

# U.S. EPA – Region 5 Review of Indiana DEM Enforcement Program Federal Fiscal Year 2005

September 27, 2006

## **A. EXECUTIVE SUMMARY**

### **Background**

The EPA Office of Enforcement and Compliance Assurance (OECA), all ten EPA Regions, the Environmental Council of States (ECOS) Compliance Committee, and other state representatives have jointly developed a method to assess state performance in the enforcement and compliance assurance program. This report reflects the review by Region 5 of the Indiana Department of Environmental Management's (IDEM) 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 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 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**

Region 5's evaluation of IDEM'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 IDEM's enforcement programs which came from EPA's Integrated Data for Enforcement Analysis (IDEA) program. During the remainder of the review, EPA staff reviewed IDEM inspection and

case files that were identified to provide a stratified random sample of inspections and case files for FFY 2005. Air reviewed 31 files, RCRA reviewed 35 files, and the Water program reviewed 35 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 IDEM**

IDEM's compliance and enforcement program is spread throughout several offices. There are several compliance branches within the Offices of Air Quality, Land Quality, and Water Quality. Moreover, although IDEM's headquarters is located in Indianapolis, IDEM operates three (3) regional offices, located in Merrillville, South Bend, and Petersburg, Indiana. Compliance staff located within these offices are part of the Office of External Affairs. Finally, enforcement staff are located within the Office of Compliance & Enforcement, which operates from the Indianapolis office.

The State Review Framework evaluation of IDEM was implemented for those compliance and enforcement activities performed by IDEM during FFY 2005, or October 1, 2004, through September 30, 2005. This period of time represents the last quarter of the previous administration and the first three (3) quarters of an entirely new administration at IDEM.

In 2005, IDEM announced a new policy of resolving its enforcement actions (i.e., Violation Letters and Notices of Violation) within one (1) year. In order to ensure timelier issuance of enforcement actions, IDEM has also developed and implemented a standard operating procedure (SOP) regarding the development, review, and issuance of such actions. In addition, the Compliance & Enforcement Team at IDEM has initiated a comprehensive review of its compliance and enforcement policies and SOPs, including IDEM's Compliance & Enforcement Response Policy, Self-Disclosure & Environmental Audit Policy, Civil Penalty Policy, and Supplemental Environmental Projects Policy, and related procedures. The purpose of this internal review is to ensure that IDEM's policies and SOPs are well-documented and lead to consistent, predictable, and timely compliance and enforcement activities.

Finally, as a proactive response to the recommendations of this report, IDEM has developed a draft SOP regarding the consideration and assessment of the economic benefit of non-compliance. The completion of this particular SOP shall lead to a more consistent identification, assessment, and collection of any economic benefit of non-compliance. Moreover, enforcement case managers have been specifically instructed to clearly document their rationale for assessing (or not assessing) an economic benefit of non-compliance component to the civil penalty. IDEM enforcement staff are currently receiving EPA training on BEN, INDIPAY, MUNIPAY, and ABEL.

These efforts are commendable, and accomplishments to date are noteworthy. The efforts to update IDEM's compliance and enforcement policies and SOPs, however, did complicate the file reviews somewhat. Portions of these policies and SOPs are in use, but had not been provided to U.S. EPA ahead of time, so reviewers were not conversant with their content. In addition,

reviewers were not able in every case, to determine which guidance was operative during the time covered by certain of the actions reviewed, as certain documents were undated, or different versions of the same document bore the same date. Thus, there is some ambiguity in certain of the findings that are based upon file reviews. As IDEM updates its procedures in FFY 2007, the Region will work with IDEM to increase its familiarity with the IDEM program, ensure IDEM policies and SOPs are consistent with Federal guidance and policies, and as needed, address any finding of this review.

### **Overall Findings and Recommendations**

In many areas, EPA has found that IDEM conducts an enforcement and compliance program throughout the state that follows established national and state policy. EPA has noticed that IDEM particularly has the following strengths:

- In the Air program, the overall quality of the CMS plan and the Full Compliance Evaluation (FCE) is very good. Also, the IDEM districts and local agencies prepare adequate and timely FCE reports; the report template serves as a good guide for the reports.
- Universe coverage in the RCRA programs meets or exceeds EPA expectations.
- In the Water program, data entry rates are very good, especially for entry of minors (which are not required).

EPA has found that improvement is needed, however, in certain program areas. Listed below are the report's main recommendations:

- For RCRA, IDEM should date inspection reports so timeliness can be accessed, and also include complete essential pieces of information in each inspection report as recommended in this state review report (e.g., narratives, checklists, etc.).
- For RCRA and Air, IDEM should make changes which would increase the timeliness of violator determinations and enforcement actions, especially for SNC/HPV cases. Suggestions throughout the state review report include adding timelines to the new IDEM EMS, better coordination between the Air Compliance Branch and Office of Enforcement, better coordination between IDEM and the local agencies, more IDEM staff training, and efficient use of unilateral Commissioner Orders.
- For all reviewed programs, the gravity and economic benefit portions of penalties need to be calculated and fully documented for each case (sometimes this was done in the reviewed programs, sometimes not). Files should contain clear documentation when economic benefit is not used and/or the penalty is mitigated.
- For RCRA and Air, data input into national data systems should be timely and accurate per existing policy. Identified mistakes should be corrected as soon as possible and barriers to data input should be removed. IDEM and EPA should continue steps to make data accurate and complete between state and federal databases.

### **IDEM Response to Findings and Recommendations**

The following is text submitted by IDEM to EPA in response to the Findings and Recommendations section of the Executive Summary:

Where necessary and appropriate, IDEM has provided a specific response to certain “recommendations” made by EPA. IDEM believes that many of the issues identified by EPA are either minor issues; issues that have already been resolved; or are issues for which specific actions have been taken by IDEM to address one or more of the “recommendations.” IDEM’s specific responses to the above-noted recommendations follow.

First, for RCRA, the development and issuance of RCRA inspection reports is tracked. More specifically, RCRA inspection reports are dated when they are finalized and issued to the regulated entity. The date of the RCRA inspection report is placed on the Inspection Summary Letter which is attached to the completed RCRA inspection report.

Second, and as discussed above, for the RCRA and CAA timeliness concerns, IDEM has implemented or is implementing many of the recommendations. IDEM believes that timeliness throughout the compliance and enforcement process has improved.

Third, IDEM believes this is a poorly-developed conjunctive metric and should be revised. For nearly all IDEM enforcement cases (unless the particular enforcement action was informal in nature), a gravity-based penalty was developed, justified, and assessed. In many of the enforcement files reviewed by EPA, IDEM has failed to articulate (1) whether or not any economic benefit of non-compliance existed; and (2) if so (and per the Civil Penalty Policy), whether or not such economic benefit was required to be considered and assessed against a regulated entity. However, because the metric requires assessment of whether both components of a civil penalty were considered and assessed, in most cases IDEM did not appear to receive any credit. This particular metric should be divided into 2 sub-metrics to enable a more transparent assessment of the nature of civil penalties assessed by IDEM (and other states) against regulated entities.

Finally, IDEM believes that compliance and enforcement data input into national data systems is timely and accurate. Specifically, for the CAA data, IDEM believes that data entry errors by EPA may have led to some confusion during the review process. It is expected that with the advent of the Air Compliance and Enforcement System (ACES), many (if not all) of these CAA data issues will be resolved.

**EPA and IDEM Follow-Up to the State Review Report**

EPA and IDEM will work together in future months to ensure that specific actions mentioned throughout the report in response to recommendations are carried out. In response to remaining recommendations, EPA and IDEM will hold discussions in order to come to joint resolution of these issues.

**B. EVALUATION DETAILS**

***Program Evaluated: CAA***

**Information Sources Included in Review:**

1. U.S. EPA Guidance, “CAA Stationary Source Compliance Monitoring Strategy,” April 25, 2001
2. “Environmental Performance Partnership Agreement (EnPPA) between Indiana and U.S. EPA, Region 5,” 2003-2005
3. “Environmental Performance Partnership Agreement (EnPPA) between Indiana and U.S. EPA, Region 5,” 2005-2007
4. IDEM Fiscal Year 2005 Compliance Monitoring Strategy (CMS) , September 28, 2004
5. IDEM Fiscal Year 2006 Compliance Monitoring Strategy (CMS), September 30, 2005
6. IDEM High Priority Violators (HPV) Case Updates, October 2004 through September 2005
7. IDEM files located in the Office of Air Quality, Indianapolis, Indiana, October 2004 through September 2005
8. Interviews with IDEM Office of Air Quality, Air Compliance Branch and IDEM Office of Enforcement, Indianapolis, Indiana, April 10 through April 13, 2006
9. U.S. EPA Guidance, “The Timely and Appropriate (T&A) Enforcement Response to High Priority Violations (HPV),” June 23, 1999
10. 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
11. Air Facility Subsystem (AFS) National Database
12. Description of IDEM Air Compliance and Enforcement Programs, Email from IDEM to U.S. EPA dated March 31, 2006
13. IDEM Civil Penalty Policy, April 5, 1999
14. IDEM Self Disclosure Policy and Environmental Audit Policy, April 5, 1999
15. IDEM Supplemental Environmental Project (SEP) Policy, April 5, 1999
16. IDEM Office of Air Quality Field Inspection Report Templates, Draft August 29, 2002 and December 14, 2005
17. IDEM Verification of Inspection Form, State Form 50890 (R2/3-04), U.S. EPA received on April 10, 2006
18. IDEM Title V/FESOP Annual Compliance Certification Review Form, U.S. EPA received on April 10, 2006
19. IDEM Local Agency Air Pollution Control Funding Agreements for City of Anderson, Office of Air Management; City of Hammond, Department of Environmental Management; Consolidated City of Indianapolis and Marion County, Department of Public Works, Office of Environmental Services; Vigo County Air Pollution Control Department; and the City of Evansville, Environmental Protection Agency, U.S. EPA received on April 10, 2006.
20. Civil Penalty Policy for the City of Indianapolis, received in an email from IDEM to U.S. EPA dated March 24, 2006.

21. Evansville EPA Enforcement Ordinance, received in an email from IDEM to U.S. EPA dated March 24, 2006.
22. HPV Matrix Violation Codes

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**Period Covered:**      Federal Fiscal Year 2005

**Introduction:**

IDEM provided U.S. EPA with lists of Title V and FESOP sources inspected in 2005. Source selections were based on source category (e.g., steel, VOC, PM, etc.), source type (e.g., FESOP or Title V), inspection frequency, the results of the inspection, and HPVs (majors and synthetic minors). Using the State Review Framework “File Section Protocol” and lists of inspection and enforcement files provided by IDEM, we initially selected 25 files to review (10 inspection files from IDEM’s Air Compliance Branch (ACB) and 15 enforcement files from IDEM’s Office of Enforcement (OE)). Sources were selected from the lists provided by IDEM’s Central Office that included local agency program offices (City of Anderson, City of Hammond, City of Indianapolis, City of Evansville, and Vigo County), thus assuring that samples of the work from each program office within IDEM, as well as a good geographic distribution of sources, were represented. After discussions with U.S. EPA Headquarters, Region 5 selected two additional inspection files and four additional enforcement files totaling 31 files for review.

