

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

Introduction

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

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

Process

The Region III State Review Framework for the Pennsylvania Department of Environmental Protection (PADEP) reviewed Fiscal Year 2005. PADEP has a Central Office located in Harrisburg, PA. The Deputy Secretary of Field Offices oversees the department's six regional offices. The regional offices are located in Norristown (Southeast), Wilkes-Barre (Northeast), Harrisburg (South Central), Williamsport (North Central), Pittsburgh, (southwest), and Meadville (Northwest). The regional offices are responsible for conducting compliance and enforcement activities in the three major program areas that are being evaluated in this review: Clean Air Act, (CAA) Resource Conservation and Recovery, Subtitle C Act, (RCRA) and the Clean Water Act, NPDES. The review evaluated all three programs in the six regional offices and their relationship with the Central Office by conducting reviews in five of the six Regional Offices as well as discussions with Central Office. The programs selected regional offices to visit based on a review of available data in order to assess PADEP's performance in the types of compliance and enforcement activities being evaluated in the review: inspection coverage, level of enforcement activity, level of assessing penalties in formal enforcement actions, taking timely and appropriate enforcement; and identifying significant noncompliance/high priority violations.

Region III's Office of Enforcement, Compliance and Environmental Justice (OECEJ) notified PADEP in writing that EPA would be conducting the State Review Framework

by letter dated May 10, 2005. Representatives from Region III's Air Enforcement, Water Enforcement and RCRA Enforcement programs met with representatives from all three programs in all of PADEP's regional offices and Central Office at a kick-off meeting on January 31, 2006 in Harrisburg, PA. The file reviews began in March 2006 through May, 2006. All of the programs worked with their counterparts at PADEP to determine the number of files to be reviewed. The number of files to be reviewed was determined based on the number of facilities in the respective regional office territory and enforcement activity in each program. The Air Enforcement program reviewed 20 files in the North Central and 20 files in the Southwest regional offices. The RCRA Enforcement program reviewed a total 90 files in the South Central, Southwest and Southeast regional offices. The NPDES program reviewed 20 files in the South Central regional office, 18 files in the Southwest regional office and 18 in the Northeast regional office.

The 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. The following is a brief summary of several of the evaluation's key issues:

Summary of Findings and Recommendations:

Overall there were four areas of concern which cross all three programs: inspection reports, identifying SNC/HPV, adequate enforcement response, and data quality. Documenting penalty calculations were also an issue in the water program. Below are the findings and recommendations for the concerns found in these elements of the review.

Inspection Reports

Air

In general, the reviewers found the quality and level of detail of the inspection reports to vary from inspector to inspector. Only 2 out of 38 files reviewed were considered by the evaluation team to contain CMRs or other reports that adequately document inspection findings.

Recommendation:

(1) **Federal Recommendation:** Conduct training for PADEP Central Office and Regional Enforcement Management personnel on the *April 2001 CMS Policy* in conjunction with a Timely and Appropriate Meeting in FY2007.

Action: Training for PADEP Central Office and Regional Enforcement Personnel is scheduled for September 28, 2007.

(2) PADEP Central Office or Regional Enforcement Management personnel should train PADEP inspectors on the *April 2001 CMS Policy* following the completion of Recommendation 1.

(3) Prior to the next scheduled printing, PADEP should review its current inspection form and modify the form to reflect all of the elements defined in the *April 2001 CMS Policy*.

Action: PADEP has agreed to review the current inspection form and incorporate EPA's Compliance Monitoring Strategy (CMS) policy requirements as applicable.

RCRA

It does not appear that PADEP is consistently following its guidance with regard to citing violations in their reports.

Recommendation:

The State should take steps to more consistently follow their guidance with regard to potential violations. The guidance on citing violations suggests that potential violations are to be marked at "to be determined" on the preliminary report and the inspection report completed with a violation or compliance determination, after clarification/sampling results, etc. are received.

Water

57.6% of the inspections reviewed were adequately documented. This is a level of performance that should be improved. Inspection completeness was variable and dependent upon the inspector.

Recommendations:

- (1) Despite the fact that the forms used to document an inspection report have been recently updated, there should be some additional improvements including adding single event violation codes.
- (2) A photo log form, which could be included with the inspection report, may help the inspectors track and document "in the moment" field notes of each photograph taken and better fulfill the requirements of the NPDES Compliance Inspection Manual. Likewise, a document receipt log could be used to record which documents were reviewed and/or photocopied to take off-site. A comment section may be included to help identify key points in the documents that are used to identify the requirement in the document that the facility is not meeting, or how the document supports the determination that a permit requirement is not being met.
- (3) PADEP should develop guidelines for what constitutes a minimum for an inspection report as well as management review procedures to ensure that inspections are complete and consistent.
- (4) EPA will assist PADEP in identifying upcoming NPDES inspectors' training.

PADEP Comments

When documenting field observations, PADEP is continuously improving consistency. We have recently revised our inspection reports. They are primarily a "checklist" that prompts the inspector to review and note pertinent aspects of a complete inspection, thus alleviating some of this variability. The new report is more comprehensive and targets areas of concern that the program has determined to elicit proper permitting, monitoring, and compliance.

Single event violations are not a metric PADEP tracks in PCS-ICIS. As part of PADEP's continuous quality improvement efforts, PADEP will consider changes during the next form revision so that their inspection forms highlight important violations.

While PADEP's field staff maintain photo logs, the inspection reports do not have specific locations to address photos. However, multiple pages in the inspection form allow the field staff to include pages that are appropriate for the type of inspection completed. One option includes a narrative page, which staff can use to record information about photos and documents retrieved as well as describe observations. PADEP will consider adding a checkbox to the inspection report form, indicating that a photo was taken.

Identifying HPV/SNC

Air

The reviewers found that for the HPVs identified PADEP addressed with appropriate enforcement, but there is a significant problem in the timeliness of addressing HPVs.

Recommendation: Reviewers recommend that PADEP should evaluate its timeliness in "addressing" HPVs as defined in EPA's *Timely & Appropriate Enforcement Response to HPVs, June 23, 1999*. The evaluation should identify the extent to which timeliness is problematic across the regions i.e., do some regions meet the timeliness requirement while others do not. PADEP should then implement changes in existing enforcement procedures to ensure that HPVs are addressed in a timelier manner.

Action: *PADEP responded that the PADEP Bureau of Air Quality Guidelines for Identifying, Tracking, and Resolving Air Violations for Air Quality, dated March 19, 2005 (GITRVAQ) requires violations to be addressed within 180 days. Nonetheless, it is expected that the timeframe for addressing HPVs will decrease as a result of GITRVAQ.*

*EPA reviewed GITRVAQ and did not find this statement. Section III.B states that "Any violations that take more than 180 calendar days, from the date of the NOV, to resolve, should be addressed via a final permit, consent order and agreement, consent decree, final order, and/or other enforceable document unless the Regional Director or Bureau Director agrees that an enforceable document is not warranted in the specific case". Furthermore, GITRVAQ does not contain language requiring violations that rose to a level of an HPV be addressed in accordance with EPA's *Timely & Appropriate Enforcement Response to HPVs, June 23, 1999*.*

RCRA

The State does not appear to have a process in place for making SNC determinations at the management level, and it is not clear that the data entry forms are well formatted to allow the consistent entry of this data into RCRAInfo when it is so indicated by the state. There does not appear to be a common understanding across the state central and regional offices as to the working, practical definition of SNC violations.

Recommendation:

The state and EPA should work together to develop clear guidance on SNC determinations, and work together to train state staff and managers on implementation of such guidance.

The State should develop procedures to review violations to determine which are SNC, which are secondary violators, and which should be addressed with formal enforcement action. These procedures should include data entry and management.

Water

PADEP does not enter SEV data into PCS for inspection based or self-reported violations, often it is the case that SNC are not identified to EPA in a timely manner. Inspection reports for majors are not submitted to EPA. eFACTS is available for public access to see the findings from an inspection. The files with SNC level violations contain sufficient supporting evidence to document SNC; however, there is no record in the file that supports that the findings of the inspections or record reviews are reviewed to make SNC determinations. The only SNC identified to EPA are those resulting from DMRs and compliance schedule milestones.

Recommendations:

PADEP needs develop a process for making SNC determinations for single event violations and reporting this information. This process will need to be developed in conjunction with the RIDE policy upon implementation.

PADEP Comment:

In Pennsylvania's Section 106 work plan, PADEP has not agreed to enter single event violations (SEV) into PCS-ICIS.

DEP does not take timely enforcement actions to address significant non-compliers.

Recommendations:

PADEP needs to take timely enforcement actions to address significant non-compliance. When looking at PCS there appears to be more violations that triggered 2 quarters of non-compliance. These SNCs should have been addressed with formal enforcement actions. There could be more SNCs that were not identified or entered properly into PCS and therefore not addressed appropriately.

Penalty Calculation**Water**

PADEP is not including calculations for gravity and economic benefit in penalty assessments.

Recommendation: Calculations for economic benefit and gravity need to be included in penalty assessment documentation. Actions with penalties need to be entered into PCS.

Data Quality

Air

Some significant data accuracy problems were found.

(1) Quality Assure/Quality Control all data. PADEP should provide a dedicated person who would be responsible for the completeness and accuracy of PADEP's data going into AFS. PADEP should ensure that all personnel who are entering data to be uploaded to AFS are familiar with what is required (e.g. review of Title V Annual Certifications vs. semiannual certifications, FCEs vs. PCEs,).

Action: PADEP has identified a dedicated person who will be responsible for data quality and assurance prior to entry into AFS..

(2) **Federal recommendation:** EPA should develop procedures to ensure that all EPA-lead HPVs are listed in AFS as "out of compliance" and are returned to "compliance" once the HPVs are resolved.

Action: EPA has drafted a Standard Operating Procedure to ensure that all EPA-lead HPVs are listed in AFS as "out of compliance" and are returned to "compliance" once the HPVs are resolved.

(3) To minimize sources automatically reverting to an "unknown" compliance in AFS, PADEP should be more diligent about removing sources from the CMS plan that have changed class or operating status (i.e., shut down). The "unknown compliance" generation occurs when a source does not have an FCE within the frequency designated by the State, which typically is two years for a major source.

(4) Although PADEP well exceeded the national average for completion of CMS commitments, PADEP's accomplishments were under reported because a number of sources were mis-classed. To remedy this problem, processes recently instituted should be continued to ensure the source class is consistent for both "State" and "EPA".

RCRA

PADEP is not the implementor of record (IOR) for the CM&E module of RCRAInfo. The state completed data entry forms, which are forwarded to EPA for entry into the national data system. This is contributing to some data quality issues, and should be resolved when PADEP becomes IOR.

Recommendation:

PADEP should continue to move forward and EPA should provide support to the state toward becoming RCRAInfo IOR.

Water

The review team found that not all of the minimum data elements are properly tracked and entered in PCS as required under the FY 2005 106 workplan.

Recommendations:

PADEP needs to verify that information going into PCS for non-majors and other non-majors is accurate and actions with penalties need to be entered into PCS. Additionally, when looking at PCS there appears to be more violations that triggered 2 quarters of non-compliance. These SNCs should have been addressed with formal enforcement actions. There could be more SNCs that were not identified or entered properly into PCS and therefore not addressed appropriately.

