R-19J

Douglas P. Scott, Director
Illinois Environmental Protection Agency
P.O. Box 19276
Springfield, IL 62794-9276

RE: U.S. EPA Review of IEPA's NPDES, RCRA, and Air Enforcement Programs – Final Report

Dear Mr. Scott:

Region 5 would again like to thank you and the Illinois Environmental Protection Agency (IEPA) staff for participating in the United States Environmental Protection Agency's (U.S. EPA's) enforcement program review of the Clean Air Act (CAA) Stationary Source, the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES), and the Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste enforcement programs. We especially appreciate your staff's cooperation and assistance during this review.

Please find enclosed a final State Review Report (Report). This Report contains an Executive Summary, as well as detailed findings, recommendations, and actions concerning IEPA's enforcement programs. Region 5 utilized U.S. EPA data reports and reviews of IEPA case files in developing this final Report as well as information gained from discussions with IEPA in regard to the draft State Review Report.

If you have any questions or issues, feel free to contact me, or Tinka Hyde of my staff, at 312-886-9296. Her email address is hyde.tinka@epa.gov.

Sincerely,

/s/

Mary A. Gade
Regional Administrator

Enclosure

U.S. EPA – Region 5 Review of Illinois EPA Enforcement Program
Federal Fiscal Year (FFY) 2005

August 22, 2007

A. EXECUTIVE SUMMARY

Background

The U.S. EPA Office of Enforcement and Compliance Assurance (OECA), all ten U.S. 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 5 of the Illinois Environmental Protection Agency (IEPA) 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. Future reviews will look at performance as a comparison to the level documented in this baseline review.

The purpose of the State Review Framework assessment is to provide consistency in the level of core enforcement activity and thus in environmental protection and public health across the country. It provides a consistent tool for Regions to use in overseeing state enforcement programs, and provides the basis for a consistent mechanism for U.S. EPA Regions to provide flexibility to states which can demonstrate an adequate core 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 U.S. EPA policies and guidance. The 12 evaluation areas posed by this Framework are consistent with evaluation areas delineated in the 1986 guidance memorandum signed by Jim Barnes entitled "Revised Policy Framework for State/EPA Enforcement Agreements." Additionally, the Framework utilizes existing program guidance, such as 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 minimum level of performance.

Process Followed in the Review

U.S. EPA, Region 5's evaluation of IEPA's core enforcement programs was conducted by staff from the Region's Air, RCRA, and Water enforcement programs using the Framework described above. Part of the review consisted of analyzing FFY 2005 data ("data metrics") regarding IEPA's enforcement programs which came from U.S. EPA's Integrated Data for Enforcement Analysis (IDEA) program. During the remainder of the

review, U.S. EPA staff reviewed IEPA inspection and case files that were identified to provide a stratified random sample of inspections and case files for FFY 2005. Air reviewed 30 files, RCRA reviewed 35 files, and the Water program reviewed 37 files. The Evaluation Details section of this report contains findings of the review for each program and areas of concern, with a full explanation of these concerns along with recommendations for resolution.

Information Regarding IEPA

IEPA's Enforcement Management System (EMS), dated October 4, 2004, describes the procedures by which IEPA will pursue compliance with the Illinois Environmental Protection Act (Act). Although the document states that it is "intended only for use by the staff of the Illinois EPA as an internal management procedural tool," it is helpful to describe procedures that are used by all environmental media in IEPA. According to the EMS, IEPA may respond to a civil violation in one or more of the following ways:

- Informal Warning Letter, otherwise known as a Noncompliance Advisory (NCA) – an informal pre-enforcement document intended for quick compliance for violations that do not warrant more formal enforcement,
- Violation Notice (VN) – a pre-enforcement document issued under Section 31 of the Act to which an alleged violator must respond.
- Compliance Commitment Agreement (CCA) – a pre-enforcement agreement between IEPA and a violator that outlines steps to achieve compliance, but does not provide for any penalties.
- Enforcement Referral – a formal enforcement procedure in which IEPA refers the case for legal action to the Attorney General's Office (AGO), a State's Attorney, or U.S. EPA.

Overall Findings

U.S. EPA has identified both strengths and areas for improvement in IEPA's enforcement and compliance program.

U.S. EPA has found that IEPA has the following strengths:

- In the Air program, use of the violator classification form and violation notice tracking system are good tools to ensure timely reporting of significant violators.
- In the RCRA program, identification of significant noncompliance (SNC) has exceeded that of the national average. (However, data from the time period since the reviewed fiscal year shows a large downturn in SNC identifications.)
- In the Water program, Discharge Monitoring Report (DMR) entry rates are high, exceeding national goals, and a large amount of data for minors is entered into national databases though there is no current requirement to do so.

U.S. EPA has found that improvements are needed in certain IEPA programs, which are summarized below along with recommended corrective actions. (Not all findings and recommendations are listed here).

- All Programs
  - Each program identified issues with IEPA's identification of significant or high priority violators or their inconsistent application of national guidance related to timely and appropriate enforcement. In the absence of administrative penalty authority, IEPA's current options for pursuing cases for which penalties are appropriate include referring cases to U.S. EPA or to the AGO. IEPA should create guidance that establishes a consistent process for when cases should be referred to each entity. U.S. EPA is willing to explore opportunities to support the State should it wish to pursue additional administrative authorities. (Review Elements 5 and 6)
  - Gravity and economic benefit calculations were not performed in required situations or were not properly recorded when calculated. U.S. EPA recommends calculations be made in all applicable circumstances and properly recorded in enforcement case files. U.S. EPA also recommends that IEPA's EMS be updated to include additional instructions on calculation and documentation of penalties. (Review Elements 7 and 8)

- RCRA
  - While IEPA is meeting its required level of inspections for LQGs in FFY 2005, data in RCRAInfo does not support this fact. IEPA has committed to performing database cleanup by the end of CY 2007. (Review Element 1)
  - The number of inspections for Treatment, Storage, and Disposal Facilities (TSDFs) does not meet the required level of inspections based on U.S. EPA policy or IEPA's Performance Partnership Agreement. IEPA should conduct all inspections to which it commits. (Review Element 1)
  - Inspection reports are often not complete and lack dates that enable one to tell if they are timely. U.S. EPA recommends that IEPA create an SOP to address completeness of inspection reports and begin the practice of dating the inspection reports themselves. (Review Element 2)
  - Data reviews show that for many facilities, either the compliance status is incorrect in RCRAInfo or Significant Non-Complier (SNC) designations are not being made in the required time frame. U.S. EPA recommends that IEPA implement a procedure to track and identify secondary violators (SVs) that have been in noncompliance for greater than 240 days, designate them as SNCs, and initiate a formal enforcement action. (Review Element 11)

- Air
  - IEPA did not report data as required by the 2005 PPA and failed to meet the timely, accurate, and complete reporting standards of the Minimum Data Requirements (MDRs). U.S. EPA recommends that IEPA 1) adhere to the Timely and Appropriate (T&A) Guidance for all MDRs, 2) create a plan to submit timely, accurate, and complete data to the Air Facility System (AFS), and 3) conduct training on MDR reporting. Failure to enter data into

national databases keeps U.S. EPA and the public from getting an accurate understanding of IEPA's efforts to administer the CAA. (Element 10)
    - In 2006, IEPA submitted their first Compliance Monitoring Strategy (CMS) in several years. This submission is expected to address IEPA's past failure to meet national compliance evaluation goals. Region 5 will work with IEPA to ensure that future strategies are submitted and that they follow U.S. EPA CMS national guidance. (Element 1)
- Water
    - Classification of inspections in PCS (e.g. CSO, SSO) sometimes does not match the complexity of the actual inspections that are conducted. IEPA should work with U.S. EPA to ensure that inspections/evaluations of a particular type are recorded consistent with national definitions. (Elements 1 and 2)
    - Inspection reports were not timely in certain cases. U.S. EPA recommends that IEPA update its EMS to specify a timeframe for completion of inspection reports. (Element 3)
    - Although IEPA reports a low SNC rate, certain practices were observed that could understate the true rate: 1) IEPA manually overrides SNC at a high rate, and 2) CCAs are recorded as formal actions. Reviewers analyzed the SNC rate for the review period, correcting it for these practices, and observed that the SNC rate was not appreciably affected by these changes. Nonetheless, IEPA should reduce the practice of manually overriding SNC to be consistent with national guidance and stop recording CCAs as formal actions.

Recommendation Note: At times in this report, reference is made to the updating of IEPA's EMS or other related policies. U.S. EPA requests that updates be sent to the appropriate Region 5 contacts in this report for review.

B. EVALUATION DETAILS

Program Evaluated: RCRA Subtitle C

Information Sources Included in the Review

1. RCRAInfo and RCRARep Databases (U.S. EPA).
2. Data Metrics Report Prepared by U.S. EPA Headquarters (August, 2006).
3. IEPA Compliance Monitoring and Enforcement Files.
4. Hazardous Waste Civil Enforcement Policy (U.S. EPA).
5. FY2005 Performance Partnership Agreement (U.S. EPA, Region 5 and IEPA).
6. RCRA Civil Penalty Policy (U.S. EPA).
7. Civil Penalty Policy (IEPA).
8. Revised RCRA Inspection Manual, 1998 (U.S. EPA).
9. State Review Framework Work Shop (November 2-3, 2005, U.S. EPA, Region 5).
10. National Program Managers Guidance for FY2005 (U.S. EPA).
11. IEPA Enforcement Management System, October 4, 2004.

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Period Covered: Federal Fiscal Year 2005

Introduction

The review of the Illinois Environmental Protection Agency (IEPA) Hazardous Waste Compliance Monitoring and Enforcement Program (CMEP) included the review of the Data Metrics report as provided by U.S. EPA Headquarters (EPA HQ) in August 2006 and information obtained during IEPA's file review which was sent via electronic files.

The file review was conducted during the month of October 2006, and included the review of 34 randomly selected compliance monitoring and enforcement files covering inspections and enforcement activities that occurred during the 2005 Federal Fiscal Year. In actuality, 35 files were selected; however, one file/facility was randomly selected twice, once under the Informal Action category and once under the Watchlist category, thereby, fulfilling two assessments. The number 35 was chosen because the universe size (i.e. number of RCRA inspections and enforcement activities occurring in FY05) was greater than 700, and the number 35 fell within the range for this size universe provided in the SRF File Selection Protocol (June 22, 2005). The specific 35 files were selected in a manner that would ensure coverage of informal enforcement actions, formal enforcement actions, significant

non-complier (SNC) determinations, Watchlist cases, and inspections that did not result in an enforcement action in FY05. Specifically, selections were made to ensure coverage in all of the categories listed below. The number of files selected from each category was based on the amount of cases in each category, the need to ensure that at least half of the cases selected contained an enforcement action, and that an adequate number of files were chosen from each category. However, the actual number chosen from each category was not made to mirror the proportion of the total universe accounted for by that category.

(1) No Violations - 10 Files
(2) Informal Actions - 10 Files
(3) Formal Actions - 8 Files
(4) Watchlist Cases - 7 Files

Files were chosen randomly from each category and sent to IEPA for comment. If there were any concerns, another random file was chosen from the category. Two selections were conducted due to a duplicate selection on the first random selection. The second random selection also produced a duplicate, but through discussion with IEPA, it was mutually decided to leave the second selection as is.

Section 1: Review of State Inspection Implementation

1. The degree to which a state program has completed the universe of planned inspections (addressing core requirements and federal, state and regional priorities).

Findings: The SRF provides six metrics for evaluation under this element (Data Metrics 1a – 1e, & 1r).

