

**2005 GEORGIA  
ENVIRONMENTAL PROTECTION  
DIVISION  
STATE REVIEW FRAMEWORK REPORT**



## **I. Executive Summary**

### **Introduction**

The Environmental Protection Agency's (EPA's) Office of Enforcement and Compliance Assurance (OECA), all ten EPA Regions, the Environmental Council of States (ECOS) Compliance Committee and other state representatives have jointly developed a method to assess state performance in the enforcement and compliance assurance program. This report reflects the review by Region 4 of the Georgia Environmental Protection Division (GAEPD) compliance and enforcement program utilizing the State Review Framework. This review has been a collaborative effort between the Region and State and captures both successes of the State's program as well as any identified areas that need improvement. As this is the first review of this type for GAEPD, this report will serve as a baseline review. Future reviews will look at performance as a comparison to the level documented in this review.

The purpose of the State Review Framework assessment is to provide consistency in the level of core enforcement activity and performance in environmental protection across the country. It provides a consistent tool for EPA Regions to use in overseeing state enforcement program performance as well as to provide the basis for a consistent mechanism for EPA Regions to provide flexibility to states which can demonstrate an adequate core enforcement program.

The review consists of 12 critical elements which compare actual compliance and enforcement practices in the Clean Air Act (CAA) Stationary Sources Program, the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) program, and the Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste program with EPA policies and guidance. The 12 evaluation areas posed by this Framework are consistent with evaluation areas delineated in the 1986 EPA guidance memorandum signed by Jim Barnes entitled *"Revised Policy Framework for State /EPA Enforcement Agreements."* Additionally the Framework utilizes existing program guidance, such as 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 definitions of a acceptable level of performance. There is also an optional 13<sup>th</sup> element. EPA and ECOS encourage the use of the 13<sup>th</sup> element to ensure the review takes a measure of the full range of program activities and results. The component can add meaningful input into a state's overall performance and program. Examples of topics could include compliance assistance, pollution prevention, innovation, incentive or self-disclosure programs, outcome measures or environmental indicators that go beyond the core program activities covered in Elements 1-12.

### **Process Followed in the Review**

Region 4's evaluation of the GAEPD's core enforcement program was conducted by staff from the Region's Office of Environmental Accountability (OEA) and the Air, RCRA and Water enforcement programs using Elements 1-12 of the Framework, described above. The State chose not to submit information for the optional Element 13. Each media technical authority (TA) from OEA and staff from the program worked with their counterparts at the State to define the number of files to be reviewed. The number of files to be reviewed was determined based on the

protocol in the Implementation Guidance, and was based on the number of facilities in the statewide universe, the number of inspections performed and the level of enforcement activity in each program. The review was not directed at assessing the capabilities of the individual GAEPD District offices, rather to assess the State as a whole. For each program, files were selected at random within a representation of types or program areas within each program. The scope of review generally evaluated the State against FY2004 agreements and outputs. For those instances where two years of data was required, FY2003 and FY2004 information was used. The report contains findings of the review for each program, and areas of concern with an explanation of these concerns along with recommendations for resolution.

### **Information Considered From Other Reviews and Other Sources**

For each of the GAEPD compliance and enforcement programs, Region 4's OEA staff obtained documents that identified negotiated compliance and enforcement commitments with GAEPD. These documents were reviewed for consistency with national and regional policy and guidelines as well as commitments that may differ from OECA expectations. The following are the information sources utilized in the GAEPD State Review Framework (SRF) review:

#### **Clean Air Act Stationary Source Enforcement Program**

Air SRF Metrics Data Pull, State inspection and enforcement files, State's enforcement response guideline document entitled "Enforcement Guidelines and Penalty Trees", Compliance Monitoring Strategy (CMS) policy, Air Facilities Subsystem (AFS), EPA's High Priority Violator (HPV) policy, EPA Clean Air Act Stationary Source Penalty policy, and the FY2004 §105 Grant Air Planning Agreement, EPA/GA Memorandum of Agreement (MOA), and the EPA/GA Performance Partnership Agreement (PPA);

#### **NPDES**

CWA SRF Metrics Data Pull, State inspection and enforcement files, GA Permitting for Environmental Results Report, EPA/GA CWA §106 Program Grant Workplan, Permit Compliance System (PCS) data pull for IY2004, PCS data pull for FY2004, GA Enforcement Management System, EPA/GA MOA, EPA/GA PPA, FY2004 EPA/GA Midyear Report, and the GA EMS.

#### **RCRA**

RCRA SRF Metrics data pull, State inspection and enforcement files, The Solid Waste Disposal Act/RCRA, OECA FY2004 MOA Guidance Update, GAEPD FY2004 grant workplan, RCRAInfo data, Hazardous Waste Civil Enforcement Response policy (December 2003), and the GAEPD RCRA FY2004/2005 annual evaluation.

### **Overall Summary**

This report documents the findings and recommendations of EPA's review of the GAEPD compliance and enforcement program for FY2004. The report examines 12 elements covering inspection implementation, enforcement activity, commitments in annual agreements and data integrity.

The State has an effective compliance and enforcement program. In almost all instances, across

the selected media programs, the State exceeded national averages identified in the Georgia State Review Framework Metrics. These data metrics compared GAEPD data to national numbers such as inspection coverage, identifying significant violators in a timely way, and addressing significant violators in a timely way.

The report includes recommendations for improvement in several areas. The one overarching significant issue for GAEPD is maintaining supporting documentation and rationale in files as to how penalties and economic benefit were calculated. Although 100% of the Air files reviewed contained penalty worksheets, the Water and RCRA enforcement files reviewed did not have the penalty worksheet included. In order to maintain consistency in enforcement proceedings and penalty calculations, as well as providing the documentation to determine if the penalty was consistent with established penalty policies, GAEPD must consider options to include gravity and economic benefit into penalty calculations, as well as documenting the calculations in the enforcement files. If GAEPD determines that an action does not warrant a penalty, documentation of the decision and rationale for the decision should be included in the case file. It is recommended that the penalty rationale be kept in the enforcement file and available for review at all times. File management is identified as a second overarching issue. EPA staff had difficulty finding a number of files and/or file components identified for review during the Air and Water review. It is recommended that GAEPD reexamine their file handling process.

### **Program Successes and Major Cases**

The State's compliance and enforcement program has concluded many successful cases in 2005. The Expedited Enforcement Compliance Order and Settlement Agreement serves as an example of a successfully applied approach utilized by GAEPD:

In 1998, the Department of Natural Resources adopted a resolution that required enhanced enforcement efforts along the Upper Chattahoochee River corridor. In response to the resolution, GAEPD developed and implemented the zero tolerance strategy for specific identified areas (the Chattahoochee River Basin from the headwaters through Troup County, the Coosa River Basin, the Tallapoosa River Basin, and the metropolitan Atlanta area – fourteen counties). The strategy required that GAEPD pursue enforcement for any permit effluent limit violation and sanitary sewer overflows (SSOs) that occurred in these sensitive areas. To handle the expected enforcement load that would likely result from this type of enforcement presence, GAEPD developed, as part of the strategy, an expedited method for addressing “zero tolerance” violations through a type of consent order termed the “expedited enforcement compliance order and settlement agreement”.

The expedited order requires that the violation(s) be immediately addressed and resolved, and includes a monetary settlement for the violation(s). Basically the orders are considered non-negotiable with the caveat that if the violator chooses not to sign the expedited action, which includes penalties less than traditional actions, then GAEPD will pursue additional enforcement, i.e., a traditional consent order containing more comprehensive corrective actions, and higher penalties. The orders have allowed GAEPD the ability to quickly initiate enforcement with a limited amount of resource, maximize enforcement over a relatively broad geographic area, and send a consistent and uninterrupted message to the owners of wastewater treatment and

conveyance systems that effluent limit violations and unpermitted discharges are not tolerated.

In addition to the zero tolerance strategy, in 1990 GAEPD revised its water quality regulations to enhance notification requirements and procedures for system owners who experience SSOs to state waters, i.e., notifications by the violator to GAEPD, the media and the public. The rules have been revised since that time to include other requirements. As a result, GAEPD is made aware of *all* spills that enter state waters, and through use of the zero tolerance strategy, can continually address *all* violations in the sensitive area. Those violations outside of the zero tolerance area are addressed by the procedures established in GAEPD's approved 1991 Enforcement Management Strategy.

According to GAEPD's data, since 1999 a total of 931 traditional consent orders have been executed statewide for violations of water quality rules, i.e., effluent limits, SSOs, water quality violations, POTW O&M problems and more recently erosion/sedimentation violations. In addition to those 931 orders, 400 expedited actions have been executed by the Atlanta office alone to specifically address zero tolerance violations of effluent limits and SSOs (8825 SSOs) for the assigned facilities. On average, there are 1260 SSOs reported to the Atlanta office annually in the sensitive area. GAEPD has found that even with the expansion of the sewer systems that occur in these high growth sensitive areas, the SSO numbers are not increasing.