PADEP Air Program Review

From March 13 to March 17, 2006, four reviewers from the Environmental Protection Agency (EPA) Region III Office of Enforcement and Permit Review (OEPR) conducted limited interviews and reviews of the Pennsylvania Department of Environmental Protection (PADEP) Air Compliance Monitoring and Enforcement Program files at the Williamsport, PA regional office. Also, from April 24 to April 27, 2006, three reviewers from EPA's OEPR and one reviewer from EPA's Office of Enforcement and Compliance Assurance (OECA) conducted limited interviews and reviews of PADEP's Air Compliance Monitoring and Enforcement Program files at the Pittsburgh, PA regional office. Finally, on April 4 and 5th, 2006, three reviewers from EPA's OEPR conducted limited interviews with PADEP's Central Office staff in Harrisburg, PA. Except where otherwise noted, the time frame for this review is the Federal fiscal year 2005 (FY2005).

PADEP's Bureau of Air Quality, under the Deputy Secretary for Waste, Air and Radiation Management, is responsible for coordinating implementation of Air Programs with its six regional offices. The Compliance and Enforcement Division (within the Bureau of Air Quality) develops most of the policy and guidance on compliance with rules, regulations and orders of the Department and tracks enforcement actions. The Air Information Division (within the Bureau of Air Quality) manages the Bureau's electronic data systems and is responsible for uploading data to EPA's AIRS Facility System (AFS¹). The Source Testing and Monitoring Division (within the Bureau of Air Quality) is responsible for providing support related to stack tests to the regional offices. The Bureau of Air Quality does not have direct authority over the regional offices.

The Deputy Secretary of Field Offices oversees the Department's six regional offices which are located in Norristown (Southeast), Wilkes-Barre (Northeast), Harrisburg (South Central), Williamsport (North Central), Pittsburgh (Southwest), and Meadville (Northwest). The regional offices provide inspection, enforcement and other compliance monitoring activities for the Air Programs. As mentioned above, file reviews were conducted at the North Central and Southwest regional offices.

The metrics presented in the PADEP Air Program Review represent the air sources and activities that are reported to EPA by PADEP for all six regions. Air sources located in Allegheny and Philadelphia counties are regulated through the Allegheny County Health Department and Philadelphia Air Management Services, respectively. The data metrics from EPA's On-Line Information Tracking System (OTIS) represent data from all sources in Pennsylvania. Consequently, the Review Team removed all data involving air sources in Philadelphia and Allegheny counties from the original Pennsylvania data metrics. The "PADEP-only Data Metrics" are presented in this report.

The official compliance monitoring and enforcement files are maintained in the regional offices. Each regional office is responsible for developing and maintaining its own filing system. No PADEP standard operating procedures (SOP) are in place for the development and maintenance of a filing system across the regions. Each regional office provided copies of all files requested by EPA and/or access to their file rooms.

The Air Program should really be evaluating all six regional offices and their relationship with the Central

¹ AIRS Facility Subsystem, the national air compliance monitoring and enforcement tracking data system.

Office. However, due to travel budget constraints, the Air Program concluded it could only afford to visit two Regional Offices – with a possible discussion with the Central Office.

The Williamsport (North Central) and Pittsburgh (Southwest) regional offices were selected by EPA for on-site visits and file review. The rationale for selecting the Regional Offices to visit was as follows:

Williamsport (North central) Regional Office

- As per dialogue during the quarterly Timely and Appropriate Oversight meetings with PADEP (note that these meetings involve representatives from each Regional Office in addition to PADEP Central Office personnel), it is common practice for the State Liaison Officer to question how final penalties are calculated. It was recognized that in a few instances of final penalty determinations by the Williamsport Regional Office, some were significantly below penalty calculations conducted by EPA for the same violations. In order to ascertain whether this is common practice or an anomaly, additional file reviews of enforcement cases are needed.

- Additionally, in reviewing High Priority Violation (HPV) data, the Williamsport Regional Office was recognized as one of three Regional Offices that appear to have a high percentage of HPVs that are not resolved timely and eventually get listed on the national Watch List. This means that violations go unaddressed for > 270 days (criteria 1a). The Southeast Regional Office is another Region that had similar findings with long HPV resolution time. However, it is common knowledge that the Southeast Regional Office experiences staff retention problems that could largely be explained for causing this phenomenon.

The third Regional Office with a high percentage of HPVs ending up on the Watch List is the Northwest Regional Office. The majority of their facilities on the Watch List are large facilities (i.e., Cement plants and Refineries) that have multiple HPVs. For these large facilities, multiple HPVs are settled by one Enforcement Order that is negotiated after multiple violations are corrected.

This commonly results in additional time to address the HPV.

Pittsburgh (Southwest) Regional Office

- Conversely, in reviewing the HPV data, this Regional Office has the least percentage of HPVs end up on the Watch List via Criteria 1a. In order to better understand how this Region is able to address the high majority of their HPV cases in a prompt manner, file reviews of the enforcement cases are needed; or are there other reasons or factors that are driving this Regional Office's HPV cases to be addressed promptly.

- Additionally, PADEP's Central Office staff have mentioned that this Regional Office's data entry into eFACTS has, on occasion, been untimely and incomplete. An in-depth review of selected files from this Regional Office could provide some insight as to the cause of this potential issue.

Finally, while only two Regional Offices have been chosen for an in-depth file review, the Evaluation Team did attempt to analyze data from the entire State in an effort to ascertain successes and possible areas of vulnerability.

On 2/22/06, OEPR made a formal request to PADEP to conduct the North Central regional office file review. The request, which was approved by PADEP on 2/28/06 included a list of the 20 sources that had been selected for file review. These 20 sources included:

- Five high priority violator (HPV) files,
- Four major source files where violations were found but the violations were not listed as HPVs,
- Two synthetic minor sources where violations were found but the violations were not listed as HPVs,
- Six major source files where no violations were found, and
- Three synthetic minor sources where no violations were found.

As of July 2006, a total of 130 major and 53 synthetic minor air sources were located in the North Central region.

On 3/28/06, OEPR made a formal request to PADEP to conduct the Southwest regional office file review, The request which was approved by PADEP on 3/30/06, included a list of the 20 sources that had been selected for file review. These 20 sources included:

- Two HPV files,
- Two major source files where violations were found but the violations were not listed as HPVs,
- One synthetic minor source where violations were found but the violation was not listed as an HPV,
- Three major sources where violations were discovered during the inspection and they were immediately corrected,
- Nine major source files where no violations were found, and,
- Three synthetic minor sources where no violations were found.

As of July 2006, a total of 152 major and 46 synthetic minor air sources were located in the Southwestl region.

Source files within each category had been randomly selected, with the exception of the following:

- 1) For both regional offices, all HPVs whose day zeros were during FY2005 were chosen; and
- 2) For the Southwest regional office, all FCEs where violations were discovered during the inspection but immediately corrected were chosen for review.

Because the Review Team only visited two of the six regional offices for a file review, the Review Team compiled certain metrics and related indicators by region. These are presented in Table I. Supporting documentation is included in Appendix I.

The North Central regional office files are maintained in a central location. One file clerk is dedicated to Air Quality files, and the files are organized alphabetically by company. The confidential section of a company's air files is marked "CO".

The Southwest regional office files have been located in the Central File room since the fall of 2004. Prior to that time, the files were located in the hallways on the second floor in the Air Section. A file clerk was hired to build an organized filing system. As of April 2006, the filing system was approximately 80 percent complete and was expected to be complete by 12/31/2006. The air files are organized by counties. Within each county, the facilities are organized alphabetically.

Unlike the data metrics presented herein, which address performance at all six PADEP regional offices, the file review metrics only cover files reviewed in the North Central and Southwest regional offices. The files reviewed in each office were selected in accordance with the protocol specified in the "State Review Framework Implementation Guidance – EPA/Environmental Council of States Work Group – Washington, DC 6/29/05".

**Table I: PADEP State Review Framework
Regional Office Review**

FY2005	Southeast	Northeast	South Central	North Central
CMS Source Universe – Majors (July 2005 – AFS)	213	157	222	160
CMS Source Universe – SMs (July 2005 – AFS)	91	50	176	48
CMS Source Universe - Total (July 2005 – AFS)	304	207	398	208
Number of Majors (*)	187	143	199	130
Number of Synthetic Minors (*)	106	67	238	53
Number of Inspectors	13	12	14	6
HPVs Identified - FY2005 (*)	20	6	4	6
HPVs Addressed (**)	11	7	9	3
HPVs on Watch List (***)	13	5	4	8
Number of FCEs at "A" Sources:				
Reported (*)	135	152	253	37
Required (*)	93.5	71.5	99.5	65
Number of FCEs at "SM" Sources:				
Reported (*)	70	41	252	46
Required (*)	21.2	13.4	47.6	10.6
Number of PCEs at "A" Sources:				
Reported (*)	245	360	41	363
Required (*)	NA	NA	NA	NA
Number of PCEs at "SM" Sources:				
Reported (*)	34	77	48	106
Required (*)	NA	NA	NA	NA
Title V Annual Certs Reviewed	158	86	141	84
NOVs Issued (****)	210	58	93	84
Title V Permits (*****)	135	100	180	90
Penalties Assessed	\$2,025,224.00	\$336,745.40	\$369,287.00	\$245,975.00
Formal Enforcement Actions (*****)	33	22	30	11
New HPVs/FCE Reported (Majors & SMs)	0.0976	0.0311	0.0079	0.0723
New HPVs/NOV Issued	0.0962	0.0952	0.0392	0.0667
Penalties Assessed/ Formal Enf. Action	\$61370.42	\$15306.61	\$12309.57	\$22361.36

(*) As of June 2006 per OTIS; (**) Includes 10 HPVs that were addressed/resolved via "2K" (i.e., return to State - no
 (***) State Review Framework Data Metric (Count) (****) Per Monthly Enforcement Reports provided from
 (***** Data Metric 8a

Below is a discussion of the data and file review metrics that comprise this report. With the exception of Data Metrics 12d1 and 12d2, the data metrics were downloaded from EPA’s Online Tracking Information System (*OTIS*) on 1/31/06. Data Metrics 12d1 and 12d2 were downloaded from *OTIS* on 3/7/06. PADEP was provided electronic and hard copies of all data metrics excluding Data Metrics 12d1 and 12d2 on 2/27/06 and 2/21/06 respectively. Electronic copies of Data Metrics 12d1 and 12d2 were provided to PADEP on 3/9/06. All measure types are discussed in this report with the exception of “Information-Only”.

Finally, PADEP provided the Review Team with a list of the PADEP Bureau of Air Quality policies and guidance for compliance and enforcement actions. Copies of all policies are available on PADEP’s website. *PADEP Bureau of Air Quality’s Guidelines for Identifying, Tracking, and Resolving Violations for Air Quality*, dated March 19, 2005, contains guidance for all compliance monitoring activities and is referenced throughout this report.

