30/04 of the 1999 MACT Area Source Implementation Strategy and revise entries in AFS, as necessary, to ensure complete and accurate reporting of inspection information (FCE/PCE), inspection results (in compliance/out of compliance), and relevant air program (M) and subpart identification (M, N, O, T, or X) in preparation for Region III’s final report on the success of the Area Source MACT Strategy;
- Submit by 10/29/04 an annual report that identifies the compliance and enforcement

activities and accomplishments;

- By 11/1/04, identify in AFS all sources planned to be inspected for FY2005;
- Participate in quarterly Timely & Appropriate conference calls/meetings;
- Identify to EPA all sources subject to the *Timely & Appropriate Policy* within the policy's time-frames and Air Protection Division enforcement guidance;
- On a monthly basis, provide copies of NOVs and other non-compliance determinations for sources identified as HPVs during the quarterly conference calls and/or meetings. Provide copies of follow-up enforcement actions, penalty amounts, and dates paid. Also, provide the number of Supplemental Environmental Projects (SEPs) used in enforcement actions, penalty amounts mitigated, and value of SEPs;
- Report specified data elements into AFS within 45 days of completion
- Resolve actions consistent with the *Timely & Appropriate Policy*.

While the Mid-Year Report for DDOH's § 105 Grant states that AFS reporting has improved, it should be noted that there is a long history beginning in FY 2002 through FY 2004 documenting untimely and inaccurate data reporting to AFS. The FY 2003 Mid-Year Report for DDOH's § 105 Grant states that DDOH should ensure the timely and accurate entry of inspection, penalty and HPV data into AFS. The accuracy and timeliness of this data is increasingly important as it is available to the public through ECHO.

EPA communicated and documented the continuous pattern of poor quality data in Timely & Appropriate Agendas and Minutes, informal conversations, formal meetings, training sessions, and emails.

The Mid-Year Report for DDOH's § 105 Grant also expresses concern regarding lax attendance at training provided by EPA. The End-of-Year Report for the § 105 Grant states that DDOE has met its compliance monitoring and enforcement commitments.

Commitments that were met:

DDOH reviewed all relevant data resulting through 9/30/04, of the 1999 MACT Area Source Implementation Strategy and entered revisions into AFS in a timely manner. DDOH submitted its year-end report in a timely manner.

DDOH participated in four Timely & Appropriate meetings in FY2005.

Commitments that were not met:

In most cases, DDOH met the § 105 Grant requirement to report to AFS within 45 days. However, the Review Team found some late data entry. This is discussed in Data Element 10. The Review Team also identified some data accuracy and data completeness problems. These are discussed in Data Elements 11 and 12, respectively. According to OEPR staff, data accuracy was identified as a significant problem around Mid-Year Review time; to address this problem, Region III provided a several-day AFS training session to DDOH personnel in September of 2005. The CMS Evaluation states that all stack tests were not being entered, that some minor sources were misclassified as megasites, and that the dates Title V annual certification reports were reviewed were being entered in AFS as the date “received.”

Nine of the 13 HPVs reviewed were identified or reported to EPA more than 30 days after violation discovery (see metric 4E). This does not conform with the schedules set forth in the *HPV Policy*.

57.1 percent of DDOE’s State or joint-lead HPVs in FY2005 remained unaddressed for more than 270 days (see discussion under Program Element 6). Such a high percentage of late addressing actions is approximately equal to the national average. However, this does not conform to the *Timely & Appropriate Policy* and is viewed as a significant vulnerability. Concern about HPVs not being addressed in a timely manner were not communicated in EPA’s FY2005 grant close-out. However, this concern was identified in the CMS report which covered FY 2005.

After FY2005, Region III State and local agencies set forth their annual commitments in the form of a Memorandum of Understanding (MOU). The § 105 Grant does not include air enforcement commitments after FY 2005.

Commitments partially met:

DDOE submitted its FY2006/2007 Compliance Monitoring Plan on schedule. DDOH met 88.6 percent²⁵ of its FY2004 and FY2005 inspection commitments at major sources. However, the file review showed that some compliance monitoring activities that are reported as FCEs do not meet that definition of an FCE, so the District probably in fact complete less than 88.6 percent of its CMS commitments. Please note that the CMS Plan is a two-year plan; FCEs scheduled during the two-year period may be scheduled for year one or year two and flexibility exists to switch sources between years, provided the CMS Plan is updated accordingly.

Citation of information reviewed for this criterion:

- DDOH’s FY2005 § 105 Grant
- EPA’s FY2005 § 105 Grant Mid Year and Final Reports for FY2005 (compliance monitoring and enforcement portions only)

²⁵Metric 1a

- § 105 Grant monitoring files maintained by the EPA State Liaison Officer
- Timely and Appropriate Meeting minutes
- 2001 Information Collection Rule.

Recommendations:

(1) The process that was agreed-upon in FY2005 for reporting of HPVs as addressed did not conform to the *HPV Policy* and resulted in inaccurate reporting of when and how HPVs are addressed. DDOE should continue to only report final enforcement actions into AFS.

Action: DDOE agreed in mid-2006 to start reporting final enforcement actions as addressed instead of proposed enforcement agreements.

Element 10 - Degree to which the Minimum Data Requirements are timely.

Data Metric:

		National Average	DDOE
Metric 10a	Percent of HPVs that are entered to AFS more than 60 days after the HPV designation - State only	56.40%	44.4%

File Review Metric:

Metric 10r	HPVs are identified within 45 days after inspection, review, etc.
	FCEs are entered into AFS within 90 days of inspection date
	Final stack test results are entered into AFS within approximately six months of conduct of test

Findings:

MDRs represent the minimum amount of data that EPA believes is necessary to manage the national air stationary source compliance monitoring and enforcement program. HPV pathways, stack test results, Title V Annual Certification reviews and compliance status are examples of the 26 MDRs. The FY2005 § 105 Grant required that DDOE enter or upload the MDRs into AFS.

HPVs - As shown in Metric 10a, **44.4 percent** of all State-lead HPVs entered into AFS during FY05

were entered into AFS more than 60 days after the HPV was identified. While this is better than the national average of 56.4 percent, it should be noted that there was one HPV whose day zero was in FY 2005 but was not entered into AFS until FY 2007. In addition, 42.9 percent (3/7) of the HPVs reviewed as part of the regional file reviews were entered into AFS more than 60 days after the HPV was identified.