Treatment, Storage, and Disposal Facilities (TSDFs):
In accordance with Section 3007(e)(1) of the Resource Conservation and Recovery Act, 100% of all TSDFs must be inspected over two years. According to the OTIS data metrics report from August 2006, U.S. EPA and IEPA have inspected a combined number of 97% (30 out of a universe of 31) of these sources over FY 2004 and FY 2005 under a workshare agreement between U.S. EPA and IEPA (See Element 9). 100% coverage was not achieved because IEPA did not perform all planned inspections as agreed to in the FY 2005 Performance Partnership Agreement (PPA). The national average of TSDF inspections is 94.2%.

Large Quantity Generators (LQG) – Annual Inspections:
Per Office of Enforcement and Compliance Assurance (OECA) National Program Manager Guidance (NPM) for 2005, 20% of the LQG universe must be inspected each year. According to the OTIS data metrics report from August 2006, U.S. EPA and IEPA have inspected a combined number of 5% (206 out of a universe of 4158) of these sources in FY 2005 under a workshare agreement between U.S. EPA and IEPA. The national average of LQG inspections in FY 2005 is 16.9%.

While U.S EPA/IEPA inspections appear to fall short of the 20% requirement, U.S.

EPA and IEPA have information from a more recent pull of the OTIS metrics report (December 2006) that shows a more accurate count of inspections. In addition, U.S. EPA believes that IEPA's Annual Reporting System reports a more accurate picture of the universe. According to this new information, 153 inspections out of a universe of 742 have been conducted by U.S. EPA and IEPA.

In FY 2005, states were also allowed to substitute inspections of LQGs with SQGs on a 3-to-1 ratio (3 SQGs for every 1 LQG), under certain stated conditions. In FY 2005, IEPA conducted 81 SQGs, which adds up to the equivalent to 27 LQGs. In total, 180 facilities were inspected out of a universe of 742, which is 24% and meets the 20% requirement.

U.S. EPA believes that the numbers in OTIS from August 2006 are not correct because IEPA had not been updating the RCRAInfo database for some time in the past to reflect generators who have closed their facilities, are no longer generating hazardous waste, or are in a different generator status. Although IEPA has since been working on updating the database, more progress needs to be made.

Large Quantity Generators (LQG) – 5 Year Inspection Coverage:
Per OECA NPM Guidance for 2005, 100% of the LQG universe should be inspected over a 5 year period. According to the data metrics, U.S.EPA and IEPA have inspected a combined number of 15% (605 out of a universe of 4158) of these sources in FY 2005 under a workshare agreement between U.S. EPA and IEPA. The national average of LQG inspections in FY 2005 is 41.8%.

While U.S. EPA/IEPA inspections appear to fall short of the requirement as in the situation above, better information as described above shows that data in the August 2006 OTIS report is not correct. In reality, LQG inspections over the 5 year period (FY2001-FY2005) have totaled 100%.

In summary, IEPA did not complete inspections at 100% of all operating TSDFs in each of the Fiscal Years covered under the agreements. Inspection requirements for LQGs, however, were accomplished for the period covered.

Information Sources Used for this Element: 1, 2, and 5, and 10.

Recommendations and Actions: Per the statutory requirement and the workshare agreement, IEPA should conduct inspections at all TSDFs to which they commit. IEPA should also clean up the RCRAInfo database to ensure only active facilities are included in the universe counts. IEPA has been making progress in cleaning up the database and has agreed to accomplish this task by the end of CY2007.

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

Findings: The SRF provides a single file review metric (Data Metric 2a) for evaluation under this element. Of the 34 compliance monitoring and enforcement files reviewed, it was determined that 28 of them were applicable to this metric (six of the files were for enforcement activities that stemmed from Non-Financial Record Reviews conducted in-house that do not produce an inspection report).

Of the 28 applicable files, 14 of the inspection reports were deemed to be complete (50%). Inspection reports were considered complete if they contained: 1) a narrative that clearly explained and supported observations and findings during the inspection; 2) a completed checklist if the inspection was a compliance evaluation inspection (CEI); and 3) photographic evidence or other documentation if necessary to support observations and findings. This standard was chosen to remain consistent with guidance in the Revised RCRA Inspection Manual, 1998.

In regard to the 14 files that were deemed incomplete, 13 were missing completed checklists and one was missing a narrative.

Information Sources Used for this Element: 3, 8, and 9.

Recommendations and Actions: IEPA should develop a Standard Operating Procedure (SOP) or policy to ensure all inspection reports are completed and included with all case reports and files. IEPA should also provide training to all IEPA inspectors on the required components of a completed inspection report. These activities should be completed by December 31, 2007.

3. The degree to which inspection reports are completed in a timely manner.

Findings: State Review Framework program guidance for this Element connects a report written in a timely fashion with meeting the requirement in the U.S. EPA Hazardous Waste Enforcement Response Policy (ERP) that a violation determination be made within 150 days of the inspection.

IEPA does not specify a timeframe for completing inspection reports. However, there is a timeline established for initiating an enforcement response once a violation is detected. According to the IEPA Enforcement Management System (EMS), if a violation is found, an enforcement response should be initiated within 60 days of the violation detection date.

Since IEPA does not specify a report turnaround time and does not follow the practice of dating its inspection reports, U.S. EPA does not have a metric to measure for this Element.

Information Sources Used for this Element: 3, 9, and 11.

Recommendations and Actions: U.S. EPA recommends that IEPA begin the practice of dating the actual inspection reports in order to determine timeliness of

inspection report completion. The date for each report should be the date the final report is completed, including any revisions required by management. Also, IEPA should develop a written policy that outlines a timeline for completing inspection reports. These practices should begin no later than December 31, 2007.

Section 2: Review of State Enforcement Activity

4. The degree to which significant violations and supporting information are accurately identified and reported to EPA national databases in a timely and accurate manner.

Findings: The SRF provides six metrics in total for evaluation under this element (Data Metrics 4a-4d; File Review Metrics 4e & 4f).

The results of the data metrics indicate that 3.6% of sites (15 sites) inspected by IEPA during FY05 were determined to be Significant Non-Compliers (SNCs). This is more than the national average (3.2%). In regards to the timeliness of the SNC determinations, the Data Metric (4b) is not yet available for evaluation under this element.

The U.S. EPA's Hazardous Waste Enforcement Response Policy (ERP), establishes two categories of violators under its classifications for noncompliance; Secondary Violator (SV) and SNC. A SNC determination is reserved for significant violations and should be addressed through formal enforcement. The ERP states that a SNC or SV determination is considered timely if it's completed within 150 days of Day 0 (1st day of the inspection) and entered into the RCRAInfo database as soon as possible.

Of the 34 files reviewed, 27 files were deemed relevant to this metric because IEPA found noncompliance. For 25 of those 27, IEPA made the classification for noncompliance. However, in the other two files, violations were identified and immediately corrected during the inspection, but IEPA did not undertake the classification for noncompliance as required by U.S. EPA policy.

Of the 25 for which IEPA undertook the classification for noncompliance, 22 had appropriate classifications of noncompliance and timely reporting into the RCRAInfo database. In two cases, IEPA misclassified the violators as SVs instead of SNCs, and thus was neither timely nor accurate. In the final file, a classification of noncompliance was revealed to be appropriate; however, the reporting into the RCRAInfo database was not timely (4%).

Information Sources Used for this Element: 1, 2, 3, 4, and 9.

Recommendations and Actions: IEPA should identify all significant violations and report them to RCRAInfo in a timely manner. Also, IEPA should identify all violations found during the inspection process, even when the violations are

corrected immediately. Per U.S. EPA policy, a notice of noncompliance should still be sent to the violator to communicate IEPA's discovery of these violations. These practices should begin no later than October 31, 2007.

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

Findings: The SRF provides two metrics in total for evaluation under this element (File Review metrics 5a & 5b).

IEPA does not have enforcement authority over administrative, civil or judicial matters. However, it does have the ability under Section 31 of the Illinois Environmental Protection Act to conduct pre-enforcement activities (see Executive Summary). The IEPA conducts quarterly Environmental Decision Group (EDG) meetings to evaluate when an enforcement action is warranted on a facility. Upon the EDG's decision to pursue enforcement on a violator, the case is referred to the Illinois Attorney General's Office (AGO). Once there, the AGO can take civil or criminal action. The AGO also has the option to file the matter as an administrative complaint before the Illinois Pollution Control Board (IPCB) for Administrative action.

Eleven of the 15 Formal and Watchlist files had either a Judicial or Administrative Order filed against the entities; the other four files had no Orders filed against them and no additional information was provided. Of the eleven files, only five required injunctive relief/compliance schedule. Of the six files that did not require it, compliance had either already been achieved, or the facilities were no longer in operation (five of the files). In one of the six files, it was unclear in the file if any injunctive relief had ever been performed or completed.

Information Sources Used for this Element: 3 and 9.

Recommendations and Actions: Illinois should include injunctive relief/a compliance schedule in all enforcement actions in which the case warrants the corrective and/or complying action. This practice should begin no later than October 31, 2007. During RCRA Quarterly Conference Calls, U.S. EPA will coordinate with IEPA and the AGO to finalize the four enforcement actions that do not have filed Orders.

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

Findings: The SRF provides four metrics for evaluation under this element (Data Metrics 6a & 6b; File Review Metrics 6c & 6d). The Data Metrics (6a & 6b) are not yet available for evaluation under this element.

In the case of Illinois, the ERP requires for designated SNC that referrals to the State's AGO be completed by Day 360. However, the ERP allows these limits to be exceeded for 20% of the cases when justified. The ERP also requires that SVs be returned to compliance by Day 240.

Of the 34 files reviewed, 25 had violations that IEPA addressed using either informal or formal actions. IEPA's classification for noncompliance resulted in determining that 16 of these 25 reviewed files resulted in identifying violators that were SNCs. Of these 16 SNCs, 10 were referred either to the AGO or U.S. EPA within 360 days. For the nine remaining files, IEPA classified the violating entities as SVs. IEPA was timely in issuing informal actions to all nine SVs. For the two files in which IEPA observed noncompliance that was corrected during the inspection, IEPA did not communicate the corrected violations in writing to the violators.

Information Sources Used for this Element: 1, 2, 3, 4, 9, and 11.

Recommendations and Actions: IEPA should conduct timely and appropriate enforcement actions on all identified violators in accordance with the ERP.

7. The degree to which a state includes both gravity and economic benefit calculations for all penalties, using the BEN model or similar state model (where in use and consistent with national policy).

Findings: The SRF provides a single file review metric for evaluation under this element (File Review Metric 7a).

Of the 11 formal enforcement actions reviewed that contained monetary penalties, only two (18%) of the formal enforcement actions reviewed included calculation for the economic benefit of noncompliance (EBNC) or any written explanation given as to why EBNC was not considered. Verbal confirmation by a representative of the AGO revealed there were four additional files in which economic benefit had been considered, but only to reveal that no economic benefit had been realized by those entities. Nine (82%) of the files reviewed did not include documentation as to how the gravity penalty was calculated.

Though EBNCs are often not significant enough to warrant an addition to gravity-based penalties, some documentation of its assessment should be included in the case file to ensure that the program considered EBNC. In most of those cases, EBNC should have been calculated and compared to the gravity based penalty for consideration.

Information Sources Used for this Element: 3, 6, 7, and 9.

Recommendations and Actions: IEPA should include calculations of all assessed penalties as part of each enforcement file. This could be achieved through a penalty

calculation worksheet, briefing memorandum, or both. In addition, IEPA should calculate the BEN for enforcement cases when appropriate. For those situations where IEPA does not feel that a BEN calculation is appropriate, IEPA should document the rationale in the enforcement case file. Similarly, IEPA should clearly record its justification for penalty mitigation in the file. These changes should be implemented no later than October 31, 2007. It is further recommended that IEPA update the EMS to include additional instructions on calculation and documentation of penalties. This recommendation should be completed by December 31, 2007.