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

Clean Air Act Source Universe	Number of Sources in PADEP Universe in FY2005
Universe of Major Sources (Title V)	1056 ²
Universe of Synthetic Minor 80% Sources	491 ³
Total Number of Major and Synthetic Minor Sources	1547
Number of inspection files for review	40

Data Metrics:

		National Average or Total	PADEP⁴
Metric 1a1	% of CAA active major sources receiving full compliance evaluation (FCE) by PADEP in FY2004/2005.	74.80%	94.51%
Metric	% CMS major sources receiving FCEs by PADEP in	77.90%	96.41%

²Metric 1a1: AFS operating majors w/air program code = V

³Metric 1b: PADEP considers all synthetic minor sources to be 80% synthetic minor sources

⁴Data quality for these data metrics is suspect. See below discussion and element 11.

1a2	FY2004/2005.		
Metric 1b	% CAA synthetic minor 80% sources (SM-80) FCE coverage in FY2002 through FY2005. State only.	77.50%	96.54%
Metric 1f	% Review of self-certifications completed.	72.7%	93.79%
Metric 1g	Number of sources with unknown compliance status ⁵ .	NA	11

File Review Metric:

Metric 1r	Percent of planned FCEs completed at major and SM-80 sources		38 ⁶ FCE files reviewed
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Findings:

For this State Program Review, reviewers assessed PADEP's FY2005 Compliance Monitoring Strategy (CMS) accomplishments. Note that PADEP's CMS Plan actually covers FY2004 and FY2005, in accordance with the *April 2001 Clean Air Act Stationary Source Compliance Monitoring Strategy (CMS Policy)*.

PADEP's CMS commitments exceed national minimum suggested frequencies of one Full Compliance Evaluation (FCE) every two years for major sources, one FCE every five years for SM-80 sources, and one FCE every three years for mega-sites. Instead, PADEP committed to complete an FCE at every major source once during FY2005, at every 80-percent synthetic minor source (SM-80) once during FY2005, and at its mega-sources once every three years. It should be noted that the actual commitments in EPA's on-line commitment system are reduced to reflect 50 percent of the major source universe and 20 percent of the synthetic minor source universe.

PADEP commented that the total number of major sources in the universe should be significantly less than the 1056 shown in the data, and the total number of synthetic minor sources should be higher than the 491 shown in the data. According to a revision to PADEP's 2006-2007 CMS Plan submitted to EPA in July 2006, the number of active sources should be as follows: 689 major sources and 623 synthetic minor sources. See Element 11 for additional details on the accuracy of PADEP's universe.

⁵As of 2/08/06

⁶A total of 40 files were reviewed during the State Review Framework. However, two of the files did not contain FCEs.

All PADEP's FCEs include on-site visits. This frequency well exceeds the minimum frequency that is recommended in the *April 2001 CMS Policy* of one on-site visit every five years, provided that the State may effectively complete an FCE using self-reported information.

FCE coverage well exceeds national averages of 74.80 percent for major Clean Air Act (CAA) active sources and 77.90 percent for major CMS sources. According to AFS, 58 facilities (classed as major) did not receive an FCE during FY2004 or FY2005. PADEP interviewees reported that only ten of the 58 facilities should fall into this category. The remaining 48 should not be included due to factors such as misclassified facilities, facilities that have been shut down, facilities not operating during the FY2004 and FY2005, or facilities that were new and not operational during FY2004 and FY2005. Using the 689 active major sources included in PADEP's revised FY2006/2007 CMS Plan and the number of CAA and CMS majors, actual FCE coverage is even higher than presented in Data Metrics 1a1 and 1a2 ($679/689 = 98.5\%$).

FCE coverage well exceeds national averages of 77.50 percent for SM-80 sources. According to AFS, **96.54 percent** of currently active SM-80 CAA PADEP sources have had an FCE in the last four years. PADEP has indicated that this percentage should actually be higher due to sources that are misclassified (see above) or have been shut down. Regardless, PADEP has well exceeded the national average of 77.50 percent. Please note that Data Metrics 1b and 1c cover four years because data is only available since FY2002, even though the *April 2001 CMS Policy* requires completion of an FCE at each SM-80 source every five years.

PADEP reported review of **93.79 percent** of all Title V Annual Certifications received in FY2005, which well exceeds the national average of 72.70 percent. As discussed in Metric 11, there are potential significant data errors in data metric 1f. A review of the files where Title V Annual Certifications would have been due to be reviewed in FY2005 showed that practically all Title V Annual Certifications were reviewed in FY2005. Also, based on conversations with PADEP regional personnel during the file reviews, the EPA reviewers believe that once the data errors are corrected, PADEP's review of Title V Annual Certification review rate will exceed the national average by an even greater percentage.

As of 1/31/06, 11 sources are listed in AFS with an "unknown" compliance status. According to PADEP, ten of these facilities are either misclassified, closed, currently under plan approval, or an FCE has been conducted at the facility within the required time frame. An FCE was begun at the remaining source on 9/28/05 but the FCE was not completed until 11/8/05 (i.e., in FY06). Therefore, AFS would have accurately listed this facility with an "unknown" compliance status as of 9/30/05 (see the discussion under Element 11). This low value of sources with "unknown" compliance status is consistent with the high FCE completion rate shown in Data Metrics 1a and 1b.

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

Strengths:

- (1) PADEP’s exceedingly high coverage of FCEs appears to be a notable strength of its Air Compliance Monitoring Program.
- (2) PADEP’s commitment to complete on-site FCEs at all major and SM-80 sources every year appears to be a notable strength of its Air Compliance Monitoring Program.
- (3) PADEP’s timely review of Title V Annual Certifications is considered to be a key strength of its Air Compliance Monitoring Program.

Recommendations⁷:

- (1) PADEP should determine whether its CMS commitments should be reduced in order to produce higher quality FCEs and stronger enforcement cases. This recommendation may apply only to certain regions where the workload per inspector is notably high.
- (2) Although the Title V Annual Certifications that are reviewed are done in a timely manner, PADEP should improve its reporting of Title V Annual Certification reviews as recommended in Data Element 11 to ensure that this data is accurate and complete in AFS.

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

	Clean Air Act Source Universe Information	Compliance Monitoring (FY2005)
Metric12d2	Full Compliance Evaluations - major and SM sources	1502 FCEs
	Number of inspection files for review	38 ⁸ files

File Review Metric:

2a	% of CMRs adequately documented in the files	2/38 files = 5.3%
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Findings:

PADEP Bureau of Air Quality’s *Guidelines for Identifying, Tracking, and Resolving Violations*

⁷Recommendations herein apply to PADEP unless indicated as a ”federal recommendation”

⁸See footnote 6

for Air Quality (dated March 19, 2005) do include procedures for preparing for and conducting inspections. In addition, PADEP's Bureau of Air Quality's *Desktop Reference Manual for Inspectors and Engineers*", which is readily accessible to the field staff via the web provides specific instructions for documenting pertinent information in the inspection report. This includes company information, dates of inspection, permit numbers, other inspections, inspection purpose, observation, records review, samples, attachments, emission inventory data, flow charts and signature.

The *April 2001 CMS Policy* requires Compliance Monitoring Reports (CMRs) to contain the following elements: general and facility information, applicable requirements, inventory/description of regulated units, enforcement history, compliance monitoring activities, and findings and recommendations. In general, the Reviewers found the quality and level of detail of the inspection reports to vary from inspector to inspector. Only two out of 38 files reviewed were considered by the Evaluation Team to contain CMRs or other reports that adequately document inspection findings.

Fifteen of the 36 "inadequate" CMRs reviewed would have been classified as "adequately documented" if they had included a section on enforcement history. Not counting these 15 CMRs, 21 CMRs were considered to be substantially inadequate. Specifically:

- 17 of 38 CMRs reviewed did not include an adequate general and facility information section;
- 13 of 38 CMRs reviewed did not adequately describe the applicable requirements for the facility;
- 9 of the 38 CMRs reviewed did not include a complete inventory and description of regulated units;
- 34 of the 38 CMRs reviewed did not include a section on enforcement history;
- 9 of 38 CMRs reviewed did not include compliance monitoring activities; and
- 3 of 38 CMRs reviewed did not include findings and recommendations.

This is considered a serious vulnerability.

The reviewers found that one of the CMRs reviewed did not document an inspection which met the definition of an FCE as defined on pages 4 and 5 of the *April 2001 CMS Policy*. The CMR was missing all of the required elements described in the above paragraph except for the findings and recommendations.

The most current inspection form to be used by the PADEP inspectors was last updated in February 2004. However, all of the inspection reports reviewed by the Review Team were on inspection forms from 1994. This predates the *April 2001 CMS Policy* that is currently in use and does not incorporate some of the changes that were made in that Policy. For example, in the *April 2001 CMS Policy*, "Level 2" inspections were eliminated and replaced with FCEs. The 1994 and 2004 PADEP inspection forms still reference "Level 2" inspections instead of an FCE.

The majority of the inspectors and regional Air Operations Chiefs interviewed said that a Level 2 inspection was equivalent and synonymous to an FCE whereas only the on-site inspection component of an FCE is roughly equivalent to a “Level 2” inspection. EPA conducted training on the new *April 2001 CMS Policy* soon after it was released, sent the Policy to each State/local agency and the Policy is posted on EPA’s website. Therefore, the Policy is easy to access. However, new personnel who started after 2001 have not received training from EPA on the *April 2001 CMS Policy*.

Citation of information reviewed for this criterion:

- The Evaluation Team reviewed FCEs performed in FY2005 as well as FCEs associated with the selected HPVs identified in prior years as appropriate. Additionally, to evaluate timely and appropriate enforcement, FY2006 files were reviewed where FCEs in FY2005 resulted in violations being found but these were not addressed in FY2005.
- *PADEP Bureau of Air Quality Guidelines for Identifying, Tracking, and Resolving Violations for Air Quality, dated March 19, 2005.*
- *April 2001 CMS Policy*
- *Desktop Reference Manual for Inspectors and Engineers*

Strengths:

(1) Procedures for preparing for and conducting inspections are included in the PADEP Bureau of Air Quality’s *Guidelines for Identifying, Tracking, and Resolving Violations for Air Quality*, dated March 19, 2005.

Recommendations:

(1) **Federal Recommendation:** Conduct training for PADEP Central Office and Regional Enforcement Management personnel on the *April 2001 CMS Policy* in conjunction with a Timely and Appropriate Meeting in FY2007.

Action: Training for PADEP Central Office and Regional Enforcement Personnel is scheduled for September 28, 2007.

(2) PADEP Central Office or Regional Enforcement Management personnel should train PADEP inspectors on the *April 2001 CMS Policy* following the completion of Recommendation 1.

(3) Prior to the next scheduled printing, PADEP should review its current inspection form and modify the form to reflect all of the elements defined in the *April 2001 CMS Policy*.

Action: PADEP has agreed to review the current inspection form and incorporate EPA’s *Compliance Monitoring Strategy (CMS) policy requirements as applicable.*

(4) As set forth in the *April 2001 CMS Policy*, to aid in a more complete characterization of a

facility's compliance status, all CMRs should include the following elements: (1) general and facility information; (2) applicable requirements; (3) inventory/description of regulated units; (4) enforcement history, especially recent enforcement history, to ensure that violations/deficiencies previously discovered are no longer occurring; (5) compliance monitoring activities; and (6) findings and recommendations. PADEP should evaluate why the quality of the CMRs in the two regions reviewed are inadequate and determine whether this problem occurs in other regions as well. Factors to consider include:

- over commitment regarding frequency of inspections (see Metric 1);
- inspector knowledge;
- processes employed in conducting inspections, and
- processes employed in writing CMRs.