CMS Plan Updates – CMS Plans may be updated at any time during the fiscal year when changes in scheduling of inspections may occur. DDOH substantially changed its scheduling from an original Plan, where approximately half of the major source universe would be inspected each year, to an actual FCE completion of approximately three-fourths of the CMS universe during the first year of the FY2004/FY2005 CMS cycle. Timely & Appropriate minutes show that EPA was informed about this late in FY2004. Actual changes to the CMS Plan in AFS were not made in a timely manner.

Stack Testing - Timely entry of stack test data into AFS is viewed as a significant vulnerability.

DDOH's FY2005 § 105 Grant required stack testing events to be entered into AFS within 60 days. The current MOU (effective October 1, 2005) also requires stack testing events to be entered into AFS within 60 days. Stack test results must be entered within the next 60 days, so that results are available in AFS within 120 days of each stack test date.

A total of four FY 2005 stack tests in the District were reported in AFS. As of November 29, 2006, the results for one stack test which was conducted on December 7, 2004 were not entered into AFS. EPA considers this lag time in entering stack test data to be a significant vulnerability.

In DDOH and now DDOE, stack testing activities are primarily the responsibility of the individual inspector assigned to each plant. Each inspector is responsible to review protocols, observe stack tests, and review stack test reports. The District does not conduct its own stack tests. Other than the new EPA Stack Testing Guidance, no written procedures related to stack test oversight exist in the District.

Only three facilities are currently required to perform annual stack tests. Thus, DDOE has indicated that the workload related to oversight of stack tests is manageable.

Compliance Status - See Data Element 11.

Citation of information reviewed for this criterion:

- CMRs for FCEs performed in FY2005 were reviewed as well as FCEs associated with the selected HPVs identified in FY2005. Additionally, to evaluate timely and appropriate enforcement, FY2006 files were reviewed where FCEs in FY2005 resulted in violations being found but these were not addressed in FY2005. Additionally, two PCE reports associated with HPVs identified in FY2005 were reviewed.

- FY2005 DDOE § 105 Grant
- MOU between DC Department of Health and US EPA Region III Air Protection Division (August 2005).

Element 11 - Degree to which the Minimum Data Requirements are accurate.

Clean Air Act Source Information	Compliance Monitoring
Full Compliance Evaluations - Major and SM sources	FY2005: 8 FCEs ²⁶
Partial Compliance Evaluations	FY2005: 26 ²⁷
Total Number of Evaluations	FY2005: 34
Number of inspection files for review	19 ²⁸

Data Metrics:

		National Average	DDOH (FY2005)
Metric 11a	# sources with HPVs/ # sources in violation - operating major sources only – combined	97.10%	100.0% ²⁹
Metric 11b1	% of stack tests conducted & reviewed without pass/fail results code entered to AFS - State-only	7.7%	25.0%
Metric 11b2	# of Federally-reportable sources with stack test failures - State-only		0

File Review Metric:

Metric 11c	Accuracy of MDRs	13 out of 19 files reviewed (68%) and compared to AFS showed at least minor errors in AFS
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Findings:

²⁶Metric 12d2

²⁷Metric 12d3

²⁸ Only 19 of the 20 files reviewed were compared against AFS for accuracy

²⁹Original metric was 114.3%. However, one source that was an HPV during FY2005, was not listed as out of compliance in FY2005 and should have been included in the denominator. The final metric is 8/8 = 100%.

The Review Team found some significant data accuracy problems. These include:

- inaccurate reporting of FCEs. For example, inspections at two facilities were reported as FCEs instead of as PCEs;
- CMS Class was found to be inaccurate in several instances;
- An inspection at one facility was inaccurately reported as an FCE in FY2006. Because a CMR was never written, an FCE was not conducted. See Element #1 for additional details;
- All violations are required to be entered into AFS. Since a violation was found during the PCE conducted at one plant in FY2005, the PCE should have been entered into AFS;

Minor Discrepancies - Of the 19 files reviewed for data accuracy, general information on the plant was inconsistent for four sources. For example, sometimes the corporate or owner addresses were used instead of the required plant physical address and the correct file name was in question. In another instance, one minor source was listed in AFS as a synthetic minor source.

In several instances, the Review Team found documents in AFS that were not included in the files provided during the Review or vice versa. Subsequently, copies of these documents were provided to the Review Team.

Unknown Compliance Status – As mentioned in the discussion under metric 1g, six sources were listed in AFS with an “unknown” compliance status as of 11/17/06. See the discussion in Element # 1 for additional details.

Compliance Status of Violating Sources – As mentioned in the footnote to data metric 11a, one HPV source was listed in AFS as “in compliance” during the period while the source was an HPV.

Title V Annual Certifications – Two Title V annual certifications not entered into AFS as reviewed by the District in FY2005 were data errors. One certification was submitted late after obtaining an extension and reportedly was reviewed by the District and was not entered in AFS as reviewed at the time the metrics were retrieved. A second source had become a minor source during the CMS ‘04/05 cycle and had not been removed from the CMS Plan, and was still listed as due to submit a Title V annual certification report. In addition, the CMS Evaluation found Title V annual certification reports reviewed entered into AFS with the date received instead of the later date actually reviewed.

Addressing Actions: Although “addressing actions” must be legally enforceable actions and draft agreements are not enforceable, in FY2005, EPA and the DDOH had agreed that an “addressing action” in the District may include a draft consent agreement. Thus, the period between when a formal enforcement action was initiated and then settled was not included in AFS as a period when the source is “unaddressed.” In the spring of 2006, as a result of the CMS Evaluation, EPA and the DDOE agreed that only final actions will be considered “addressing actions.”

In addition to the four HPVs that were addressed in FY2005 and FY2006 with a formal enforcement

action, one additional HPV was addressed informally (i.e., is listed as an order in AFS but should be “returned to State”) with no penalties.

Stack Test Results:

Data Metric 11b1: This metric shows that one out of four FY2005 stack test results were not entered into AFS as pass (“pp”) or fail (ff”) at the time the data was downloaded (11/17/06). DDOE’s FY2005 § 105 Grant required stack testing results to be entered into AFS within 180 of the stack testing event. The current MOU (effective October 1, 2005) also requires stack testing events to be entered into AFS within 60 days. Stack test results must be entered within the next 60 days, so that results are available in AFS within 120 days of each stack test date. Given that the fact that is has been almost two years since the stack test was conducted and there are still no results in AFS, this appears to be a potential vulnerability. The Review Team did not determine why this problem occurred in FY2005.