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

Findings: The SRF provides four metrics for evaluation under this element (Data Metrics 8a & 8b; File Review Metrics 8c & 8d).

The data metrics indicate that Illinois assessed a total of $272,000 in penalties during FY05. According to the data metrics, in FY 2005, 33% of Illinois' formal enforcement actions included some penalty, compared to the national average of 51.7%; and 44% of Illinois' final enforcement actions included some penalty, compared to the national average of 78.1%. The results above indicate that Illinois' performance in this area is below the national average.

However, for the same reasons discussed under Element 7, penalty calculations and documentation is an area where improvement is warranted. File Review Metric 8c is defined as the "percentage of final enforcement actions that appropriately document penalties to be collected." IEPA files contained no documentation of economic benefit calculations for 9 of the 11 formal enforcement actions reviewed. Similarly, IEPA files contained no documentation of gravity calculations for these 9 cases as well.

In regards to penalty collections, of the 10 files reviewed where a penalty was due, all of the penalties were collected or scheduled to be collected.

Information Sources Used for this Element: 2, 3, 6, 7, and 9.

Recommendations and Actions: See the recommendations for Element 7.

Section 3: Review of Annual Commitments

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

Findings: Region 5 considered IEPA's performance under its FY2005 Performance Partnership Agreement (PPA). In FY2005, IEPA committed to performing 41 inspections at 36 TSDFs, 73 inspections at LQGs, and 81 inspections

at SQGs. Actual results for FY2005 show that IEPA conducted 26 TSDF inspections, 90 LQG inspections, and 83 SQG inspections, per the RCRAInfo database.

Based on this data, IEPA fell short of its intended TSDF inspections, but achieved its planned inspections at LQGs and SQGs.

Information Sources Used for this Element: 1 and 5.

Recommendations and Actions: Per PPA agreements**,** IEPA should complete inspections of all planned TSDFs. This will help in meeting U.S. EPA's statutory requirement of 100% TSDF inspection coverage of every two years, which is not currently being met by IEPA (see Element 1). Future PPAs should ensure the 100% goal is met every two years.

Section 4: Review of Database Integrity

10. The degree to which Minimum Data Requirements are timely.

Findings: The SRF provides two metrics for evaluation under this element (Data Metric 10a & File Review Metric 10b).

The ERP requires that classifications for noncompliance determinations be entered into RCRAInfo as soon as possible, but no later than 150 days from Day 0 (1st day of the inspection).

The data provided by HQ OECA for Data Metric 10a indicates that 71.4% of the SNC determinations (i.e. "SNY" in RCRAInfo) entered into RCRAInfo by IEPA between the dates of August 9, 2005 and August 9, 2006, were entered more than 60 days after the date corresponding to the date of EDG's decision that the violator was an SNC. Using this measure, IEPA has been timely in SNC inputs only 28.6% of that time period. Since the ERP states that an SNC evaluation (i.e. "SNY") should be entered into RCRAInfo as soon as possible, U.S. EPA expects IEPA to enter such SNC data more quickly than 60 days after EDG's decision.

Information Sources Used for this Element: 1, 2, 3, 4, and 9.

Recommendations and Actions: IEPA should ensure that data entry into RCRAInfo related to compliance monitoring and enforcement activities is completed in accordance with the ERP timelines. This practice should begin no later than October 31, 2007. U.S. EPA will coordinate with IEPA on adding language to future PPAs that would require entry of the SNC determination date into RCRAInfo within 30 days of the action to ensure timeliness.

11. The degree to which Minimum Data Requirements are accurate.

Findings: The SRF provides two data metrics (Data Metrics 11a & 11b**)** and one file review metric **(**File Review Metric 11c**)** for evaluation under this element. Data Metric 11a, which tracks the closeness between SNC determinations and the issuance of formal actions, indicates that none of the SNC determinations made by IEPA in FY05 occurred on the date, or within one week, of the issuance of the formal enforcement action. This is the desired result for this metric, as it indicates that IEPA is not holding back SNC determinations until the formal action is completed.

However, Data Metric 11b indicates that 77 facilities not designated as SNCs are reported to have been in violation for a period of greater than three years as of August 9, 2006. If these facilities are indeed still in violation, they should have been designated as SNCs within 240 days of the violations having been determined, per the ERP. Therefore, this result indicates either a shortcoming in timely SNC identification and reporting, or a possible lack in data integrity for the compliance status of those 77 facilities.

Of the 34 compliance monitoring and enforcement files reviewed, 7 of the files revealed RCRAInfo data reporting errors (e.g. the date of the inspection, classification for noncompliance determination, and/or enforcement activity reported in RCRAInfo do not agree with information contained in the file).

Information Sources Used for this Element: 1, 2, 3, 4, and 9.

Recommendations and Actions: IEPA should make the necessary corrections to the 7 facilities for which reporting errors were found by October 31, 2007. IEPA should implement a procedure to track and identify SVs that have been in noncompliance for greater than 240 days. These violators should then be designated as SNCs, and formal enforcement should be initiated. The procedure should be implemented no later than October 31, 2007.

12. The 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 purpose of the seven data metrics under this element (Data Metrics 12a – 12g) are to report to the State selected universe counts from OTIS and ensure that the State and U.S. EPA agree with the information in the national database. If there is a disagreement about the counts, further evaluation should be performed to determine the source of the discrepancy.

On September 29, 2006 and January 3, 2007, IEPA was provided the OTIS data metrics for all applicable Elements, including Element 12. IEPA has responded with its count of LQGs, but U.S. EPA and IEPA must still discuss the IEPA counts for other Element 12 items. These items are listed below.

Table 1. Counts for Element 12. (According to Data Metrics)

Description of Data	U.S. EPA Count	IEPA Count
Number of operating TSDs	31	No Response
Number of active LQGs	4,158	742
Number of active SQGs	15,502	Not accurate-but no adequate estimate
All other active Handlers in RCRA Info	12,298	No Response
Number of inspections performed by IEPA in FY05	754	No Response
Number of facilities inspected by IEPA in FY05	422	No Response
Number of facilities with violations in FY05	487	No Response
Facilities receiving a State NOV in FY05	146	No Response
Total NOVs issued by IEPA in FY05	181	No Response
# of new SNCs in FY05	15	No Response
# of facilities in SNC in FY05	49	No Response
Facilities with formal actions in FY05	13	No Response
# of formal actions in FY05	15	No Response
Total penalties assessed in FY05	$272,000	No Response

Information Sources Used for this Element: 1, 2, and 9.

Recommendations and Actions: IEPA should compare all of the above data to the

data it has in its own Illinois RCRA tracking system and determine if any discrepancies exist between its system and RCRAInfo. IEPA should report this information to U.S. EPA by October 31, 2007. As noted above, IEPA has identified a large discrepancy with the LQG universe, and potentially, the SQG universe. As a result, IEPA needs to ensure that data in RCRAInfo is correct and up to date (See Recommendations under Element 1). IEPA has agreed to perform this task by the end of CY 2007. In addition, IEPA should provide updates on all universe and action counts to U.S. EPA during CY 2007 RCRA Quarterly Conference Calls.

Program Evaluated: CAA

<u>Information Sources Included in Review</u>:

1. Illinois Environmental Protection Agency Statute, "Environmental Safety (415 ILCS 5/) Environmental Protection Act, Title VIII: Enforcement, Section 31. Notice; complaint; hearing."
2. Illinois Environmental Protection Agency, "Bureau of Air Field Operations Section, FY05 Workplan."
3. Illinois Environmental Protection Agency, "Enforcement Response Plan, Process and Timeline for Addressing and Resolving Air Pollution Violations," May 18, 1999.
4. Illinois Environmental Protection Agency,"Violator Classification Form IEPA-BOA."
5. U.S. EPA Region 5 and IEPA, "FY 2005 Performance Partnership Agreement," March 2005.
6. U.S. EPA Region 5 and IEPA, "FY 2006/2007 Performance Partnership Agreement between Illinois EPA and U.S. EPA Region 5," January 18, 2006.
7. IEPA Document, "Enforcement Management System (EMS)," October 4, 2004.
8. IEPA Field Operations Program Offices.
9. U.S. EPA Form, "Compliance Monitoring Strategy Evaluation."
10. U.S. EPA Guidance, "Issuance of the Clean Air Act Stationary Source Compliance Monitoring Strategy (CMS)," April 25, 2001.
11. U.S. EPA Guidance,"The Timely and Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs)," June 23, 1999.
12. Online Tracking Information System (OTIS), "State Review Framework Drill Down, CAA Metric Reports," November 2, 2006.
13. U.S. EPA Guidance, "Clean Air Act Stationary Source Civil Penalty Policy," October 25, 1991, and "Clarification of the Use of Appendix I of the Clean Air Act Stationary Source Civil Penalty Policy," July 23, 1995.
14. U.S. EPA National Database, "Air Facility Subsystem (AFS)."
15. U.S. EPA High Priority Violator (HPV) Matrix Violation Code Table.
16. U.S. EPA Guidance,"State Review Framework Workshop Notebook," November 2 – 3, 2005.
17. U.S. EPA Policy, "Information Collection Request," July 2005.
18. U.S. EPA Guidance, "Clean Air Act Stationary Sources Program Guidance and File Review Metrics," June 24, 2005.
19. IEPA files located in the Bureau of Air (BOA).
20. Interviews with IEPA.

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Period Covered: Federal Fiscal Year 2005

Introduction:

The IEPA file review was conducted over three days from November 13 through November 15, 2006 at the IEPA central office in Springfield, Illinois. IEPA provided U.S. EPA with lists of Title V and FESOP sources inspected, and with a list of enforcement actions taken, in 2005. Using the State Review Framework "File Section Protocol," OTIS data pulls, and lists of inspection and enforcement files provided by IEPA, U.S. EPA selected 30 files to review (13 inspection files from IEPA's Field Operation Section (FOS)) and 17 enforcement files from IEPA's Compliance Section). Source selections were based on source category (e.g., steel, volatile organic matter, particulate matter, etc.), source type (e.g., federally enforceable state operating permit (FESOP) or Title V), inspection frequency, the results of the inspection, and high priority violators (HPVs) (majors and synthetic minors). Sources were selected from the lists provided by IEPA's Bureau of Air, thus assuring that samples of the work from each regional office within IEPA, as well as a good geographic distribution of sources, were represented.

IEPA's Compliance Section gathered all of the files and provided essentially all of the file information requested for the review in Illinois. IEPA did not provide two of the 17 enforcement files during the on-site review because one was archived and the other file could not be located. In addition to FOS inspection and Compliance enforcement case files, the review included a discussion with IEPA managers about their written procedures for compliance and enforcement.

Section 1: Review of State Inspection Implementation

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 Title V major sources: IEPA did not submit a CMS plan to U.S. EPA from FY 2001 to FY 2005 as required by the CMS policy. In 2001, IEPA prepared a draft CMS plan for review by U.S. EPA. This draft CMS plan was submitted to Region 5, which submitted it to EPA Headquarters. The comments received from Headquarters indicated that the plan was unacceptable as submitted, and that IEPA needed to commit to meeting the full requirements of the CMS in terms of onsite inspections and full compliance evaluations (FCEs). However, given the resources available to IEPA, IEPA believed it could not meet those requirements and thus chose not to attempt to complete a CMS plan. Therefore, no final CMS plan was submitted by IEPA in FY 2001. By FY 2006, IEPA's resource situation had not changed, but the Chicago ozone non-attainment area had been

reclassified as moderate, redefining the major source threshold and reducing the number of major sources in the Chicago non-attainment area. With the reduction in Title V major sources and synthetic minor sources with allowable emission levels at or above 80% of the major source threshold, IEPA was in a position to reasonably attain the requirements of the CMS. Therefore, IEPA's first CMS plan was submitted in FY 2006.