IDEM’s ACB and OE gathered all of the files and provided essentially all of the file information requested for the review in Indianapolis. The file review was conducted over four days from April 10 through April 13, 2006 at the IDEM central office in Indianapolis, Indiana. In addition to compliance inspection and enforcement case files, the review included a discussion with IDEM managers about their written procedures for compliance and enforcement, as well as those used by local agency offices.

***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:* The Fiscal Year (FY) 2005 Compliance Monitoring Strategy (CMS) and FY 2006 CMS plans submitted by IDEM to U.S. EPA Region 5 specify the sources at which full compliance evaluations (FCEs) at Title V major sources and synthetic minor sources in Indiana will be conducted. IDEM agreed to inspect all Title V major sources every two years, with two exceptions: all mega-sites will be inspected every three years; and some gas compressor stations and gas turbine generating stations will be inspected at least once every five years. IDEM identified these sources for alternative inspection frequencies under the U.S. EPA CMS policy (2001) because these sources have very few compliance issues, very few complaints, and they are relatively consistent in their operational practices.

According to the Online Tracking Information System (OTIS) State Framework Review Results, CAA Data for Indiana (review period ending FY 2005, pulled in March 2006), Metric 1, which identifies the universe of major sources in Indiana, the State inspected 68.5 percent of its major sources in FY 2005. This effort was less than the national average of 74.9 percent for the time period; however, as discussed with IDEM during the file review, the universe of facilities number (1,071) in AFS is inaccurate. The actual number is 773, and both Region 5 and IDEM will continue to work together until the data has been corrected in AFS. Based on the actual number of 773 sources, IDEM inspected 94.7 percent of its major sources, well above the national average of 74.9 percent.

U.S. EPA and IDEM also discussed the number of sources targeted for inspections in each CMS plan, and how this number compares to the universe of facilities in AFS. Typically, in each annual CMS plan, U.S. EPA HQs projects half of the Title V major source inventory to be targeted for inspections in the fiscal year. However, IDEM purposefully does not do this so that the agency can maintain flexibility in choosing sources to inspect that are not targeted in the CMS plan. ACB has a category of inspections called commitment inspections that are based on a number of factors and included in their Strategic Plan. These commitment inspections are subject to change depending on priorities, vacant positions, change in source status, and workload issues. In reality, IDEM actually inspects more than half of the Title V major source inventory in one year. According to IDEM, ACB usually inspects more sources than required by the CMS plan in a given year. For example, IDEM may inspect some sources annually or even two times per year.

*Inspections of synthetic minor sources:* IDEM's CMS plans for FY 2005 and FY 2006 require 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. IDEM identified these sources as Federally Enforceable State Operating Permit (FESOP) sources and committed to inspect these sources every five years. According to the data metrics review for FY 2005, IDEM inspected 85.9 percent of its FESOP sources in the required five-year timeframe for FY 2005. This performance exceeded IDEM's CMS goal and was greater than the national average of 77.7 percent for that timeframe. As discussed with IDEM during the file review, the universe of facilities in AFS is inaccurate and both

Region 5 and IDEM will continue to work together until the data has been corrected in AFS. Both IDEM and EPA are aiming to complete this task by December 31, 2006.

*Title V Annual Compliance Certifications received and reviewed:* For all of the annual compliance certifications (ACC) received in 2004 and 2005, IDEM ACB reviewed greater than 95 percent for Title V major sources and greater than 94 percent for FESOP sources. ACB reviews and tracks all ACCs it receives in its internal database system. IDEM has an ACC review form that it completes within 90 days of receipt (see attached form). The first review consists of an administrative review (checking for typos, missing information, etc.). The second review is completed by inspectors involving cross-referencing the information contained on ACC to the enforcement history of the source. For example, if a Notice of Violation (NOV) was issued during the time period of the ACC, the inspector would check to see if the source included the NOV on the ACC submitted. Although IDEM 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 Indiana. IDEM has made the state database information available to U.S. EPA but not through AFS. IDEM ACB has committed to entering this data beginning June 30, 2006.

**Citation of information reviewed for this criterion:** Interviews with IDEM; Indiana EnPPA (FY 2005 and 2006); U.S. EPA Guidance, “CAA Stationary Source Compliance Monitoring Strategy,” April 25, 2001; IDEM’s FY 2005 CMS and FY 2006 CMS; AFS National Database; IDEM Title V/FESOP Annual Compliance Certification Review Form.

**Recommendations and Actions:** IDEM and U.S. EPA are in the process of correcting the Title V major source inventory in AFS to reflect the correct number of Title V major sources in Indiana by December 31, 2006. This will require entering the proper codes in AFS for sources which have ceased operation (shutdown), changed classification (major or minor) and/or deleted per request by State. In the future, IDEM will be responsible for maintaining and updating its Title V major source inventory in AFS.

In order to provide additional information about the number of projected inspections on Indiana’s annual CMS plan, U.S. EPA suggested IDEM add language to its annual CMS cover letter that states, “IDEM will meet its commitments to conduct FCEs at all major sources every two years and all FESOP sources every five years. IDEM continues to conduct FCEs beyond the minimum requirements of the CMS. In order to maintain operational flexibility to substitute inspections at any given time to address priorities of IDEM and U.S. EPA, IDEM will list only those Title V sources that were not inspected in the last year, or FESOP sources that have not been inspected in the last four years.” This type of language would allow IDEM to maintain flexibility in the number of sources it inspects on an annual basis, while providing clarity to U.S. EPA that the full universe of stationary sources will be inspected during the agreed upon timeframes.



IDEM has developed a new Air Compliance and Enforcement System (ACES) database. The ACES database, which was effective June 30, 2006, is compatible with the AFS database, and will allow IDEM to directly upload their FCE, ACC, and stack test result data into AFS.

**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 12 compliance monitoring reports (CMRs), all of which were full compliance evaluations (FCEs). Seven of the FCEs were conducted by IDEM and five by local air pollution control agencies.

IDEM uses a standard format for its CMRs to assure that all seven of the required elements of an inspection are covered (see attached IDEM Office of Air Quality Field Inspection Report Templates). U.S. EPA found IDEM's report format to be well organized and understandable and found the CMRs addressed all seven of the required elements for all 12 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 year of enforcement history while others provided details from the previous five years for a source.

IDEM compliance inspectors use a standard form and routinely review annual compliance certifications (ACCs) submitted to IDEM by Title V and FESOP program sources (see attached IDEM Title V/FESOP Annual Compliance Certification Review Form). These reviews were not reported to AFS in FY 2005; therefore, AFS reported "zero" ACC reviews for Indiana. However, IDEM has been tracking ACC reviews into a State database system. IDEM anticipates using the new ACES database beginning June 30, 2006. ACES will track all of the information on the ACC review form which will be uploaded to AFS to meet the reporting requirements of U.S. EPA.

**Citation of information reviewed for this criterion:** Interviews with IDEM; IDEM files located in the Office of Air Quality (OAQ), Indianapolis, Indiana; IDEM Office of Air Quality Field Inspection Report Templates Draft, August 29, 2002 and December 14, 2005; U.S. EPA Guidance, "CAA Stationary Source Compliance Monitoring Strategy," April 25, 2001; IDEM Title V/FESOP Annual Compliance Certification Review Form received on April 10, 2006.

**Recommendations and Actions:** Based on the consistency of the CMRs reviewed, U.S. EPA found that IDEM's CMR format serves as an excellent template for

compliance inspectors. IDEM should, however, caution inspectors about duplicating report content from previous CMRs to ensure that a new assessment of a source's compliance is made for each individual inspection. IDEM should emphasize the importance of providing adequate detail about the enforcement history in the background section of the CMR. A review and targeting of processes and areas by way of an on-site evaluation that is informed by the inspector's knowledge of previously occurring deviations is critical to complete compliance determination evaluations. 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.**

**Findings:** After conducting our review of 12 compliance files, U.S. EPA determined that IDEM completed compliance monitoring reports (CMRs) in a timely manner. Five of the twelve compliance files contained full compliance evaluations (FCEs) conducted by local air pollution control agencies. The FCEs included a review of various compliance-related documents submitted to IDEM by the sources. In the case of Title V sources, this activity included a review of ACCs. All of the reports reviewed by U.S. EPA were written within 30 days after the on-site inspection; two CMRs were completed on the same day of the inspection, and several others within a few days of the inspection.

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. A "Verification of Inspection" form is attached to each CMR. The form includes a signature and date section for verification that a summary of all violations and concerns identified during the inspection were verbally communicated to a representative of the company. All twelve of the CMRs contained the Verification of Inspection form.

**Citation of information reviewed for this criterion:** U.S. EPA Guidance, "The Timely and Appropriate (T&A) Enforcement Response to High Priority Violations (HPV)", June 23, 1999; IDEM files located in Office of Air Quality, Indianapolis, Indiana; U.S. EPA Guidance, "CAA Stationary Source Compliance Monitoring Strategy," April 25, 2001; IDEM Office of Air Quality Field Inspection Report Templates Draft, August 29, 2002 and December 14, 2005; IDEM Verification of Inspection Form.

**Recommendations and Actions:** IDEM should continue to use the CMR template for inspection reports to ensure their timeliness and completeness. This recommendation is supported by the consistency of the CMRs reviewed. IDEM should, however, caution inspectors about duplication of report content as discussed in the Metric 2 discussion above.

*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.**

**Findings:** Several issues appear to be affecting the timely reporting of significant violators to U.S. EPA. These include the referral process between the ACB and OE, data transmission between IDEM and U.S. EPA, and accurate identification of high priority violators (HPVs) between IDEM and its local agencies. All of these factors may be contributing to IDEM's low HPV discovery rate found in the data metrics.

ACB/OE Referral Process:

Since 2001, ACB has used an internal guidance document for referring violations to OE. When a possible violation is identified by ACB, a referral memo and supporting documentation is prepared and submitted to OE, thus, leaving the actual HPV determination to OE. U.S. EPA found two reasons why this current HPV determination process affects timely reporting of significant violations:

First, a required second review of the referral memo and supporting documentation by OE involves a second program office weighing in on the decision about an HPV. In reality, ACB has identified a violation, but does not make a HPV determination. Thus, the second review by OE affects the timeliness of reporting the HPV to U.S. EPA.

Second, often there is a need by both ACB and OE to gather additional information to determine if an HPV violation actually occurred. For example, in one case additional information was needed from IDEM's permitting section before IDEM could pursue the enforcement action. The permitting office, however, has its own mission and does not always prioritize enforcement related issues. As a result, the timeliness of reporting the HPV to U.S. EPA was delayed.