Data Metric 11b2: Zero stack test failures in FY 2005 are entered as “results” in AFS. Since DDOE reported zero failed stack tests as HPVs in FY2005, the Review Team could not determine if there is a potential vulnerability of identifying stack test failures as HPVs.

Finally, it should be noted that the two GSA Central Heating Plant HPVs with Day Zeros of 5/19/02 and 2/5/03 in data metric 10a have been subsequently changed in AFS. Currently, the Day Zeros for these HPVs are 10/29/04 and 11/29/04 respectively. These represent a change in day zero of at least two fiscal years.

Citation of information reviewed for this criterion:

- *The Timely & Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs)*, June 23, 1999
- *Final Clean Air Act National Stack Testing Guidance* dated September 2005
- *2001 Information Collection Rule.*

CMRs performed in FY2005 and FY2006 were reviewed as well as CMRs associated with the selected HPVs identified in prior years as appropriate. Where no FY2005 or FY2006 CMRs were available (one instance), the FY2004 CMR was reviewed. Additionally, to evaluate timely and appropriate enforcement, FY2006 and FY2007 files were reviewed where FCEs in FY2005 resulted in violations being found but these were not addressed in FY2005. The Review Team also looked for FY2007 enforcement files where a violation was found but not addressed in FY2006 but no such enforcement files were found.

For the metric data, EPA reviewed the following in AFS for FY2005:

- HPV data,

- Compliance data
- Title V Annual Certification data
- Stack Test data
- “Class” data
- NOVs issued.

Recommendations: (1) The Review Team believes the various data errors described above are due primarily to a lack of understanding, among District personnel, of the *CMS Policy* and *HPV Policy*, inadequate skills in entering AFS data, absence of SOPs for District personnel to provide accurate, timely, and complete information to the AFS data steward, and absence of quality control procedures to validate data that is entered into AFS. New management should address these deficiencies.

Action: *A new AFS Data Steward has been assigned to manage AFS. DDOE agrees to address training needs and develop SOPs that are expected to improve data quality.*

Element 12 - Degree to which the Minimum Data Requirements are complete, unless otherwise negotiated by the Region and State or prescribed by a national initiative.

Data Metrics:

Metric 12a1	AFS operating major sources	35
Metric 12a2	AFS operating major sources w/ air program code = V	35
Metric 12b1	Major sources per <i>OTIS</i>	35
Metric 12b2	Synthetic minor sources per <i>OTIS</i>	0 ³⁰
Metric 12b3	NESHAP minor sources per <i>IDEA</i>	0
Metric 12d1	Sources with FCEs in FY2005 (major and SM operating sources, State-only)	8
Metric 12d2	Total FCEs completed in FY2005 (major and SM operating sources, State-only)	8
Metric 12d3	Number of PCEs reported to AFS in FY2005	26 - Informational only
Metric 12e	# of sources that had violations at any point during FY2005 – combined	86, of which 7 are major sources
Metric 12f1	# of NOVs issued in FY2005 - State only	5

³⁰ Original metric lists one source as a synthetic minor, but this source was in fact a minor source and was incorrectly classed in AFS

Metric 12f2	# of sources with NOV's in FY2005 - State-only	4
Metric 12g1	# of new HPVs (pathways) in FY2005 - State-only	9
Metric 12g2	# of new source HPVs in FY2005 - State-only	6
Metric 12h1	# of State formal actions issued in FY2005, major and synthetic minor sources	4 ³¹
Metric 12h2	# of sources with State formal actions in FY2005, major and synthetic minor sources	4 (see footnote for 12h1)
Metric 12i	Total dollar amount of State-assessed penalties in FY2005 - State-lead HPVs	\$8900 ³² for 4 State-lead HPVs addressed in FY2005.
Metric 12j	# of major sources missing CMS Policy applicability	1 major source w/o CMSC field

Findings:

The following MDRs entered by DDOE appear to be incomplete:

- results for one stack test (see discussion under Program Element 11)
- completion of Title V Annual Certification reviews (see discussion under Program Element 11)
- compliance status (see discussion under Program Element 11)
- identification of one HPV (see discussion under Program Element 4).

Metric 12 – Assessed penalties entered by DDOE appear to be incomplete. In one instance where penalties were assessed in FY2005, the appealed penalty amount was entered instead of the amount assessed with the final addressing action. Actual assessed penalties for all FY2005 addressed HPVs have been paid in full.

Metric 12j - AFS, as of February, 2007, listed one major source with a blank CMS Source Category (CMSC) field. This source was designated by the District as a “major” Title V source in FY2005 but the CMSC field for this source was not accurately entered.

Stack Tests - In addition, the CMS Evaluation states that three stack tests were found in that file review that had not been entered into AFS.

³¹ Original metric was 3, but this included a facility, where the enforcement action was not formal, and did not include two HPVs at another source.

³²Original metric lists \$2600 but this represents the calculated penalty and not the final, assessed penalty for two HPVs and does not include penalties for two HPVs at another source.

Citation of information reviewed for this criterion:

- *April 2001 CMS Policy*
- DDOE's § 105 Grant files
- EPA's § 105 Grant Report for FY2005 (compliance monitoring and enforcement portions only).

Recommendations:

- (1) See Recommendations in Element 8 regarding entry of "final" penalties that are appealed.
- (2) The one source that was missing a CMSC field should be entered into the current CMS Plan.

Action: *Done. This source is now entered into the District's CMS Plan.*

**DC State Review Framework
Resource Conservation and Recovery Action (RCRA)**

Introduction

The RCRA portion of the DC State Review was conducted by staff from the Office of Compliance, Enforcement and Environmental Justice (OECEJ) in consultation with the RCRA Enforcement Branch. In order to adequately evaluate inspection coverage, timely and appropriate enforcement criteria and penalty calculations, the files chosen for review were for facilities that received an inspection, an informal and/or formal enforcement action during Fiscal Year 2005. The reviewers originally requested 28 files. The DC District Department of the Environment’s (DDOE) RCRA Enforcement Staff was not able to locate three of the requested files. Two additional files were not included in this review because the inspection and subsequent enforcement were EPA actions.

DDOE uses EPA’s Enforcement Response Policy as its guidance for timely and appropriate enforcement.