As mentioned previously, IEPA did not submit a CMS plan for FY2005. However, according to the Online Tracking Information System (OTIS) State Review Framework Results for Metric 1, which identify the universe of major sources in Illinois, the State inspected 72.9 percent of its major sources in the two-year period, including FY 2005. This effort was less than the national average of 75.7 percent for the time period, and less than the national goal of 100 percent.

Inspections of synthetic minor sources: U.S. EPA's guidance document titled *CAA Stationary Source Compliance Monitoring Strategy,* April 25, 2001, requires that FCEs be conducted at all synthetic minor sources that emit or have the potential to emit at or above 80 percent of the Title V major source threshold, once every five years. According to the data metrics review for FY 2005, IEPA inspected 67.1 percent of its synthetic minor sources in the required five-year timeframe for FY 2005. This performance was less than the national average of 77.2 percent for that timeframe, and less than the national goal of 100 percent.

Title V Annual Compliance Certifications (ACCs) received and reviewed: Although IEPA is reviewing and entering ACC data in their own internal database, this data is not being reported to AFS as required. Therefore, AFS shows zero for the number of ACCs reviewed/reported for 2004-2005 for Illinois.

Information sources used for this Element: 5, 10, 14, and 20.

Recommendations and Actions: To meet the requirement of the CMS Policy, IEPA submitted its first CMS plan to Region 5 U.S. EPA in FY 2006. This will address the failure to specify inspections at Title V major sources and FESOP sources. Future CMS plans need to be submitted by September 30th of the relevant fiscal year, as required by the national guidance and the Performance Partnership Agreement (PPA).

See Element 10 for discussion of the Title V ACC reporting issue.

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

Findings: U.S. EPA reviewed 13 compliance monitoring reports (CMRs), which were either full compliance evaluations (FCEs) or partial compliance evaluations

(PCEs). Six of the inspections were conducted by IEPA Region 1, three were conducted by IEPA Region 2, and four were conducted by IEPA Region 3.

Generally, the format that IEPA uses for its CMRs is similar across the three IEPA regions. U.S. EPA found IEPA's report format to be well organized and understandable and found that most of the CMRs addressed all seven of the required elements for all 13 files reviewed. The seven elements include: (1) general information (date and level of evaluation); (2) facility information (name, location, address, and contacts); (3) applicable requirements; (4) inventory and description of regulated emission units and processes; (5) enforcement history; (6) compliance monitoring activities (on-site observations and compliance assistance); and (7) findings observed and discussed with the facility during the inspection. Some variability was seen in the amount of detail in the background section of the CMRs reviewed. For example, some CMRs commented on the previous enforcement history while others provided no details. Also, during the review, U.S. EPA found two CMRs in FY 2005 for one source. The text of the CMRs was identical with the exception of ambient temperature and the temperature of the oxidizer.

Information sources used for this Element: 4, 10, 19, and 20.

Recommendations and Actions: Based on the consistency of the CMRs reviewed, U.S. EPA found that IEPA's CMR format serves as an adequate template for compliance inspectors. By December 31, 2007, IEPA should send a memo to all field inspectors cautioning them about duplicating report content from previous CMRs to ensure that a new assessment of a source's compliance is made for each individual inspection. IEPA should also emphasize the importance of providing adequate detail about the enforcement history in the background section of the CMR. Such detail may help future inspectors target process areas or regulations that were violated in the past.

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

Background: IEPA identifies violations that come from field investigations or record reviews. The Field Operations Section (FOS) performs all field investigations. The Compliance and Enforcement Section (CES), in consultation with the Bureau of Air (BOA) and Division of Legal Counsel (DLC) staff, performs all record reviews and documents the results to the file. BOA receives and reviews various reports (e.g., quarterly deviation reports, excess emission reports, etc) submitted by companies.

Once IEPA identifies situations which constitute known or suspected violations, it classifies the violations and the violator to determine the severity of the violation. FOS makes this classification for violations which it finds through inspections. CES makes this classification for violations which it finds through record reviews. The general classification categories are Class I, Class II, or Class III. Air pollution

violations are classified in accordance with the nature of violation and the size of the source: major, synthetic minor, minor, or small. The classification of the violation and the assessment of impact potential are used to determine the priority, resource allocation, and method of resolution IEPA uses to resolve the violation.

The category of violators granted the highest priority for timely and appropriate resolution of violations is labeled a high priority violator (HPV). A violator is classified as HPV if it meets one or two sets of criteria. The first set consists of criteria established by U.S. EPA Headquarters to define "significant violators." If a source meets these criteria, it is deemed an HPV. The second part of the criteria is applied to those violators that do not meet the U.S. EPA HPV criteria, but create a "special impact" that is particularly important to Illinois in terms of environmental consequences or public interest in Illinois.

Findings: After conducting our review of 13 compliance files, U.S. EPA determined that IEPA completed compliance monitoring reports (CMRs) within 60 days of the inspection as required by U.S. EPA's "Clean Air Act Stationary Sources Program Guidance and File Review Metrics, June 24, 2005." Eight of the files contained full compliance evaluations (FCEs) conducted by IEPA. The other five files contained partial compliance evaluations (PCEs). Only three of the thirteen CMRs reviewed by U.S. EPA were not written within 60 days after the on-site inspection. Generally, the format that IEPA used for its CMRs was similar across the three IEPA regions.

Not every inspection file contained violations. For inspections where violations were found, the violations were specified in the CMR. The reports adequately described any violation(s) identified in order to provide the evidence necessary in pursuing the appropriate enforcement action. Additionally, IEPA compliance inspectors attach a violator classification form to inspection reports when violations are found. The form is used to determine the class of the violation (see discussion in paragraph below). U.S. EPA found this classification form provided a detailed description of the violation.

Information sources used for this Element: 10, 11, 18, and 19.

Recommendations and Actions: U.S. EPA believes that IEPA's CMR format for inspection reports ensures timeliness and completeness. IEPA should, however, caution inspectors about duplication of report content as discussed in Element 2 above. Further, FOS management should review CMRs during a fiscal year to check for duplication of report content.

Section 2: Review of State Enforcement Activity

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

Background:

Pre-Enforcement Procedures:

As described in the Bureau of Air Appendix in the IEPA Environmental Management System document (October 4, 2004), noncompliance information is provided to the CES from FOS, the Permit Section, Administration, or through record reviews. FOS provides noncompliance information on the violator classification form (see discussion in Element 3 above). CES reviews the information to confirm the noncompliance. If CES determines that the allegation of violations is not supported, CES documents that finding to the file, and sends a copy to the section that provided the original information. If a violation is confirmed, pursuant to Section 31 of the Illinois Environmental Protection Act (Section 31), CES must issue a violation notice (VN) to the source within 180 days of becoming aware of the violation. CES works with the section identifying the violation to draft a VN, create a case file, assign a VN number, and input information about the violations (trigger date/"Day 0" and 180-day Section 31 deadline) into VN tracking. The draft VN is then forwarded to all sections for review and comments. Once comments are received and any necessary changes are made, the VN is issued to the facility.

Findings: Of the 15 enforcement case files reviewed, U.S. EPA found that IEPA accurately and timely designated 14 sources as HPV. In one case, U.S. EPA thought that IEPA should have identified the source as an HPV because the source violated maximum achievable control technology (MACT) monitoring requirements.

Driven by the Section 31 deadline, IEPA has developed a streamlined process for moving from identification of violation to issuing an enforcement action. These factors positively affect IEPA's ability to timely report HPVs to U.S. EPA within the required 45 days of the violation being identified.

Information sources used for this Element: 7, 10, 11, 14, and 19.

Recommendations and Actions: U.S. EPA has no recommendations. The use of the violator classification form is a good tool for clearly identifying the "Day 0," which is then entered into a VN tracking database by IEPA. Both of these tools work effectively to ensure that significant violators are reported to AFS in a timely manner.

During a meeting on July 24, 2007, IEPA informed U.S. EPA that it will revise the violator classification form to add the HPV criteria codes with the HPV definitions listed on the form. This will make the form even more useful as it will help the data steward enter the required criteria code when new HPVs are entered into AFS.

5. Degree to which state enforcement actions require complying action that will return facilities to compliance in a specific time frame.

Background:

IEPA Enforcement Protocol

IEPA must take an enforcement action (i.e., issue a VN) within 180 days of becoming aware of a violation, as required by Section 31 of the Illinois Environmental Protection Act (see attached document). The source has 45 days from receipt of the VN to submit a written response to IEPA regarding the alleged violations. The written response must contain information required by Section 31, including a proposed compliance commitment agreement (CCA). Within 30 days of receiving a written response from the source, IEPA is required to inform the source of its acceptance, rejection, or proposed modification to the proposed CCA. Following the VN issuance, CES, DLC, FOS, Permits, and the Air Quality Planning Section (AQPS) are involved in all meetings held pursuant to the Section 31 process and all decisions made regarding the acceptance or rejection of the CCAs. Based on IEPA's Bureau of Air Appendix in the IEPA Environmental Management System document (October 4, 2004), the Compliance manager is authorized to accept or reject the CCAs. Acceptance is limited to those CCAs with appropriate commitments that will return the source to compliance in less than one year. For alleged violations that remain the subject of disagreement between IEPA and the violating source, as a pre-condition to IEPA's referral to the Illinois Attorney General's Office (AGO), IEPA must issue a written notice informing the source that IEPA intends to pursue legal action. Written enforcement recommendations are made to the Compliance Decision Group (CDG), which meets monthly. Each section is represented at these meetings. Decisions to make referrals are provided to the Department of Legal Counsel (DLC) for further processing and tracking.

Violation Notice (VN)

Section 31 requires IEPA to issue a VN to a source within 180 days of becoming aware of an alleged violation. At a minimum, Section 31 requires each VN to include:

a) notification to the source to submit a written response addressing the violations alleged and the option to meet with IEPA;
b) a detailed explanation of each alleged violation;
c) an explanation of the actions that IEPA believes may resolve the alleged violations, including an estimate of a time period for coming into compliance; and
d) an explanation of any alleged violations that IEPA believes cannot be resolved without the involvement of the Illinois Attorney General.

Compliance Commitment Agreement (CCA)

Section 31(a) defines the CCA as a compliance commitment agreement that is proposed by the source and includes specific time frames for achieving each commitment. According to IEPA Enforcement Management System document and IEPA's Enforcement Response Plan, a CCA may be accepted, rejected, or modified. The successful completion of an approved CCA, or an approved compliance plan, is sufficient to resolve a violation. If a CCA is accepted, the CCA progress must be monitored. If commitments are met, then no further enforcement action is taken.

Failure to comply with the terms of CCA, relieves IEPA from further responsibility under Section 31(a) and the matter may proceed to Section 31(b), which is a referral to the Illinois AGO.

Referral

When IEPA and source do not reach agreement on CCA, IEPA may refer the violations to the Illinois AGO following Section 31(b) of the Act. This process involves IEPA first providing written notice to the source called a Notice of Intent to Pursue Legal Action (NIPLA), allowing the source the opportunity to hold a meeting to discuss the referral, then submitting a referral to the Illinois AGO. Once the case is referred, IEPA may then draft a complaint under Section 31(c) and resolve the alleged violations through a Consent Order. A Consent Order is the only mechanism through which IEPA can collect a penalty.