In addition, through the spill notification requirements and through review of the SSO locations during preparation of expedited actions, GAEPD is also able to identify areas where SSOs may be chronic problems in need of escalated enforcement and more comprehensive corrective actions. An example of this is the sewer system identified as "Azalea Drive" along the Chattahoochee River in Fulton County. While expedited actions quickly addressed overflows in this area, GAEPD ultimately placed Fulton County under a comprehensive schedule for rehabilitation of sewer lines when SSOs were identified as continuing.

### **Inspection Implementation**

**CAA** - The level of inspection activity undertaken by the State is indicative of an effective field presence in their compliance and enforcement program and well above the national average, including inspections at majors, and synthetic minors. Inspection reports for the State were well written, thorough, and with few exceptions, contained all required elements. GAEPD completes inspection reports and identifies violations in a timely manner as established by EPA policy. There were four source files without an inspection report, however, three of the inspection reports were later located by the GA Air Protection Branch and included in the review. The fourth source had not operated since 2002, and had therefore not been inspected.

GAEPD has entered into the AFS database a substantial number of partial compliance evaluations (PCEs) throughout the fiscal year, even for PCE activities that are not required to be reported into AFS. However, for full compliance evaluations (FCEs), GAEPD has been reporting all of their FCE actions on September 30th, the last day of the fiscal year. This matter was discussed with the State and they have since revised and implemented a policy in accordance with our recommendation.

**NPDES** - The State inspections of its NPDES major facilities in inspection year 2004 (81.2%)

well exceeded the national average (64.2%) and their NPDES non-major inspections were comparable with the national average. Furthermore, GAEPD's inspection coverage for NPDES non-majors that do not have effluent limits and DMRs (12.4%) exceeded the national average (4.6%). GAEPD's high level of inspection activity indicates an effective field presence in their compliance and enforcement program. This conclusion is supported by information in the Permit Compliance System (PCS).

The file review conducted noted that inspection reports for inspections identified in PCS were not readily located in the facility's files. The files were difficult to navigate through, being primarily organized by year, with no subsections of like subject matter, i.e., enforcement actions, compliance actions, DMRs, etc. Initially 14 of the inspections listed in PCS were not found in the facility files. GAEPD retrieved and/or accounted for 11 of the 14 missing reports, and they were reviewed by EPA staff. Facility files could be reorganized by date and content (compliance, enforcement actions, facility correspondence, spill records, etc.) greatly facilitating file review for oversight and citizens. GAEPD should make it a practice to consistently and timely copy all compliance and enforcement materials to the facility files and implement file management practices to facilitate retrieval of documents.

**RCRA** - For FY2004 GAEPD maintained inspection coverage of the regulated universe, far above the national average and OECA guidance recommendations. GAEPD inspected 100% of the Treatment, Storage, and Disposal Facilities (TSDs) as required by statute. In Georgia, land disposal facilities received a Comprehensive Groundwater Monitoring Evaluation (CME) and/or an Operation & Maintenance (OAM) at twice the OECA MOA guidance recommendation. GAEPD inspected 100% of the TSDs, well above the statutory requirement for inspections, as well as the national average. In Georgia, the number of post-closure facilities that received a CME and/or an OAM, was twice the OECA MOA guidance recommendation. GAEPD has inspected 67% of the Large Quantity Generator (LQG) universe in FY2004, well above the OECA core program requirement of 20%, as well the national average of 28.8%. Georgia has more than 3,000 Small Quantity Generators (SQGs) and inspected an average of 92% of all SQGs over a five-year period (FY2000-FY2004).

The inspection reports were timely, thorough and well-documented, appropriate to the complexity of the facility. Violations were clearly identified in the report, and documented where appropriate with photographs. In addition, GAEPD has an inspection identification rate of significant noncompliance (SNC) of almost twice the national average.

### **Enforcement Activity**

**CAA** - GAEPD's FY2004 HPV discovery rate was consistent with the national average and reflects an aggressive approach by GAEPD in identifying and reporting HPVs. In addition, HPVs are reported to EPA in a timely and accurate manner.

Region 4's file review determined that of the 16 files reviewed that contained HPVs, GAEPD resolved the violations within the 270-day timeframe prescribed in the HPV policy in all but two

instances. In addition, the data metrics indicated that GAEPD had 20 of 56 HPVs (35.7%) that were not addressed within the 270-day timeline. Although this percentage is better than the national average of 41.4%, it is recommended that GAEPD review its procedures for addressing HPVs and strive to address all HPVs within the 270 day guideline.

Of the 40 files reviewed, 13 contained consent orders with penalties. The penalty worksheets in the files closely followed the State's December 1997 penalty policy. As anticipated by this policy, the economic benefit of noncompliance can be mitigated or negated if it is determined that the economic benefit is not significant. This was the case in all the penalty calculations reviewed. The GAEPD's penalty policy is being followed and documented in the files.

As noted above, of the 13 enforcement actions found in the files reviewed, all addressed penalties. This supports the data metrics which shows 100% of GAEPD's enforcement actions in FY2004 containing penalties, significantly exceeding the FY2004 national average (84%).

**NPDES** - The GAEPD identifies and addresses all violation using EPA criteria outlined in program delegation documents and the MOA. The State maintains a current Enforcement Management System (EMS), which describes how and when the State will take action on violations and the level of formal enforcement that should be taken.

GAEPD should currently be entering violations arising from major compliance monitoring. This includes single event violations at majors. This is to assess whether violations determined by means other than automated discharge monitoring reports are being reported and tracked in PCS. GAEPD is not reporting single-event violations in PCS. It is recommended that GAEPD begin reporting single-event violations arising from major facility compliance monitoring.

In the metropolitan Atlanta area, GAEPD has developed a zero tolerance policy for addressing violations at facilities within this high population density area. All violations are addressed using consent orders with civil penalties and the facilities are expected to maintain a high level of compliance for their systems. In addition, the State has implemented a zero tolerance strategy for waters in a 14 county area in and around metropolitan Atlanta. Under this strategy, all numeric permit limit violations (except flow), SSOs, delinquent DMRs, and failure to meet compliance milestones in existing enforcement actions will be addressed with a consent order that includes a monetary penalty.

The QNCR Guidance Manual calls for enforcement action before 2 quarters of QNCR effluent violation at the same pipe for the same parameter. The number of facilities without timely action should not exceed 2% of the active major universe throughout the fiscal year. GAEPD consistently demonstrates timely action to address SNC reporting an impressive 0%, with the national average being reported as 3%.

The State has a written penalty policy that applies to municipal and industrial facilities. Penalty calculation reviewed during the on-site file review only took into consideration the gravity component, not economic benefit, as part of the settlement action. The majority of the enforcement files reviewed did not have the penalty worksheet included. It is recommended that the penalty rationale, including economic benefit, be kept in the enforcement file and available for review at all times. If GAEPD determines that an action does not warrant a penalty, and/or

economic benefit is negligible, documentation of the decision and rationale for the decision should be included in the case file.

GAEPD typically includes penalties with formal enforcement actions and the penalties are comparable to the national average. However, GAEPD should document the economic benefit and gravity contributions for all penalties assessed and collected. It is encouraged that economic benefit be included as a key factor when determining penalty amounts as policy dictates.

**RCRA** - During the file review, RCRAInfo data pulls were compared with information in the file to determine if the violation data was reported timely and accurately. All SNC information contained in the files was accurately reported in RCRAInfo.

All enforcement files reviewed included required actions for the facility to return to compliance. Following the issuance of an informal or formal enforcement action, GAEPD typically conducts an onsite follow-up inspection to monitor compliance with the schedule in the enforcement order.

In FY2004, the GAEPD RCRA program identified 33 SNC facilities. Of the 15 files reviewed, timely enforcement actions were taken to address all SNCs according to ERP time frames.

Upon reviewing the selected enforcement cases, it was noted that there were no penalty calculations included in the files. Through discussion with GAEPD, it was determined that although the gravity of the violations are considered in the penalty calculation, no documentation of the penalty calculations are maintained in the files. GAEPD does not factor economic benefit into their penalty calculations. In order to maintain consistency in enforcement proceedings and penalty calculations, GAEPD must consider options to include economic benefit into penalty calculations, as well as documenting the calculations in the enforcement files.

In reviewing the RCRA enforcement files, EPA did not find any documentation of final penalty calculations with the enforcement actions. The final penalties were reflected in RCRAInfo, but the penalty calculations were not formally documented in the files. GAEPD must consider options to maintain both initial and final penalty documentation, including economic benefit and gravity-based calculations.

### **Commitments in 2004 Annual Agreements**

GAEPD has an annual PPA with EPA Region 4 that covers multiple environmental programs.

**CAA** - GAEPD has met or exceeded all committed to deliverables in FY2004.

**NPDES** - GAEPD has met or exceeded all the enforcement requirements of their PPA, §106 grant workplan and Enforcement Management System in FY2004.