In preparation for the SRF, the FY-05 mid-year and end-of-year reports were reviewed. A significant problem regarding DDOE’s enforcement capability was discussed in this report which has an impact on this review as well. According to the FY-05 mid-year report, DC’s Department of Health, Environmental Health Administration (Agency name has changed), and during the May 17 mid-year review meeting DOH stated “it does not have the legal capacity to fully carry out its authorized Subtitle C and Subtitle I enforcement programs.” DOH stated that there is not a position within the Department of Health and the Attorney General’s Office dedicated to providing legal support to the District’s Hazardous Waste and Underground Storage Tank Program. In fact, the District’s Attorney General has testified before City Council that his office does not have funding for environmental enforcement.” This problem was discussed again during the FY-05 end-of-year review. The end-of-year report suggests that DC “refer select enforcement cases to EPA.”

Element 1 – Degree to which State program has completed the universe of planned inspections (addressing core requirements and Federal, state, and regional priorities).

Inspection coverage for operating Treatment, Storage, and Disposal Facilities FY-05

DC Only	National Average State Only	DC and EPA Combined	National Average Combined
0%	90.8%	100%	94.1%

Annual inspection coverage Large Quantity Generators

DC Only	National Average State Only	DC and EPA Combined	National Average Combined
28%	16.9%	34%	18.1%

Five year inspection coverage Large Quantity Generators

DC Only	National Average State Only	DC and EPA Combined	National Average Combined
47%	41.3%	66%	44.4%

Five year inspection coverage Small Quantity Generator

DC Only	National Average State Only	DC and EPA Combined	National Average Combined
61%	8.8%	63%	9.3%

DC has exceeded national averages for inspection coverage in all categories with the exception of inspecting TSDs. There is one TSD facility in DC. EPA conducted the inspection at this TSD facility and addressed the violations discovered during the inspection in FY-05.

Element 2 - Degree to which inspection reports and compliance reviews document inspection findings, including accurate description of what observed to sufficiently identify violations.

Inspection reports were missing in all of the 23 files reviewed. Thirteen of the files contained checklists. DDOE uses the Small Quantity Generator checklist or the Large Quantity checklist which are one to two pages. Narratives containing observations or findings are not included on the forms, nor are there any pictures. Five files contained no reports, checklist or any correspondence regarding the inspection or a determination of findings. Eight files contained inspection checklist with no narratives but did have a copy of the NOV sent to the facility. All of the NOVs listed the violations discovered during the inspection. Six of these 8 NOVs had the inspector’s observations regarding the violations sited in the NOV. Four files contained letters to the facility, either acknowledging a change in generator status or indicating “in compliance”, but no report or checklist. Four files had the checklist from the inspection and a letter to the facility confirming change in generator status. One file contained a checklist from the inspection and a memo to the file with a brief narrative describing the findings during the inspection.

Recommendation: None of the files reviewed contained full and complete inspection reports. All inspections should be documented in an inspection report. The inspection report should include appropriate checklist, narrative describing observations at the facility including but not limited to the type of operations, conditions of hazardous waste management containers and practices, violations and/or concerns observed, how long the violation has been occurring, and pictures.

Element 3 – Degree to which inspection reports are completed in a timely manner, including timely identification of violations.

There were 13 files with checklists which contained the date of the inspection. The dates on the checklists for these files matched the date of inspection listed in the data base for the date of inspection. The checklist is completed on the day of the inspection. There were five files with no report or checklist that contained an NOV which had the date of the inspection listed. The date on the NOV matched the date of inspection in the database. These NOVs were issued within one to three weeks of the inspection. However, there is no way to determine if all violations discovered during the inspection were addressed comprehensively without a copy of a complete report. There were 15 NOVs issued notifying facilities of violations discovered during the inspection and all were issued in less than 30 days from the date of inspection.

Recommendation: The identification of violations documented on the checklist that were included in some of the files were timely, however, the checklist itself does not constitute an inspection report. Further, inspection reports should be part of the file to assure all violations are identified and addressed in a timely manner.

Element 4 – Degree to which significant violations (e.g. significant noncompliance and high priority violations) and supporting information are accurately identified and reported to EPA national database in a timely manner.

	DC	National
SNC identification rate (per 100 inspected facilities)	2.4%	3/2%
Number of SNCs identified in the State in FY05	1	571
SNC reporting indicator (percentage of formal actions taken during FY-05 that received prior SNC listing)	100%	54%

DC performed 42 inspections in FY-05. One facility was identified as a Significant Non-Complier (SNC) and addressed with a NOV and a Notice of Infraction which included a penalty. There were 21 facilities reporting violations and 17 NOVs issued in FY-05. The review team evaluated 18 files containing checklist and/or NOVs to determine if SNC were being accurately identified and reported in a timely manner. DC identified one SNC which the review team agrees was accurately identified. However, there were 6 files review in which the reviewed team found could be SNC violations that were not identified as such. Making a SNC determination is difficult because none of the files reviewed contained inspection reports with a narrative explaining the circumstance of the violations or the inspectors' observations. The reviewers made the following SNC determinations with the information provided on the checklist and NOVs.

1. Facility failed to obtain a hazardous waste identification number, stored hazardous waste greater than 180 days without a permit, and failed to label and date storage containers.
2. Facility failed to date and label hazardous waste containers, failed to make hazardous waste determination, stored hazardous waste greater than 180 days without a permit.
3. Facility to make a hazardous waste determination, failed to date storage container which could have been in storage for greater than 180 days, and was unable to demonstrate compliance with used oil transportation regulations.
4. Facility store hazardous waste for greater than 90 days without a permit, failed to label and date hazardous waste containers, and failed to make hazardous waste determinations.
5. Facility failed to mark hazardous waste containers with accumulation start date, failed to label two containers as hazardous waste, a container of hazardous waste did not have secondary containment, a container of hazardous waste was stored for greater than 90 days without a permit and incompatible waste were stored together in a cabinet.
6. Facility failed to have accumulation start date on containers of hazardous waste, some containers did not have hazardous waste labels, containers of liquid hazardous waste did not have secondary containment, manifest were not available for inspection, used oil had spilled into secondary containment unit was not properly managed and a verbal immediate cease and desist order was issued for a fluorescent bulb crushing unit.

Recommendation: Inspection reports should contain sufficient information about the violations to make an appropriate decision regarding whether SNC exists. Additionally, these violations should be discussed with EPA during your regular oversight calls in order to assure the SNC violations are being identified, reported, and addressed in a timely and appropriate manner.

Element 5 – The degree to which state enforcement actions include required corrective complying actions (injunctive relief) that will return facilities to compliance in a specific timeframe.

All of the NOV's that we reviewed contained boiler plate language requiring the respondent to certify that corrective actions have been taken and supporting documentation provided within 14 days of receipt. Two NOV's contained "compliance directives." Compliance directives explained exactly what the facility had to do to return to compliance for each violation listed.