Findings: For all 15 HPV enforcement case files, IEPA initiated the enforcement process by issuing a VN. Following the VN, IEPA took one of the following actions: (1) For six case files, IEPA accepted a CCA proposed by the source; (2) for eight case files, IEPA referred the violations to the Illinois AGO; and (3) for one case file, IEPA rejected the CCA proposed by the source, but did not refer the case to the Illinois AGO.

As illustrated in the table below, appropriate measures* (e.g., improved work practices, installation of emission controls, cessation of violating activity/practice) were informally agreed upon in six of the seven cases using the CCA process. However, only two of the seven CCA cases met IEPA's one-year requirement for achieving compliance. For the four cases that have not yet achieved compliance, the time from the acceptance of the CCA to the time of the SRF ranged from 16 months to 42 months. U.S. EPA believes that timeliness for achieving compliance is a problem because the CCA is an informal document with no enforceable schedule for implementing injunctive relief. Based upon the CCA's failure to resolve cases in a timely manner, U.S. EPA also believes the CCA process is being used for complex injunctive relief cases that are beyond its abilities to resolve.

Enforcement Mechanism (CCA or Referral)	CCA Accepted or Rejected? (A or R)	Case Resolved / Compliance Achieved? (Y or N)	Time from Accepted CCA to Compliance[1] (months)	Meet CCA Guidance < 12 months?[2] (Y or N)
CCA1	A	N	16	N
CCA2	A	N	18	N
CCA3	A	Y	0	Y
CCA4	A	N	10	N[3]
CCA5	A	Y	0	Y
CCA6	A	N	21	N
CCA7	R	N	42	N

Notes:
[1] - For those cases that have not yet been resolved, the "Time from Accepted CCA to Compliance" is the difference between the Accepted CCA date and the date of this audit (November 13-15, 2006).
[2] - IEPA's Bureau Organization Description says "Acceptance [of CCAs] is limited to those CCAs with appropriate commitments that will return the source to compliance in less than one year."
[3] – U.S. EPA could not determine whether compliance had been achieved at the time of the SRF. Therefore, U.S. EPA was unable to determine whether the 12-month requirement was met.
* - U.S. EPA believes that two of the CCA cases involved significant violations for which penalties should have been collected.

In regard to four of the eight referred cases, the appropriate measures were taken to achieve compliance. For the other four cases that have not yet achieved compliance, the time from the NIPLA to the time of the SRF ranged from 13 months to 42 months. Penalties (proposed and collected) ranged from $10,000 to $120,000.

Enforcement Mechanism (CCA or Referral)	NIPLA Date	Referral to AGO Date	Consent Order Date	Compliance Achieved? (Y or N)	Time from NIPLA to Consent Order[1] (months)	Proposed Penalty or Obtained Penalty ($)
Referral1	10/6/05	10/6/06	N	N	13	$16,025
Referral2	11/22/05	12/29/05	4/14/06	Y	6	$16,440
Referral3	1/26/05	10/21/05	4/24/06	Y	15	$10,000
Referral4	7/15/04	1/13/05	N	N	27	$120,000
Referral5	6/1/05	8/10/06	N	N	17	$38,000
Referral6	5/12/03	12/21/04	N	N	42	$25,000
Referral7	2/22/02	8/30/02	2/16/06	Y	36	$48,000
Referral8	6/17/99	12/21/99	8/6/05	Y	73	$98,000

Note:
[1] - For those cases that do not have a Consent Order, the "Time from NIPLA to Consent Order" is the difference between the NIPLA date and the date of this SRF (November 13-15, 2006).

Small penalties ($10,000 and $16,440) were collected to resolve Clean Air Act Permitting Program (CAAPP) violations for two of the referred cases. Although U.S. EPA considers the collection of small penalties for CAAPP permit violations to be a necessary and effective deterrent for future noncompliance, referral of these small penalty and simple injunctive relief cases to the Illinois AGO does not seem to be the best mechanism for resolving these types of violations. The concern about efficiency is based on the current backlog and excessive workload at the Illinois

AGO, as illustrated by the "Time from NITPLA to Consent Order" for Referrals 6, 7, and 8 in the table above.

IEPA does not have any written guidance to help the CDG determine which cases should be referred. As a result, U.S. EPA believes that this leads to inconsistent selection of cases for which penalties are sought. For example, U.S. EPA reviewed two CCA cases that involved significant violations (NESHAP and emission limit exceedances) where no penalties were sought. U.S. EPA also reviewed two referrals that collected small penalties for CAAPP violations that required only a permit revision for injunctive relief. U.S. EPA believes these four cases illustrate an inconsistency in IEPA's selection of cases for which penalties are sought.

Information sources used for this Element: 1, 3, 7, 10, 11, 14, and 19.

Recommendations and Actions: IEPA's enforcement program could benefit from administrative penalty order (APO) authority. APO authority would give IEPA greater flexibility to resolve small penalty cases, thus allowing the CCA process to be used for its stated purpose: to resolve non-penalty cases within one year. It would also allow IEPA to establish clear guidance for referring cases to the AGO, based on cooperation of the source, size of the penalty, and complexity of injunctive relief. This authority would improve not only the timeliness of the CCA process, but also the timeliness of the resolution of cases referred to the AGO.

In absence of APO authority, IEPA could refer administrative penalty cases to U.S. EPA as these cases approach the 12-month CCA deadline.

As a third option, U.S. EPA recommends that IEPA create guidance by December 31, 2007, that defines for the CDG when a case should be referred to the AGO or U.S. EPA, or when the CCA process should be used. This will give consistency in the decision making process for when a penalty should be sought to resolve major cases, and when a CCA is sufficient for resolution. Although guidance will ensure that major cases are handled appropriately, it will have the added effect of creating more cases for the AGO.

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.

Background: As stated in Element 4, noncompliance information is provided to the CES from FOS, the Permits Section, Administration, or through record reviews. CES reviews information to confirm noncompliance. If CES determines that the alleged violations are not supported, CES documents those finding, and sends a copy to the section that provided the original information. If a violation is confirmed, pursuant to Section 31 of the Illinois Environmental Protection Act, CES must issue a VN to the source within 180 days of becoming aware of the violation. CES works with the section identifying the violation to draft a violation

notice (VN), create a source file, assign a VN number, and input information about the violations (trigger date/day zero and 180-day Section 31 deadline) into a VN tracking database. The draft VN is then forwarded to all sections for review and comments. Once comments are received and any necessary changes are made, the VN is issued to the facility.

The U.S. EPA's HPV Policy establishes timelines for addressing/resolving a violation as: 270 days (9 months) from the Day "0" date (e.g., the date the violation was discovered). U.S. EPA was able to accurately determine a Day "0" for all 15 enforcement case files reviewed, due to the fact that Day "0" was specified on either the Violator Classification Form (VCF), or the VN. The Day "0" determination is facilitated by the pre-enforcement procedures discussed in Element 4 above.

Findings: As illustrated in the table below, only one of the seven cases using the CCA process met the HPV Policy for timeliness by resolving the violations in less than 270 days. For the eight cases using the referral process, none met the HPV Policy requirement for timeliness.

Enforcement Mechanism (CCA or Referral)	CCA Accepted or Rejected? (A or R)	Case Resolved? (Y or N)	Time for Resolution from Day Zero[1] (months)	Meet HPV Policy < 9 months? (Y or N)
CCA1	A	N	20	N
CCA2	A	N	23	N
CCA3	A	Y	8	Y
CCA4	A	N	13	N
CCA5	A	Y	21	N
CCA6	A	N	29	N
CCA7	R	N	52	N
Referral1		N	24	N
Referral2		Y	15	N
Referral3		Y	11	N
Referral4		N	38	N
Referral5		N	24	N
Referral6		N	59	N
Referral7		Y	51	N
Referral8		Y	81	N

Note: [1] - For those cases that have not yet been resolved, the "Time for Resolution from Day Zero" is the difference between the Day Zero date and the date of this SRF (November 13-15, 2006).

Information sources used for this Element: 1, 7, 10, 11, 14, and 19.

Recommendations and Actions: IEPA should improve the timeliness of resolving enforcement actions through the current CCA and referral processes. In order to achieve this, U.S. EPA recommends that IEPA commits to resolving CCA cases within one year. In addition to this commitment, U.S. EPA recommends that IEPA explore obtaining APO authority, which would give IEPA a formal process for resolving small penalty cases in a timely manner. This would have the added benefit of freeing resources at the AGO to work exclusively on more complex cases and therefore, timelines for resolving referred cases at the AGO would also be improved. Until IEPA obtains APO authority, IEPA should refer CCA cases that are going to exceed the 270-day resolution deadline in the HPV Policy to U.S. EPA.

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

Findings: For the eight cases that IEPA referred to the Illinois AGO, penalty proposals were included in all eight referrals to the AGO. However, U.S. EPA did not find economic benefit (BEN) calculations in any of the eight referrals to support the proposed penalties. It was also not clear how IEPA arrived at the proposed penalty because none of the eight referral files included either a penalty calculation worksheet or an explanation of the penalty calculation in a briefing memo.

Although U.S. EPA believes penalties were appropriate for some of the six cases for which IEPA accepted a CCA, IEPA is not able to collect penalties through the CCA process.

Information sources used for this Element: 13 and 19.

Recommendations and Actions: IEPA should include calculations of all assessed penalties as part of each enforcement file. This could be achieved through a penalty calculation worksheet, briefing memorandum, or both. In addition, IEPA should calculate the BEN for enforcement cases when appropriate. For those situations where IEPA does not feel that a BEN calculation is appropriate, IEPA should document the rationale in the enforcement case file. Similarly, IEPA should clearly record its justification for penalty mitigation in the file. These changes should be implemented no later than October 31, 2007. It is further recommended that IEPA update the EMS to include additional instructions on calculation and documentation of penalties. This recommendation should be completed by December 31, 2007.

8. Degree to which final enforcement actions take appropriate action to collect economic benefit and gravity portions of a penalty, in accordance with penalty policy considerations.

Findings: None of the eight enforcement case files for which IEPA referred violations and calculated a penalty contained analyses of the strengths and weaknesses of the proposed penalties. IEPA collected a penalty for four of these cases. U.S. EPA found penalty adjustments were made in at least two of the four

cases without a clear justification. Further, one of the four cases alleged PSD violations and required the installation of a thermal oxidizer as injunctive relief. However, IEPA collected a $40,000 civil penalty with a $58,000 SEP. U.S. EPA believes the penalty collected for this case was low based on the type of injunctive relief required and the duration of violation (greater than 6 years) according to U.S. EPA's Clean Air Act Civil Penalty Policy.

For the four enforcement case files where a penalty was collected, U.S. EPA found documentation (e.g., either internal IEPA emails or copies of checks received from the source) in the case files to indicate that the penalty was collected by IEPA.

Information sources used for this Element: 13 and 19.

Recommendations and Actions: See recommendations for Element 7.

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

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: IEPA did not meet all of the required data reporting commitments made to U.S. EPA in the FY 2005 Performance Partnership Agreement (PPA), March 2005. IEPA expected to implement a new database system in FY 2005 which would have made IEPA's database compatible with AFS. Unfortunately, the system never became operational. Nevertheless, U.S. EPA still required the data be submitted into AFS in accordance with the PPA. IEPA then developed a converter program to electronically submit data into AFS. This system, however, was not fully implemented until FY 2006.