Both of these factors adversely affect IDEM's ability to report HPVs to U.S. EPA within the required 45 days of the violation being discovered.

IDEM/U.S. EPA Data Transmission:

Of the 19 enforcement case files reviewed, U.S. EPA found that IDEM designated ten sources as HPV. However, in all ten cases, HPV reporting exceeded the 45-day requirement for designating "Day 0" according to the HPV Policy. During this time, IDEM was providing a HPV Case Update Report to U.S. EPA by email. U.S. EPA agreed to then enter the HPV data for IDEM.

Accurate Identification of HPVs:

Another significant issue appears to be IDEM's lack of accurate identification HPVs. Of the 19 enforcement case files reviewed, U.S. EPA determined that 18 of the 19 case files were HPV sources according to the HPV Policy. However, IDEM only identified 10 of the 18 case files as HPV sources, resulting in a difference of eight HPV sources. Three of the eight sources involved violations that IDEM believed were not substantial, or substantially interfered with determining sources compliance or applicable emission

limits. IDEM believed these three violations were compliance assurance monitoring (CAM) type violations, and thus not true HPVs according to the HPV Policy. This demonstrates the need for more timely communication between IDEM and U.S. EPA when questions arise concerning HPV determinations. The remaining five of the eight HPV sources in question involved local agency determinations.

The lack of proper identification of HPVs also appears to be an area of concern for sources inspected by the local agencies. U.S. EPA found five out of the five local agency enforcement case files did not identify sources as HPVs, when according to the criteria in the HPV Policy, the violations should have been identified as HPVs.

U.S. EPA reviewed three FESOP case files and found inaccurate determination of an HPV for one source. The operating and production limits in these FESOPs are designed to keep the sources from being major. Thus, when a source exceeds such a limit, the U.S. EPA HPV Policy views such exceedances as HPVs.

**Citation of information reviewed for this criterion:** IDEM files located in Office of Air Quality, Indianapolis, Indiana; AFS National Database Source Data Report; U.S. EPA Guidance, “The Timely and Appropriate (T&A) Enforcement Response to High Priority Violations (HPV),” June 23, 1999; and U.S. EPA Guidance, “CAA Stationary Source Compliance Monitoring Strategy,” April 25, 2001

**Recommendations and Actions:** In the areas of HPV identification and reporting, IDEM needs to further improve its referral process between ACB and OE, as well as its HPV determination procedures. More discussion between ACB and OE should take place at time of referral to OE. Discussions between ACB, OE, and U.S. EPA during monthly conference calls would also improve HPV determinations. IDEM is in the process of revising its 2001 referral procedures. IDEM’s new referral procedure guidance should include as many examples as possible of specific violations that meet the HPV Policy criteria and the evidence needed to allege those violations. This information would allow ACB inspectors to make a HPV determination, and thus, eliminate or minimize the additional review by OE in evaluating the same evidence to determine if the violation is a HPV. By improving communication between ACB and OE and developing a clear HPV determination process, IDEM will improve the timeliness of reporting HPVs to AFS. In addition, training should be provided for all ACB and OE program staff, including those in local agencies, and should be comprehensive and cover all aspects of the HPV policy.

For sources with FESOPs and/or synthetic minor permits, IDEM needs to evaluate compliance more closely. When a source exceeds such a limit, the HPV Policy views such exceedances as HPVs. One suggestion for ensuring that HPV determinations made by local agencies are accurate is to have the OE local agency liaison discuss potential violations with the local offices during the monthly calls. Further, OE should review violation letters and notices issued by local agencies on a monthly basis to check if the local agency is correctly using the HPV policy and making the appropriate HPV

determination. To ensure prompt reporting of HPVs, the monthly calls between OE and the local agencies should be coordinated with Region 5.

Arnie Leriche of U.S. EPA Headquarters agreed to provide IDEM with a checklist for making HPV determinations according to the HPV Policy.

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

**Findings:** ACB is responsible for determining compliance of regulated sources of air emissions in the State of Indiana. When a violation is identified, ACB and the three IDEM regional offices evaluate the nature or “seriousness” of the violation. According to ACB, if the violation is a HPV, it is immediately referred to the OE. If the violation is not a HPV in nature, OAQ will typically work with the violator to correct the problem by issuing a violation letter and compliance schedule.

OE is responsible for determining the appropriate enforcement actions for serious violations of air pollution control regulations. According to OE, for serious violations of environmental regulations, OE will issue a Notice of Violation (NOV). The source is guaranteed a settlement period of at least 60 days after receiving a NOV to enter into an Agreed Order (AO) with IDEM. In most cases, AOs include a civil penalty for the violation(s) and stipulated penalties. If settlement through an AO is not reached, IDEM may issue a Commissioner’s Order, which is a unilateral order demanding payment of a civil penalty and implementation of any necessary compliance activities to return the source back into compliance.

For 14 of 14 of the enforcement case files where IDEM was the lead enforcement agency and had issued a NOV, U.S. EPA found that IDEM also issued an AO as the final enforcement step to return the source to compliance. Although the enforcement actions taken and AOs issued did return the sources back into compliance, some of the AOs did not contain injunctive relief necessary to achieve continuous compliance. For example, two of the 14 enforcement case files contained documentation of operation and maintenance (O&M) problems that needed to be corrected to bring the source into compliance. However, neither of the AOs included any formal injunctive relief component for the O&M projects to ensure future continuous compliance. Timeliness of enforcement actions will be discussed in Metric 6 below.

IDEM local air pollution control agencies have a funding agreement with IDEM that outlines the procedures each local agency will follow for determining compliance and initiating/resolving formal enforcement actions (see attached contracts). All six of the local agencies have the authority to issue a Warning Letter, Violation Letter, Failure to Respond Letter, Letter of Violation, Notice of Determination, informal Notice of Violation, formal Notice of Violation, or AO.

For the five enforcement case files reviewed where a local agency was the enforcement lead and violations were identified, U.S. EPA found that the enforcement actions properly followed the procedures outlined in each local agency contract. However, in all of these files, the local agency should have identified the violations as HPVs (see explanation in the Metric 4 discussion above) and referred these violations to IDEM, as well as reported the HPVs to U.S. EPA.

**Citation of information reviewed for this criterion:** IDEM files located in Office of Air Quality, Indianapolis, Indiana; AFS National Database Source Data Report; U.S. EPA Guidance, “The Timely and Appropriate (T&A) Enforcement Response to High Priority Violations (HPV),” June 23, 1999; U.S. EPA Guidance, “CAA Stationary Source Compliance Monitoring Strategy,” April 25, 2001; Description of IDEM Air Compliance and Enforcement Programs, Email from IDEM to U.S. EPA dated March 31, 2006; IDEM Local Agency Air Pollution Control Funding Agreements; Evansville EPA Enforcement Ordinance.

**Recommendations and Actions:** U.S. EPA recommends IDEM include injunctive relief in AOs, where appropriate, to ensure continuous compliance. See Recommendations for HPV identification in Metric 4 discussion above. Local agencies, ACB and OE need to further improve referral processes, as well as HPV determination procedures. More discussion between local agencies, ACB and OE should take place at the time a violation is identified as HPV, or as a potential HPV. Discussion between ACB, OE, and U.S. EPA during monthly conference calls could also improve HPV determinations.

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

**Findings:** ACB is responsible for determining compliance of regulated sources of air emissions in the State of Indiana. When a violation is identified, ACB and the three IDEM regional offices evaluate the nature or “seriousness” of the violation. According to ACB, if the violation meets the referral criteria, including HPV, it is immediately referred to the OE. If the violation is not significant or is not HPV in nature, OAQ will typically work with the violator to correct the problem by issuing a violation letter and compliance schedule.

OE is responsible for determining the appropriate enforcement actions for serious violations of air pollution control regulations. According to OE, for serious violations of environmental regulations, OE will issue a Notice of Violation (NOV). The source is guaranteed a settlement period of at least 60 days after receiving a NOV to enter into an Agreed Order (AO) with IDEM. In most cases, AOs include a civil penalty for the violation(s) and stipulated penalties. If settlement through an AO is not reached, IDEM may issue a Commissioner’s Order, which is a unilateral order demanding payment of a civil penalty and implementation of any necessary compliance activities to return the source back into compliance.

IDEM local air pollution control agencies have a contract with IDEM that outlines the procedures each local agency will follow for determining compliance and initiating/resolving formal enforcement actions (see attached contracts). All six of the local agencies have the authority to issue a Warning Letter, Violation Letter, Failure to Respond Letter, Letter of Violation, Notice of Determination, informal Notice of Violation, formal Notice of Violation, or AO.

The HPV Policy establishes timelines for addressing/resolving a violation as: 270 days (9 months) from the Day “0” date, if there is no lead change; and 300 days (10 months) from Day “0”, if there is a lead change. U.S. EPA was unable to accurately determine a Day “0” for all enforcement case files (19 total) reviewed, due to the fact that Day 0 was not specified in any of the ACB or OE documents provided during the SRF review. Therefore, the referral date on the referral memorandum from ACB to OE was used. Although the Day 0 had not been specified in IDEM’s referral memorandum, IDEM did identify the Day 0 on the HPV Case Update Reports provided to U.S. EPA.

The referral date on the referral memorandum was used in lieu of the Day 0 to compare to the signature date on the AO. By using this referral date to OE, U.S. EPA calculated the number of months from the referral date to the signature date of the AO, and thus, estimated the time it took IDEM to resolve a violation. U.S. EPA calculated the time to resolve a violation for 14 enforcement case files in which IDEM was the lead agency, there was no lead change, and the cases were resolved with an AO. The timeframe from the referral date to the signature date on the AO ranged between 5 to 44 months for the 14 cases reviewed. More specifically, 5 of the cases were resolved in less than 10 months; 3 cases were resolved between 10 to 15 months; and 4 cases were resolved greater than 27 months.

For the five enforcement case files reviewed where a local agency was the enforcement lead, one of the cases was resolved with an AO. U.S. EPA found that this AO addressed the violations in a timely and appropriate manner according to the HPV Policy. In the other four cases, companies achieved compliance by submitting appropriate records.

**Citation of information reviewed for this criterion:** IDEM files located in Office of Air Quality, Indianapolis, Indiana; AFS National Database Source Data Report; U.S. EPA Guidance, “The Timely and Appropriate (T&A) Enforcement Response to High Priority Violations (HPV),” June 23, 1999; U.S. EPA Guidance, “CAA Stationary Source Compliance Monitoring Strategy,” April 25, 2001; Description of IDEM Air Compliance and Enforcement Programs, Email from IDEM to U.S. EPA dated March 31, 2006; IDEM Local Agency Air Pollution Control Funding Agreements; Evansville EPA Enforcement Ordinance.

**Recommendations and Actions:** IDEM should improve the timeliness of resolving enforcement actions for its HPV sources. IDEM management has set a goal of resolving all cases within one year from issuing an NOV. This will be achieved through better

communication between ACB and OE; improved HPV determination; and the use of initiating a Commissioner Order for those sources that do not want to settle quickly. See recommendations under Element 4 above.