Recommendation: Include required corrective complying actions/injunctive relief in all formal and informal enforcement actions.

Element 6 – The degree to which state takes timely and appropriate enforcement actions in accordance with policy relating to specific media actions.

As stated in element #3, the state issues NOVs in less than 30 days of the inspection. However, in element #4 the reviewers found six instances where the violations could have been identified as SNC, and according to EPA’s Enforcement Response Policy which guides DC, SNC violations should be addressed with a formal enforcement action. The one SNC identified was addressed through a NOV and a Notice of Infraction issued under separate cover with a \$4,010 fine.

Recommendation: The RCRA enforcement program mentioned in the end-of-year report that DC had a deficiency in identifying SNCs. According to the FY-05 mid-year report DC did not have the legal capacity to fully carry out its authorized Subtitle C and Subtitle I enforcement programs. During FY-05 DOH did not have a position within the Department of Health and the Attorney General’s Office dedicated to providing legal support to the District’s Hazardous Waste and Underground Storage Tank Program. DC and EPA should have more thorough discussion during their monthly/quarterly enforcement calls to assure that SNC violations are being identified and reported in a timely manner, as well as assuring that SNC violations are being appropriately addressed.

Element 7 – The degree to which the state includes both gravity and economic benefit calculations for all penalties, appropriately using the BEN model of consistent state policy.

There was one SNC identified in FY-05. The initial response was an informal action (NOV). The NOV in FY-05 was for the repeated violations. The NOV informs the facility that the Civil Infraction to submit a response to this \$1,000 in addition to any penalty for the citations in this Notice. The Notice of Infraction was a standard form with a \$4,010 penalty. A penalty was assessed on the form for a “fine for infraction” and “statutory penalty if applicable”. The file did not contain a penalty calculation or explanation for the penalty assessed in the file. There were no formal enforcement actions in FY-05.

Recommendation: All formal enforcement actions should contain penalty calculations which include gravity and economic benefit in accordance with applicable penalty policy.

Element 8 – The degree to which penalties in formal enforcement actions include economic benefit and gravity in accordance with applicable penalty policies.

There were no formal enforcement actions taken in FY-05. For the one SNC addressed in FY-05, DOH issued a NOV informing the facility that the Civil Infraction to submit a response to this \$1,000 in addition to any penalty for the citations in this Notice. The Notice of Infraction was a standard form with a \$4,010 penalty. A penalty was assessed

on the form for a “fine for infraction” and “statutory penalty if applicable”. There was no penalty calculation or explanation for the penalty assessed in the file.

Recommendation: All formal enforcement actions should contain penalty calculations which include gravity and economic benefit in accordance with applicable penalty policy.

Element 9 – The degree to which enforcement commitments in the PPA/PPA/categorical grants (written agreement to deliver a product/project at a specified time) are met and any products are completed.

DC met its compliance and enforcement commitments for FY-05.

Element 10 – The degree to which the Minimum Data Requirement are timely.
Integrity of SNC data (timely entry)

DC identified one SNC during FY-05. An inspection was conducted on 7/22/05 and DC entered the SNC determination into the data base on 7/26/05.

DC identified one SNC which the review team agrees was accurately identified. However, there were 6 files review in which the reviewed team found could be SNC violations that were not identified as such. Making a SNC determination is difficult because none of the files reviewed contained inspection reports with a narrative explaining the circumstance of the violations or the inspectors’ observations.

Element 11 – Degree to which minimum data requirements are accurate.
Integrity of SNC data (Correct entry of SNC determination date) DC identified one SNC during FY-05. An inspection was conducted on 7/22/05 and DC entered the SNC determination into the data base on 7/26/05. DC identified one SNC which the review team agrees was accurately identified. However, there were 6 files review in which the reviewed team found could be SNC violations that were not identified as such. Making a SNC determination is difficult because none of the files reviewed contained inspection reports with a narrative explaining the circumstance of the violations or the inspectors’ observations.

Element 12 – Degree to which the minimum data requirements are complete unless otherwise negotiated by the region and state or prescribed by a national initiative.

OECEJ provided the State Review Framework metrics to DDOE’s RCRA Enforcement Program on December 6, 2006. They reported no discrepancies for the element 12 metrics.

The following comments from this report apply to metrics 12(e) through 12(g):
As stated in element #3, the state issues NOV’s in less than 30 days of the inspection. However, in element #4 the reviewers found six instances where the violations could have been identified as SNC, and according to EPA’s Enforcement Response Policy

which guides DC, SNC violations should be addressed with a formal enforcement action. The one SNC identified was addressed through a NOV and a Notice of Infraction issued under separate cover with a \$4,010 fine.

August 31, 2007
State Review Framework
Direct Implementation Region 3 NPDES Programs in
The District of Columbia for FY 2005

Review Place and Date

Region 3 Philadelphia, Pennsylvania

December 12, 2006

EPA Evaluators:

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Overview and Summary

Introduction

This is OECA's report for the State Review Framework review of Region 3's direct implementation of the CWA NPDES enforcement and compliance program in the District of Columbia. The review team conducted the on-site review at the Region 3 offices in Philadelphia, Pennsylvania on December 12, 2006. The review is based on FY 2005 data, which was the most complete data available at the time of the review.

Review Process

Prior to the on-site review, the data metrics were shared with Region 3 on November 16, 2006. The review team conducted a review of the data metrics and entered into a dialogue about the data metrics with the Region 3 management and staff. The main issue was to determine the correct number of inspections conducted by Region 3 and by the District of Columbia Department of the Environment. It was verified that there were four major source and eight non-major source inspections, and no enforcement

August 31, 2007
State Review Framework
Direct Implementation Region 3 NPDES Programs in
The District of Columbia for FY 2005

actions concluded in the District in FY 2005. On November 24, 2006, the review team sent the preliminary data findings to the Region for their comments. The team asked the Region to verify the data metrics and bring potential issues to the attention of the review team. These data issues were discussed during the December 12th visit. The Region also provided written responses to some of the data issues. The responses to the data metric issues and the data from the on-site file reviews are included in the report findings below.

Organizational Structure

Region 3's direct implementation of the NPDES program in the District of Columbia is the responsibility of the Office of NPDES Permits and Enforcement in the Water Protection Division (WPD). NPDES enforcement and compliance assurance responsibilities are shared with the Office of Enforcement, Compliance, and Environmental Justice (OECEJ). The Office of NPDES Permits and Enforcement manages the overall program activities and conducts some inspections. The Office of Standards, Assessment, and Information Management is responsible for data entry into the PCS and ICIS/NPDES databases. The Enforcement and Compliance Assistance Branch of OECEJ has a cadre of inspectors at the Fort Meade field office who conduct a number of NPDES inspections in the District.