Action: PADEP has agreed to work with EPA to determine what additional documentation is needed. In addition, EPA would expect PADEP to reference any documents reviewed in the preparation, conduct, and evaluation, and incorporate those references in the write-up of the CMR.

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

	Clean Air Act Source Universe Information	Compliance Monitoring in FY2005
Metric12d2	FCEs	1502
	Number of inspection files for review	38 ⁹ CMR files

File Review Metric:

Metric 3a	% CMRs that are completed in a timely manner (i.e., within 60 days) including timely identification of violations	38/38 CMR files = 100%
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Findings:

Each region is directly responsible for conducting in a timely manner scheduled FCEs/PCEs, completion of CMRs, identification of violations, and issuance of Notice of Violations (NOVs)

⁹See footnote 5

for violations. PADEP Bureau of Air Quality's *Guidelines for Identifying, Tracking, and Resolving Violations for Air Quality* require NOV's to be issued within 21 days after the Department has determined that a violation exists. If the violation is a potential HPV, then the policy calls for a NOV to be issued within 14 calendar days.

All files reviewed by the Review Team included CMRs that were completed within 60 days of the actual FCE, based on comparing inspection dates and dates of the reports in the files. This conforms to the *Timely & Appropriate Enforcement Response to HPVs, June 23, 1999*.

Two additional PCE reports associated with HPVs identified in FY2005 were reviewed as well. No FCEs were conducted at these two facilities in FY2005. Both PCE reports were completed in a timely manner, i.e., within 60 days of the inspection.

PADEP Bureau of Air Quality's current *Guidelines for Identifying, Tracking and Resolving Violations for Air Quality*, requires that an inspection report be completed and entered into PADEP's Environmental Facility Application Compliance Tracking System (eFACTS) within ten (10) working days of the inspection unless follow-up information to complete the report is required. Note that the information in eFACTS is uploaded to AFS approximately once a month.

Citation of information reviewed for this criterion:

- *The Timely & Appropriate Enforcement Response to HPVs, June 23, 1999*
PADEP Bureau of Air Quality Guidelines for Identifying, Tracking, and Resolving Violations for Air Quality, dated March 19, 2005.

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

Strengths:

(1) CMRs and PCE reports appear to be completed in a timely manner. PADEP should be commended for requiring, in its Bureau of Air Quality *Guidelines for Identifying, Tracking, and Resolving Violations for Air Quality*, that inspection reports be completed and uploaded in accordance with a schedule that is much shorter than required in national guidance. It appears that rigorous adherence to PADEP's Guidance accounts for PADEP's strong performance under this metric.

(2) PADEP's requirement to issue NOV's within 21 days after the violation is found, and 14 days for potential HPVs, also appears to be a notable strength in that such a process insures that the violating source is timely informed of a violation.

Recommendations: None

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

	Clean Air Act Source Universe Information	Number of Sources/Pathways in Universe in FY2005
Metric 12g1	New High Priority Violations in FY2005 - State only	48 PADEP-lead ¹⁰
Metric 12g2	# of sources in HPV in FY2005 - State-only	37 ¹¹
	Number of inspection files for review	40

Data Metrics:

		National Average	PADEP
Metric 4a	FY2005 HPV Discovery Rate – per Major FCE Coverage (new major source HPVs/major sources with FCEs) - State only	8.90%	3.97% ¹²
Metric 4b	FY2005 HPV Discovery Rate per Major Source Coverage (new major source HPVs/active major universe) - State only	4.00%	2.22% ¹³

¹⁰Metric 12g1. The original metric was 45 but did not include three HPV pathways missing from the original metric. Also note that this includes two HPVs identified at SM sources.

¹¹Original metric was 35 HPVs. However, three new major source HPVs that were not included in this data and did include one new major source HPV that was mistakenly identified as an HPV in FY2005.

¹²Original metric was 3.86%, but the original numerator (34) did not include two new major source HPVs that were not included in this data and did include one new major source HPV that was mistakenly identified as an HPV in FY2005. The actual metric is $35/881 = 3.97\%$.

¹³Original metric was 2.16%, but the numerator did not include three new major source HPVs with Day Zeros identified in FY2005 and did include one new major source HPV that was mistakenly identified as an HPV in FY2005. Finally, two of the 37 source HPVs identified by PADEP in FY2005 were synthetic minor sources. The actual metric is $35/1575 = 2.22\%$.

Metric 4c	No activity indicator- # of new PADEP- or joint-lead HPVs	NA	37 ¹⁴ sources
Metric 4d	Major sources designated as an HPV (PADEP or joint-lead) in FY2005 or the 3 rd and 4 th quarters of FY2004 that received formal enforcement actions in FY2005/All major sources that received formal enforcement actions in FY2005	78.40%	43.84% ¹⁵

File Review Metrics:

Metric 4d	% HPV determinations that are identified in a timely manner	7/7 identified HPVs reviewed = 100%
Metric 4e	% HPVs determinations that are accurately identified	14/16 = 87.50%

Findings:

The regions are responsible for enforcing PADEP’s air regulations, including those that pertain to Continuous Emission Monitoring Systems (CEMS), participating in the process with the Central Office and EPA to make final HPV determinations, and inputting NOV’s and other relevant enforcement information into eFACTS.

The Southeast regional office identified the greatest number of HPVs in FY2005, and the greatest numbers of HPVs per inspector (see Appendix I). The Northwest regional office identified the greatest number of HPVs per FCE completed in FY2005 and more than 13 times the number of HPVs per FCE completed in the South Central regional office. However, the South Central regional office is assigned the greatest number of Title V permits (see Table I). The Review Team did not determine whether a relationship exists between number of CMS sources, Title V permits to be issued and monitored, and HPV identification rate.

With the exception of HPVs identified through violations via CEMS reports, the regional offices

¹⁴Original metric listed only thirty one new PADEP or joint-lead HPVs, but this list did not include 8 facilities. In addition, one facility was mistakenly identified as an HPV in FY2005 bringing the total to 37 sources. A total of 48 new HPVs were PADEP or joint-lead HPVs in FY2005.

¹⁵Original Metric was 45.21%. However, one source that was listed in the “not counted” did receive an HPV designation in FY2005. Also, two sources were exclusively EPA-lead HPVs but were included in the numerator. Furthermore, formal enforcement actions at six facilities did not address existing HPVs. Finally, formal enforcement action at one facility (First Mansfield) on 1/18/05 was tied to an existing HPV but this was not the original addressing action for that HPV. The revised metric is 32/73 = 43.84%.

are responsible for making initial recommendations to identify violations as potential HPVs. There is a standard operating procedure (SOP) for this process. Specifically, when violations are identified at a source, an NOV is issued to the facility. When the NOV is entered into eFACTS and the facility is subject to the HPV policy, an HPV questionnaire pops up which contains all of the HPV criteria (both general and matrix criteria) in question form. The staff person entering the data must answer the questions. If any of the questions are answered "YES", the NOV is marked to discuss at the quarterly T&A meeting. Finally, to assist in the identification of chronic and discretionary HPVs, EPA Region III and PADEP's Central Office developed guidance for the regions to use in this process in July 2005.

On a monthly basis, the regions send copies of all NOV's and completed HPV questionnaires to the Central Office for review. The Central Office then sends a list of NOV's to EPA as part of PADEP's monthly enforcement report. For those NOV's which are potential HPVs (i.e., at least one of the HPV questions is answered "yes"), a hard copy of the NOV along with a list of the HPV questions that were answered "yes" are included in the report. At the next quarterly T&A meeting, the Central Office, PADEP, and EPA discuss potential HPVs and mutually make the final HPV determination. Except for CEM-related NOV's, Day Zero is to be the date of the NOV. This process was instituted between EPA Region III and PADEP through a "Significant Violator Agreement," dated 2/2/98. However, beginning 10/1/05, Day Zero is to be the date of the NOV or 45 days after the HPV Discovery Date, whichever is earlier.

PADEP discovered six HPVs in FY2005 that were based on stack test violations. This is a reflection of the technical strength and effective teamwork accomplished between the Source Testing Section and the regions (see element 10).

For CEM-detected violations, the Continuous Compliance Section within the Division of Compliance and Enforcement (in Harrisburg) is responsible for identifying violations, reporting these violations to the regions and flagging potential HPVs in eFACTS. Specifically, PADEP's rules require that quarterly CEM reports be electronically submitted to the Department's Central Office within 30 days after the end of the calendar quarter in a specified electronic format. Note that these CEM reports contain only the raw data. PADEP then processes the CEM reports and identifies violations based on the applicable standards. In addition, the computer program determines if any of the CEM HPV criteria are triggered. A report summarizing the data including violations and penalties and any CEM HPV criteria that are triggered is then generated and posted electronically on PADEP's internal web-site. No other state/local agency within EPA Region III has such a sophisticated program. In FY2005, there were 12 HPVs (out of 48 HPVs identified) based on CEM violations. No other local/state agency in Region III had as high total of percentage of HPVs identified based on CEM violations.

Once a quarterly report showing the compliance results of the CEM data is posted on PADEP's internal web-site, the Continuous Compliance Section sends an e-mail notification to the appropriate regional office. At the quarterly Timely and Appropriate meetings, all of the CEM-related potential HPVs are discussed and a joint decision as to whether or not to identify them as HPVs are made between the Compliance Monitoring Section, the PADEP region and EPA.

If it is decided to identify a violation as an HPV, the date of the e-mail notification to the regional office that the quarterly report is reported in AFS as the HPV Discovery Date. This discovery action is posted in AFS as an excess emission report (EER). Day zero will be 45 days later as no NOVs are generated for CEM violations. Instead, the region usually sends a letter to the company notifying them of the CEM violation(s) along with the quarterly report mentioned in the prior paragraph.

Data Metric 4A –PADEP’s HPV discovery rate (**3.97 percent** of FCEs) in FY2005 was below the national average (i.e., 8.90 percent) by 55 percent.

Data Metric 4B - PADEP identified HPVs at **2.22 percent** of PADEP’s active major universe in FY2005. This was well below the national average (i.e., 4.00 percent).

PADEP’s goal is to conduct an FCE at all major sources each year, instead of every other year, as mandated by the *April 2001 CMS Policy*. This results in a denominator twice as large as if FCEs were conducted every other year at major sources, and thus a much lower HPV discovery rate than the national average. Also, as stated in the discussion in Elements 1 and 11, the number of PADEP major sources is believed to be significantly overstated in AFS. Once the true universe of major sources is accurately reflected in AFS, the HPV discovery rates in Data Metrics 4a and 4b are expected to increase since the denominators in both metric formulas should decrease.

File Review Metric 4D – Of the seven HPV files selected for review, records show that PADEP reported all of these potential HPVs to EPA within 60 days of Day Zero. However, only one of the seven HPVs were formally identified as HPVs in AFS within 60 days after Day Zero. This is probably due to the length of the HPV identification process described above.