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

**Findings:** U.S. EPA found that a penalty was calculated and assessed for 84 percent (16 of the 19 files) of the 19 enforcement case files reviewed. IDEM was the lead enforcement agency for 13 of these cases, and the co-lead enforcement agency for 1 case. The other two cases with calculated penalties were lead by local agencies. For all 16 of these files, IDEM or the local agency calculated a gravity component of the penalty using the civil penalty policy or local penalty policy. No BEN calculations were performed for any these penalty calculations; however, U.S. EPA found two cases with documented expenditures by the source for injunctive relief. For one of these cases, the source spent \$575,000 on injunctive relief and \$30,000 on operation and maintenance to return to compliance. For the other case, the source spent more than \$200,000 to return to compliance.

All of the 16 case files for which a penalty was calculated included either a penalty calculation worksheet, an explanation of the penalty calculation in a briefing memo, or both. However, in several cases where the initial penalty calculation was mitigated, U.S. EPA could not find an explanation of the reasons for mitigating the penalty.

No penalty was calculated for three of the 19 files, and all three of these cases were lead by a local agency office. U.S. EPA questioned whether a penalty should have been calculated for two of these case files because the violations appeared to be HPV; however, the violations were not appropriately characterized as HPV by the local agency.

**Citation of information reviewed for this criterion:** IDEM files located in Office of Air Quality, Indianapolis, Indiana; IDEM Local Agency Air Pollution Control Funding Agreements; Evansville EPA Enforcement Ordinance; 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; IDEM Civil Penalty Policy, April 5, 1999; IDEM Self Disclosure Policy and Environmental Audit Policy, April 5, 1999; IDEM Supplemental Environmental Project (SEP) Policy, April 5, 1999; Civil Penalty Policy for the City of Indianapolis

**Recommendations and Actions:** IDEM and local agencies should calculate an economic benefit component for enforcement cases where money was spent on injunctive relief projects to return a source to compliance. For those situations where IDEM does not feel that a BEN calculation is appropriate, IDEM needs to document the rationale in the enforcement case file for its decision as to why it could not assess an economic benefit component in appropriate situations. Also, IDEM should improve its justification



for penalty mitigation in the penalty calculation worksheet, briefing memorandum, or both. As a follow-up, EPA plans to review IDEM's BEN calculations on a yearly basis.

IDEM is in the process of formulating a Standard Operating Procedure (SOP) identifying when it believes economic benefit calculation is appropriate, to give additional guidance to enforcement case managers. After that SOP is completed, IDEM case managers will address the issue of economic benefit calculations more clearly in briefing memos.

**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:** In the 16 enforcement case files for which IDEM calculated a penalty, IDEM included an enforcement briefing memorandum, a penalty calculation worksheet, or both, that contained an analysis of the gravity portion of the penalty calculation. Each briefing memorandum also contained analysis of the strengths and weaknesses of the case. U.S. EPA found, however, for most of the cases where a penalty was calculated which also included penalty mitigation, the penalty reductions were made without a clear justification in either the briefing memorandum or the penalty calculation worksheet.

For these 16 enforcement case files where a penalty was assessed, U.S. EPA found documentation (e.g., either internal IDEM emails or copies of checks received from the source) in all of the enforcement case files to indicate that the penalty was collected by IDEM or the local agency.

**Citation of information reviewed for this criterion:** IDEM files located in Office of Air Quality, Indianapolis, Indiana; IDEM Local Agency Air Pollution Control Funding Agreements; Evansville EPA Enforcement Ordinance; 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; IDEM Civil Penalty Policy, April 5, 1999; IDEM Self Disclosure Policy and Environmental Audit Policy, April 5, 1999; IDEM Supplemental Environmental Project (SEP) Policy, April 5, 1999; Civil Penalty Policy for the City of Indianapolis

**Recommendations and Actions:** IDEM should improve its justification and supporting documentation in the enforcement case file for penalty mitigation in the penalty calculation worksheet, briefing memorandum, or both.

***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:** The Environmental Performance Partnership Agreement (EnPPA) between Indiana and U.S. EPA, Region 5,” July 1, 2003 – June 30, 2005, had no enforcement commitments. Nevertheless, ACB committed, “As available resources allow, develop and begin implementation of ACES, a database system, which links many of the current Compliance Branch databases as well as other OAQ and agency databases, following all agency database criteria and assuring compatibility with U.S. EPA compliance data reporting requirements. This commitment was completed by June 30, 2005.

**Citation of information reviewed for this criterion:** AFS National Database; and the “Environmental Performance Partnership Agreements (EnPPAs) between Indiana and U.S. EPA, Region 5,” 2003-2005 and 2005-2007.

**Recommendations and Actions:** U.S. EPA requested that the 2005-2007 EnPPA include more specific enforcement and compliance commitments from IDEM. Those specifics were included in the 2005 – 2007 EnPPA.

#### *Section 4: Review of Database Integrity*

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

**Findings:** Many of the HPVs were either never reported to AFS or reported beyond the 45-day reporting requirement after the violations were discovered. After reviewing the 19 enforcement case files, U.S. EPA discovered the reporting of the minimum data requirements (MDRs) to be untimely. Listed below are three factors, along with examples of case files, which contribute to the untimeliness of reporting MDRs:

- a) IDEMs internal enforcement referral process from the ACB to OE program offices. (See explanation in Metric 4)
- b) Lack of communication between agencies (Local, State and/or Federal) in identifying HPVs in accordance with “The Timely and Appropriate (T&A) Enforcement Response to HPVs” policy. U.S. EPA reviewed 19 enforcement case files, 18 of which were identified by U.S. EPA as HPVs according to the HPV matrix violation codes developed by Headquarters. However, IDEM only identified 10 of the 18 case files as HPV sources, resulting in a difference of eight HPV sources not reported to U.S. EPA. The following are eight examples of IDEM enforcement cases that were not reported to U.S. EPA as HPVs:
  - Facility exceeded minor source 12 month rolling limit; repeat violator.
  - Facility subject to Miscellaneous Metal Parts Coating SIP; has add-on control (RTO). Facility operated without a TO.
  - Facility exceeded the 12 consecutive month production limit (985) of ductile iron; violation of Title 5 permit condition.

- Facility submitted its Title V ACC two months late. ACC due in July but was received in September.
- Facility exceeded a VOC emissions FESOP limit of 24 tons based on 12 consecutive months.
- Facility baghouse and cyclones were not operating and failed to operate control equipment while process grinders operated.
- Facility violated permit requirement to stay below 25 tons per year, miscellaneous metal parts coating rule and failed to apply for operating permit for three coating booths.
- Facility had five counts of monitor excess downtime for NOx. According to the dates of the referrals to the OE program office, three separate HPVs should have been entered because the violations identified were more than 30 days apart.

Because the eight cases were never identified as HPVs by IDEM and never reported to U.S. EPA, the HPVs were not timely and therefore did not meet the MDR requirements according to the T&A Guidance for HPVs.

IDEM identified 10 out of the 19 enforcement case files as HPVs but these sources were not entered in AFS in a timely manner.

One facility was entered in AFS as HPV with a Day “0” date of 02/02/04. After reviewing the enforcement case file, the violation was identified in the Violation Letter from OC as 08/25/03. Therefore, the Day “0” is inaccurate and was reported beyond the 45-day reporting requirement of the HPV policy. The date of 02/02/04 would be five months, 7 days after the violation was discovered.

One facility was entered in AFS as HPV with a Day “0” date of 08/12/04. After reviewing the enforcement case file, the violation was identified by stack test on 12/19/03 but the referral to OE did not occur until 07/12/04. The timeframe between when the violation was discovered and OE referral was too long and the date of the Day “0” is questionable. U.S. EPA also feels three additional enforcement cases were questionable. In these cases, U.S. EPA felt more communication between the agencies regarding the violations should have occurred before a final HPV determination was made.

There was one enforcement case file which was reported to U.S. EPA in a timely manner and entered in AFS accurately. In addition, in one of the enforcement

cases reviewed, both U.S. EPA and IDEM agreed that the violation discovered was determined not to be a HPV.

- c) During the period on which this SRF is based, IDEM did not enter their HPVs into the AFS because U.S. EPA had agreed to enter the HPV sources into AFS. On a monthly basis, IDEM submitted a HPV Case Update Report to U.S. EPA. The report contained HPV cases pending, to be added and removed from the list. Some of the cases had a “Day 0” that was beyond the 45-day requirement per HPV Policy when U.S. EPA received IDEM’s HPV Case Update Report. Additionally, U.S. EPA may share some responsibility for failure to enter these HPV sources into AFS.

**Citation of information reviewed for this criterion:** IDEM files located in Office of Air Quality, Indianapolis, Indiana; AFS National Database Source Data Report; IDEM High Priority Violators Case Updates; U.S. EPA Guidance, “The Timely and Appropriate (T&A) Enforcement Response to High Priority Violations (HPV),” June 23, 1999; U.S. EPA Guidance, “CAA Stationary Source Compliance Monitoring Strategy,” April 25, 2001; HPV Matrix Violation Codes

**Recommendations and Actions:** U.S. EPA recommends IDEM adhere to the T&A Guidance timeframe for HPVs, develop standard operating procedures for referring violations from one program office to the next for enforcement, and initiate better communication between the agencies involved in the enforcement process when identifying HPVs that are not exactly clear cut.

The monthly HPV case updates submitted to U.S. EPA for entry into AFS ended on June 30, 2006. IDEM is now entering and tracking its own HPVs in AFS. In accordance with the EnPPA 2005-2007, IDEM committed to upload compliance and enforcement information from ACES to AFS to meet U.S. EPA MDR within the 60-day standard required for reporting by the Information Collection Request (ICR), beginning June 30, 2006. They will ensure all information provided to U.S. EPA is complete, accurate and timely consistent with U.S. EPA policies and the ICR.

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

**Findings:** At the time of the SRF, IDEM was entering stack test results into AFS. However, IDEM was using the old results codes. IDEM was not reporting the “action pollutant.” IDEM and U.S. EPA has since cleaned up much of this data and IDEM is currently entering the correct results codes. Beginning June 30, 2006, IDEM will be uploading stack test data directly from the IDEM ACES database into AFS.