The District Department of the Environment (DOE) participates in the implementation of the NPDES program, although they do not have program authorization. The DOE Watershed Protection Division conducts inspections and takes informal enforcement actions in the form of Notices of Violation (NOVs). The DOE was created in 2005 in order to centralize environmental programs in the District. These functions were previously in the Department of Health. After this reorganization, many of the experienced water compliance staff remained with the Department of Health, leaving the DOE short of trained personnel. The Region 3 Water Protection is providing technical support and training to new DOE staff.

The DOE and the WPD are working together and have developed a Team Work Plan for 2007 to assess the NPDES workload and to decide how to manage that work between the two organizations.

File Selection

In FY 2005, there were 119 sources in the CWA universe – five major sources, 10 non-major NPDES sources, and 104 non-NPDES sources. During that year, EPA conducted four inspections at major sources and DOE conducted eight inspections at non-major sources. The inspections conducted by the DOE could not be located in the file room. Also in FY 2005, no enforcement actions were concluded during the year. Thus, there was a universe of only 12 files. After consultation with Regional staff, it was

August 31, 2007
State Review Framework
Direct Implementation Region 3 NPDES Programs in
The District of Columbia for FY 2005

determined that five of the inspections were conducted by EPA. The review team selected those five files to review.

Summary of Findings

- 2005 was a transition year for both Region 3 and the District. There was a reorganization of the Region 3 water office. The District of Columbia reorganized the environmental program into the Department of the Environment.
- Inspection coverage of NPDES majors is above the national average.
- Inspection reports were not well managed. DOE inspection reports were lost and not available for the review. However, these inspection reports were later found bundled in an NPDES file that was under review.
- Not all inspection reports indicate that potential violations were followed-up on.
- Reports were found in the files that had not been reviewed by management nor reported into PCS.
- There is coordination between Region 3's water program and DOE on implementation of the permit and enforcement and compliance assurance program.

Summary of Recommendations

- Region 3 needs to inspect 100% of major NPDES sources in the District annually.
- Region 3 needs to finalize and document an SOP writing and managing inspection reports, including managing inspection data in ICIS-NPDES, ensuring that all inspection reports are completed in a timely manner as specified in the CWA EMS and documented in ICIS-NPDES, and that potential violations are followed-up on.
- Region 3 needs to address SNC in a timely and appropriate manner.

<i>Section 1: Review of State Inspection Implementation</i>
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- 1. Degree to which state program has completed the universe of planned inspections/evaluations (covering core requirements and federal, state, and regional priorities) is completed.**

Findings:

Metric 1a – 80 % of all major CWA NPDES sources in the District of Columbia (4 of 5) were inspected by EPA Region 3 and the DOE in FY 2005. District inspectors often accompany the EPA inspector, and three of the FY 2005 inspections were joint inspections. The total EPA/State inspection coverage is higher than the national average of 67.7% and less than the national goal of 100%.

August 31, 2007
State Review Framework
Direct Implementation Region 3 NPDES Programs in
The District of Columbia for FY 2005

Metric 1b -- 80% of non-major NPDES sources in DC (8 of 10) were inspected in FY 2005. These were all DOE inspections. The Region and DOE are exceeding that 20% per year informal benchmark (one inspection within a permit cycle) for inspecting NPDES non-majors.

Metric 1.c. – There are 104 NPDES sources not captured under metrics 1a and 1b. During FY 2005, inspections were not conducted at these sources. The Region explained to the review team that from 1999 to 2001, these facilities, which are minor NPDES unpermitted and storm water sources, were investigated under the Anacostia Storm Water Initiative and Regions 3's storm water initiative. Additional work in this area has been restricted due to the recent shift of priorities to storm water construction and resource restrictions.

Metric r – The FY 2005 CWA 106 grant to DOE included commitments to inspect four major facilities and 11 non-major facilities. Region 3 did not break out their FY 2005 inspection commitments in the ACS by states. There was a Region-wide commitment to conduct 600 NPDES inspections, which was exceeded by conducting 613 inspections that year. The Region committed to conducting four NPDES major inspections in the ACS.

Citation of information reviewed for this criterion: **CWA EMS**

Recommendations:

Region 3 needs to inspect 100% of the NPDES major sources in the District. Commitments should be included in the Annual Commitment System.

2. Degree to which inspection/evaluations reports document inspection findings, including accurate identification of violations.

Findings:

Five files were selected for the review. The review team provided the Region with a list of files more than two weeks in advance of the review and they were unable to readily access the files for the review. Some files are maintained by the inspectors or attorneys who worked on those activities and are not in the central filing system. Some inspections were completed by inspectors from the Fort Meade office in Maryland. However two of those inspectors have retired and were not available to discuss the reports. One of the files (DC Health Administration) was not available. There is no permit number for this facility and the Region could not explain why this occurred. There was no facility file or inspection report. It is not clear why this appeared in OTIS. One file reviewed had two inspection reports that were applicable to the review. Thus,

August 31, 2007
State Review Framework
Direct Implementation Region 3 NPDES Programs in
The District of Columbia for FY 2005

the review team reviewed five inspection reports.

Metric 2a – 40% (2 of 5) of the inspection reports reviewed contained complete inspection reports with documentation.

Completed Reports

- The report contained the form 3560 with narratives and supporting documentation. It also contained detailed information on equipment and progress on making corrections to problems and contained a table of the construction status. (Blue Plains)
- This was a sampling inspection conducted by the Fort Mead office. The report documented flow measurements, chlorine samples at the outfall, and contained an updated sampling plan. This, however, was not the inspection report the review team expected to find in the file. This was an EPA inspection report that was not entered into PCS. (Washington Aqueduct-Dalecarlia)

Incomplete Reports

- The report verified the compliance of the facility and contained the DMRs, but it was not signed by a manager. In addition, the state inspection report that was identified for the review was not in the file and a more recent EPA inspection was there, but had not been entered into PCS. (Potomac Electric Power-North Royal Street)
- This report had many of the components of a complete report but the narrative was very brief, there were no pictures, and it did not have a supervisor's. (Pepco-Benning Road)
- This report lacked the details to determine compliance. (Washington Aqueduct-Dalecarlia Plant)

The only inspection report reviewed that identified potential violations was one of the two complete reports for the Washington Aqueduct-Dalecarlia Plant. This report was thorough and identified potential violations that required follow-up. As noted above, this report was not entered into PCS and is not listed in the OTIS facility report. There is no indication that any follow-up took place. This facility is under a 2003 Federal Facility Compliance Agreement (FFCA). There is a construction schedule and BMPs in the agreement. Initial compliance is scheduled for 3/2008 and final compliance in December 2009. A number of effluent violations have been reported over the past 12 quarters. Some of these effluent violations are quite large and need to be evaluated to determine that they are not data reporting errors.