**RCRA** - GAEPD met and exceeded all PPA commitments for TSD and non-TSD inspections in FY2004.

### **Data Integrity**

**CAA** - MDRs represent the minimum amount of data that EPA believes is necessary to manage the national stationary source compliance monitoring and enforcement program. In examining the MDRs for the 40 selected files no significant data deficiencies were noted.

The data metrics show in FY2004 that 17% of HPVs are not coded in AFS with a plant compliance status of in violation. With respect to stack test data, the data metrics for GA show that 12.2% of sources with stack tests conducted do not have the pass/fail results coded into AFS. GAEPD should ensure that HPVs are coded in AFS with a plant compliance status of in violation and that stack test results are coded into AFS.

**NPDES** - With the exception of single event data, GAEPD has consistently maintained high accuracy and good timeliness in data entry. All minimum data elements are properly tracked and entered in PCS. GAEPD is reported at 99.1% entry rate for DMRs at majors compared to the national average of 93.4%. GAEPD's rate of manual override of SNC to a compliant status is well below the national average.

**RCRA** - RCRAInfo does not currently have a "date stamp" that marks the date that information is entered into the system. Therefore the lag time from SNC determination and data entry can only be determined from file review, if there is a record of data entry in the files. All compliance and enforcement data contained in the files reviewed were accurately entered into RCRAInfo.

### **Summary**

EPA Region 4's review of the GAEPD enforcement program has determined that the State has a thorough understanding of its media enforcement programs, i.e., CAA- Stationary Source program, CWA-NPDES program and RCRA-Subtitle C hazardous waste program, and is successfully implementing these delegated enforcement programs.

The Region will continue to work closely with the State of Georgia to implement the recommendations made in this report. The Region will incorporate the recommendations in this report into the National SRF Tracker System along with agreed upon timelines, milestones, and any tracking agreements, such as an MOA, PPA, or PPG, as well as provide timely updates as to the progress made in the implementation of the recommendations.

## **II. Media Program Element Reviews**

### **Program: Clean Air Act Stationary Source Enforcement Program**

#### **Introduction**

The file selection protocol from the SRF was used to select 40 files to be reviewed. The selected list of files was submitted to GAEPD for concurrence as to representativeness of the air enforcement program. GAEPD had no issues with the files selected. The 40 files reviewed consisted of 35 major sources and five SM sources. Sixteen of these were carried in AFS as HPV sources at some point during FY2003-2004.

The GAEPD program has a main program office, located in Atlanta, Georgia, and eight district offices which cover the six (6) Georgia district areas (Southwest, Coastal, East Central, West Central, Mountain and Northeast). The main office, also known as the Air Protection Branch, maintains responsibility for the following programs:

1. Stationary Source Compliance Program (SSCP) - perform inspections, compliance tracking and enforcement of stationary sources under the CAA.
2. Stationary Source Permitting Program - administer both the Title V and the Georgia State Implementation Plan (SIP) permitting programs.
3. Planning & Support Program - administers the grants program and also evaluations and models air program data.
4. Mobile & Area Source Program - implements the mobile inspection and maintenance programs
5. Industrial Source Monitoring Program - conducts and tracks stationary source testing.
6. Ambient Monitoring Program - meteorological and ambient monitoring.

The Stationary Source Compliance Program (SSCP) employs the air program engineers who have program responsibility over the more significant and complex stationary air sources throughout the state. These are sources that are very large emitters of air pollutants, contain very complex processes, are located in a non-attainment area, and/or have other impacts that are of concern to the program. The SSCP conducts inspections and takes enforcement actions for these sources of concern, as well as provide technical assistance to the district offices and to the Stationary Source Permitting Program.

The district offices are under the authority of the Program Coordination Branch (PCB) and are located in strategic regions of the state to provide more efficient access to the sources of pollution. The district offices are multimedia based operations and contain inspectors with both science and engineering backgrounds. The district is mainly utilized for complaint investigations and follow-up. However, there are a few major sources which are in the jurisdiction of the district's enforcement authority. These are typically the less complicated

sources, such as rock quarries and asphalt plants. The districts do have jurisdiction over all sources when it comes to such common issues as fugitive dust and visible emissions. A significant benefit that the district office approach provides to the GAEPD program is that it places inspectors in close proximity of sources when a problem is observed and reported. Although the district offices do not fall under the authority of the Air Program Branch, they are still accountable to the SSCP. The districts are required to report any air related enforcement activity to the SSCP for tracking and filing. SSCP is also copied on any enforcement related documentation pertaining to CAA issues and/or violations. However, all air permitting functions are performed by the Air Program Branch's Stationary Source Permitting Program in the main office, located in Atlanta, Georgia.

The SRF was not directed at any individual district office. Since the district's involvement in air enforcement matters is tracked and guided by the SSCP office in order to maintain statewide consistency, Region 4 emphasized a random sampling of the whole universe of sources throughout the state.

The SSCP's central filing system in GAEPD's Atlanta office contains all source files. Each file was divided into two sections: permit information (meaning permit applications and draft/final permits for their preconstruction and operating permit programs) and correspondence information (this contained the inspection reports, consent orders, penalty calculation work sheets, general facility correspondence and permit required reports like semi-annual monitoring reports and annual compliance certifications). The correspondence information was subdivided bi-fiscally (i.e., there were separate folders for FY2003-2004 and FY2005-2006, etc.).

For the steps in conducting the Georgia SRF, the data analysis consisted of reviewing information generated by the SRF data metrics for FY2003-2004, the most recently completed two fiscal year period. The data metrics pull was done on August 27, 2005. The source of the metrics data for the air program is AFS. As a result of the data analysis, discussions on potential discrepancies and issues were held with SSCP management.

The findings and recommendations that follow reflect the 12 elements of the SRF that were investigated. These 12 elements encompass four review areas: inspections, enforcement activity, annual state/EPA agreements, and database integrity.

**1. Degree to which state program has completed the universe of planned inspections/evaluations (addressing core requirements and federal, state, and regional priorities).**

**Findings:**

**Inspections at major sources:** Under the GAEPD FY2004 PPA, GAEPD planned to inspect 90% of their major sources. This is more aggressive than EPA's CMS requirement to conduct FCE's once every two years at all Title V major sources.

According to AFS, in FY2003-2004, GAEPD completed FCEs at 91.8% (424 of 462) of its major facilities thus meeting their 2004 PPA commitment. The State well surpasses the national average of 75.7% of all major sources receiving a FCE.

**Inspections at SM-80s (80 percent of major source level):** The universe of SM-80s includes those sources with an EPA or state classification code in AFS for synthetic minors and with a CMS source code for SM-80s. While the CMS requires that FCEs be conducted once every five years at the SM-80 sources, GAEPD agreed to conduct FCEs at about one-third of their SM-80 sources in FY2004. According to AFS, GAEPD's FCE rate for FY2002-2004 was 74.6% (512 of 686), exceeding the national average of 69.2% of SM-80 sources receiving a FCE.

**Title V Annual Compliance Certifications received and reviewed:** According to the SRF Metrics pull for Georgia, 393 Title V annual compliance certifications were to be received and reviewed by GAEPD in FY2004. Of this universe, the Metric pull shows 350 (89%) actually entered into AFS as reviewed (national average is 73.6%). This is below EPA's CMS goal of all Title V annual compliance certifications being received and reviewed by the State in the year they are due. During GAEPD's initial review of this document, they noted disagreement with the data metric results, stating that they had continuing problems uploading data into AFS. GAEPD conducted a manual count of their files which resulted in GAEPD saying they had received and reviewed 440 annual compliance certifications in FY2004. Thus 100% of the annual compliance certifications due in FY2004 have been received and reviewed. GAEPD is continuing with their efforts to resolve their batch data upload problems.

**Sources with Unknown Compliance Status Designations:** AFS reports three sources with unknown compliance status as of August 13, 2005, compared to a total of 2,427 nationally. Usually an unknown compliance status code is generated when a FCE is not entered into the database for two calendar years. An examination of these three sources shows one shut down (GA Power-Atkinson), one is now a synthetic minor (Balfour Pole) and one where more than two years has passed without a required FCE (C.E. Minerals).

*Citation of information reviewed for this criterion:*

- GAEPD FY2004 PPA
- GA Data Metrics
- EPA's 4/21/2001 Compliance Monitoring Strategy guidance

**Recommendation:** GAEPD should perform a quality assurance check of their batch data uploading system periodically during the next fiscal year and at least annually thereafter to ensure that the reported data within AFS is correct and that the program is properly credited with its compliance and enforcement efforts.