During the opening meeting with IEPA on November 13, 2006, U.S. EPA expressed its concerns regarding the commitments in the FY 2005 PPA which were not met. IEPA was fully aware of the agreed upon commitments and the fact that they had not been met in FY05. Due to resource constraints, IEPA could not, however, ensure that all of the commitments made for FY 2006 would also be met.

Information sources used for this Element: 3, 5, and 14.

Recommendations and Actions: All enforcement and compliance commitments made by IEPA must be met in accordance with the PPA agreed upon by both agencies. The importance of meeting PPA commitments will be emphasized during the upcoming PPA negotiations for FY 2008 and FY 2009.

Section 4: Review of Database Integrity

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

Findings: For the 15 enforcement case files reviewed, U.S. EPA found that, in all cases, IEPA did not report and enter most of the Minimum Data Requirements (MDRs) into AFS in a timely manner. Examples of MDRs that were not entered into AFS, and therefore were not timely, include stack test reviews and Title V annual compliance certification data.

"Day 0" is another type of MDR that identifies the date when a violation occurred. In most of the cases reviewed, IEPA did establish and enter the "Day 0" date into AFS in a timely manner, with the exception of two cases where IEPA identified multiple "Day 0" dates. However, MDRs are not being entered and/or linked to the "Day 0" date within the HPV pathway.

Information sources used for this Element: 6, 11, 12, 14, 15, and 19.

Recommendations and Actions: U.S. EPA recommends IEPA 1) adhere to the T&A Guidance for all MDRs, 2) create a plan to submit data in a timely, accurate, and complete manner consistent with national policies and commitments made in the PPA, and 3) conduct training on MDR reporting.

IEPA should begin meeting the following enforcement and compliance reporting requirements: (1) the dates and the results of all stack tests; (2) the date due, date received, date reviewed, reported deviations, and results of all Title V annual compliance certification reviews; (3) Full Compliance Evaluations conducted at all Title V sources once every two years, all FESOP sources that are at or above 80% of major source thresholds once every five years, and all Mega sources identified in the CMS once every three years; (4) any source with a formal enforcement action initiated; (5) Violation Notices (NOVs); (6) Consent Orders and Penalties; (7) Referrals; and (8) HPV linking and tracking within the pathway for HPVs. All commitments should be submitted electronically to AFS within 60 days as required by the Information Collection Request (ICR), July 2005.

U.S. EPA met with IEPA on July 24, 2007, to discuss timeliness and reporting of the minimum data requirements (MDRs) described in the paragraph above. The meeting was very productive and IEPA has committed to report all MDRs in FY 2008. To do this, IEPA will complete programming within its internal tracking database in order to upload the required data to AFS within 60 days (after programming is completed) as required by the ICR. IEPA will also create an automated tickler in its database as a reminder to upload data to AFS on a monthly basis. U.S. EPA will monitor reporting to ensure the information provided is complete, accurate and timely consistent with U.S. EPA policies and the ICR. All reporting requirements and commitments made by IEPA will be incorporated in the FY2008/FY2009 PPA.

IEPA informed U.S. EPA that at this time, the linkage within the HPV pathway for the method & date of discovery will not performed.

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

Findings: IEPA reviews and tracks the stack tests and Title V annual compliance certifications in their internal database system, but does not submit the data to AFS.

After reviewing IEPA data in the AFS database, U.S. EPA discovered inaccuracies and missing data. Specific examples of inaccurate and/or missing MDRs are listed below:

- unknown compliance status for facility for more than 3 years
- different name entered in AFS
- incorrect and/or missing CMS flags entered for source category and minimum frequency indicator
- missing enforcement actions (Violation Notice (NOV), Order, Referral, penalty)
- no change in compliance status for facility on violations identified for more than 3 years
- addressing (RT) and resolving (44) codes not entered in AFS for HPVs
- Title V annual certification reviews not entered in AFS
- stack test reviews not entered in AFS
- unknown compliance status for air program and regulated pollutant for more than 3 years
- incorrect date entered for "Day 0"
- no change in compliance status even though a violation letter was issued
- missing and/or incorrect classification for air program and regulated pollutant within air program
- withdrawn code used on cases resolved instead of the addressing and resolving codes
- incorrect codes entered in AFS within HPV pathway incorrect
- violations identified as HPV occurring after 30 days entered in AFS under same key action ("Day 0")
- inspection conducted not entered in AFS
- incorrect HPV linkage to key action ("Day 0")

During the on-site review, IEPA expressed to U.S. EPA that reporting some of the MDRs (stack test reviews, Title V annual compliance certification reviews, and HPV violating pollutants) would be an additional burden for the State and provide essentially meaningless data. IEPA has also submitted comments to U.S. EPA Headquarters regarding its concerns under U.S. EPA's State Reporting Burden Initiative.

Information sources used for this Element: 11, 14, and 19.

Recommendations and Actions: See recommendations for Element 10.

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: Based on the findings in elements 10 and 11, U.S. EPA does not believe the universe counts for Element 12 (according to OTIS data matrix) are complete and accurate. The chart below was emailed to IEPA to verify the accuracy and completeness of the MDRs in the AFS database.

Description of Data	Count
Number of High Priority Violations	157
Number of New State High Priority Violations	57
Number of State Administrative Actions *	55
Number of State Referrals to AG	1
Number of State Consent Decrees entered (Consent Order)	1
Total Number of State Actions	57
Number of Notice of Violations (Violation Notice)	75
Number of State Actions w/Penalties	1
State Penalties Assessed	$149,600
Number of State Full Compliance Evaluations	551
Number of Facilities w/State Full Compliance Evaluations	494
Number of Facilities w/State Actions	39

Note:
* - For purposes of AFS, CCAs that are accepted are counted under the "State Administrative Actions" category. This allows IEPA to get credit for addressing the action.

Information sources used for this Element: 6, 11, 12, 14, 15, 17, and 19.

Recommendations and Actions: See Recommendations for Element 10. During the July 24, 2007 meeting mentioned in Element 10, IEPA committed to begin reporting all Violation Notices and enter and report at least one pollutant and criteria code for HPVs into AFS in accordance with the reporting requirements. The pollutants and criteria codes will be programmed to upload to AFS from IEPA's internal database.

Program Evaluated: NPDES

Information Sources Included in the Review:

1. Selected Inspection Files.
2. Selected Case Files.
3. Data from PCS and OTIS, as summarized in the CWA Framework Metric Results, November 8, 2006 version.
4. Data in PCS as of 10/26/06.
5. Illinois Environmental Protection Agency Enforcement Management System (EMS).
6. IEPA Region 5 Environmental Performance Partnership Agreement (EnPPA).
7. Field Inspection Strategy and Plan, FY2005, for NPDES.
8. Conversations with IEPA Staff.
9. U.S. EPA Enforcement Management System, National Pollutant Discharge System, Clean Water Act, U.S. EPA Office of Water (1986, as revised 1989).
10. National Pollutant Discharge Elimination System Compliance Inspection Manual, July 2004.

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Introduction

File reviews were conducted on November 27-29, 2006 in IEPA offices in Springfield. IEPA provided a total universe of 8768 files from which U.S. EPA could select. The recommended selection protocol for a universe of over 700 files suggests choosing a range of 25-40 files for review. Thirty-seven files were selected to represent a stratified random sample reflecting a mix of industrial, municipal and agricultural cases as well as major and minor facilities.

The files were divided into two (2) categories, inspections and pre-enforcement/enforcement actions. Fifteen inspection files (41%) and 22 pre-enforcement/ enforcement action files (59%) were reviewed.

Inspections

The 15 Inspections files were selected using a Permit Compliance System (PCS) pull dated 10/20/06. They were chosen from 8296 total inspection files, reflecting 7 types of

inspections:

- 3 Compliance Evaluation Inspections (CEI) from a universe of 431
- 3 Compliance Sampling Inspections (CSI) from a universe of 89
- 3 Reconnaissance (RECON) Inspections from a universe of 7463
- 3 Storm Water (SW) Inspections from a universe of 184
- 1 Sanitary Sewer Overflow (SSO) Inspection from a universe of 4
- 1 Concentrated Animal Feeding Operation (CAFO) Inspection from a universe of 1
- 1 Combined Sewer Overflow (CSO) Inspection from a universe of 10

Since there were a relatively large number of CE, CS, SW and RECON inspections, a decision was made to randomly select for review, three of each of these types of inspections, and one of the remaining three types of inspections (CSO, CAFO, and SSO).

Pre-Enforcement/ Enforcement Actions

Twenty-two pre-enforcement /enforcement action files were reviewed. IEPA provided a list of 472 informal and formal enforcement actions that were concluded between 10/01/04 and 09/30/05. The pre-enforcement/enforcement action category includes three (3) types of actions: Noncompliance Advisories (NCA), Violation Notices (VN), and Consent Decrees (CD). A stratified random selection process was used to identify the following number and type files for review:

- 3 NCAs from a universe of 78
- 8 VNs from a universe of 334
- 11 CDs from a universe of 60

Section 1: Review of State Inspection Implementation

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

Findings: Historically, U.S. EPA had set a goal of inspecting 100% of all major NPDES facilities each year. In guidance issued in 2003, U.S. EPA modified this goal to allow states the option to trade-off 2 minor inspections for each major facility not inspected with the provision that a minimum of 70% of the major facilities be inspected. Historically, U.S. EPA had also required that these inspections be CEI, but in the 2003 guidance, this requirement was modified to allow use of RECON Inspections to the extent that the facility being inspected had not been in Significant Non Compliance (SNC) for any of the four quarters prior to the inspection, the facility was not a primary industry as defined by 40 CFR Part 122 Appendix A, and the facility was not a municipal facility with a pretreatment program.

This additional flexibility was welcomed by most states but made inspection planning and EnPPA negotiations somewhat more uncertain. For example, it was not possible to predict at the beginning of the year which facilities would be in

noncompliance during the year. In addition, IEPA views multiple RECON visits as supplements to Compliance Evaluation Inspections and as providing an on-site presence in addition to regular effluent sample results. In light of these facts, IEPA and U.S. EPA have translated the national goals in the 2005 Performance Partnership Agreement (PPA) to a commitment to perform inspections with a target of 40 % of major facilities receiving a CEI each year and an additional 30% receiving multiple RECON inspections (approximately six for each facility). With a universe of 273 major facilities, this left 81 major facilities (30%) for which a minimum of 162 minor inspections could be substituted. The IEPA also committed to an additional inspection at each minor facility every 5 years (310 inspections/year or 20%), in addition to the 162 minor inspections to be performed as trade-offs for major inspections not performed. This results in a total inspection rate for minors of approximately 31%.

Data from PCS (Information Source 4) indicates that in Federal Fiscal Year (FFY) 2005, IEPA performed CEI, CSI, or RECON inspections meeting the criteria of the 2003 guidance at 76.8% of its major facilities, exceeding their PPA commitment as well as the national average inspection rate for majors, which was 65.4%. Additionally, IEPA inspected 38.4 % of its 1,553 non-major facilities, exceeding its goal of inspecting 31% of the minor facilities.

IEPA submitted, in a timely fashion (1/20/05), their "Field Inspection Strategy and Plan, FY2005 "(*Information Source 7*). This document identifies the universe of major facilities and lists the type and expected quarter each inspection should take place. While the document includes a commitment to inspect 20% of identified large CAFOs, PCS (*Information Source 4*) shows only 1 CAFO inspection performed for the subject period. Based on discussions with IEPA management, U.S. EPA recognizes that more than one CAFO inspection was conducted during the review period. However, the majority of the CAFOs in Illinois are not permitted, and the lack of inspection data in PCS may be due to the fact that present PCS guidance does not require entry of inspections at non-permitted facilities.