File Review Metric 4E - The Review Team agrees that two violations identified in files reviewed should have been brought to EPA’s attention for HPV consideration. One of these violations would be classified as a chronic HPV. The other violation may have been classified as a discretionary HPV since the recordkeeping violations took place at a synthetic minor facility (this violation was ultimately decided by EPA and PADEP not to be elevated to HPV status). Please note that both of these violations were discovered prior to the development of the Region III/PADEP July 2005 guidance on chronic and discretionary HPVs.

The Reviewers concluded that all seven files reviewed with violations that were reported as HPVs did indeed rise to the level of an HPV

Citation of information reviewed for this criterion:

- *The Timely & Appropriate Enforcement Response to HPVs, June 23, 1999*
- Minutes of FY2005 and FY2006 Timely and Appropriate meetings
- *PADEP Bureau of Air Quality Guidelines for Identifying, Tracking, and Resolving Violations for Air Quality, dated March 19, 2005.*

Strengths:

- (1) The ability to identify HPVs based on stack test violations is a reflection of the technical strength and effective teamwork between the regional offices and the Source Testing Section.
- (2) PADEP’s system in place to identify HPVs based on CEM violations is far superior to any other state/local program in EPA Region III.

Recommendations:

- (1) See Recommendation under Program Element 10 regarding late identification and reporting of HPVs.
- (2) The one potential HPV that was not identified as such should be listed and tracked in AFS as an HPV.

Action: This violation has subsequently been identified as an HPV in AFS.

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

Clean Air Act Source Universe Information	Number of Enforcement Actions
State formal enforcement actions	108 ¹⁶ total at major and SM sources of which 27 address HPVs. Also, two enforcement actions addressed discretionary HPVs at minor sources.
Number of enforcement files for review	Out of 40 files, 4 HPVs and 0 non-HPVs with formal enforcement actions completed

File Review Metrics:

Metric 5a	% formal State enforcement actions that contain a compliance schedule or activities designed to return source to compliance	0/4 = 0%
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¹⁶Original metric 12h1 listed 145, but 33 were at minor sources. The above chart focuses on HPVs, consistent with the T&A Policy. The original metric included two formal enforcement actions which were duplicates. Also, there were two formal enforcement actions in the original metric that do not exist according to PADEP. This accounts for the 108 enforcement actions at major and SM sources.

Metric 5b	% formal or informal enforcement responses that return sources to compliance	12/13 = 92%
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Findings:

Metric 5A: Formal State enforcement actions were associated with four HPV files reviewed. Because the sources had returned to compliance prior to the execution of the formal enforcement action, none of these actions included activities designed to return the sources to compliance. However, when applicable, the formal enforcement actions do cite the actions taken by the source to return to compliance.

Metric 5B: Twelve out of 13 files reviewed included formal or informal enforcement responses. The twelve files documented facilities' return to compliance where violations were found. The thirteenth file included several NOVs for perchloroethylene emission exceedances. However, there was no record of any formal enforcement actions to correct the problem. Instead, there was documentation indicating that the facility would apply for a plan approval modification to increase the perchloroethylene emission limit for the degreaser in question. The remaining four violations had not been formally or informally addressed at the time of the file review. In several instances, files showed that the source had returned to compliance prior to the enforcement action being taken. Such action is commendable, since a rapid return to compliance is the main objective of the compliance monitoring program and appears to be consistent with the Principles for Compliance and Enforcement that are set forth in the *PADEP Bureau of Air Quality's Guidelines for Identifying, Tracking, and Resolving Violations for Air Quality* dated March 19, 2005.

Citation of information reviewed for this criterion:

- *The Timely & Appropriate Enforcement Response to HPVs, June 23, 1999*
- *PADEP Bureau of Air Quality Guidelines for Identifying, Tracking, and Resolving Air Violations for Air Quality, dated March 19, 2005*

The Evaluation Team reviewed 17 files where violations were found.

Strengths:

(1) PADEP should be commended for placing high priority on a facility's rapid return to physical compliance as per its Bureau of Air Quality *Guidelines for Identifying, Tracking, and Resolving Violations for Air Quality*.

Recommendations: None

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

in accordance with policy related to specific media.

Clean Air Act Source Universe Information	Number of Enforcement Actions
State formal enforcement actions	108 ¹⁷ at major and SM sources. Also, two enforcement actions addressed discretionary HPVs at minor sources
Number of enforcement files for review	17 files, of which 7 are HPVs and 10 are non-HPVs

Data Metrics:

		National Average	PADEP
Metric 6a	% sources that were HPVs for at least one month in FY2005 and that remained unaddressed >270 days – State and joint-lead	46.30%	59.1% ¹⁸
Metric 6b	% of State-lead HPV pathways that exceeded the 270-day timeliness threshold in FY2005.	NA ¹⁹	64.4 ²⁰

¹⁷See footnote 16

¹⁸Original metric was 62.5% (i.e., 40/64). One facility was included in the numerator because the HPV status for the facility was unaddressed for > 270 days in FY2005. However, there was an HPV (unaddressed at the beginning of FY2005) that was addressed on 1/10/05 and another HPV whose day zero was 3/22/05. Neither of these HPVs was unaddressed for > 270 days. Also, two HPV sources were not included in the original data. However, both of the sources had HPVs identified in FY2005 and were unaddressed for > 270 days in FY2005. The actual metric is 39/66 = 59.1%.

¹⁹Original metric was based on HPVs in FY2004 – not FY2005 and listed NA because data for this national metric was not available at the time of the 1/31/06 data download.

²⁰Original metric was based on HPVs in FY2004 – not FY2005, and listed NA because data for this metric was not available at the time of the 1/31/06 data download. The 64.4% (67/104) figure is based on HPV data for FY2005 from EPA’s Region III’s internal HPV tracking system on 8/10/06.

Metric 6c	All State formal actions taken during FY2005 at HPVs	NA	29 ²¹ by PADEP or jointly at HPVs
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File Review Metrics:

Metric 6d	% of HPVs addressed or resolved appropriately	5/5 = 100%
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Findings:

The regions are directly responsible for addressing, in an appropriate manner, all violations identified in their respective Regions. PADEP Bureau of Air Quality’s *Guidelines for Identifying, Tracking, and Resolving Violations for Air Quality dated March 19, 2005*, establishes the framework for identifying, tracking, and resolving violations. The Policy states that “for all violations that are addressed via an enforceable document, the negotiations for the enforceable document should be finalized within 180 calendar days after the date that the Department notified the violator/responsible person of the violations unless the Regional Director or Bureau Director agrees that an extended time frame is acceptable.” While this language appears to be generally consistent with the HPV policy (note that Day Zero is not necessarily the date of the NOV in the HPV Policy), this Guidance does not ensure that HPVs that are not addressed with a formal enforcement action are also addressed within 270 days of Day Zero.

PADEP addressed 38 HPVs in FY2005 with formal enforcement actions, either as State or joint-lead enforcement actions. All HPV files reviewed showed that these HPVs were addressed or resolved appropriately. An additional ten HPVs were addressed or resolved with informal enforcement actions and returned to compliance by state with no further enforcement action required. These may or may not have been resolved appropriately. Four of these facilities were state State-owned facilities. PADEP reported that it is very difficult for PADEP to collect penalties at State-owned facilities, even if they are repeat violators. See the discussion in Element 8 for details on the remaining six facilities whose HPVs were “return to State” with informal enforcement and returned to compliance by PADEP with no further enforcement action required. Because the *Timely & Appropriate Enforcement Response to HPVs, June 23, 1999* focuses on HPVs, this discussion addresses only HPVs.

59.1 percent of PADEP’s State or joint-lead source HPVs in FY2005 remained unaddressed for more than 270 days (see Metric 6a), compared to a national average of 46.3 percent. **64.4 percent** of Pennsylvania’s HPV pathways that were State or joint-lead HPVs at any time in FY2005 were not addressed within the 270-day time line specified in the *Timely & Appropriate*

²¹Original metric listed 145. That number includes formal enforcement actions at all PADEP facilities (i.e., both HPV and non-HPV violations). These 29 enforcement actions addressed 38 and include two formal enforcements action taken for HPVs at minor sources .

Enforcement Response to HPVs, June 23, 1999.

Only 21 of the 48 HPVs that were addressed or resolved by PADEP in FY2005 were addressed within the 270-day time frame that is set forth in the *Timely & Appropriate Enforcement Response to HPVs, June 23, 1999*. Of the 48 HPVs²² that PADEP addressed in FY2005, the average number of days after Day Zero to address violations was 402 days. The median number of days to address these 48 HPVs was 300 days.

Based on the above analysis, PADEP's timeliness in addressing HPVs appears to be a significant problem. One of these HPVs took 1868 days to address. The delay was primarily due to a change in the lead agency to address this HPV from EPA to PADEP. The lead change took place in March 2003. The HPV was subsequently addressed by PADEP some 19 months later on 10/25/04. Another HPV took PADEP 1457 days to address/resolve. This delay was primarily due to EPA Region III and Headquarters involvement with this HPV. Excluding these two HPVs, the average number of days after Day Zero to address the remaining 46 HPVs is 275 days, not much more than 270 days, but still not considered to be timely.

Reviewers consider PADEP's untimeliness in addressing HPVs to be a significant vulnerability in PADEP's air enforcement program. Possible explanations as to why such a high percentage of HPVs are not getting addressed within 270 days include:

- 1) PADEP places the highest priority on bringing a facility back into "physical" compliance as evidenced by the fact that the majority of PADEP's formal enforcement actions are Consent Assessment of Civil Penalties (CACPs). CACPs contain only a civil penalty (i.e., no injunctive relief);
- 2) Some regions (e.g., North Central and Southeast) insist on having modified permits issued before addressing the HPV with a formal enforcement action. Reportedly, this ensures that the violation has been corrected. However, an enforcement action with a compliance schedule that is monitored would achieve this too, and also better conform with the *Timely & Appropriate Policy*. Indeed, not having a violation or an enforceable compliance schedule removes the incentive for the violating source to expedite the return to physical compliance; and
- 3) In many cases, addressing actions are delayed when there are multiple violations at a facility. In these instances, PADEP attempts to settle all outstanding violations under one agreement. In FY2005, excluding the one HPV that took 1868 days to address, the twenty HPVs from single facilities took an average of 258 days to address while the fifteen HPVs that were settled with addressing actions that involved multiple HPVs took an average of 550 days to address.

Citation of information reviewed for this criterion:

²²This includes ten HPV pathways that were "returned to state" with no further enforcement action required in FY2005.

- *The Timely & Appropriate Enforcement Response to HPVs, June 23, 1999*
- *PADEP Bureau of Air Quality Guidelines for Identifying, Tracking, and Resolving Air Violations for Air Quality, dated March 19, 2005*

The Evaluation Team reviewed 17 files where violations were found. CMRs for FCEs performed in FY2005 were reviewed as well as FCEs associated with the selected HPVs identified in prior years. To evaluate timely and appropriate enforcement, FY2006 files were also reviewed where FCEs in FY2005 resulted in violations being found but not addressed in FY2005. Additionally, two PCE reports associated with HPVs identified in FY2005 were reviewed.