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

**Findings:** Forty files were chosen to be reviewed for the Georgia SRF; 35 major sources and five SM-80 sources. Of the five SM-80 sources, only one file was not reviewed - Pine Ridge MSW Landfill. This particular file was in such disarray that the required information could not be found in a reasonable amount of time. GAEPD explained that the compliance files are open to public review and are sometimes returned in disarray. With this one noted exception, all of the files were well organized and each contained a Fiscal Year Compliance Report form, found in the front of the file, denoting a completed FCE. GAEPD should be commended for establishing this form, though if retitled to say "FCE form", anyone reviewing a file could readily tell which sources received a completed FCE. The components reviewed as a FCE for the SRF included: a review of all required reports (i.e., Title V self certifications, semi-annual monitoring reports and periodic monitoring reports, etc.), all records and all monitoring data reported to the state (e.g. CEM and continuous parameter monitoring reports, malfunction reports, excess emission reports); an assessment of control device and process operating conditions; visible emissions observations as needed; review of facility records and operating logs; an assessment of process parameters such as feed rates, raw material composition and process rates; an assessment of control equipment performance parameters (e.g. water flow rates, pressure drop, temperature, electrostatic precipitator power rates); and a stack test, where there is no other means of determining compliance.

With respect to GAEPD's inspection reports, four of the 39 files that were actually reviewed did not contain an inspection report: Boral Bricks, Decostar Industries, Rayonier Wood Products and YKK USA. However, three of these inspection reports were later located by the Air Protection Branch and included in this review: Boral Bricks, Decostar Industries, and YKK USA. Rayonier Wood Products has not operated since July 11, 2002, and has therefore not been inspected since then. The inspection reports reviewed were well written and thorough, i.e., they contained a description of the facility; applicable requirements; a listing of emission units; enforcement activity; assessments of air pollution control equipment and process parameters, as well as containing findings and recommendations.

*Citation of information reviewed for this criterion:*

- GAEPD Source Files
- AFS

**Recommendation:** Although all of the required SRF inspection reports were reviewed, based on the three reports that were not initially in the files, it is recommended that GAEPD emphasize to its personnel the need to consistently copy all compliance and enforcement materials to the appropriate files in a timely manner. GAEPD should also consider revising their Fiscal Year Compliance Report form to mirror the requirements of a completed FCE.

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

**Findings:** Based on the audit's review of FY2003-2004, GAEPD completes inspection reports and identifies violations in a timely manner. All 35 major source files contained at least one inspection report for the two fiscal years being reviewed. All inspection reports were timely, with the majority of all reports completed in less than 30 days from date of inspection. Additionally, there were no problems noted for the reporting of PCEs (such as on-site inspections), HPVs, and FCEs in the AFS database.

GAEPD enters completed PCEs throughout the fiscal year. However, for FCEs, GAEPD has been reporting all of its FCE actions on September 30th, the last day of the fiscal year. GAEPD states that the FCEs are not confirmed until the end of the fiscal year because of the final yearly file review, which ensures that all of the components leading to a FCE were completed. EPA recommended that GAEPD implement the agency's policy of entering all FCE data on a real time basis, as appropriate, but not later than 60 days following the completion of the FCE or "final" PCE which would constitute a FCE for the facility. GAEPD has subsequently implemented the EPA's revised reporting policy<sup>1</sup>.

*Citation of information reviewed for this criterion:*

- GAEPD Source Files

**Recommendation(s):** Although entering FCE's at the end of the fiscal year was an issue for the SRF review, GAEPD has implemented the revised reporting policy and should be commended on its quick response to EPA's concern.

**4. Degree to which HPVs are reported to EPA in a timely and accurate manner.**

**Findings:** According to AFS, GAEPD's HPV discovery rate was 9.4%, with the national

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<sup>1</sup> Beginning in FY2006, all state and local programs are required to enter all Federally Reportable Data, including FCEs, into the AFS database within 60 days upon completion. This change is included in the information collection request (ICR) notice published in the Federal Register (volume 70, Number 22) on June 1, 2005 and approved by OMB.

average being 10.6%, based on FCEs completed in FY2004. In addition, the HPV discovery rate based upon active major sources was 8.1%, with the national average being 5.7%. High priority violations are reported to EPA in a timely and accurate manner. During the period of time covered by this review identification, reporting into AFS, and the resolution of HPVs was monitored by the region through quarterly meetings with GAEPD. Since that time the frequency of the program meetings has been changed to one meeting per month.

*Citation of information reviewed for this criterion:*

- AFS

**Recommendation(s):** None

**5. Degree to which state enforcement actions include required corrective or complying actions (injunctive relief) that will return facilities to compliance in a specific time frame.**

**Findings:** Of the 40 files reviewed 13 contained consent orders with penalties. A review of the orders showed the following as items as typical requirements contained in the reviewed consent orders: submit a Title V permit application, take all reasonable precautions to prevent fugitive dust, keep required records.

*Citation of information reviewed for this criterion:*

- GAEPD Source Files

**Recommendation(s):** None

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

**Findings:** According to the data metrics, GAEPD had 20 of 56 HPVs (35.7%) that were not addressed within the 270-day timeline prescribed in the HPV policy. This is better than the national average of 41.4%.

Of the 16 files reviewed that contained violations, GAEPD resolved the violations within the 270-day timeframe prescribed in the HPV policy in all but two instances: Langboard MDF was resolved in 315 days due to lengthy negotiations to obtain a consent order with an adequate penalty. Blue Bird Body Company was resolved in 394 days following the submission of additional equipment information and the improvement of their recordkeeping system. However, the actual consent order was executed 100 days earlier. This was still beyond the 270 days required for an adequate resolution but gives a fairer

picture of GAEPD's resolution record. Again, GAEPD's enforcement process, at times, requires lengthy negotiations to establish a resolution and penalty through a consent order. However, if the enforcement action has to be referred to the Attorney General's (AG's) office, the resolution could take a much longer time period and there is the possibility of continuing noncompliance until the judicial case is scheduled and resolved.

Thirty-nine sources shown in the data metrics as in violation with no action taken in FY2004 (metric 6c), did not rise to the level of a HPV or they were not addressed and/or resolved until FY2005.

Region 4 and GAEPD, at the quarterly meetings, discussed notice of violations (NOVs) that were issued, newly identified and existing violators, the status of each violator, and any resolutions or completed enforcement actions that had occurred since the last quarterly meeting. The discussions were not limited to HPVs, but also covered SIP violations at major and SM sources. During these meetings, GAEPD would identify any issues or complications that the program was having in resolving HPVs which were not resolved in a timely manner and would provide information on GAEPD's current enforcement position. In cases where the company was recalcitrant and there was no expectation for an agreed upon order, GAEPD would refer the violator to its Attorney General's (AG's) office. Once the AG's office was involved in the enforcement action, a longer period of resolution is expected.

*Citation of information reviewed for this criterion:*

- GAEPD Source Files
- Data Metrics

**Recommendation(s):** None

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

**Findings:** The state has a penalty policy, dated December 1997, which contains the same elements as EPA's penalty policy. The gravity component of the GAEPD penalty policy includes actual or possible harm, sensitivity of the environment, and toxicity of the pollutant. The GAEPD penalty policy also has categories for excess visible emissions (with a minimum penalty of \$1,000), permitting, monitoring and procedural violations, gravity adjustments, and the benefit of noncompliance. Other factors that are taken into account with the GAEPD penalty policy are the ability to pay and the inclusion of supplemental environmental projects. Although the penalty amounts for each component, when specified, are less than the specified penalty amounts in the EPA penalty policy (i.e. work practice standards violations have a penalty range of \$1,000 to \$5,000), the policy itself still conforms to EPA's expectations.

*Citation of information reviewed for this criterion:*

- GAEPD 12/07 Penalty Policy

**Recommendation(s):** GAEPD should consider increasing its penalty ranges to provide more of a deterrent.

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

**Findings:** Of the 40 files reviewed 13 contained consent orders with penalties. As allowed by GAEPD's penalty policy, the economic benefit of noncompliance can be mitigated or negated if it is determined that the economic benefit is not significant. This was the case in the penalty calculations reviewed. The GAEPD's penalty policy is being followed, with proper documentation being added to the source file. The six files that were reviewed for the SRF confirm the results of the data metrics, which indicated that 100% of GAEPD's enforcement actions in FY2004 included penalties. This exceeds the national average of 84.4%.

*Citation of information reviewed for this criterion:*

- GAEPD 12/07 Penalty Policy
- Source Files
- Data Metrics

**Recommendation(s):** None

**9. Degree to which enforcement commitments in the PPA/PPG/categorical grants (written agreements to deliver a product/project at a specified time), if they exist, are met and any products or projects are completed.**

**Findings:** GAEPD has an annual PPA with EPA Region 4 that covers multiple environmental programs. In the FY2003-2004 PPA, GAEPD committed to using a full range of tools from traditional enforcement to compliance assurance activities to strengthen the protection of public health and the environment. With respect to their Compliance and Enforcement programs, GAEPD committed to:

- incorporating Environmental Justice and Pollution Prevention into their targeting and planning activities,
- participating in multimedia inspections,
- supporting the acid rain program,
- continuing to review notifications and conduct inspections of the asbestos NESHAP,

- returning facilities with significant violations to compliance by adhering to EPA's T&A HPV guidance including collecting penalties using the Penalty Calculation Worksheet approved by Region 4, and
- encouraging use of SEPs.