Several draft policy statements will affect this element in the future, and also affect the recommendations that result from the findings discussed above. These policies are the draft Compliance Monitoring Strategy (April 30, 2007) and the draft ICIS-NPDES policy statement (April 27, 2007). The first statement proposes comprehensive revisions to the U.S. EPA and state inspection programs by establishing lowered goals for inspection coverage for majors and traditional minors, and establishing new goals for other priority areas, including wet weather discharges. The second policy statement, when final, will establish alternate minimum data requirements for states using ICIS-NPDES, the system that is replacing PCS. The ICIS-NPDES policy statement will require states to develop a transition plan that documents the state's plan for obtaining and entering the newly defined minimum data requirements into ICIS-NPDES.

Information Sources Used for this Element: 2, 3, 4, and 7.

Recommendations and Actions:

a. Once the ICIS-NPDES policy statement becomes final, IEPA should develop a transition plan consistent with the expectations and deadlines established in the policy statement. To the extent that the policy statement requires inspection data entry for the unpermitted facilities, IEPA's transition plan should address the steps and timeframes for entering these data.
b. IEPA should develop an interim inspection strategy consistent with the goals established in the April 30, 2007 draft of the Compliance Monitoring Strategy. This strategy is intended to be a multi-year strategy, but given the magnitude of changes that the strategy may invoke, the uncertainties this poses with respect to workload, and the fact that the national strategy has not yet become final, IEPA's strategy may be revised based on its experience during the first year of implementation. This interim strategy should be submitted to Region 5 for review by September 15, 2007.

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

Findings: Of the fifteen inspection files reviewed, four of the files indicated that noncompliance was identified during the inspection. Of these four files, two were issued as NCAs. One file resulted in a rejected CCA. The fourth inspection file received no enforcement action.

A. SW Inspections: IEPA has arrangements with several County Soil and Water Conservation Districts (SWCD) to conduct some construction site technical assistance visits. The primary purpose is to provide technical assistance to developers and contractors as the districts have not been delegated authority to conduct any state inspection or compliance monitoring activities. Therefore, the State does not consider these to be inspections and does not enter them into PCS.

B. SSO Inspections: IEPA performed a RECON based on a citizen complaint but recorded it in PCS as a SSO inspection. While the nature of the complaint was related to an illegal sanitary sewer overflow, the complexity of the inspection was not near the comprehensive evaluation that is expected for a SSO inspection. U.S. EPA believes this inspection should have been recorded as a RECON.

C. RECONs: Though the majority of inspections conducted by IEPA are RECONs, IEPA's EMS does not provide a detailed description of what IEPA considers the scope and objective of these inspections. A separate Field Procedures Manual containing language very similar to the inspection type

descriptions in the U.S. EPA inspection manual exists for this purpose. During the review, IEPA management advised U.S. EPA reviewers that the RECON inspections primarily consist of site visits by the technical specialist responsible for inspecting the facility. Sample results are evaluated by the engineer or technical specialist and a NPDES inspector conducts a re-inspection when the sampling results show exceedance of permit limits. In reviewing Illinois' Field Inspection Strategy and Plan, it appears this document does not accurately capture the extensiveness of Illinois' use of RECON inspections.

D. CSO Inspections: The one CSO inspection file reviewed showed that the IEPA inspector provided little narrative explanation in the inspection report. While the IEPA inspector used the U.S. EPA Region 5, CSO checklist, the report did not provide much of needed detail to support potential compliance determinations, nor was the extent of the inspection reflected in the inspection report.

Information Sources Used for this Element: 2.

Recommendations and Actions:

a. IEPA will be developing a comprehensive inspection strategy (see Element 1). Under this strategy, IEPA should identify the number of stormwater inspections to be performed by IEPA and to be performed on behalf of IEPA by other agencies. To the extent that the ICIS-NPDES policy statement requires data entry of inspections performed by these other agencies, provisions for recording these data should be included in the transition plan (see Element 1).
b. IEPA should classify inspections consistent with national definitions. For example, inspections coded into PCS as CSO or SSO should represent evaluations of the complexity and thoroughness as defined by national guidance (see information source 10). The Region and IEPA will work together to share information to ensure that evaluations of a particular type (CSO, SSO etc) are of comparable complexity and depth. These discussions should occur, and IEPA's classification of inspections should be revised, by December 31, 2007.

   It is acceptable to have the RECON inspection definition contained in the separate staff Field Procedures Manual, although it would be beneficial to reference this second guidance in the State's EMS. U.S. EPA recognizes the significant resource investment Illinois makes in conducting an extensive number of RECON inspections; this effort should be accurately reflected in the Inspection strategy discussed in the recommendations for Element 1.

3. Degree to which inspection reports are completed in a timely manner.

Findings: IEPA uses its EMS to define the process it will use to enforce the

Illinois Environmental Protection Act (the Act) and associated regulations. Section 31 of the Act provides timeframes by which the agency must act on any noncompliance of which it becomes aware. Neither IEPA's EMS nor Section 31 of the Act identifies a required timeframe for completion of inspection reports. According to IEPA's management team, the program has established an internal goal of 60 days to complete inspection reports; this performance milestone is identified in field staff job descriptions. Among IEPA staff interviewed during the review, however, there was a general consensus that reports should be produced within 30 days of the inspection. Finally, our file review showed that only seven of the 15 inspection reports were completed within the 60 days.

Information Sources Used for this Element: 1 and 5.

Recommendations and Actions: Given the uncertainty regarding expectations**,** and the fact that more than half of the inspection reports were not completed even within the longer 60 days**,** IEPA needs to internally communicate the expected milestone goal of completing inspection reports within 60 days. Region 5 believes the EMS is an appropriate and more visible location to define this kind of performance expectation. Therefore, we recommend that Illinois revise its EMS to include a target for inspection report completions (i.e., 60 days), criteria under which an extension of that time frame might be appropriate, and a process by which staff would request such an extension. The State may also wish to use historical data to affirm that 60 days is an appropriate general target. Finally, for cases where an inspection report takes longer than 60 days (or a new standard) to finalize, documentation in the file of the circumstances and/or approval of a new target would be a good management practice, and this requirement should also be captured in the EMS. To the extent that the EMS is not updated by March 31, 2007, U.S. EPA asks that a policy memo be sent to staff regarding policy for inspection report completions. Alternatively, these expectations could be included in the inspection strategy required under Element 1.

Section 2: Review of State Enforcement Activity

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

Determination of SNC in the NPDES program involves violations of NPDES permit conditions of substantial concern to the Agency including:

- Violations of monthly and non-monthly effluent limits by 20 percent for toxic pollutants such as metals, and 40 percent for conventional pollutants such as total suspended solids, for 2 or more months during 2 consecutive quarterly review periods;

- Non-effluent violations such as bypasses or unpermitted discharges, which cause or have the potential to cause a water quality problem (e.g., beach closings);
- Permit schedule violations;
- Reporting violations including failure to submit timely DMRs (filing a DMR more than 30 days late); and
- Violations of existing enforcement orders, including judicial or administrative orders.

This definition of SNC applies only to permittees identified as majors. There is no national definition of SNC for minors, although the U.S. EPA has developed a draft policy statement identifying SNC for minor wet weather permittees (CSO, SSO, CAFO and stormwater).

The vast majority of SNC is self-reported by permittees when they submit their periodic discharge monitoring data. Additionally, significant noncompliance may result from Single Event Violations (SEVs). SEVs are documented through compliance inspections, collection of information requests, state/tribal referrals, Discharge Monitoring Report comments, annual reports, and noncompliance reports. SEVs include one-time events and long-term violations. The Interim Single Event Violation Data Entry Guide for PCS was issued to Regional Water and Enforcement Branch Chiefs for distribution to their States on September 30, 2005. The Final Single Event Violation Data Entry Guide for the Permit Compliance System (PCS) was issued on May 22, 2006. Identification and inclusion in PCS of SEVs is important because it could (correctly) cause a facility to be in SNC status.

According to the U.S. EPA's EMS (Information Source 9), facilities with SNC violations must receive a formal enforcement action from the administering authority that is timely and appropriate, or return to compliance within the quarter following the SNC violation. A formal enforcement action requires:

- A facility to take action to achieve compliance;
- Specifies a timetable;
- Contains consequences for noncompliance that are independently enforceable without having to prove the original violations; and
- Subjects the facility to adverse legal consequences for noncompliance.

Formal action by the agency removes the facility from SNC status.

Findings: For the subject review period, the files showed that only two single-event violations (SEVs) were identified. Both U.S. EPA reviewers and IEPA management believe the number of SEVs discovered during inspections should be higher. As noted above, identification and inclusion in PCS of certain SEVs could cause a facility to be in SNC status. Also, the final guidance relating to SEVs was not issued until late in the year covered by this review. Consequently, as IEPA begins to implement this guidance, it is possible that the SNC rate will increase.

IEPA has a high rate of override (46%) on SNC as opposed to a national average of 18%. This may be because IEPA manually overrides violations in PCS while cases are in the referral review process rather than waiting until a settlement is finalized. This may also have the effect of under-reporting of facilities in SNC status in PCS.

As stated previously, a facility is removed from SNC status when the agency takes formal action to correct the violations. IEPA returns most of the facilities to compliance using CCAs. IEPA's EMS describes the CCA as an informal enforcement mechanism, yet the actions are recorded in PCS as Formal Actions. (See Element 5 below)

During the review period, 18 major facilities (6.6%) were in SNC status, which is less than the national average of 17.5%. Only nine major facilities (3.3%) were in SNC for more than 2 consecutive quarters during the same period. The low number of facilities in SNC status may be influenced by IEPA's high rate of manual overrides and the designation of CCAs as formal actions in PCS. In addition, as noted, implementation of the new SEV guidance may also increase the SNC rate.

Information Sources Used for this Element: 2 and 3.

Recommendations and Actions: IEPA should continue implementing the new SEV guidance.

The two other identified issues which may impact the SNC rate are discussed in more detail in the Elements below.

5. Degree to which state enforcement actions require complying action that will return facilities to compliance in a specific time frame.

Findings: IEPA's EMS includes provisions for use of CCAs. When IEPA identifies violations, the agency will often issue an informal enforcement action in the form of a VN. Facilities receiving a VN must respond within 45 days identifying facility-specific activities and timeframes by which they will resolve violations. The informal enforcement process is concluded with a CCA acceptance or rejection letter. If the CCA is accepted by the facility and IEPA, the facility is determined to be incompliance during the duration of the CCA. Rejected CCAs are considered a basis upon which the agency seeks a formal action in the form of a referral to the Office of the Attorney General, State's Attorney, or U.S. EPA. Accepted CCAs, although not independently enforceable, are coded in PCS as formal Administrative Compliance Orders. The review team reviewed 22 formal and informal enforcement actions. In six of these cases, the original response was insufficient to resolve the violations and bring the facility back into compliance and the cases were referred for formal action. Sixteen (77%) of the 22 enforcement actions reviewed were resolved within the required timeframe.

Information Sources Used for this Element: 1, 2, 3 and 5.

Recommendations and Actions: U.S. EPA recognizes that CCAs are an important and appropriate tool under certain conditions for bringing sources back into compliance. U.S. EPA policy requires that a violation that has been designated SNC be corrected or that a formal enforcement action be initiated within a specified period of time. It is clear that Illinois can use CCAs to address non-SNC violations; it is U.S. EPA's expectation, however, that violations found to immediately be in SNC status should generally be addressed by formal actions. The State's EMS should provide the criteria by which staff can make this determination and the case files should contain the documentation of that decision. To the extent that the EMS is not updated by March 31, 2007, U.S. EPA asks that a policy memo be sent to staff regarding criteria for addressing SNC violations.