U.S. EPA discovered other inaccuracies with the data entered in AFS by Indiana. During the time of the SRF, U.S. EPA agreed to only enter HPV sources into AFS. For all other MDRs (e.g., inspections, stack tests, enforcement actions taken, Title V annual

compliance certifications, etc.), IDEM was responsible for accurately entering this information into AFS per the 2003-2005 EnPPA. Potential sources of inaccuracies with the data entered in AFS were one or more of the following: failure to correctly identify and correct the data when inaccuracies were identified; failure to enter data into AFS; and failure to enter data accurately into AFS. Examples of inaccurate AFS data include: poor compliance status data entry at the source level, missing enforcement actions, and CMS flag entries. These are major concerns of U.S. EPA due to the number of MDRs found to be inaccurate and/or missing in AFS for all 19 enforcement case files reviewed. Specific examples of inaccurate and/or missing MDRs are listed below for the 19 case files:

- unknown compliance status for more than 3 years
- different name entered in AFS
- incorrect penalty amount entered
- incorrect CMS flags entered for source category and minimum frequency indicator
- missing enforcement actions (NOV, settlement conference, AO, penalty)
- no change in compliance status for violations identified
- unknown compliance status for Title V air program for more than 3 years
- incorrect date entered for AO
- listed as “in compliance” for MACT and SIP air programs for more than 3 years but were in violation
- no change in compliance status even though a violation letter was issued in 2005
- three inspections entered in AFS with the same date (05/03/01); all entered as violations (duplication)
- compliance status for violation in July 2004 never reported in AFS
- missing classification for regulated pollutant within air program
- violation status never reported
- incorrect date entered for penalty
- untimely resolution for case referred in December 2000; resolution occurred July 2004 (not in accordance with the T&A Guidance)
- stack test date of March 30, 2003 not entered in AFS
- Title V air program entered as temporarily closed; compliance status shut-down from October 2005 to present, unknown compliance status for Title V air program from April 2004 to September 2005
- unknown compliance status for MACT air program since May 2004 and Title V air program since March 2004 to present
- missing FCE conducted September 23, 2005
- compliance status entered in AFS as “in compliance” but should be “shut-down”
- timeliness in identifying Day “0” date and enforcement actions initiated; resolution occurred before enforcement action taken (FESOP issued December 13, 2002, NOV issued July 8, 2003 and AO issued March 2, 2005; four years since violation identified, addressed and resolved with AO)

**Citation of information reviewed for this criterion:** IDEM files located in Office of Air Quality, Indianapolis, Indiana; AFS National Database Source Data Report; IDEM High Priority Violators Case Updates; U.S. EPA Guidance, “The Timely and Appropriate (T&A) Enforcement Response to High Priority Violations (HPV),” June 23, 1999

**Recommendations and Actions:** U.S. EPA recommends IDEM adhere to the T&A Guidance Policy and the commitments made in the EnPPA between Indiana and U.S. EPA, Region 5, July 1, 2003 – June 30, 2005. U.S. EPA visited IDEM on June 27 and 28, 2006, to assist in the compliance data reporting requirements to U.S. EPA during the transition to the new ACES database. During the visit, U.S. EPA met with the contractor and IDEM staff to resolve data issues and made comments on the design document for ACES upload to AFS.

Based on the 2005-2007 EnPPA, IDEM compliance and enforcement information will be uploaded from ACES to AFS to meet U.S. EPA MDRs within the 60-day standard required for reporting by the ICR. In addition, IDEM will ensure all information provided to U.S. EPA is complete, accurate and timely consistent with U.S. EPA policies and the ICR.

In addition to using ACES, the State should provide training to managers/staff (i.e., inspectors, data stewards) on the MDRs and the processes for reporting such information. Training on the reporting provisions of the national policies such as CMS and HPV should also be provided.

**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:** At the time of the SRF, Title V annual compliance certification (ACC) data was not entered into the AFS database, thus not meeting the MDRs as required by U.S. EPA Headquarters. (See discussion of Title V inventory in Metric 1 above). IDEM made the state ACC database information available to U.S. EPA, but not through AFS. IDEM ACB has committed to entering this data beginning June 30, 2006.

The stack test results codes were entered with the old results codes. See discussion of Metric 11 above. IDEM and U.S. EPA have since then cleaned up this data and IDEM is correctly entering the correct results codes. Beginning June 30, 2006, IDEM will be uploading stack test results from IDEM’s ACES database into AFS.

**Citation of information reviewed for this criterion:** IDEM files located in Office of Air Quality, Indianapolis, Indiana; AFS National Database Source Data Report; U.S. EPA Guidance, “The Timely and Appropriate (T&A) Enforcement Response to High Priority Violations (HPV),” June 23, 1999; U.S. EPA Guidance, “CAA Stationary Source Compliance Monitoring Strategy,” April 25, 2001

**Recommendations and Actions:** (See discussion in Metrics 1 and 11 above.)

***Program Evaluated: RCRA Subtitle C***

**Information Sources Included in the Review**

1. RCRAInfo, RCRARep and OTIS Databases (U.S. EPA)
2. Data Metrics Report Prepared by U.S. EPA Headquarters
3. IDEM Compliance Monitoring and Enforcement Files
4. Hazardous Waste Civil Enforcement Policy (U.S. EPA)
5. 2003-2005 Environmental Performance Partnership Agreement (U.S. EPA, Region 5 and IDEM).
6. RCRA Civil Penalty Policy (U.S. EPA)
7. Civil Penalty Policy (IDEM)
8. Self Disclosure and Environmental Audit Policy (IDEM)
9. Revised RCRA Inspection Manual, 1998 (EPA)
10. State Review Framework Work Shop (November 2-3, 2005, U.S. EPA, Region 5)

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**Period Covered:** Federal Fiscal Year 2005

**Introduction**

The review of the Indiana Department of Environmental Management (IDEM) 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) on February 17, 2006; information from the OTIS database for calculation of data metrics for which EPA HQ did not provide data; and information obtained during an on-site file review at IDEM's Headquarters in Indianapolis.

The file review was conducted on April 10-13, 2006, and included the review of 35 randomly selected compliance monitoring and enforcement files covering inspections or enforcement activities that occurred during the 2005 Federal Fiscal Year (FY05, i.e. October 1, 2004 – September 30, 2005). 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, 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) Facilities inspected in FY-05 with no violation detected - 7 Files
- (2) Secondary Violators in FY-05 not receiving any formal action - 13 Files
- (3) Proposed Agreed Orders filed in FY-05 - 5 Files
- (4) Final Formal Actions filed in FY-05 against facilities previously designated as SNCs - 5 Files
- (5) Significant Non-Complier's designated in FY05 - 5 Files

Files were chosen randomly from each category and sent to IDEM for comment. If there were any concerns, another random file was chosen from the category.

### ***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). The results for each of these metrics clearly indicate IDEM's success in meeting the element goals.

During FY04 and FY05, IDEM performed inspections at 100% of Indiana's operating Treatment, Storage and Disposal Facilities (TSDFs). At the time of the review, there were a total of 21 operating TSDFs in Indiana. The requirement is to inspect each TSDF every 2 years. The national average for inspections at TSDFs during FY04 and FY05 is 91%.

During FY05, IDEM performed inspections at 42% of its Large Quantity Generators (LQGs). This calculation is based on an LQG universe totaling 522 facilities, and a total of 221 State inspections at these facilities. The goal for annual inspections of LQGs is 20% and the national average for FY05 was 26%.

Between FY01 and FY05, IDEM completed inspections at 98% of its LQGs, indicating that IDEM is achieving the goal of inspecting all of its LQGs every 5 years (the small deviation from 100% could be attributed to universe changes). This calculation is based on the 522 facility universe. The national average for FY01 through FY05 is 68%.

IDEM performed inspections at 99% of its Small Quantity Generators (SQGs) during FY01 through FY05. This calculation is based on an SQG universe of 850 sites, and inspections performed at 839 of these sites. A national goal does not exist for inspections at SQGs. The national average is 90%.

In addition, 2,144 sites not classified as TSDFs, LQGs, or SQGs were inspected by IDEM during FY01 through FY05 (6% of the national total). The national total for inspections at these sites during this time period is 33,833.

Finally, Region 5 considered IDEM's performance under its 3-year Environmental Performance Partnership Agreement (EnPPA); covering State Fiscal Years 2003 through 2005 (State Fiscal Years begin on July 1 and end on June 30). In this agreement, IDEM committed to performing inspections at 100% of its operating TSDFs, 20% of its LQGs, and 10% of its SQGs in each State Fiscal Year.

IDEM completed inspections at 100% of all operating TSDFs in each of the State Fiscal Years covered under the agreement. IDEM completed inspections at 24%, 24% and 28% of its LQGs in State Fiscal Years 2003 through 2005, respectively. IDEM completed inspections at 30%, 25% and 23% of its SQGs in State Fiscal Years 2003 through 2005, respectively. Therefore, the review indicated that IDEM had completed 100% of the inspections identified in the agreement, and had exceeded the goal for inspections at both LQGs and SQGs. These calculations were based on data obtained from OTIS Management Reports.

**Information sources utilized for this criterion:** 1, 2, 5 and 10.

**Recommendations and Actions:** None. IDEM successfully completed all of its required inspections.

**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 35 compliance monitoring and enforcement files reviewed, it was determined that 31 of them were applicable to this metric (four of the files were for enforcement activities that stemmed from Non Financial Record Reviews conducted in-house).

Of the 31 applicable files, 23 of the inspection reports were deemed to be complete (~74%). 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.

**Information sources utilized for this criterion:** 3, 9 and 10.

**Recommendations and Actions:** None. Though roughly 25% of inspection reports were deemed to be incomplete, the Region does not believe a formal recommendation is required. The elements missing in the incomplete reports are elements that are normally incorporated into IDEM's inspection reports (i.e. checklists, photographs, and narratives).

In addition, since the time of the review IDEM has communicated to the Region that performance standards pertaining to accuracy, completeness, and timeliness are now incorporated into RCRA inspector performance reviews and are reviewed on a monthly basis. Also, IDEM is revising reporting forms to improve completeness and consistency, and manager responsibilities in the program have been clarified to assure accountability.

Therefore, the input of the Region does not appear necessary to address future inadequacies.

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

**Findings:** The SRF provides a single file review metric for evaluation under this element (Data Metric 3a). Of the 35 files evaluated, 31 were considered to be applicable to this metric for the same reasons as stated in the discussion of Data Metric 2a.

Nineteen of the inspection reports (61%) were considered to be completed in a timely manner. An inspection report was considered to be completed in a timely manner if it was completed within 45 days of the inspection, to be consistent with EPA Region 5 Enforcement and Compliance Assurance Branch policy for its own RCRA inspections.

However, IDEM does not follow the practice of dating its inspection reports. The only dates associated with inspection reports are the cover letters (Inspection Summary Letter) that accompany the reports when they are issued to the regulated entity. Therefore, it was difficult to assess IDEM's timeliness for this element.

**Information sources utilized for this criterion:** 3 and 10.

**Recommendations and Actions:** Begin the practice of dating the actual inspection reports in order to distinguish between timeliness of inspection report completion and the transmittal of the report to the regulated entity. The date for each report should be the date the final report is completed, including any revisions required by management. This date should appear on the inspection report itself. This practice should begin no later than the beginning of the 2007 calendar year.

## *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 1.3% of sites (8 sites) inspected by IDEM during FY05 were determined to be Significant Non-compliers (SNCs). This is less than half of the national average (3.2%).