Moreover, GAEPD has the following deliverables:

- conducting yearly audits and/or reviews of 50% of applicable source's Continuous Emission Monitoring (CEM) system,
- providing EPA Region 4 an annual list of targeted inspections (due Oct 31),
- maintaining the AFS database, and
- meeting quarterly with Region 4 to discuss compliance and enforcement activities.

GAEPD has met these deliverables as determined through the routine monitoring conducted by Region 4 staff.

*Citation of information reviewed for this criterion:*

- GAEPD FY2004 PPA

**Recommendation(s):** None

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

**Findings:** MDRs represent the minimum amount of data that EPA believes is necessary to manage the national stationary source compliance monitoring and enforcement program. FCEs, stack test results, compliance status, and results of Title V annual compliance certification reviews are some examples of the 26 elements that comprise the MDRs. In examining the MDRs for the 40 selected files, no significant data deficiencies were noted.

The data metrics indicated that 48% (24 of 50) of HPVs were reported by the State to EPA later than 60 days following the date of discovery. Though this is slightly better than the national average of 56%, HPV data should always be entered within 60 days.

*Citation of information reviewed for this criterion:*

- EPA's AFS Minimum Data Requirements
- Data Metrics

**Recommendation(s):** GAEPD should perform a periodic check to ensure that its HPV data is entered into AFS within 60 days from the date of discovery.

**11. Degree to which Minimum Data Requirements are accurate (focus on plant compliance status)**

**Findings:** This metric is analyzing sources carried as HPVs compared to their AFS plant compliance status. The data metrics show in FY2004 that 83.1% of HPVs are coded in AFS with a plant compliance status of “in violation” (national average is 94.3%). Conversely 17% of HPVs are not coded in AFS with a plant compliance status of “in violation.” With respect to stack test data, the data metrics for GA show that 12.2% of sources with completed stack tests do not have the pass/fail results coded into AFS. These findings indicate a need for additional data quality reviews.

*Citation of information reviewed for this criterion:*

- Data Metrics

**Recommendation(s):** GAEPD should review its procedure, of inputting the MDRs, with its personnel to emphasize the importance of data accuracy and to identify the need to ensure an understanding of point level data changes and facility-wide (plant compliance) data changes. GAEPD should also include this MDR analysis in a periodic review of their AFS data for quality assurance.

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

**Findings:** The goal of this metric was to ensure agreement between GAEPD and Region 4 on the accuracy of the MDR being report into AFS and, for discrepancies, develop an action plan for making appropriate corrections. Specific MDR elements examined included: Title V universe; source count of major, synthetic minor and NESHAP minor sources; universe of NSPS, NESHAP and MACT sources; accuracy of FCEs and PCEs being reported; historical non compliance counts; accuracy of sources receiving NOVs; accuracy of HPV reporting; accuracy of enforcement actions being reported; accuracy of penalty dollars assessed by state and number of major sources missing CMS applicability. No comments have been received by GAEPD pursuant to them seeing their State Framework Data Metrics.

*Citation of information reviewed for this criterion:*

- EPA’s Minimum Data Requirements
- Data Metrics

**Recommendation(s):** It is recommended that GAEPD develop a periodic quality assurance review of the MDR requirements, along with the other areas previously mentioned in this report. This will assist in ensuring that the data is accurate and that GAEPD receives proper credit for its compliance and enforcement efforts.



## **Program: Clean Water Act - NPDES**

**Introduction:** The CWA NPDES program is administered through the GAEPD Watershed Protection Branch. This Branch is made up of five programs: Permitting, Compliance and Enforcement Program (PCEP); the NonPoint Source Program (NPSP); the Engineering and Technical Support Program (ETSP); the Watershed Planning and Monitoring Program (WPMP); and the TMDL Implementation Program. The NPDES program for regulated point sources is largely implemented by PCEB. The NPDES program for stormwater is implemented by the NPSP.

Compliance tracking for non stormwater NPDES permits is handled by the PCEB and GAEPD's District Offices. The PCEP primarily tracks compliance for the larger municipalities and industries in the State. Compliance tracking for the smaller municipalities, industries, privately owned systems and stormwater activities is accomplished through seven District offices located throughout the State. Compliance tracking includes activities such as review of monthly discharge monitoring reports, routine inspections, tracking of permit schedules and reports. GAEPD uses a river basin planning approach to watershed protection. This approach provides the framework for identifying, assessing, and prioritizing water resource issues, developing implementation strategies, and providing opportunities for targeted, cooperative actions to reduce pollution, enhance aquatic habitat, and provide a dependable water supply.

The GAEPD utilizes enforcement actions to correct serious environmental problems and to bring businesses, individuals and government entities into compliance with environmental laws. The most common enforcement actions are consent orders and administrative orders. The order explains the nature of the problem, details the action necessary to correct the problem, and may or may not include a settlement amount or fine.

The State Review Framework file selection protocol dictates 20 to 35 files are to be reviewed for a universe of 300 to 700 files. Files in the central office in Atlanta were readily available for review. EPA selected and/or reviewed 24 facility files randomly that consisted of 55 total inspections, 34 majors and 21 minors. The files routinely contained correspondence including inspection reports, Notice of Violations (NOVs), communications from the facility, spill notifications, DMR non-compliance reports, penalty only orders, penalty payment acknowledgments and current permit status.

### **1. Degree to which state program has completed the universe of planned inspections/evaluations (addressing core requirements and federal, state, and regional priorities).**

**Findings:** GAEPD conducts inspections in accordance with the Water Grant Commitment Workplan pursuant to the Clean Water Act §106 and their PPA. This agreement incorporates a five year rotating watershed inspection plan. GAEPD has 14 major river basins and these have been further divided into five river basin groups. All major municipal and industrial NPDES facilities and minor municipal facilities within the basins of focus are inspected at least once during the calendar year and most major facilities are inspected twice. The State also prioritizes inspections for permittees discharging to impaired waters where the impairment can be attributable to the permitted

discharge.

The FY2004 workplan states that GAEPD is to conduct inspections each year at all major facilities and significant minor facilities in the basins of focus. Furthermore, the work plan states that GAEPD is to conduct follow-up inspections and/or other action(s) in previous basins of focus with significant non-compliance problems. These inspections are to be in accordance with the river basin management planning schedule. The basins of focus for calendar year 2002 were the Savannah and Ogeechee; for calendar year 2003 the Ochlockonee, Suwannee, Satilla, and St. Marys; and for Calendar year 2004 the Ocmulgee, Oconee, and Altamaha. GAEPD also conducts inspections of facilities with significant non-compliance problems which are outside the basins of focus. The combination of all inspection requirements resulted in a workplan commitment to inspect at least 125 out of 176 statewide major facilities, and 66 minor facilities, during each inspection year. Furthermore, GAEPD committed to conduct inspections of at least 30 industrial storm water general permit facilities and 300 construction storm water general storm water facilities during each inspection year.

**Inspections at Major facilities:** GAEPD inspected 128 out of 176 statewide major facilities (72.2%) in Inspection Year (IY) 2004, July 1, 2003 to June 30, 2004, which exceeded the national average (64.2%). Eight major facilities were selected for the SRF review with 13 inspection files reviewed. Types of major facility inspection reports were reviewed including Compliance Evaluation Inspections (CEI), Compliance Sampling Inspections (CSI), and Pretreatment Compliance Inspections (PCI).

**Inspections at Non-Major facilities:** GAEPD inspected 145 out of 673 (22%) of their NPDES non-majors, those with effluent limits that regularly submit DMRs, which is comparable with the national average (22.9%). Further, GAEPD's inspection coverage for NPDES non-majors that do not have effluent limits and DMRs is reported at 93 out of 748 (12.4%), which exceeds the national average (4.6%).

*Citation of information reviewed for this criterion:*

- CWA State Review Framework Metrics Data Pull by EPA Headquarters
- GA Permitting for Environmental Results Report
- EPA/GA CWA§106 Program Workplan
- PCS Data Pull for IY2004

GAEPD's has a high level of inspection activity providing a significant field presence. This conclusion is supported by information in PCS.

**Recommendation(s):** None

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

**Findings:** GAEPD maintains enforcement and compliance files, including all correspondence, inspection reports, and enforcement actions. The files are maintained in

a centralized file room.

Noncompliance with stormwater permits consists primarily of reporting violations. Compliance reviews of industrials and MS4s are mostly based on reporting. Compliance reviews of construction activities take place when complaints are received. However, construction compliance reviews focus more on best management practices (BMPs).