U.S. EPA recognizes that such guidance/criteria will never address every circumstance. Given IEPA's lack of formal administrative enforcement authority, U.S. EPA also recognizes that there will be cases where a CCA may be the most appropriate course of action even where the guidance might call for a formal response. Region 5 would be happy to work with the State to ensure the EMS describes the criteria and factors to be considered when determining whether to use the formal or informal mechanism, recognizing that the opportunity to make case-specific determinations is inherent.

Finally, in order to maintain the integrity of PCS and the ICIS-NPDES databases, it is important that Illinois properly code the use of CCAs by using the informal enforcement action module in ICIS-PCS and selecting one of the options available in the drop down menu. We would expect this to occur from this point forward. To the extent this option still poses barriers to effective data management and accurate portrayal of compliance, Region 5 is willing to elevate concerns to the national enforcement program

6. Degree to which a state takes timely and appropriate enforcement actions, in accordance with policy relating to specific media.

Findings: Section 31 of the Act (Information Source 5) describes procedures and timelines associated with both the pre-enforcement and enforcement referral activities. The EMS also covers the use of NCAs, VNs, referrals, and CDs. The informal enforcement process begins with the issuance of a NCA or a VN. This procedure allows up to 60 days to issue a NCA from the date a violation is identified and 165 days to issue a VN. The enforcement referral process allows 90 days from the date an enforcement decision is made to the date a referral package is due to management.

Using the criteria identified in the State EMS, file reviewers found that 66% (or two out of three) of the NCA files reviewed resolved the identified violations in a timely and appropriate manner. Seventy-five percent (or six out of eight) of the VN files reviewed were resolved by timely and appropriate informal action and 100% (11) of

the CDs reviewed were timely and appropriate actions. Overall, 86% (19 of 22) of the actions were found to be timely and appropriate.

The SNC rate for majors is a key indicator of whether or not a state is taking timely and appropriate actions, and when expressed as a 3 year rolling average, is one of the metrics used by the Office of Management and Budget (OMB) to measure the health of the NPDES program. In the most recent report to OMB, the 3 year rolling average SNC rate for majors was reported as 19.5% for the nation. The Regional average for that time period was approximately 17 %. In addition, for many years the Region has set a related goal that no more than 10% of the major permittees be in SNC status as measured on a quarterly basis.

Data provided in PCS shows that 18 (6.6%) of the total 272 major facilities were in SNC for the evaluated time period which is well within the goal set by the Region, and far below the national and regional rates reported to OMB.

A second indicator of whether or not a state is taking timely actions is the size of the active exceptions list (AEL). The derivation of the AEL is somewhat complex, but generally speaking it identifies major facilities that have been in SNC for more two quarters and have not been subject to formal enforcement action. The national goal is that the AEL be no greater than 2%. The State/Regional EnPPA for the period of this review *(Information Source 6)* expresses a goal that the AEL be less than 5%. Eighteen major facilities (Information Source 3) were in SNC during the review period. However, only nine major facilities (3.3%) were in SNC for more than 2 consecutive quarters during the same time period, and were not subject to formal enforcement action. While this is greater than the national goal, it is less than the national average of 7.7%, and within the goal established in the EnPPA.

Our file reviews (*Information source 2*) included three of these nine major facilities that verify that PCS is accurate. However, as noted under Element 4, the state has a high rate of override (46%) on SNC as opposed to a national average of 18%. As noted in Element 4 and discussed more fully below, certain of these overrides appear to be inconsistent with current Agency guidance, and this may serve to understate the true SNC rate and the size of the AEL.

In response to the finding that Illinois' SNC manual override rate was higher than the national average and that informal actions (CCAs) were coded as formal actions, the Region analyzed IEPA's use of the SNC manual overrides, Compliance Commitment Agreements (CCA), and other factors to evaluate if there was a major affect on the overall SNC rate. There were several findings when the Region examined and considered all the factors involved, but the overall SNC rate did not dramatically increase.

First, six CCAs were issued for facilities in SNC, which removed them from the SNC list to resolved pending. Violations occurring after the CCAs are issued continue to be manually resolved to keep them out of SNC status and off the AEL.

Two additional CCAs were issued pre-2005, which removed and continued to keep these facilities off the SNC list. Fifteen CCAs were issued in 2005 to majors for non-SNC violations. Another six facilities avoided the SNC list because they were resolved by alternative actions, i.e., seeking an adjusted permit standard. The custom of manually resolving SNC violations based on requesting an adjustment of permit standards and violations occurring after the issuance of a formal action is not consistent with national guidance.

In conclusion, excluding the 15 CCAs issued for what appears to be solely for non-SNC relating matters, it's possible that 26 majors should have been in SNC for 2005, which brings IEPA 2005 SNC rate to 9.6%, but still below the national average of 17.5%. The 26 facilities examined and identified in SNC above consist of the original 18 noted in the data metrics, six facilities whose violations were manually set to resolved pending (RP) because adjusted standards were being sought as the primary mechanism to achieved compliance, and two facilities with continuous effluent violations that were coded as RP based on pre-2005 CCAs.

Information Sources Used for this Element: 3, 5 and 6.

Recommendations and Actions: Illinois needs to ensure it is following U.S. EPA guidance when considering manual overrides, and to the extent some of the issues overlap with the use of CCAs, the Region's interest in working with IEPA to address those concerns as noted in Element 5 still stands. Based on this assessment, however, while there might be some impact on the SNC rates, it appears that Illinois will still have SNC rates well below the national average. It would be of interest to know if IEPA has any ideas what factors might be driving this result in Illinois. U.S.EPA will continue to assess the annual SNC rate and the three year average.

7. Degree to which the State includes both gravity and economic benefit (BEN) calculations

Findings: Of the 200 formal enforcement actions found in our OTIS pull (*Information Source 4*), 19 actions (9.5%) were associated with penalties. Our file reviews included 11 formal enforcement actions that included penalties. Five of these files did not include any documentation of penalty calculation. Two of the files that included gravity calculations did not include BEN calculations. These results may be partly due to the fact that the EMS (*Information source 5*) only provides a brief explanation of the penalty policy and requirements for BEN and gravity calculations.

Information Sources Used for this Element: 4 and 5.

Recommendations and Actions: IEPA should include calculations of all proposed penalties as part of each enforcement file. This could be achieved through a penalty calculation worksheet, briefing memorandum, or both. In addition, IEPA should calculate the BEN and gravity for all penalty actions. For those situations where

IEPA does not feel that a BEN calculation is appropriate, IEPA should document the rationale in the enforcement case file. Similarly, IEPA should clearly record its justification for penalty mitigation in the file. These changes should be implemented no later than October 31, 2007. It is further recommended that IEPA update the EMS to include additional instructions on calculation and documentation of penalties. This recommendation should be completed by December 31, 2007.

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: Seven of the 11 files reviewed did not include documentation of penalty collection. IEPA staff indicated during the exit interview that penalty collection information was maintained in other files.

Information Sources Used for this Element: 2 and 8.

Recommendations and Actions: Guidance should be issued to staff regarding the appropriate location for maintaining this documentation. This guidance could be in a memo form or could be incorporated into the EMS. This recommendation should be completed by December 31, 2007.

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

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

Findings: Many of the commitments made in the 2005 PPA have been discussed as they pertain to the other elements of this review. The state exceeded its commitments to perform inspections (see Element 1), exceeded goals for the size of the active exceptions list and the significant non-compliance rate for majors (see element 6), and exceeded expectations for the DMR entry rates for majors. Other PPA requirements are explained below:

Inspections of Majors: According to the 2005 EnPPA, 40% of major facilities should receive a CEI/CSI (108 compliance inspections); 209 (77%) major facilities had compliance inspections performed. Eighty-two (30%) of the same major facilities should receive RECONs; all (100%) of the major facilities received a RECON inspection.

Inspections of Minors: Three hundred-ten or 20% of minor facilities inspections were required in the 2005 PPA. Five hundred ninety-seven (38%) of minor facility inspections were performed.

RECONs: All majors were visited approximately 6 times per year by a

RECON/sampling technician as required by the PPA.

Information Sources Used for this Element: 3 and 6.

Recommendations and Actions: None.

Section 4: Review of Database Integrity

10. Degree to which minimum data requirements are timely

Findings: Inspections conducted at permitted minor facilities are required to be entered into PCS. The review confirmed that inspections conducted by IEPA were entered appropriately. Construction SW inspections conducted by the SWCD, however, were not entered in PCS. IEPA management indicated that a joint agreement exists in several Illinois counties to conduct and document construction SW inspections. It is not clear how many construction SW inspections are being conducted by SWCD. As noted in Element 2, the primary purpose of these SWCD visits is to provide technical assistance to developers and contractors, and therefore, the State does not consider these to be NPDES inspections and does not enter them into PCS.

The review also found instances where SEVs were not properly recorded in PCS. The U.S. EPA acknowledges that expectations regarding entry of these violations were ambiguous, and consequently issued guidance in September 2005 and May 2006, (subsequent to the majority of the review period for this review). There were also instances where civil penalties were assessed and not recorded in PCS.

Information Sources Used for this Element: 2, 3, and 4.

Recommendations and Actions: IEPA should ensure that data entry into PCS related to Wet Weather inspections, SEVs, and civil penalties assessed required by the PCS policy is timely, complete and accurate. The national program has indicated that it will evaluate state performance against the issued guidance for single event violations detected in FY 2007 and beyond. IEPA should develop a process, or improve its existing process, to ensure that all required data is entered into PCS. IEPA should implement this recommendation by December 31, 2007. To the extent Illinois believes the forthcoming ICIS-NPDES policy statement would impact the practicality of addressing these existing issues, U.S. EPA is open to a two-pronged approach, including a transitional plan for those areas.

11. Discuss the degree to which the minimum data requirements are accurate.

Findings: The national goal is for 80% or more of the enforcement actions found in PCS to be linked with violations. Our OTIS data pull for the review period shows that IEPA has 99% of the actions linked to violations.

Information Sources Used for this Element: 2 and 3.

Recommendations and Actions: None.

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

Findings: Prior to the file review, the U.S. EPA review team prepared a draft report, based solely on the file review metrics. This report was shared with the state at the time of the file reviews, and the draft findings discussed. These findings have been discussed elsewhere in this report in the context or the review of relevant data elements. Additional relevant data metrics are provided below as found under Element 12 of the data metrics report (information source 3).

The data pull shows that there are 272 active major facilities with individual NPDES permits and 1,551 minor facilities with active NPDES permits. The national goal for major facilities with correctly coded limits is ≥95%. Information source 3 reveals that IEPA has a 93% entry rate for correctly coded permit limits, slightly below the goal, but above the national average of 89.6%. The national goal for major facilities with Discharge Monitoring Report (DMR) entry rates based on expected DMRs is ≥95%. IEPA has a 99.4% entry rate, exceeding the national goal, the EnPPA goal of ≥97%, and the national average of 95.5%.

Minor facilities have rates of entry of correctly coded permit limits and DMRs of 74.8% and 69.4% respectively. IEPA should be commended for its entry of data for minors as there is no national requirement.

IEPA and Region 5 have discussed the high level of compliance schedule violations (156). IEPA management indicates that it believes that most of these violations are erroneously coded in PCS. IEPA expressed the desire to develop a plan to investigate and rectify noticeable compliance schedule violation mistakes.

Information Sources Used for this Element: 3 and 4.

Recommendations and Actions: By December 31, 2007, IEPA should develop and implement a plan to address erroneous compliance schedule violations. IEPA should correct the errors in order that compliance rates reflected on the QNCR and published on various EPA websites are accurate.