In FY 2005, both the Water Protection Division in Region 3 and the DOE in the District were undergoing reorganizations. In Region 3, the WPD reorganized the permits and enforcement functions into one office, which would help to improve their performance in

August 31, 2007
State Review Framework
Direct Implementation Region 3 NPDES Programs in
The District of Columbia for FY 2005

the long run. Region 3's OECEJ conducts a number of NPDES inspections, but has recently lost two experienced inspectors from the Fort Meade office, due to retirement. (One inspector has recently been hired.) The District moved their environmental programs from the Department of Health to the newly formed Department of the Environment. The DOE did not retain experience in the water program and has been undergoing a steep learning process. In trying to identify files for the review, it was learned that the eight inspections conducted by District inspectors could not be located in the Region 3 office file room. During the course of the review, the review team found them, bundled together and misfiled in one of the files we reviewed.

The Region is taking positive steps to improve their management of the program. These steps include:

- Development of an SOP for receiving inspection reports from the inspectors and placing them in the management chain for review and approval, taking appropriate follow-up action, and ensuring accurate data entry into ICIS/NPDES;
- A file room manager was hired in 2006;
- Working with DOE to improve their capacity and prepare a joint work plan outlining how DOE will manage its program; and
- DOE has agreed to retain a portion of the Section 106 grant funds in order to hire contractors to provide field training and conduct inspections.

Citation of information reviewed for this criterion: **CWA EMS**

Recommendations:

The Region needs to finalize and document an SOP for writing inspection reports and managing inspection files. The SOP should include: management review, followed-up and enforcement response, data management in ICIS-NPDES, and file management. It should also discuss how inspections conducted by the OECEJ are managed. The Region needs to ensure that the SOP conforms to the CWA Enforcement Management System (EMS) and other applicable guidance such as the CWA Inspector Manual.

The Region needs to provide training in the SOP and in NPDES inspections for all EPA and DOE inspectors.

- 3. Degree to which inspection reports are completed in a timely manner, including timely identification of violations.**

Findings:

Metric 3a – 80% (4 of 5) inspection reports reviewed were timely. Two of the timely

August 31, 2007
State Review Framework
Direct Implementation Region 3 NPDES Programs in
The District of Columbia for FY 2005

reports were completed in one day. The other two were completed in 22 and 30 days. The fifth report was a sampling report that was completed in 77 days. The standard in the CWA Enforcement Management System (EMS), and used by the other Regional Offices, is 30 day for a CEI and 45 days for a sampling inspection. Only the sampling inspection that was reviewed was not timely. However, the Region has been using a standard of 60 days to complete an inspection report and have it signed, and 90 days for a sampling inspection report.

Citation of information reviewed for this criterion: **CWA EMS**

Recommendations if corrective action is needed:

The Region needs to establish a 30 day standard for completing CEI inspection reports and 45 days for sampling inspection reports.

4. Degree to which significant violations are reported to EPA in a timely and accurate manner.

Findings:

Metric 4a – Zero single event violators are listed in the data metrics for Region 3 or DC.

Single Event Violators are violations of the CWA's NPDES requirements that are documented during a compliance inspection, reported by the facility, or determined through other compliance monitoring methods by the permitting authority. They are required to be entered into the national system (PCS or ICIS-NPDES) for all NPDES major permittees, and the Final Single Event Violation Data Entry Guide for PCS issued out in June 2006 contains the latest information on the subject. (OECA strongly encourages the entry of single event violations at non-major facilities; however, at this time, this requirement is pending the issuance of the ICIS-NPDES Policy Statement.) SEV tracking is important to forming an historic electronic record of inspection and compliance determinations. Tracking inspection results can impact future enforcement decisions, particularly when a permittee continues to exhibit the same violation over the course of several years. Electronic documentation of violations also improves the accuracy of public information. It should be noted that the new 3560 form (distributed in January 2006) contains a list of single event violations to facilitate data entry. While not every single event violation is SNC, they should still be reported.

Metric 4b – 60% (3 of 5) of the major sources in the District are in SNC. This is above the national average of 18.6%. These violations found at major sources are identified through DMR reporting. One facility (Washington Aqueduct-Dalecarlia) has a long construction schedule, to 2009 with no interim limits, and appears to consistently be in SNC. The same may be true of Blue Plains. The PEPCO plant on Royal Street in

August 31, 2007
State Review Framework
Direct Implementation Region 3 NPDES Programs in
The District of Columbia for FY 2005

Alexandria installed very progressive equipment to continuously monitor pH but have found problems getting the equipment to work. The facility believed, based on a telephone conversation with EPA, that it did not need to report until the monitoring equipment is fully operational. For that facility there are a series of non reported DMR violations. The permit is being rewritten to clarify reporting requirements and to bring it up to date.

Citation of information reviewed for this criterion: **CWA EMS**

Recommendations if corrective action is needed:

The Region needs to begin entering single event violations into ICIS-NPDES. However, at this time, this requirement is pending the issuance of the ICIS-NPDES Policy Statement.

The Region needs to review facilities with long term SNC determinations to assess what enforcement actions may be required to bring them into compliance.

- 5. Degree to which Regional enforcement actions require complying actions that will return facilities to compliance in a specific time frame.**

Findings:

There were no concluded enforcement actions in FY 2005.

Citation of information reviewed for this criterion: **CWA EMS, Expedited Settlement Policy, Section 309(a) of the CWA, CWA Civil Penalty Policy.**

Recommendations if corrective action is needed:

See Element 6.

- 6. Degree to which the Region takes enforcement actions, in accordance with national enforcement response policies relating to specific media, in a timely and appropriate manner.**

Findings:

Metric 6a – 40% (2 of 5) of the major facilities did not have timely enforcement actions. This is above the 7.7% national average and the 2% allowed by the CWA EMS.