The file review conducted noted that many of the inspections identified in PCS were not readily located in the facility's files. As a result of a misunderstanding, EPD staff pulled all files for the facilities reviewed, instead of limiting the pull to the two years being reviewed. Initially, 14 inspection reports were not accounted for. After the file review, GAEPD located seven missing reports in the files, and provided them to EPA for review; three were determined to have been improperly coded (complaints or enforcement actions, not inspection reports) or incorrectly dated in entry; and, therefore, were not missing. GAEPD determined that three inspection reports listed in PCS were not provided to EPA for review because they had not been filed or had been mis-filed. Those reports were also provided to EPA for review. One file had two CEI dates and therefore had been counted twice.

The inspection reports varied in quality depending on the inspector, regarding detail of review and documentation. Most reports reviewed were comprehensive, including facility information and permit requirements. Training for inspectors on report writing and management processes should be offered to ensure improved quality and consistency of reports among the inspectors. However, the files were difficult to navigate through being primarily organized by year with no subsections of like subject matter, i.e., enforcement actions, compliance actions, DMRs, etc. Facility files can be reorganized by date and content, i.e., compliance, enforcement actions, facility correspondence, spill records, etc., and would then facilitate file review for oversight and citizen interest. The broad content of the facility files in addition to the sheer volume of documents complicated the file review process.

The sample of Compliance Evaluation Inspection reports reviewed were generally thorough addressing areas of permit compliance, facility operations, facility description, observations and conclusion. Compliance Sampling Inspection reports included a summary of findings, sampling, flow monitoring, facility data comparability, observations and comments, and facility reconnaissance. It was determined that the inspections typically did not generate any formal enforcement actions, rather, at times uncovered deficiencies that were addressed through requiring the facility to respond to the inspection report concerns or when necessary, issuing a Notice of Violation.

*Citation of information reviewed for this criterion:*

- On-site file review

**Recommendation(s):** GAEPD should make it a practice to consistently and timely copy all compliance and enforcement materials to the facility files and to implement file management practices to facilitate retrieval of documents for oversight and citizen interest.

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

**Findings:** The File Selection Protocol requires a range of 20 to 35 files to be reviewed for a universe of 462 inspection files.<sup>2</sup> EPA selected and/or reviewed 24 files that consisted of 55 total inspections, 34 majors and 21 minors.

The evaluation, identification of violations and development and distribution of inspection reports were generally performed in a timely manner. Inspection reports for both major and minor facilities were reviewed. All files reviewed by EPA, the inspection reports were completed within 30 days after the date of inspection with the exception of four occurrences. The four reports of concern were issued anywhere from 44 days to two months after the date of the inspections and were all for major facilities. The delay was attributed to limited resources and complexity of the reports. Georgia will continue to strive for the timely issuance of all inspection reports.

*Citation of information reviewed for this criterion:*

- PCS data pull for IY 2004
- On-site file review
- GA Enforcement Management System

GAEPD has done a good job in completing most inspection reports in a timely manner and in maintaining timely violation identification through ongoing review of self reporting and monitoring reports.

**Recommendation(s):** None

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

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2 Majors: 186 inspections (for purposes of determining universe of inspection files, all inspections were counted except reconnaissance inspections).  
Minors: 276 inspections (for purposes of determining universe of inspection files, all inspections were counted except reconnaissance inspections).

**Findings:** The State of GAEPD identifies and addresses all violation using EPA criteria outlined in program delegation documents and the MOA. The State maintains a current EMS, which describes how and when the State will take action on violations. The EMS also addresses the level of formal enforcement that should be taken. This involves consideration of several factors related to violations such as the environmental or health impacts. The State EMS is consistent with EPA's national EMS.

Microsoft excel spreadsheets are used to track compliance by NPDES point sources. Once GAEPD has issued a formal enforcement order, it maintains a tracking system to ensure compliance. Tracking of compliance order conditions is done using systems developed by individual staff responsible for tracking compliance with a specific order, and using a centralized order tracking database that is continuously updated by a data technician based on staff input.

GAEPD should be entering violations arising from major compliance monitoring. This includes single event violations (SEV) at majors. This is to assess whether violations determined by means other than automated discharge to limits comparisons are being reported and tracked in PCS. Single event violations are currently required data entry for majors (per PCS Policy Statement), and plans are underway to also make SEV required for non-majors in ICIS-NPDES. GAEPD is not reporting single-event violations in PCS. Georgia's low percent of major facilities in SNC maybe artificially low due to the lack of SEV data entered.

EPA's trend data indicate that the GAEPD's percentage of major facilities in significant noncompliance is reported at 6.5%, well below the national average of 17.9%. GAEPD is commended for this low rate of significant noncompliance. The GAEPD Zero Tolerance Strategy has proven to be effective in ensuring compliance. The Zero-Tolerance Strategy involved the issuance of an expedited order requiring that the violation(s) be immediately addressed and resolved, and includes a monetary settlement for the violation(s). The orders are considered non-negotiable with the caveat that if the violator chooses not to sign the expedited action, which includes penalties less than traditional actions, then GAEPD will pursue additional enforcement, i.e. a traditional consent order containing more comprehensive corrective actions, and higher penalties. The orders have allowed GAEPD the ability to quickly initiate enforcement with a limited amount of resource, maximize enforcement over a relatively broad geographic area, and send a consistent and uninterrupted message to the owners of wastewater treatment and conveyance systems that effluent limit violations and unpermitted discharges are not tolerated.

In addition to the zero tolerance strategy, in 1990 GAEPD revised its water quality regulations to enhance notification requirements and procedures for system owners who experience SSOs to state waters, i.e., notifications by the violator to GAEPD, the media and the public. The rules have been revised since that time to include other requirements. As a result, GAEPD is made aware of *all* spills that enter state waters, and through use of the zero tolerance strategy, can continually address *all* violations in the sensitive area. Those violations outside of the zero tolerance area are addressed by the procedures established in GAEPD's approved 1991 Enforcement Management Strategy.

The GAEPD Water Protection Branch utilizes the Watch List as a means to fine tune and monitor facility status. The Branch reviews the reports with EPA when they are made available, discusses the findings with EPA so that identified corrections can be made, and then evaluates the listed facilities for enforcement or other appropriate response.

GAEPD enters all effluent data in a timely manner. PCS automatically flags SNC based upon the Discharge Monitoring Reports and other reports.

*Citation of information reviewed for this criterion:*

- EPA/GA MOA
- GA EMS
- CWA State Review Framework Metrics Data Pull by EPA Headquarters
- EPA/GA CWA§106 Program Workplan

**Recommendation(s):** It is recommended that GAEPD begin reporting single-event violations arising from major facility compliance monitoring. EPA will begin pulling SEV data from PCS starting in FY2007 to ensure that data has begun to flow into the national system of record.

**5. Degree to which state enforcement actions include required corrective or complying actions (injunctive relief) that will return facilities to compliance in a specific time frame.**

**Findings:** Where effluent violations are documented, GAEPD action is implemented in accordance with an EPA approved enforcement management strategy. The strategy involves using an escalated approach to address permit violations.

The most common enforcement actions are consent orders and administrative orders. The order explains the nature of the problem and details the action necessary to correct it and may or may not include a settlement amount or fine. A Consent Order would normally contain a monetary settlement for addressed violations and stipulated penalties for future violations or violations of order conditions. An Administrative Order would contain conditions for corrective actions.

In the metropolitan Atlanta area, GAEPD has also developed a zero tolerance policy for addressing violations at facilities within this high population density area. All violations are addressed using consent orders with civil penalties and the facilities are expected to maintain a high level of compliance for their systems.

All enforcement files reviewed contained a reasonable compliance schedule of required actions or activities designed to return the source to compliance, either injunctive relief or other complying actions<sup>3</sup>.

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3 Majors: 149 Enforcement Actions  
minors: 353 Enforcement Actions

*Citation of information reviewed for this criterion:*

- PCS data pull for FY2004
- On-site file review
- GA Enforcement Management System
- FY2004 EPA/GA Midyear Report

**Recommendation(s):** None

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

**Findings:** The QNCR Guidance Manual calls for enforcement action before two quarters of QNCR effluent violation at the same pipe for the same parameter. The number of facilities without timely action should not exceed 2% of the active major universe throughout the fiscal year. GAEPD consistently demonstrates timely action to address SNC reporting an impressive 0%, with the national average being reported as 3%. GAEPD has reported no major facilities without timely action.

In addition, the State has implemented a zero tolerance strategy for water in a 14 county area in and around metropolitan Atlanta for the Coosa and Tallapoosa river basins, and the upper Chattahoochee river basin from the headwaters to Troup County. Under this strategy, all numeric permit limit violations (except flow), SSOs, delinquent DMRs, and failure to meet compliance milestones in existing enforcement actions will be addressed with a consent order that includes a monetary penalty.

*Citation of information reviewed for this criterion:*

- CWA State Review Framework Metrics Data Pull by EPA Headquarters
- GA Enforcement Management System
- FY2004 EPA/GA Midyear Report

**Recommendation(s):** None

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

**Findings:** The State has a written penalty policy that applies to municipal and industrial facilities. There is a base penalty with the following criteria considered to arrive at a final penalty:

- magnitude of violation
- pollutant characteristics
- 303(d) listing as impaired water
- reasonable preventive
- ability to pay
- economic benefit where reasonably determinable

The onsite file review determined that penalty calculations only took into consideration the gravity component, not economic benefit, as part of the settlement action.