The SRF guidance states that if the SNC determination rate for a state is less than half the national average, further discussion is recommended. Though IDEM's SNC determination rate is below the national average, the on-site review of compliance monitoring and enforcement files indicated that IDEM is making accurate and appropriate violator determinations. Out of 32 files reviewed in which violations resulted from an inspection, 31 (97%) of the subsequent violator determinations (i.e. SNC vs. Secondary Violator) appeared to be appropriate. Therefore, the fact that IDEM's SNC determination rate is low should not alone be used to conclude that IDEM is not properly identifying significant non-compliance.

The one file for which the violator determination was considered inappropriate involved a facility identified as a Secondary Violator (SV) that the review team concluded should have been identified as a SNC. However, in this case IDEM did pursue a formal enforcement action against the SV, which would have been the appropriate enforcement response had the violator been identified as a SNC.

Also, IDEM regularly files formal enforcement actions against SVs. Of the 12 enforcement files reviewed where a formal enforcement action was issued by IDEM in FY05 (Adopted Agreed Orders (AAOs) or Commissioner's Orders (COs)), five were issued against SVs. This is also indicated by the results for Data Metric 4d, which demonstrates that only 25% of IDEM's formal enforcement actions taken in FY05 were against facilities that received prior SNC designations. The national average is 53%.

Finally, six of the eight SNC determinations (75%) made in FY05 were completed within 150 days of Day Zero (defined by the Hazardous Waste Civil Enforcement Policy (ERP) as the first day of the initial inspection or record review). This metric was not provided by U.S. EPA HQ; it is the Region that calculated the metric. In order to perform the calculation, the Region used the data from the EPA HQ calculation for Data Metric 4a, to determine the number of SNC determinations made in FY05 and the date of those determinations. This is the same data used as the numerator in calculation of metric 4a

(State only data). The Region then compared these dates to the inspection dates associated with these SNC evaluations as provided by the RCRARep data base. The ERP requires all violator determinations to be made within 150 days of Day Zero. However, it allows for 20% of enforcement actions to fall out of the time-lines provided, if case specific factors provide sufficient justification.

Of the 32 files reviewed in which violations were identified from the inspection, 29 (91%) of the violator determinations were made and reported to RCRAInfo within 150 days of day zero. The ERP requires that violator determinations be made and reported to RCRAInfo within 150 days of Day Zero.

**Information sources utilized for this criterion:** 1, 2, 3, 4, and 10.

**Recommendations and Actions:** Ensure that violator determinations are made and reported to RCRAInfo within 150 days of Day 0 in accordance with the ERP.

**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 file review metrics provided by the SRF for evaluation under this element (File Review metrics 5a & 5b) indicate that this is an area of success for IDEM.

Of the 12 formal actions reviewed (Adopted Agreed Orders (AAOs) and Commissioner's Orders (COs)), 100% of the issued IDEM FY05 formal actions contained the appropriate injunctive relief necessary to return the facility to compliance. Proposed Agreed Orders (PAOs) were not considered here as they are not formal enforcement actions, but rather actions required before the issuance of a formal action.

Also, 100% of the informal enforcement actions against SVs (14 total) returned the facility to compliance (with compliance being documented through a return site-visit or information review).

**Information sources utilized for this criterion:** 3 and 10.

**Recommendations and Actions:** None.

**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 results of these metrics indicate that this is an area where improvement is needed. The results of Data Metric 6a indicates that seven out of the ten (70%) formal enforcement actions taken against SNCs during FY05 were filed after day 360. This metric was not provided by U.S. EPA HQ; it is the Region that calculated the metric. In order to perform the calculation, the Region used the data from the EPA HQ calculation for Data Metric 4d, to determine the total number of formal enforcement actions taken against SNCs in FY05 and the dates of those actions. This is the same data used as the numerator in calculation of metric 4d. These dates were then compared with the inspection dates associated with these formal actions, as supplied by the RCRARep database.

The ERP requires all unilateral formal enforcement actions to be completed by Day 240, and all referrals to the Department of Justice or State's Attorney General's office, or entrance into final orders with the violator to be completed by Day 360. However, the ERP allows these limits to be exceeded for 20% of the cases when justified.

A total of 40 formal enforcement actions were taken by the State in FY05 (includes formal enforcement actions against SNCs and SVs). In addition, of the 32 compliance monitoring and enforcement files reviewed, 12 revealed that the enforcement actions were not timely. However, it should be noted that since this metric measures the timeliness of all required actions during enforcement actions against SNCs and SVs, it does not necessarily mean that the final enforcement action was not timely; e.g. an AAO could be filed by day 360, but the facility was not provided with a warning letter by day 150, therefore making the enforcement action not timely.

Though timeliness appears to be an area where improvement is needed, of the 32 enforcement files reviewed, all of the enforcement actions were deemed appropriate to the violations (i.e. all SNCs and some SVs were being addressed with formal enforcement actions).

**Information sources utilized for this criterion:** 1, 2, 3, 4 and 10.

**Recommendations and Actions:** IDEM should identify any barriers against timely enforcement actions and take action to overcome the barriers.

To this end, IDEM should evaluate the impact, if any, that prolonged good faith negotiations with SNCs, for the purposes of achieving AAOs, have on the timeliness of its formal enforcement actions. If it is determined that such negotiations beyond the time frame IDEM is required to negotiate by statute is contributing to untimely enforcement actions, IDEM should make a policy to issue its unilateral COs by the date a formal enforcement action is required to be issued per the ERP, regardless of whether or not the violator is still engaging IDEM in negotiation at that time. IDEM should complete this action by the beginning of the 2007 calendar year.

Also, IDEM may consider taking less formal enforcement actions against SVs, if appropriate to the violations, to focus on formal enforcement actions against SNCs.

**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 (Data Metric 7a).

In reviewing this element, the reviewers only considered the penalties calculated for formal enforcement actions that have actually occurred (i.e. penalties calculated for PAOs were not considered). Of the 12 formal enforcement actions reviewed that contained a monetary penalty, none included calculation for the economic benefit of non-compliance (EBNC) or any written explanation given as to why EBNC was not considered. Also, one formal enforcement action taken against an SV did not include any written documentation as to how the gravity penalty was concluded.

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.

It should be noted that many of the reviewed enforcement actions contained penalties for violations that would not have resulted in a significant economic benefit to the violator. However, the penalties for at least three of the reviewed enforcement actions included violations that likely resulted in some measurable EBNC.

Therefore, in those cases, EBNC should have been calculated and compared to the gravity based penalty for consideration. Examples of these violations include: the failure to make a waste determination (and subsequently sending hazardous waste to a non-hazardous waste landfill), failure to perform a complete integrity assessment of a hazardous waste storage tank, failure to repair a leaking hazardous waste storage tank, failure to adequately construct secondary containment for a hazardous waste storage tank and failure to develop a waste analysis plan.

Gravity penalties consistent with state and national policy were calculated and assessed in IDEM's formal enforcement actions (with some exceptions, including multi-day penalties, as discussed in the following section).

**Information sources utilized for this criterion:** 3, 6, 7, 8 and 10.

**Recommendations and Actions:** Begin calculating the EBNC for all enforcement actions using the BEN model (except when determined negligible as discussed below and in accordance with the RCRA Civil Penalty Policy). Also, IDEM should identify if there

is a need for additional training of staff on the use and theory of the BEN model. IDEM should complete this activity by the beginning of the 2007 calendar year.

Currently, IDEM's Civil Penalty Policy indicates that EBNC should be considered whenever possible. It also states that the economic benefit component can be disregarded when it is less than \$1,000. IDEM should update its penalty policy to delineate those circumstances in which EBNC must be added to the gravity based penalty. When economic benefit is not going to be pursued because IDEM considers it to be negligible, pursuant to appropriate policy, an explanation as to how it was deemed negligible should be included in the case file. IDEM should accomplish this goal by the end of FY07.

**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 IDEM assessed a total of \$557,259 in penalties during FY05. The national total for FY05 is reported to be \$13,114,624.

In FY05, 78% of IDEM's formal enforcement actions included some penalty, compared to the national average of 51.4%; and 82% of IDEM's final enforcement actions included some penalty, compared with a 77.6% national average. The results above indicate that IDEM's performance in this area is above the national average.

However, for the same reasons discussed under Element Seven, 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." As stated earlier, no documentation of economic benefit calculations existed for any of the 12 formal enforcement actions reviewed.

The majority of gravity calculations appeared to be appropriate. However, no multi-day penalties were calculated nor were explanations given as to why multi-day penalties were not appropriate in cases where continuing violations did occur. Examples of continuing violations for which multi-day penalties were not assessed included: the storage of hazardous waste beyond 180 days; failure to make a waste determination, and, as a result, shipping hazardous waste to a non-hazardous waste landfill; and failing to respond to a leak from a hazardous waste storage tank for an extended period of time (around one year).

In some instances, the enforcement personnel placed the gravity-based penalty in either the "major" potential for harm or extent of deviation category. Therefore, per IDEM's penalty policy, penalties for these violations should "generally" have included a multi-day component.



One penalty assessed against a SNC was significantly reduced from what was originally proposed without a sufficient written explanation justifying the reduction. Also, one formal enforcement action against an SV did not contain any documentation in the enforcement file as to how the penalty was arrived at (i.e. how the gravity was determined, what were the factors considered, etc.).

In regards to penalty collections, of the 10 files reviewed where a penalty was due, nine of the penalties were collected. One penalty was not collected, and was past-due by approximately six months as of the time of the review. The file for this case did not indicate that the facility has been designated as a SNC, and that an action enforcing the AAO was in progress. However, discussions with IDEM following the file review indicate that the penalty was paid on April 27, 2006.

Also, IDEM's Civil Penalty Policy is not entirely consistent with EPA's RCRA Civil Penalty Policy. This could provide for penalties that are not consistent with the national policy. For instance, IDEM's penalty policy does not provide for "discretionary," "presumed appropriate," or "mandatory" multi-day penalties, as does the EPA policy. Multi-day penalties are simply stated to be "generally calculated in the case of continuing violations that demonstrate a major potential for harm and/or a major extent of deviation, but may also be calculated in the case of other continuing violations." This statement does not sufficiently direct enforcement personnel as to when it is appropriate and when it is not necessary to calculate multi-day penalties.

However, it should be noted that in the case where multi-day penalties were to be assessed, IDEM's penalty policy could be considered stricter than EPA's, in that a separate multi-day matrix does not exist, as is the case with EPA's penalty policy. Instead, the IDEM policy instructs the enforcement personnel to multiply the gravity value by the number of days of violation.

Also, IDEM's adjustment factors allow for mitigation of a gravity-based penalty by as high as 50% for actions that occur before or after the violations. However, IDEM's penalty policy also allows for upward adjustment of the penalty for the same factors by as much as 50%, which is greater than an upward adjustment under the EPA policy.