Recommendations: (1) Reviewers recommend that PADEP should evaluate its timeliness in “addressing” HPVs as defined in EPA’s *Timely & Appropriate Enforcement Response to HPVs, June 23, 1999*. The evaluation should identify the extent to which timeliness is problematic across the regions i.e., do some regions meet the timeliness requirement while others do not. PADEP should then implement changes in existing enforcement procedures to ensure that HPVs are addressed in a timelier manner.

Action: *PADEP responded that the PADEP Bureau of Air Quality Guidelines for Identifying, Tracking, and Resolving Air Violations for Air Quality, dated March 19, 2005 (GITRVAQ) requires violations to be addressed within 180 days. Nonetheless, it is expected that the timeframe for addressing HPVs will decrease as a result of GITRVAQ.*

*EPA reviewed GITRVAQ and did not find this statement. Section III.B states that “Any violations that take more than 180 calendar days, from the date of the NOV, to resolve, should be addressed via a final permit, consent order and agreement, consent decree, final order, and/or other enforceable document unless the Regional Director or Bureau Director agrees that an enforceable document is not warranted in the specific case”. Furthermore, GITRVAQ does not contain language requiring violations that rose to a level of an HPV be addressed in accordance with EPA’s *Timely & Appropriate Enforcement Response to HPVs, June 23, 1999* .*

(2) PADEP should continue to discuss with EPA violations at State-owned facilities. EPA will subsequently decide if follow-up action is warranted.

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

Clean Air Act Source Universe Information	Number of Enforcement Actions
State formal enforcement actions	108 ²³ total at major and SM sources of which 27 address HPVs. Also, two enforcement actions addressed discretionary

²³See footnote 16

	HPVs at minor sources
Number of enforcement files with formal enforcement action for review	4 files, of which all are HPVs

File Review Metric:

Metric 7a	Percentage of formal enforcement actions that include calculation for gravity and economic benefit.	2/4 =50 %
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Findings:

Of the four files reviewed with completed formal enforcement actions, two included well documented assessed penalties. Both of these files were in the North Central region. PADEP’s North Central region’s enforcement files were particularly well organized. Both of these included detailed penalty calculations and timelines detailing the progress of the negotiations with the company until the execution of the formal enforcement action. Both files in the Southwest region did not include information on enforcement actions, including penalties assessed. In fact one of the files was missing copies of all formal enforcement actions that have been executed along with any penalty calculations. The absence of penalty calculation documentation in two of files reviewed in the Southwest Region may be viewed as an area of vulnerability.

In response to the missing documentation in the Southwest region files, PADEP stated that typically all penalty calculations are documented and maintained in compliance monitoring and enforcement files in all regional offices. The penalty for one facility was based on a CEM violation and that penalty is computed from the statewide CEM penalty policy. The number is provided to the regional office and a standard CACP is used to collect the penalty. The standard penalty policy is not used for a CEM penalty, which is why no calculations were found in the file. The other enforcement action included a penalty that was based on the severity and longevity of the violations and it was decided to go above the calculated penalty from the standard penalty policy. A Major Action Advisory (MAA) was completed and approved by the Deputy Secretary. Copies of MAAs are not stored in the files that are available for public review and would not be available to the EPA file reviewers, unless requested.

As part of the SRF process, EPA asked to see **all** files related to the facilities included as part of the SRF process.

From looking at only four files with formal enforcement actions taken, it is difficult to draw conclusions about individual regions reviewed or all the regions. While there appears to be a correlation between the individual regions reviewed and completeness of penalty calculations, such a conclusion would be based on a review of only two files in each region reviewed, which is barely sufficient.

The PADEP Bureau of Air Quality’s *Guidelines for Identifying, Tracking and Resolving Violations for Air Quality* provides guidance as well as the templates and other administrative

policies and procedures that address how to assess penalties. PADEP’s guidance and policies very clearly state that gravity as well as economic benefit should be assessed as part of the penalty assessment process. PADEP’s authority to be consistent with EPA’s Penalty Policy by calculating economic benefit, as well as other factors, is set forth in Section 9.1 of the Air Pollution Control Act (APCA), 35 P.S. §4009.1.

Citation of information reviewed for this criterion:

- *EPA Clean Air Act Stationary Source Civil Penalty Policy (1991)*
- *PADEP Bureau of Air Quality Guidelines for Identifying, Tracking, and Resolving Air Violations for Air Quality, dated March 19, 2005-§ 9.1 Commonwealth of PA Air Pollution Control Act, 35 P.S. §4009.1 (Administrative and Civil Penalties)*
- *The Timely & Appropriate Enforcement Response to HPVs, June 23, 1999.*

The Evaluation Team reviewed four files which included formal enforcement actions.

Strengths:

(1) PADEP should be recognized for its clear guidance, in the PADEP Bureau of Air Quality *Guidelines for Identifying, Tracking and Resolving Violations for Air Quality* as well as the templates and other administrative policy and procedures that address how to assess penalties. PADEP’s guidance and policies very clearly State that gravity as well as economic benefit should be assessed as part of the penalty assessment process.

Recommendations: (1) PADEP should develop procedures to ensure that all penalty calculations related to CEMs violations are documented and maintained in compliance monitoring and enforcement files in all regional offices.

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

Clean Air Act Source Universe Information	Number of Enforcement Actions
State formal enforcement actions	108 ²⁴ total at major and SM sources of which 27 address HPVs. Also, two enforcement actions addressed discretionary HPVs at minor sources
Number of enforcement files for review	17 files, of which 7 are HPVs and 10 are non-HPVs

²⁴See footnote 16

Data Metrics:

		National Average or Total	PADEP
Metric 8a	No activity indicator – penalties – State	NA	38 ²⁵ (State-lead HPVs addressed in FY2005)
Metric 8b	Penalties normally included with formal enforcement actions at HPVs in FY2005 – State and joint	79.4%	97.37% ²⁶

File Review Metrics:

Metric 8d	Percentage of final enforcement actions that appropriately document penalties to be collected	2/4 = 100%
Metric 8e	Percentage of final enforcement actions resulting in penalties to be collected	4/4 = 100%

Findings:

All but one HPV that was addressed in FY2005 with a formal enforcement action included a penalty. This well exceeds the national average of 79.4%. Assessed penalties for the 38 State-lead HPVs (from 29 sources) that were addressed in FY2005 with formal enforcement actions totaled \$2,307,309. Where penalties were assessed and reported to EPA, these ranged in amounts from as low as \$250 to as high as \$825,236. The collected amounts reported to EPA at Timely and Appropriate meetings and/or in the monthly enforcement reports and in AFS equal the assessed amounts.

As discussed under Program Element 7, the Review Team found documentation of initial penalty

²⁵Since the T&A Policy focuses on HPVs, formal enforcement actions that addressed state-lead HPVs in FY2005 only are listed in the above chart. This includes the two formal enforcement actions that addressed discretionary HPVs at minor sources. The original metric for 8a was 141 formal enforcement actions, but this includes non-HPVs, some duplicates and formal enforcement actions that are not believed to exist. Please note that the 38 HPVs listed above, as well as the original metric, do not include ten HPVs that were resolved in AFS with informal enforcement and returned to compliance by state with no further enforcement action required.

²⁶Original metric for 8b was 95.83% (i.e., 46/48) and included formal enforcement actions that did not address HPV pathways and counts duplicates as well as formal enforcement actions that are not believed to exist. The revised metric is 37/38 = 97.37%.

calculations to generally be sufficient in two out of four files reviewed, where PADEP had initiated formal enforcement action. Nonetheless, the initial penalty calculations documented in the files rarely equal the amount reported as “assessed” to EPA in AFS. This is to be expected because EPA has defined the “assessed” penalty, to be reported in AFS, as the amount included in the final order or decree. Thus, reductions in penalties from the initial calculations and before the final enforcement action is completed is often not reported in AFS.

In addition to the 38 lead HPVs that were addressed in FY2005 with a formal enforcement action, an additional ten HPVs were “returned to State” with informal enforcement and returned to compliance by PADEP with no further enforcement action required. Specifically:

- Four of the facilities were State-owned facilities. PADEP reported that it is very difficult for PADEP to collect penalties for violations at State owned facilities;
- Two facilities were HPVs for failure to submit a Title V permit application. Both of these facilities were in an industry that was not known nationally emitted VOCs until 2005 and submitted Title V applications promptly after PADEP requested the applications be submitted;
- One source was an HPV for violation of a VOC limit. However, after the HPV was identified, PADEP discovered that the wrong VOC limit was incorporated into the Title V permit. When the correct VOC limit was applied, the facility was in compliance;
- One source was bought by a new company after the NOV was issued. This source expeditiously came back into compliance once they were aware that they were in violation for failing to submit Title V Annual Certifications;
- The *Timely & Appropriate Policy* minutes are unclear as to why recordkeeping and monitoring violations at one source were not addressed with a formal enforcement action; and
- One facility corrected its opacity violations caused by the formation of a secondary plume resulting from the installation of new pollution control equipment. PADEP felt that a penalty was inappropriate, given the cause of the secondary plume. Documentation exists showing that EPA concurred with this decision.

None of the final enforcement actions reviewed involved actions that are covered under *Pennsylvania’s Community Environmental Project Policy* which provides for penalty adjustment when voluntary pollution prevention projects are included in a settlement.

Citation of information reviewed for this criterion:

- *EPA Clean Air Act Stationary Source Civil Penalty Policy (1991)*
- *PADEP Bureau of Air Quality Guidelines for Identifying, Tracking, and Resolving Air Violations for Air Quality, dated March 19, 2005*
- *§ 9.1 Commonwealth of PA Air Pollution Control Act, 35 P.S. §4009.1 (Administrative and Civil Penalties)*
- *The Timely & Appropriate Enforcement Response to HPVs, June 23, 1999.*
- *Pennsylvania’s Community Environmental Project Policy*

Strengths:

(1) PADEP’s high percentage of formal actions executed in FY2005, which included penalties at HPVs as well as non-HPVs, is viewed as a program strength.

Recommendations:

(1) Investigate why recordkeeping violations at SGL Carbon Corp. were not addressed with a formal enforcement action.

Action: Recommendation achieved. PADEP reported that these violations largely deal with monitoring and record keeping requirements. Because the violations were promptly corrected, and were relatively minor in nature, the region decided that no further enforcement action will be pursued and the HPV will be resolved via “2K”. EPA concurred with this decision at the September 15, 2005 T&A meeting.

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

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

Metric 9a	State agreements (PPA/PPG/SEA, etc.) contain enforcement and compliance commitments that are met.	All compliance monitoring and enforcement commitments were accomplished.
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Findings:

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

- Submit by 7/1/05 a FY 2006/2007 Compliance Monitoring Plan;
- By 6/30/05, review all relevant data resulting through 9/30/04 of the 1999 MACT Area Source Implementation Strategy and revise entries in AFS, as necessary, to ensure complete and accurate reporting of inspection information (FCE/PCE), inspection results (in compliance/out of compliance), and relevant air program (M) and subpart identification (M, N, O, T, or X) in preparation for Region III's final report on the success of the Area Source MACT Strategy; non-compliance findings and an evaluation of MACT area source inspections;
- By 11/1/04, identify in AFS all sources planned to be inspected for FY 2005;
- Participate in quarterly Timely & Appropriate conference calls;
- Identify to EPA all sources subject to the *Timely & Appropriate Policy* within the policy's time-frames and Air Protection Division enforcement guidance;
- On a monthly basis, provide copies of NOV's and other non-compliance determinations for sources identified as HPVs during the quarterly conference calls and/or meetings. Provide copies of follow-up enforcement actions, penalty amounts, and dates paid. Also, provide the number of Supplemental Environmental Projects (SEPs) used in enforcement actions, penalty amounts mitigated, and value of SEPs;
- Report specified data elements into AFS within 90 days of completion
- Resolve actions consistent with the *Timely & Appropriate Policy* .