In addition, the State has a separate penalty policy for construction stormwater permit violations. The construction stormwater penalty policy includes a penalty matrix.

*Citation of information reviewed for this criterion:*

- On-site file review

**Recommendation(s):** The majority of the enforcement files reviewed did not have the penalty worksheet included. It is recommended that the penalty rationale be kept in the enforcement file and available for review at all times. If GAEPD determines that an action does not warrant a penalty, documentation of the decision and rationale for the decision should be included in the case file. Economic benefit is one of eight assessment factors in the 1998 Zero Tolerance Strategy guidance and subsequent policy updates. GAEPD should document the economic benefit contribution for all penalties assessed *and collected*. When appropriate, economic benefit should be included as a key factor when determining penalty amounts.

**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.**

**Findings:** GAEPD typically includes penalties with formal enforcement actions. GAEPD's enforcement actions carried a penalty 41.3% of the time, which is comparable to the national average of 44.3%. Penalty collection could not be verified from the files, documents supporting penalty collection were not easily located in the facility files. The compliance and enforcement files were difficult to navigate through because of the volume of documents and lack of structured organization.

*Citation of information reviewed for this criterion:*

- On-site file review
- CWA State Review Framework Metrics Data Pull by EPA Headquarters

**Recommendation(s):** The State's penalty policy and its strategy for taking formal enforcement for repeat violators are not clear. Penalties associated with effluent violations in the metropolitan Atlanta area follow the 1998 Zero Tolerance Strategy guidance and subsequent policy updates. Gravity and economic benefit are components of the guidance's assessment factors and should be taken into consideration when assessing civil penalties. GAEPD should document the economic benefit and gravity contributions for all penalties assessed *and collected*. When appropriate, economic benefit should be included as a key factor when determining penalty amounts. GAEPD should make it a practice to consistently and timely copy all compliance and enforcement materials to the facility files and implement file management practices to facilitate retrieval of documents.

**9. Enforcement commitments in the PPA/PPG/categorical grants (written agreements to deliver product/project at a specified time), if they exist, are met and any**

**products or projects are complete.**

**Findings:** EPA does have a PPA with GAEPD. GAEPD has met or exceeded all the enforcement requirements of their PPA, their §106 grant workplan, and EMS. The State of Georgia has conducted inspections in accordance with the PPA with EPA. This agreement incorporated a 5-year rotating watershed inspection plan. In accordance with the PPA, the State inspected at least 125 major facilities and 66 minor facilities each year.

*Citation of Information Reviewed for this Criterion:*

- EPA/GA PPA
- GA Enforcement Management System
- EPA/GA CWA§106 Program Workplan

**Recommendation(s):** None

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

**Findings:** GAEPD has consistently maintained good timeliness in data entry. All minimum data elements are properly tracked and entered in PCS with the exception of SEV data.

For data management commitments the State relies on both PCS and an internal tracking system. GAEPD maintains a Microsoft Access database of basic facility and permit tracking information, sanitary sewer overflows, inspections, and orders. There is no automatic interface between any of the additional tracking systems and PCS. All data are entered directly into both PCS and appropriate State tracking systems. Data in PCS and the various State systems are periodically compared as a data quality assurance measure.

All of these databases are maintained in the Atlanta office except the databases for construction general storm water coverage, which are maintained by the State district offices. GAEPD plans on using ICIS NPDES modernized PCS, when available.

*Citation of Information Reviewed for this Criterion:*

- On-site file review
- GA Permitting for Environmental Results Report
- EPA/GA CWA§106 Program Workplan

**Recommendation(s):** None

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

**Findings:** GAEPD has consistently maintained high accuracy in data entry. All minimum data elements are properly tracked and entered in PCS with the exception of SEVs. The onsite file review for majors determined two inspections to be found in the file but not reported in PCS. Further, an additional 3 inspections for minors were found to be in the files but not reported in PCS.

Data is inputted directly into PCS as well as into the State system, therefore there exists

no data exchange concerns. Periodically various lists are generated to compare and quality control some elements which may be contained in both databases. GAEPD practices linking addressed violations to the actions. Georgia is reported to only have 123 enforcement actions without enforcement violation type codes entered, well below the national average of 1735.

*Citation of Information Reviewed for this Criterion:*

- On-site file review
- CWA State Review Framework Metrics Data Pull by EPA Headquarters
- EPA/GA CWA§106 Program Workplan
- PCS Data Pull for FY2004

**Recommendation(s):** None

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

**Findings:** There is a 95% entry standard rate for the DMR entry rate at majors. GAEPD is reported at 99.1% compared to the national average of 93.4% (data pull as of the quarter ending 3/31/05). Also, the major permit limits entry standard is set at 95%, with Georgia having reported at 84.7%, consistent with the national average. GAEPD's rate of manual override of SNC to a compliant status is well below the national average (18.2%), reported at 8.3%.

*Citation of information reviewed for this criterion:*

- On-site file review
- CWA State Review Framework Metrics Data Pull by EPA Headquarters

GAEPD is encouraged to continue their good work in striving to achieve meeting the national goal for the entry standard for majors.

**Recommendation(s):** None

## **Program: RCRA Hazardous Waste Enforcement Program**

- 1. Degree to which state program has completed the universe of planned inspections/evaluations (addressing core requirements and federal, state, and regional priorities).**

### **Findings:**

**Inspections at TSDs:** The Solid Waste Disposal Act §3007(e) requires that every TSD be inspected once every two years. The State Review Framework Metrics indicate that GAEPD inspected 100% of their TSDs in FY2003-2004, as required by statute, well above the national average of 90.4%.

**Inspections at Federal Facility TSDs:** The Solid Waste Disposal Act §3007<sup>©</sup> requires that every TSD facility owned or operated by the federal government must be inspected every year to determine compliance with the hazardous waste regulations. There are six federal TSDs located in GAEPD. In FY2004, five of the six federally owned TSDs received a compliance inspection. Fort Gordon did not receive a compliance evaluation inspection during the fiscal year. There were two corrective action oversight inspections (CAOs) conducted at Fort Gordon. However, these do not qualify as compliance inspections since the evaluations do not cover the active hazardous waste management activities at the facility. CAO evaluations determine compliance with the corrective action order/permit for the remediation of contamination at RCRA facilities. This appears to be an oversight on the part of the State.

**Inspections at state & local TSDs:** The Solid Waste Disposal Act §3007(d) requires that every TSD facility owned or operated by a state or local government must be inspected every year to determine compliance with the hazardous waste regulations. There is one state-owned TSD located in GAEPD, the University of Georgia located in Athens. In FY2004, this facility received a compliance inspection as required by federal statute.

**Inspections at Land Disposal Facilities:** The OECA FY2004 MOA Update specifies that every Land Disposal Facility (LDF) should receive an inspection of their groundwater monitoring system once every three years. This could be a CME for new or newly regulated LDFs, or an OAM inspection at LDFs where the groundwater monitoring system has been adequately designed and installed. There are 43 post-closure facilities in Georgia subject to the RCRA Subpart F groundwater monitoring requirements. In FY2004, 28 facilities, or 65% of the universe, received a CME and/or an OAM. The FY2004 OECA MOA guidance recommendation is that 100% of the facilities receive a CME/OAM every three years. By completing 65% of this task in one year GAEPD has made significant progress in meeting the OECA guidance requirements.

**Inspections at LQGs:** The OECA FY2004 MOA Update specifies that 20% of the LQG universe should be inspected every year, with a goal of achieving 100% inspection coverage every five years. The State Framework Metrics indicate that GAEPD has inspected 67% of the LQG universe in their state in FY2004. This is well above the OECA core program requirement of 20%, as well the national average of 28.8%. The

data metric also shows that from FY2000-FY2004, GAEPD inspected 93% of the LQG universe.

In the GAEPD PPA there are state-specific strategic goals involving the reduction of persistent, bioaccumulative or toxic (PBT) chemicals and increasing the amount of hazardous waste that is safely recycled. To achieve these goals, the state focuses inspections at facilities that generate PBT waste. According to Georgia law, these facilities are also required to have Hazardous Waste Reduction Plans that contain performance goals. Due to the focus on the generators of PBT wastes, there was a 97.5 % waste reduction from 1995 to 2003.

**Other Inspections:** Although the FY2004 OECA MOA Update does not specify further inspection coverage requirements, it does recommend that the regions and states determine appropriate levels of inspection coverage for SQGs. Georgia has more than 3,000 SQGs, and according to the State Framework Metrics, GAEPD inspected an average of 92% of all SQGs over a five-year period (FY2000-FY2004).

Georgia maintains quality inspection coverage of the regulated universe, far above the national average and OECA guidance recommendations.