August 31, 2007
State Review Framework
Direct Implementation Region 3 NPDES Programs in
The District of Columbia for FY 2005

The explanation for the lack of timeliness for these two enforcement actions is:

- Based on a review of the Watchlist QRRR, it appears that one source (PEPCO) has permit data reporting issues that have generated erroneous violations that have yet to be rectified. The 2001 permit has been administratively extended by Region 3. This permit is expected to be reissued in early 2007, at which time enforcement will not be warranted.
- The other source (Washington Aqueduct-Dalecarlia discussed above in Element 2) entered into a Federal Facility Compliance Agreement on June 12, 2003. This agreement has interim conditions to make capital improvements by March 1, 2008, which is the deadline for compliance with the NPDES discharge limitations set forth in the permit at one or more of the sediment basins. In addition, there is a December 30, 2009 deadline for achieving full compliance with the discharge limitations at all basins. There are no interim limitations associated with the FFCA. Therefore, effluent violations will be generated until the upgrades are final.

Citation of information reviewed for this criterion: CWA EMS

Recommendations if corrective action is needed:

Region 3 should not allow sources to remain in SNC for long periods of time without taking timely and appropriate enforcement action. The Region should not wait for permit revisions for a source to attain compliance. SNC should be addressed timely and appropriately.

- 7. Degree to which the State includes both gravity and economic benefit calculations for all penalties.**

Findings:

There were no enforcement actions in FY 2005

Citation of information reviewed for this criterion: **CWA Civil Penalty Policy, SEP Policy and BEN Model**

Recommendations if corrective action is needed:

The Region should take enforcement actions where SNC is identified.

- 8. Degree to which final enforcement actions (settlements or judicial results) take appropriate action to collect economic benefit and gravity portions of a penalty, in accordance with penalty policy considerations.**

August 31, 2007
State Review Framework
Direct Implementation Region 3 NPDES Programs in
The District of Columbia for FY 2005

Findings:

Metric 8a – Zero. There were no completed enforcement actions in the District in FY 2005.

Metric 8c – Zero. There were no completed enforcement actions in the District in FY 2005.

Citation of information reviewed for this criterion: **CWA Civil Penalty and BEN Model**

Recommendations if corrective action is needed:

The Region should take enforcement actions where SNC is identified.

Section 3: Review of Performance Partnership Agreement or State/EPA Agreement

9. Enforcement commitments in EPA’s Annual Commitment System.

Region 3 did not break out their FY 2005 inspection commitments in the ACS by states. There was a Region-wide commitment to conduct 600 NPDES inspections, which was exceeded by conducting 613 inspections that year. The Region committed to conducting four NPDES major inspections in the ACS.

An October 2006 report on the enforcement program in Region 3 notes that the region has difficulty in preparing inspection targeting plans to identify violating facilities that should be inspected and possible enforcement taken. Inspection targeting and inspection plans should receive more attention in the future.

The region noted that the CWA 106 grant with the District needs to be written more prescriptively and the number of inspection and to nail down problems and corrections. The Region has made a request of the DOE that EPA retain some of the 106 grant funds in order to hire contractors to conduct additional NPDES inspections. The Acting Deputy Director of the DOE has agreed to do this.

Citation of information reviewed for this criterion: **FY 2004 MOA Guidance and the FY 2005 National Program Guidance**

Recommendations if corrective action is needed:

August 31, 2007
State Review Framework
Direct Implementation Region 3 NPDES Programs in
The District of Columbia for FY 2005

The Region needs to ensure that 100% of the major sources in the District of Columbia are inspected annually. The commitments should be recorded in the Annual Commitment System.

Section 4: Review of Database Integrity

10. Degree to which the Minimum Data Requirements are timely.

Findings:

During the on-site review, the team used the PCS data shown in OTIS facility reports for each of the sources used in the file reviews. The data in the files were compared with the data in the reports. This included the dates for inspections and the enforcement actions, as well as the types of actions. Overall, the data in the OTIS reports corresponds with the data in the files, indicating that data requirements are reported accurately into PCS. However, there were exceptions. Two inspection reports had been completed but the dates had not been entered into the data bases. There were also inspection reports in the files that were not entered into the database.

Citation of information reviewed for this criterion: **PCS, OTIS, File Reviews**

Recommendations if corrective action is needed:

The Region needs to ensure that all inspection reports are accurately reported into ICIS-NPDES. This should be an integral part of the SOP to be developed under the recommendation for Element 2.

11. Degree to which the Minimum Data Requirements are accurate.

Findings:

Metric 11a – The data metrics show that no actions are linked to violations in PCS or ICIS-NPDES. This is required information, and can be accomplished through the use of the EVTP field (a WENDB required element) in PCS and other means in ICIS-NPDES. Without this data, OECA cannot determine with any certainty why an action was taken. In addition, if the action includes a compliance schedule, it is impossible to tell which monitoring periods, parameters, or events are associated with the compliance schedule if EVTP and other applicable fields (EVMD, EVPR, EVSC, EVSD, etc.) are not entered. Linking an action to a violation has the additional benefit of resolving RNC/SNC at the violation level, and may result in fewer facilities on the Watch List.

Citation of information reviewed for this criterion: **PCS, OTIS, File Reviews**

August 31, 2007
State Review Framework
Direct Implementation Region 3 NPDES Programs in
The District of Columbia for FY 2005

Recommendations if corrective action is needed:

12. Degree to which the Minimum Data Requirements are complete, unless otherwise negotiated by the Region and State or prescribed by a national initiative.

Metric 12 a – Regarding the metric for correctly coded limits for majors, there is 100% compliance for sources in the District. DMR entry rate for majors is 95.5 %, which exceeds the standard.

Metric 12 b – 3 of 5 majors have an SNC override (manual) rate of 3 of 5. The explanation given for the override was that if the DMR are a few days late, the Region voids the SNC and puts the DMR into the system.

Metric 12 c – 80% of the non majors have correctly coded limits.

Metric 12g – The non compliance rates for non majors under metric 12 g1 and 12 g2 for DC is 100%, which is high. The Region explained that this is a data error. They had been in contact with HQ about some changes that needed to be made and thought the problem had been fixed but it has not been fixed. 3 of 10 non majors have had DMR non receipt violations. One major has a schedule violation.

Citation of information reviewed for this criterion: **PCS, OTIS**

Recommendations if corrective action is needed:

Region 3 needs to have a better understanding of non-major non-compliance and increase attention on non-major DMR and non-compliance data. This will lead to more accurate annual non-compliance reports and will allow for better inspection targeting and priority decisions. The Region needs to correct the data issues associated with metric 12g.