PADEP submitted its FY2006/2007 Compliance Monitoring Plan on schedule. PADEP met approximately 95 percent²⁷ of its FY2004 and FY2005 inspection commitments at major sources. Please note that the CMS Plan is a two-year plan; FCEs scheduled during the two-year period may be scheduled for year one or year two and flexibility exists to switch sources between years, provided the CMS Plan is updated accordingly.

PADEP reviewed all relevant data resulting through 9/30/04, of the 1999 MACT Area Source Implementation Strategy and entered revisions into AFS in a timely manner.

PADEP participated in four Timely & Appropriate meetings in FY2005. Forty-eight HPVs were identified by PADEP in FY2005. Of these, most were reported to EPA as "potential HPVs" within the timeframes that are set forth in the *February 1998 Significant Violator Agreement*

²⁷Metrics 1a and 1b

between EPA Region III and PADEP, described above. However, the process of reporting potential HPVs and identifying HPVs with EPA, as set forth in the *February 1998 Significant Violator Agreement*, does not conform with the schedules set forth in the *Timely & Appropriate Enforcement Response to HPVs, June 23, 1999*.

PADEP provided EPA comprehensive monthly enforcement reports delineated by region. The reports included the following:

- A summary of all NOVs and copies of NOVs determined to be potential HPVs;
- A summary of all enforcement agreements and copies of agreements that address HPVs;
- A summary of all penalty payments received and copies of all penalty payments tied to HPVs; and
- A listing of all SEPs and copies of SEPs tied to HPVs

In most cases, PADEP met the § 105 Grant requirement to report to AFS within 90 days because they perform monthly uploads to AFS. When PADEP's data is generated, Minimum Data Requirements (MDRs) such as FCE, Stack Test, Title V Certifications, Source Classes, and Compliance are uploaded to AFS within 30 days. Nonetheless, some HPVs were linked in AFS beyond the timeframe set forth in the 2005 Grant *T&A Policy* (30 days after "detection" to "report" to EPA and an additional 90 days to "enter" into AFS). This appears primarily due to the following:

- the process for identifying HPVs, set forth in the *1998 Significant Violator Agreement* between EPA Region III and PADEP, results in identification of HPVs well after the 30 days stipulated in the *Timely & Appropriate Policy*, and
- EPA is responsible for creating in AFS the Day Zero to begin the HPV pathway and also for linking all subsequent state entered data related to that HPV. The Day Zero is not created until after the quarterly *Timely & Appropriate* meeting. *Timely & Appropriate* meetings are held as late as 120 days after the first day of the quarter being reviewed e.g., a September 2005 *Timely & Appropriate* meeting would cover the period from 5/1/05 through 7/31/05.

The Review Team has identified additional problems related to PADEP's timely reporting in AFS in FY2005. See Data Element 10.

59.1 percent of PADEP's State or joint-lead HPVs in FY2005 remained unaddressed for more than 270 days (see discussion under Program Element 6). Such a high percentage of late addressing actions does not conform to the *Timely & Appropriate Policy* and is viewed as a significant vulnerability.

The End-of-Year Report for PADEP's § 105 Grant states that PADEP has met its compliance monitoring and enforcement commitments. Without the metrics in the SRF, the late entry of HPVs into AFS and was probably not evident to EPA at the time of the grant review and therefore

not communicated in EPA's grant performance review.

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

Citation of information reviewed for this criterion:

- PADEP's FY2005 § 105 Grant
- EPA's FY2005 § 105 Grant Final Report for FY2005 (compliance monitoring and enforcement portions only)
- § 105 Grant monitoring files maintained by the EPA State Liaison Officer
- Timely and Appropriate Meeting minutes
- 2001 Information Collection Rule

Strengths: (1) PADEP is to be commended for providing comprehensive monthly enforcement reports to EPA.

Recommendations:

(1) PADEP's agreed-upon process of identifying and reporting of HPVs does not conform to the *Timely and Appropriate Policy* which was instituted after the *February 1998 Agreement*. See Recommendations under Program Element 10.

(2) See Recommendations under Program Element 6 regarding PADEP's untimeliness in addressing HPVs.

(3) **Federal Recommendation:** EPA Region III should closely monitor HPV data entry timeliness.

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

Data Metric:

		National Average	PADEP
Metric 10a	Percent of HPVs that are entered to AFS more than 60 days after the HPV designation - State only	56.40%	84.85%

File Review Metric:

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

Findings:

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

HPVs - As shown in Metric 10a, **84.85 percent** of all State-lead HPVs were entered into AFS more than 60 days after the HPV was identified. This well exceeds the national average of 56.4 percent. In addition, 85.7 percent (6/7) of the HPVs reviewed as part of the regional file reviews were entered into AFS more than 60 days after the HPV was identified. In most cases, this late entry of HPVs into AFS appears to be due to the current arrangement between PADEP and EPA whereby EPA enters new HPVs into AFS. See Data Element 9.

Stack Testing - PADEP’s stack testing program has been one of the strengths of PADEP’s Air Compliance and Enforcement Program for years as demonstrated by PADEP’s technical capabilities in overseeing stack testing activities and ability to conduct stack testing as needed. However, there appears to be a problem with timely entry of stack test data into AFS is viewed as a significant vulnerability.

Appendix I delineates the number of stack tests conducted in FY2005 by PADEP regional offices. Whereas a total of 154 FY 2005 stack tests were reported in AFS as of March 2006 (six months after the end of FY 2005), a total of 371 FY 2005 stack tests were reported in AFS as of June 2006 (nine months after the end of FY 2005). The number of stack tests conducted all regions in FY 2005 as shown in AFS more than doubled from March to June (for the northeast regional office). EPA considers this lag time in entering stack test data to be a significant vulnerability.

In PADEP, stack testing activities are primarily a centralized responsibility. Within the Bureau of Air Quality’s Division of Source Testing and Monitoring is the “Source Testing Section” comprised of ten staff people and the Section Chief. All ten staff people review protocols, observe stack tests, review stack test reports and conduct stack tests. Of the ten staff, one is located in the Southeast region, one is located in the South Central regional office and the other eight are located in the Central Office. All procedures related to stack tests are covered in PADEP’s Source Testing Manual. The latest edition, dated November 2000, is under revision to

include the new EPA Stack Testing Guidance.

The first step in PADEP's stack test process is the submission by the company of a stack test protocol. The protocol is usually submitted to the regional office 30 to 60 days prior to the day the stack test is scheduled to be conducted. The regions conduct a cursory review of the protocol, focusing their review on the process/plant conditions, and then forward the protocol to the Source Testing Section for review. After completing its review, the Source Testing Section sends a protocol review memo to the facility and the PADEP Region where the stack test is to take place.

Next, the stack test is conducted. Observers from the region and/or the Source Testing Section may be present to observe the stack test. Source Testing Section personnel said that they try to observe as many stack tests as possible. According to those interviewed in the Source Testing Section, they observed approximately 60 percent of the stack tests in calendar year 2005.

The source submits two copies of the Stack Test Report to the regional office. Any time frame requirements to submit the Stack Test Report are specified in the plant-specific permits or applicable regulations. For NSPS, the test report is to be submitted within 180 days after the initial startup date or within 60 days after reaching maximum production rate. For NESHAP, the test report is to be submitted within 31 days after completion of the test. For MACT, the test report is to be submitted within 60 days after the test is completed. PADEP does not have a rule that requires the Stack Test Report to be submitted within a specific time period although the Source Testing Manual allows PADEP up to 60 days to review the Stack Test Report. The Region performs a cursory review of the report and sends the review, along with the Stack Test Report, to the Source Testing Section.

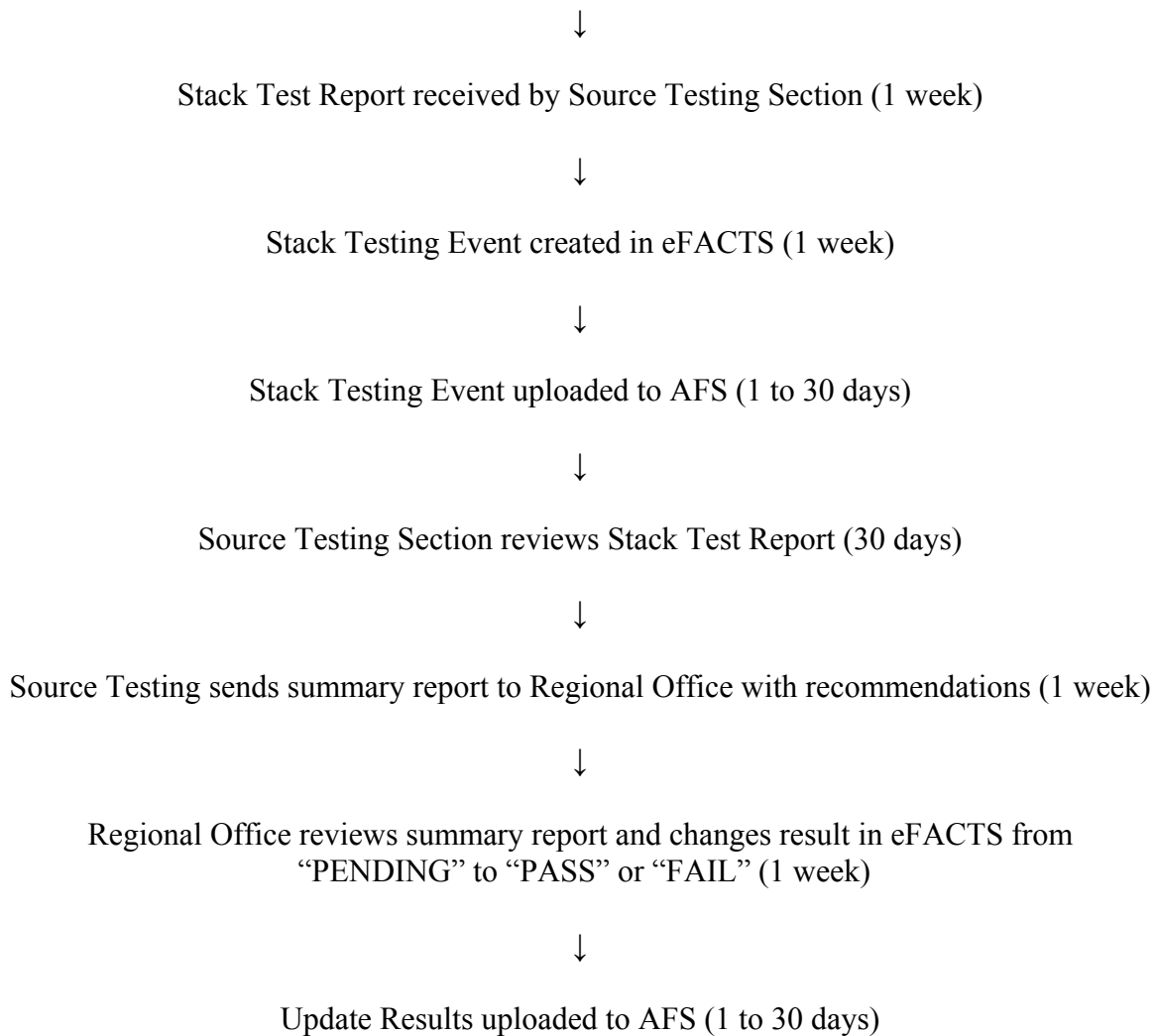
When the Stack Test Report is received in the Source Testing Section, a transaction form that includes details of the stack test is generated by Source Testing Section personnel. This transaction form is then input into eFACTS which is then uploaded to AFS. At this point, the result of the stack test is entered as "pending". The Source Testing Section review primarily addresses the quality of the data and conformance to the protocol. Once the Stack Test Report review is completed, the Source Testing Section recommends a "result" and then sends the report to the region for the final compliance status determination. The region is responsible to change, in eFACTS, the result of the stack test to "pass" or "fail" once the Source Testing Section completes the review.