*Citation of information reviewed for this criterion:*

- Solid Waste Disposal Act
- EPA Region 4 Annual Review Reports - Georgia Hazardous Waste Management Branch
- OECA FY2004 MOA Guidance Update
- OECA RCRA State Review Framework Metrics
- RCRAInfo data

**Recommendations:** It is recommended that GAEPD ensure that every statutorily mandated inspection is conducted, including annual Federal Facility TSD inspections.

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

**Findings:** At the GAEPD offices in Atlanta, a total of 30 files were reviewed, 15 inspection files and 15 enforcement files<sup>4</sup>. The inspection reports were thorough and well-documented, appropriate to the complexity of the facility. There were complete descriptions of the types and amount of hazardous waste management activities observed and facility operations/conditions at the time of the inspection. Violations were clearly identified in the report, and documented where appropriate with photographs. In addition, the State Review Framework Metrics indicates that Georgia has an inspection SNC identification rate of 5.2%, well above the national average of 3.2%

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<sup>4</sup> According to the OECA State Review Framework Metrics, Georgia inspected 599 facilities in FY2004. Using the SRF file selection protocol, this translated to 20 to 35 files that should be reviewed where 50% were enforcement files and 50% were inspection files.

*Citation of information reviewed for this criterion:*

- GAEPD files and State Review Framework Metrics

**Recommendation(s):** None

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

**Findings:** In the Memorandum of Agreement (MOA) between the state of Georgia and EPA, dated December 13, 1999, there is no established deadline for the completion of inspection reports by GAEPD. Of the inspection reports reviewed, 100% were completed within 150 days of the initial day of the inspection. In fact, 93% were completed within 60 days, with only two reports completed within approximately 75 days of the inspection. All reports clearly documented the violations observed.

*Citation of information reviewed for this criterion:*

- GAEPD RCRA Inspection files
- GAEPD/EPA RCRA MOA

**Recommendations:** None

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

**Findings:** During the file review, RCRAInfo data pulls were compared with information in the file to determine if the violation data was reported timely and accurately. Of the inspection reports reviewed, 100% were completed and violations identified within 150 days of the initial day of the inspection. All SNC information contained in the files was accurately reported in RCRAInfo. GAEPD does an excellent job at maintaining accurate and timely data in RCRAInfo.

*Citation of information reviewed for this criterion:*

- GAEPD inspection files and RCRAInfo data

**Recommendation(s):** None

**5. Degree to which state enforcement actions include required corrective or complying actions (injunctive relief) that will return facilities to compliance in a specific time frame.**

**Findings:** EPA reviewed 15 enforcement files as part of the GAEPD RCRA SRF. All enforcement files reviewed included required actions for the facility to return to compliance. Following the issuance of an informal or formal enforcement action, GAEPD often conducts an onsite follow-up inspection to monitor compliance with the schedule in the enforcement order. Six of the 15 cases (40%) were followed up with RCRA Compliance Schedule Evaluations (CSE) to determine the facility's compliance with the enforcement action. Return to compliance in the other cases was documented during the initial inspection and/or through documentation from the facility. All facilities

returned to compliance without additional enforcement required.

*Citation of information reviewed for this criterion:*

- GAEPD enforcement files and RCRAInfo.

**Recommendation:** None

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

**Findings:** The RCRA Enforcement Response Policy (ERP) designates the following time lines for responding to SNCs:

- Day 150 - by this number of days after the first day of inspection, the state (implementing agency) should determine if formal enforcement action is required (identifying the violating facility as a SNC);
- Day 240 - by this number of days after the first day of inspection, the state should issue its unilateral or initial order, if appropriate;
- Day 360 - by this number of days after the first day of inspection, the state should enter into a final order with the violator, or make a referral to the State's Attorney General office.

The ERP recognizes circumstances that may dictate an exceedance of the standard response times, such as multimedia cases, national enforcement initiatives, additional sampling or information needs, etc. A ceiling of 20% of cases per year may exceed the above time lines.

In FY2004, the GAEPD RCRA program identified 33 SNC facilities. Of the 15 files reviewed, timely enforcement actions were taken to address all SNCs according to ERP timeframes. GAEPD maintains an excellent response time for addressing SNCs.

*Citation of information reviewed for this criterion:*

- Hazardous Waste Civil Enforcement Response Policy (December 2003)
- GAEPD facility files
- RCRAInfo data

**Recommendation(s):** None

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

**Findings:** Upon reviewing the selected enforcement cases, it was noted that there were no penalty calculations included in the files. Through discussion with GAEPD, it was determined that although the gravity of the violations are considered in the penalty calculation, no documentation of the penalty calculations are maintained in the files. GAEPD does not factor economic benefit into their penalty calculations.

*Citation of information reviewed for this criterion:*

- RCRAInfo data
- GAEPD RCRA Enforcement files

**Recommendations:** In order to maintain consistency in enforcement proceedings and penalty calculations, GAEPD must consider options to include economic benefit into penalty calculations, as well as documenting the calculations in the enforcement files.

**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.**

**Findings:** In reviewing the RCRA enforcement files, EPA did not find any documentation of final penalty calculations with the enforcement actions. The final penalties were reflected in RCRAInfo, but the penalty calculations were not formally documented in the files.

*Citation of information reviewed for this criterion:*

- GAEPD enforcement files
- RCRAInfo data

**Recommendations:** In order to maintain consistency in enforcement proceedings and penalty calculations, GAEPD must consider options to maintain both initial and final penalty documentation, including economic benefit and gravity-based calculations.

**9. Enforcement commitments in the PPA/PPG/categorical grants (written agreements to deliver product/project at a specified time), if they exist, are met and any products or projects are complete.**

**Findings:** In February 2003, GAEPD submitted a FY2003-FY2004 PPA, which included the commitments for the implementation of the RCRA program. In February 2005, EPA Region 4 conducted a review of the RCRA program, as required by 40 CFR §35.115, to assess progress toward meeting the PPA FY2004 commitments and discuss any potential obstacles to meeting FY2005 commitments. Following the review, a report to document the findings was developed. In the FY2004/FY2005 RCRA Review, the report found that GAEPD met and exceeded all PPA commitments for TSD and non-TSD inspections.

Facility Type	# of CEI conducted	% Targeted in FY2004	% Conducted in FY2004
TSD	57	100	100
LQG	192	29.8	54
SQG	176	4.3	5.6
Used Oil	52	51.5	52.5

Transporter	61	100	100
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*Citation of Information Reviewed for this Criterion:*

- GAEPD RCRA Annual Review Report, FY2005/2006

**Recommendations:** None

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

**Findings:** The RCRA Enforcement Response Policy states that data should be entered when compliance determinations are made, but no later than 150 days from day zero or the first day of the inspection. This provision is included so that no SNC entry is withheld until enforcement is completed, and therefore not tracked for timely enforcement response.

In the data metrics for this element, OECA has measured the percentage of SNCs that are entered into RCRAInfo more than 60 days after the determination (i.e., the first date of inspection). According to the OECA metrics, GAEPD entered 61.9% of the SNCs in FY2005 greater than 60 days after the date of determination. In the GAEPD RCRA MOA, there is no established deadline for SNC data entry into RCRAInfo.

*Citation of Information Reviewed for this Criterion:*

- RCRA State Review Framework Metrics
- GAEPD File Review
- GAEPD/EPA RCRA MOA
- RCRAInfo data

While the OECA data metrics indicate that GAEPD entered 61.9% of the SNCs greater than 60 days after the date of determination, all of the SNC facilities were addressed with timely enforcement actions according to ERP timeframes.

**Recommendations:** None

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

**Findings:** The following discussion addresses the findings of the RCRA State Review Framework Metrics for data accuracy.

Metric 11(a)(1) - This metric measures the “closeness” between SNC determination and formal enforcement actions. The ERP states that the data should be entered when the determination is made, and SNC entry should not be withheld until the action is completed. The metric indicates that during FY2004, there were no GAEPD RCRA SNC determinations made on the same day as formal enforcement actions.

Metric 11(a)(2) - This metric also measures the “closeness” between SNC determination and formal enforcement actions. The metric indicates that during FY2004, there were no GAEPD RCRA SNC determinations made within one week of formal enforcement actions.

Metric 11(b) - This metric measures the longstanding secondary violations that are not “returned to compliance” or redesignated as SNC. According to the data metric, in Georgia there were no facilities that were in violation for greater than three years.

*Citation of Information Reviewed for this Criterion:*

- RCRA State Review Framework Metrics

**Recommendations:** None

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

**Findings:** GAEPD is the “implementor of record” for data into RCRAInfo since it is an authorized state. This means that the State has the lead for the completeness and accuracy of data, including compliance and enforcement information, into RCRAInfo (except for EPA inspections and enforcement). The State Review Framework Metrics were provided to GAEPD, and there is no disagreement from Georgia with the data provided in the report.

*Citation of information reviewed for this criterion:*

- RCRA State Review Framework Metrics

**Recommendations:** None