**Information sources utilized for this criterion:** 2, 3, 6, 7, 8, and 10.

**Recommendations and Actions:** See recommendations under Element Seven regarding economic benefit calculations. IDEM should revise its penalty policy to require explanation as to how penalties are to be documented for gravity, multi-day, and adjustment factors, and ensure it is consistent with EPA's penalty policy. IDEM should use the penalty narrative examples contained in the RCRA Civil Penalty Policy, or create its own examples, consistent with the RCRA Civil Penalty Policy, as guidance for

enforcement personnel documenting penalty calculations. IDEM should accomplish this goal by the end of FY07.

### ***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:** Review of IDEM's 2003-2005 EnPPA indicates that IDEM has performed all of the required compliance monitoring activities agreed to in the EnPPA (See discussion under Element 1). No other enforcement commitments have been established between IDEM and Region 5 EPA.

**Information sources utilized for this criterion:** 1, 5 and 10.

**Recommendations and Actions:** None.

### ***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 data metric indicates that 30% of the SNC determinations entered into RCRAInfo between the dates of October 19, 2004 and January 19, 2006, were entered more than 60 days after the determination was made. The ERP requires that the determinations be made within 150 days of Day 0 and that the violator status be entered into RCRAInfo as soon as possible after the determination is made, but no later than Day 150.

Of the 35 compliance monitoring and enforcement files reviewed, nine of the files revealed compliance monitoring or enforcement activities that were not entered into RCRAInfo. These include activities such as the issuance of informal enforcement actions (PAOs and Violation Letters), the return to compliance for facilities previously in violation, and the re-designation of a SNC to a non-SNC (SNN) after issuance of an AAO. Appendix B of the ERP requires the input of this information into RCRAInfo.

**Information sources utilized for this criterion:** 2, 3, 4 and 10.

**Recommendations and Actions:** IDEM should ensure that data entry into RCRAInfo related to compliance monitoring and enforcement activities required by the ERP is completed. IDEM should develop a process, or improve its existing process, to ensure

that all required data is entered into RCRAInfo. IDEM should implement this recommendation by the end of FY07.

**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 IDEM 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 IDEM is not holding back SNC determinations until the formal action is completed.

However, Data Metric 11b indicates that 54 facilities not designated as SNCs are reported to have been in violation for a period of greater than three years as of January 19, 2006. If these facilities are indeed still in violation, they should have been re-designated as SNCs within 240 days of the violations having been determined, per the ERP. Therefore, this result indicates a possible lack in data integrity for the compliance status of those 54 facilities.

Review of the RCRAInfo database reveals that in the case of two of these facilities, the violations were determined by EPA, and therefore, cannot be attributed to IDEM data quality issues. Also, an additional two facilities have both EPA- and State- determined violations that are outstanding. The remainder of the violations are all state-determined. Three of the 54 facilities have state determined violations that appear to have been referred to EPA at one time. However, it is not clear from RCRAInfo if the referral was accepted, and in two of these cases, RCRAInfo indicates that IDEM did take a formal enforcement action addressing the violations.

Of the 35 compliance monitoring and enforcement files reviewed, 9 revealed RCRAInfo data reporting errors (i.e. the date of the inspection, violator determination, and/or enforcement activity reported to RCRAInfo do not agree with information contained in the file).

**Information sources utilized for this criterion:** 1, 2, 3, 4 and 10.

**Recommendations and Actions:** IDEM should review the files for the 54 facilities that are reported to be in violation for greater than 3 years, determine whether that data is accurate, and make any necessary corrections, including re-designating SVs in violation for greater than three years as SNCs. This activity should be completed by the beginning of the 2007 calendar year.

IDEM should implement a procedure to track the duration of violation for facilities designated as secondary violators that will ensure IDEM becomes aware when such

facilities have been in non-compliance status for greater than 240 days. IDEM should implement this recommendation by the end of FY07.

IDEM should also make the necessary corrections in RCRAInfo regarding the 9 facilities for which data reporting errors were found. This activity should be completed by the beginning of the 2007 calendar year.

**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 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.

The information in Table 1 was provided to IDEM during a conference call conducted on March 22, 2006. Unless otherwise noted, the data was provided by EPA HQ and agreed with a subsequent OTIS management data pull performed by EPA Region 5. To date, IDEM has not stated that any of the information is inaccurate.

**Table 1. Universe Counts for Element 12.**

Description of Data	Count
Number of operating TSDs	21
Number of active TSDs	102 <sup>a</sup>
Number of active LQGs	639 <sup>a</sup>
Number of active SQGs	785 <sup>a</sup>
All other active Handlers in RCRA Info	1890 <sup>a</sup>
Number of inspections performed by IDEM in FY05	745 <sup>b</sup>
Number of facilities inspected by IDEM in FY05	613 <sup>c</sup>
Number of facilities with violations in FY05	169 <sup>d</sup>
Facilities receiving a State NOV in FY05	186
Total NOVs issued by IDEM in FY05	221 <sup>e</sup>
# of new SNCs in FY05	8
# of facilities in SNC in FY05	41 <sup>f</sup>
Facilities with formal actions in FY05	40
# of formal actions in FY05	40
Total penalties assessed in FY05	\$557,259

a. Data was derived from an OTIS Management Report generated by EPA Region 5. Last data refresh by RCRA Info was February 9, 2006.

b. OTIS Management Report run by EPA Region 5 for data current as of February 9, 2006 indicated 753 inspections by the State in FY05.

- c. OTIS Management Report run by EPA Region 5 for data current as of February 9, 2006 indicated 620 facilities inspected in FY05.
- d. OTIS Management Report run by EPA Region 5 for data current as March 10, 2006 indicated 443 facilities with violations in FY05.
- e. OTIS Management Report run by EPA Region 5 for data current as of February 9, 2006 indicated 230 State NOVs in FY05.
- f. OTIS Management Report run by EPA Region 5 for data current as of February 9, 2006 indicated 39 facilities in SNC in Indiana in FY05.

**Information sources utilized for this criterion:** 1, 2, and 10.

**Recommendations and Actions:** IDEM should compare the above data to the data it has in the Indiana RCRA Activity Tracking System (IRATS) and determine if any discrepancies exist between RCRAInfo and IRATS. IDEM should inform the Region of these discrepancies no later than the beginning of the 2007 calendar year. If discrepancies do exist, IDEM and the Region should work to resolve the issues and ensure that data in RCRAInfo is correct and up to date. This task should be completed by the end of FY07.

***Program Evaluated: NPDES***

**Information Sources Included in the Review:**

1. Selected Inspection Files (see attached list);
2. Selected Case Files (see attached list);
3. Data from PCS and OTIS, as summarized in the *CWA Framework Metric Results*, April 23, 2006 version.
4. Data in PCS as of 4/26/06
5. Indiana Department of Environmental Management Compliance/Enforcement Management System, November 1999, September 2001 Update (EMS)
6. Civil Penalty Policy, April 5, 1999, ENFORCEMENT-99-0002-NPD
7. Supplemental Environmental Project Policy, April 5, 1999, ENFORCEMENT-99-0003-NPD
8. Self-disclosure and Environmental Audit Policy, April 5 1999, Enforcement-99-0005-NPD

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**Introduction**

File reviews were conducted April 25 -26, 2006 in IDEM’s offices in Indianapolis. Files were selected with the objective of having a universe of between 35 and 40 files to review, with half being selected on the basis of having had an inspection completed in FFY 2005, and the other half selected on the basis of having an enforcement action concluded in FFY 2005. U.S. EPA’s objective was to have the files represent a stratified random sample.

IDEM provided a list of 1179 inspections performed in FFY 2005. Selecting every 47<sup>th</sup> file provided an initial list of 25 files to review. A review of the files resulting from this random selection process revealed that these represented a mix of industrial and municipal cases, and major and minor facilities. However, it was not clear that the files selected covered all sectors. In particular, it did not appear that any CAFO or Stormwater inspections had been included. Consequently, IDEM was asked to identify two additional inspection files for review in each of these two sectors. To preserve the random nature of the file selection process, the Region requested that these be the first two inspections of each type performed in FFY 2005.

IDEM also provided a list of enforcement actions concluded in FFY2005. This list included 198

actions, of which 35% recouped penalties. Selecting every tenth file resulted in 20 files to review; however, this set of files was wanting in several respects. First, the percent of the subset of files that recovered penalties was only 30%, and as review of penalty calculations is a critical part of the file review, reviewers hoped to have a larger number of cases with penalties to review. In addition, industrial actions, CAFO actions and stormwater actions were not well-represented. Consequently, the list was expanded by the addition of a stormwater action and an industrial case. U.S. EPA was not able to identify any concluded CAFO cases. U.S. EPA consequently asked that if any of the concluded cases were CAFO actions, IDEM add the first one listed to the list of files to review. IDEM did this.

The resulting list was between 47 and 52 files. This provided some leeway, in case certain of the files were not available (for example, if the permittee were subject to active litigation or in trial, the Region would not have expected the files to be produced). After analysis to ensure that all files could be made available, the list was further reduced by randomly eliminating files until final number of 35 was identified.

### ***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:** Nationally, U.S. EPA has set an expectation that 100% of a state's majors are inspected each year, but will allow a trade off of two minor inspections for each major which is not inspected, as long as a minimum of 70% of the majors are inspected. However, during discussions with IDEM staff during the review, it became apparent that the trade off of two minor inspections for every major inspection was not clearly communicated to IDEM in advance of the inspection year at issue, nor was it detailed in the corresponding Environmental Partnership Performance Agreement (EnPPA) between EPA Region 5 and IDEM. U.S. EPA also sets an additional goal that states inspect at least 20% of their minors each year. Once again, it became apparent that this expectation was not clearly communicated to IDEM in advance of the inspection year and was not detailed in the corresponding EnPPA between EPA Region 5 and IDEM.

Data from PCS (*Information Source 4*) indicate that in Federal Inspection Year 2005, IDEM inspected 161 of its 194 major facilities, for a coverage rate of 83%. Data in *Information Source 3*, however indicate that in Inspection Year 2005 (July 1, 2004 through June 30, 2005), IDEM's coverage rate for majors was only 52.6%. This anomaly can be explained by the fact that when U.S EPA calculates coverage rates for major facilities, it does not include reconnaissance (RECON) inspections for major industrial point sources characterized as "primary industries" subject to specific effluent guidelines, or major municipal sources that have approved pretreatment programs. It was noted by IDEM staff during the state review discussions that they did not previously understand the "primary industry" distinction that could be flagged using a previously unknown

query of PCS data; or the EPA expectation that compliance evaluation inspections (in lieu of RECONS) be conducted at municipalities with approved pretreatment programs, regardless of the industry's or municipality's previous compliance status. IDEM, however, does count these RECON inspections when measuring its success in meeting the national expectations. U.S. EPA is not concerned with this definitional discrepancy at this point, for two reasons. First, the boundary between what constitutes a compliance evaluation inspection (CEI), which EPA does include when calculating coverage rates, and a RECON inspection is indistinct. EPA file reviewers note, in fact, that some of the IDEM RECON inspections reviewed could have been classified as CEIs. Secondly, U.S. EPA is in the process of revising its Compliance Monitoring Strategy. This Strategy is intended to consolidate inspection goals and expectations for all classes of permittees. It is being developed at this time because U.S. EPA recognizes that its expectations for coverage inspections for majors may be outdated given the relative magnitude of environmental harm resulting from various discharge sectors such as combined sewer overflows, separate sewer overflows, confined animal feeding operations, and stormwater that are frequently not classified as majors. Revised inspection goals are expected to be developed in time to pilot them in FFY 2007, and finalize them for FFY 2008. It is expected that in the context of this effort, the major coverage expectations for IDEM will be reduced, and/or the types of inspections that will be counted as coverage inspections will be modified. U.S. EPA will seek IDEM input as the new compliance monitoring strategy is developed and will, through EnPPA negotiation; work with IDEM to establish new inspection coverage commitments.

Data in *Information Source 3* also indicate that the inspection coverage rate for minors was 58.5% in Federal inspection year 2005. This far exceeds the federal goal of 20%.

Finally, reviewers found that CAFO inspections did not appear to be recorded in PCS. Had these been included in PCS, the coverage rates may have changed.

**Citation of information reviewed for this criterion:** Information sources 1, 2, 3 and 4.

**Recommendations and Actions:** 1) Inspection commitments be revised consistent with the pilot Compliance Monitoring Strategy for the fiscal year following the completion of the Strategy. 2) Beginning in FFY 2007, IDEM begin entering CAFO inspections into ICIS-NPDES.

**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:** IDEM is in the process of updating its inspection manual. Many of the components of that manual, including the use of numerous inspection checklists, are already in use. The checklists provide helpful structure to the inspections. In particular,



the pre-inspection checklist provides a useful framework for defining the scope of the inspection.

Since many of the inspections reviewed were for RECONs, for which a definition of completeness has not been developed, file reviewers determined that all the inspections were complete if the reviewer could answer the following questions: 1) What was the purpose of the inspection? 2) What was reviewed during the inspection? 3) What were the findings? Using these three questions, reviewers determined that the majority (27 of 29) of the inspection reports were complete.

Reviewers noted that in 3 cases, PCS showed multiple permit violations. However, this was not noted in the pre-inspection checklist or in the inspection checklist/report. In two of these cases the inspection checklist indicates that effluent limit violations were not an area reviewed, however in one case the pre-inspection checklist indicates that there were no effluent violations for a given time period, when PCS shows multiple significant violations during that timeframe.

Of historic concern has been the interlude during which the construction stormwater (referred to as "Rule 5") inspections were performed by a separate agency, the Indiana Department of Natural Resources. Though four enforcement cases relating to stormwater were reviewed, all but one of the inspection reports supporting these actions were missing. IDEM and EPA believe that since the construction stormwater inspection program is in the process of being returned to IDEM, this problem is being rectified and inspection reports will be properly maintained in the future.

**Citation of information reviewed for this criterion:** Information sources 1 and 2

**Recommendations and Actions:** It is recommended that during 2006, IDEM perform a Q/A check on a random sample of inspection reports to determine if effluent violations reported on discharge monitoring reports (DMRs) are being properly accounted for in the inspections/reports, and report its findings to Region 5 by March 31, 2007.

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

**Findings:** IDEM operates under a statute, IC-13-14-5, that requires that, with limited exceptions, an inspection report be provided to the permittee within 45 days of the inspection. Reviewers found that inspectors routinely (26 of 35 cases) met this requirement by providing the permittee a copy of the checklist at the time of the inspection. In 7 cases, the permittee was provided a report at a later date within the 45 day period. Two of these reports were provided beyond the 45 day timeframes at 62 and 68 days. In two cases reviewers were not able to find evidence that an inspection report was completed. The median days taken to provide a report was zero days, with an average of seven days and a maximum of 68 days. These results are impressive.

**Citation of information reviewed for this criterion:** Information sources 1 and 2

**Recommendations and Actions:** Since the requirement that, with limited exceptions, the inspection report be completed within 45 days is embodied in state law, IDEM should follow up on the issue relating to reports being provided after 45 days by December 31, 2006. To the extent that the delayed reports are not due to one of the limited exceptions, it is recommended that a memo to staff describing the above findings, and reminding staff of the 45 day deadline, be issued.

*Section 2: Review of State Enforcement Activity*

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

**Findings:** EPA reviewers found limited information to review this element, since in only three cases were reportable SEVs found. These violations were not recorded in PCS.

**Citation of information reviewed for this criterion:** Information sources 1 and 2

**Recommendations and Actions:** It is recommended that IDEM begin reporting single event violations consistent with recently issued guidance for traditional sources and expected guidance for wet weather single event violations. The date for implementing these activities will be included in the plan that IDEM and EPA will negotiate in 2007, relating to the transition to the ICIS/NPDES data system.

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

**Findings:** File reviewers found 18 cases where formal or informal enforcement response was taken. In three cases, the original response was insufficient to resolve the noncompliance, and an escalated response was needed. In two of these cases, there was considerable delay in issuing the escalated response (4 years cumulative and nine years). In six cases, the injunctive relief had not been completed and it was consequently too early to tell if the relief resulted in a return to compliance. In three cases, the injunctive relief was complete, and the facility appeared to have returned to compliance (in that no further violations were recorded); however there was no record in the file that the case was closed out. In four cases the return to compliance was documented and the case closed out. In one case, the action failed to return the facility to compliance. In sum, the file reviews appear to show that the enforcement response routinely returned the facility to compliance or would likely return the facility to compliance when the injunctive relief was completed. However, lack of specific case close out documentation makes this conclusion somewhat speculative.

**Citation of information reviewed for this criterion:** Information sources 1, 2, 5, 6 and 7

**Recommendations and Actions:** It is recommended that IDEM include expectations for documenting the close-out of enforcement actions in its revised EMS.

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

**Findings:** Reviewers found that enforcement actions were appropriate, as evaluated against the current state EMS, in all cases reviewed. Except for very limited response requirements for the Office of Enforcement, the current EMS does not include requirements for the timeliness of actions. Adding such timelines is one enhancement to be included in the new EMS. In the interim, and beginning in 2005, IDEM has established an expectation that all new cases be resolved within one year, and that the backlog of older cases (those unresolved for more than two years) be eliminated. At the time of file review, 85% of these cases had been resolved.

**Citation of information reviewed for this criterion:** Information sources 1, 2 and 5

**Recommendations and Actions:** IDEM proceed as planned to add these timelines to its revised EMS.

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

**Findings:** Penalties were assessed in 12 cases, and penalty calculations were documented in all but two of these cases. Penalty calculations were well documented, and the values for the various penalty components clearly identified. Gravity components were found in all but two cases; the calculation of BEN was only included in three cases. Although these calculations were available, file reviewers were unable to determine if they were developed consistent with IDEM's established guidance as the guidance was not provided to reviewers in time to be considered during the file review.

IDEM indicates that it will work to ensure that briefing memos articulate how BEN was assessed. IDEM will also seek training on BEN and ability to pay analyses.

**Citation of information reviewed for this criterion:** Information sources 3 and 12

**Recommendations and Actions:** IDEM should include requirements and guidance for calculating BEN in its revised EMS, and work with EPA as needed to provide training in BEN calculation and ability to pay analysis.

In response to this recommendation, IDEM reports that its staff are now receiving, or are scheduled to receive, BEN training.

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

**Findings:** In the three cases in which both BEN and gravity were calculated, the final action included a penalty which appropriately collected these portions of the penalty.

Files routinely contained computerized documentation that the penalty had been collected.

**Citation of information reviewed for this criterion:** Information sources 3 and 12.

**Recommendations and Actions:** None

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

- 9. Enforcement commitments in the 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:** A joint assessment of the IDEM water programs was conducted by EPA and IDEM on October 4-5, 2005. The assessment identified both highlights and areas of concern. The latter, relating to the enforcement program, include 1) the historic rate of long term control plan review (for which IDEM now has provided additional resources and consequent increased rate of review); 2) the quality of CAFO inspections, as evidenced by joint inspections (for which training has since been provided); and 3) the disruption in construction stormwater inspection capabilities, due to the transfer of the program outside IDEM (which was being corrected at the time of file review by transfer back to IDEM).

**Citation of information reviewed for this criterion:** Joint Evaluation Report dated November 2005.

**Recommendations and Actions:** None

### *Section 4: Review of Database Integrity*

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

**Findings:** IDEM has begun investigating the possibility of securing contractual support, hardware, and software to eventually develop, implement and support two enhancements

designed to provide superior results in this element. The first is an e-DMR reporting program for which a goal of recording DMRs in ICIS-NPDES within one day of receipt is proposed. The second is a program being piloted within both the Drinking Water Branch of the Office of Water Quality and Office of Land Quality designed to result in recording inspections in state and federal databases within one day of completing the inspection.

**Citation of information reviewed for this criterion:** Discussion with IDEM managers.

**Recommendations and Actions:** None

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

**Findings:** In 9 of 34 files reviewed, reviewers found areas where PCS entry could be improved. In three cases inspections were not recorded. These are currently required data elements. In four cases, enforcement actions were not recorded. These four cases all involved minor facilities, and consequently not required data elements at this time. In four cases single event violations were not recorded; two of these were SSO events. In one case, there was a discrepancy in the date of the action in PCS, and the date of the action in the file. In sum, there were only incidental findings that required data are missing or inaccurate. Other missing data may become required data elements when the new ICIS-NPDES policy statement is issued, in which case EPA will work with IDEM to develop a transition plan for supplementing ICIS-NPDES with these data in the future.

**Citation of information reviewed for this criterion:** Information source 3.

**Recommendations and Actions:** None

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

**Findings:** EPA has established a variety of measures against which to evaluate state performance under this measure. The first is a goal that 95% of the majors have permit limits correctly coded in PCS. Data source 3 indicates that only 65% of the Indiana majors are correctly coded. EPA acknowledges that there are concerns with the quality of this statistic. According to IDEM data, the actual value for comparison is unknown because it is not clear to IDEM PCS managers how the information in data source 3 was queried and extracted from PCS and analyzed to make the 65% determination. A second metric is the DMR entry rate for majors, for which a goal of 95% has also been established. The national average entry rate is 93.4%. Data source three shows that IDEM performs exceedingly well against these statistics, with an entry rate greater than 99%. A third statistic is rate of manual override, for which no goal has been established, but for which the national average is 18%. Again, IDEM performs well against this statistic with an override rate of only 10.6%. Finally, though not currently required, the

rate of entry of data relating to minors is excellent compared to the national average, with limits being entered for only 84.7% of the minors, as opposed to a national average of 44.8%, and the DMR entry rate for minors at 93.8%.

**Citation of information reviewed for this criterion:** Information source 3.

**Recommendations and Actions:** None