Using PADEP's process as provided by PADEP to EPA, the following shows the range of time it typically takes for data entry to AFS related to a stack testing event:

Stack Testing Event



Stack Test Report received by Regional Office (60 days)



This timeline shows that AFS entry of stack testing events takes from 69 to 98 days. Thus, this may not occur within the 90 - day time period set forth in the FY 2005 Section 105 grant. It also shows that PADEP stack test reviews take from six to ten weeks so that results may not be entered within 120 days as required.

PADEP stated that under the current business process, it is more likely than not that the stack test event cannot be entered into AFS due to (1) The facility has not delivered the test report to the Department in a timely manner, or (2) the regional office holds the test report for assignment and review prior to sending it to the Source Testing Section for review. EPA does not see why the stack testing event can not be entered into AFS **before** the test report is received. PADEP also stated that test reports that are missing vital information relating to the testing, lab, or calculation errors, unreadable process charts and incomplete data delay the process. The Source Testing Section makes every effort to recover all of the data required to make a complete assessment of

the test data be contacting the facility, lab or test consultant to complete the review. PADEP reported that it is not unusual to take many weeks to complete the test submittal during the review before testing can be evaluated. When the test report is entered into eFACTs as pending (“99”) and it takes 60 days to receive the test report, it allows only 60 days to review the report and then to send it to the region where they change the pending code to pass (“PP”) or fail (“FF”). Under the current process, almost 40% of the reports that PADEP reviews take the Regions > 90 days to enter “PP” or “FF”.

PADEP further noted that the Fiscal Year 2005 Section 105 Clean Air Act grant Base Program Reporting Requirements, allowed up to 90 days to enter a stack test event. Pennsylvania is correct in that statement. However, PADEP was also obligated to report to AFS within that same 90 day period following the stack test event, the pollutants tested and the compliance results. This granted PADEP an additional 30 days from the national reporting obligation to add this information to the national data base. Additionally, this 90 day reporting obligation was subsequently amended back to 60 days in December 2005 when both agencies entered into a Memorandum of Understanding.

EPA issued its final stack test guidance on September 30, 2005. And, subsequent to EPA’s SRF analysis of Pennsylvania, EPA issued clarification guidance on stack test reporting obligations for observed and unobserved stack tests. Even though this clarification was issued following the review, the guidance actually doubled the amount of time previously required nationally to enter all relevant stack test information. In conclusion, EPA continues to affirm that there is no reason why PADEP can not enter stack test data within the prescribed timeframe. Moreover, this is a national policy and Region 3 has no authority to allow any exceptions to full compliance.

Lastly, PADEP noted that “the National Stack Test Guidance document is not clear in how or when data should be entered into AFS.” Region 3 believes the policy is quite clear, and at no time prior to receipt of PADEP’s comments did the state indicate or question the reporting obligations. The national guidance has been transmitted to PADEP on at least three separate occasions. The interpretation of the guidance was also discussed in a meeting with PADEP officials. Nonetheless, Region 3 will advise EPA Headquarters of PADEP’s response.

A new electronic file management system is currently under development. This system, expected to be operational by October 2007, will decrease the processing time but not the review time. In addition, PADEP is currently developing a policy that will provide guidance on several issues, including compliance determinations. This policy will include timelines for making stack test compliance determinations and properly entering the determination into eFACTs. Finally, PADEP is currently developing a no-line Internet-based system to allow for the submission of stack test reports. When fully implemented, this system will improve the review timeframes.

Each staff member of the Source Testing Section has an average of eight to nine stack tests on his/her desk at any one time. PADEP has indicated that this workload is manageable and has not created a back log in stack test reviews in the Source Testing Section.

Title V Annual Certifications - The Review Team found no timeliness problems associated with the entry of Title V Annual Certifications reviews. However, they did find data quality issues with the Title V Annual Certification review data. See Data Element 11.

Compliance Status - See Data Element 11.

Citation of information reviewed for this criterion: (1) CMRs for FCEs performed in FY2005 were reviewed as well as FCEs associated with the selected HPVs identified in FY2005. Additionally, to evaluate timely and appropriate enforcement, FY2006 files were reviewed where FCEs in FY2005 resulted in violations being found but these were not addressed in FY2005. Additionally, two PCE reports associated with HPVs identified in FY2005 were reviewed.

(2) FY2005 PADEP § 105 Grant

(3) MOU between Commonwealth of Pennsylvania Bureau of Air Quality and US EPA Region III Air Protection Division (December 2005)

Strengths:

(1) The Title V Annual Certification reviews were found to be completed and entered into AFS in a timely manner.

(2) PADEP observes a relatively high number of stack tests.

Recommendations:

(1) PADEP and EPA both agree that the *Significant Violator (i.e., HPV) Agreement dated 2/12/98* should be terminated. Since both agencies are in agreement with this as a satisfactory resolution, paragraph B, Section II, under Purpose of the Air Quality Management Memorandum of Understanding dated October 2005, can be considered to have satisfied this recommendation. Paragraph B reads “Where provisions or conditions of this MOU conflict with any portion of previous agreements or MOUs between Pennsylvania and the EPA, the provisions or conditions of this MOU will supersede those provisions or conditions of the prior agreements..

Action: Recommendation achieved on December 17, 2005 after both parties signed and agreed to the contents of the MOU.

(2) An expedited process to identify HPVs should be developed and the current MOU between EPA Region III and the Commonwealth of Pennsylvania should be amended as appropriate to reflect these changes.

Action: PADEP agrees that identification of the HPV by the Commonwealth would improve communication with EPA and the public. PADEP has identified changes that must be made in the AIMS system to allow for the identification of the HPV day zero. When this modification is

completed, PADEP will be able to modify the data extract to the Universal Interface to identify and submit HPV data to AFS during the monthly data upload.

(3) PADEP should consider linking its HPV data in AFS as soon as possible. Whereas EPA still is expected to concur on each HPV recommended by a State/local agency and must still receive the NOV's that document the violations, direct entry by PADEP would best ensure that the public, as well as the regulated community, are informed about high priority violations in a timely manner. Once PADEP links its HPV's directly, EPA would review PADEP's recent entries in AFS, compare the entry to the documentation provided by PADEP, and advise PADEP of any changes to AFS that may be needed regarding HPV's. This would be expected to improve the timeliness of entry of MDRs.

Action: PADEP agrees that identification of the HPV by the Commonwealth would improve communication with EPA and the public. PADEP has identified changes that must be made in the AIMS system to allow for the identification of the HPV day zero. When this modification is completed, PADEP will be able to modify the data extract to the Universal Interface to identify and submit HPV data to AFS during the monthly data upload.

(4) All stack test data should be entered in conformance with the "The National Stack Testing Guidance". The stack testing event should be entered in AFS within 60 days of the date of the action using a result of "PP" (pass) "FF" (fail) or "99" (pending). Any stack test with a PENDING code is required to update the results to PASS or FAIL within 120 days of the original stack test date.

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

Clean Air Act Source Information	Compliance Monitoring (FY2005)
Full Compliance Evaluations - Major and SM sources	1502 FCEs ²⁸
Partial Compliance Evaluations	1781 ²⁹
Total Number of Evaluations	3283
Number of inspection files for review	40

Data Metrics:

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²⁸Metric 12d2

²⁹Metric 12d3

		National Average	PADEP
Metric 11a	# sources with HPVs/ # sources in violation - operating major sources only – combined	<100% (Goal)	23.5% ³⁰
Metric 11b1	% of stack tests conducted & reviewed without pass/fail results code entered to AFS - State-only	7.2% ³¹	100%
Metric 11b2	# of Federally-reportable sources with stack test failures - State-only		0

File Review Metric:

Metric 11c	Accuracy of MDRs	25 out of 40 files reviewed (62.5%) and compared to AFS showed at least minor errors in AFS
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Findings:

Based on periodic analysis of the data by EPA Region III, PADEP’s data appears to be relatively complete. However, some significant data accuracy problems were found. These include:

- a significant number of major sources were misclassified;
- multiple FCEs are entered, some PCEs are entered as FCEs, and some FCEs are entered as PCEs;
- compliance status is inaccurate for PADEP-lead HPVs;
- some Title V Annual Certification reviews may be inaccurately listed as being “reviewed”; and
- stack test results are inaccurately reported in AFS.

Minor Discrepancies - Of the 40 files reviewed for data accuracy, general information on the plant was inconsistent for 25 sources. For example, sometimes the corporate or owner addresses were used instead of the required plant physical address.

The Review Team found documents in the files that were not entered into AFS. There were also

³⁰Original metric, 24.05%, was based on 76 operating major sources as HPVs, but this does not include 2 facilities, which were 2005 HPVs added to AFS after the January 2006 AFS download. Also, the original metric includes a facility as an HPV which had been inaccurately entered as an HPV. Finally, the original metric was based on 316 operating major sources in violation, which did not include 11 sources which were inaccurately entered into AFS as “in compliance”. These eleven sources are identified in the main text under this data element. Thus, the final metric is $77/328 = 23.5\%$.

³¹As of August 16, 2006

actions listed in AFS but were not found in file.

The “A” and “SM” known Universe - Some file records indicated a different State class than AFS. The Review Team found 57 facilities classed as major (i.e., “A”) by EPA but as synthetic minor (i.e., “SM”) or minor (i.e., “B”) by PADEP. PADEP personnel interviewed indicated that AFS records are not being maintained in recent years and that there are approximately 250 facilities “misclassified”. As a result of the preliminary findings in this State Review Framework, PADEP has initiated a “class” analysis of all PADEP facilities, and the universe of major sources has been reduced by approximately 200 sources. Whereas many sources appear to be misclassified, such a proactive approach to this issue is to be commended.

According to AFS, 58 facilities (classed as major) did not receive an FCE during FY2004 or FY2005. PADEP believes that only 10 of the 58 facilities should fall into this category. The remaining 48 should not be included because they were misclassified have been shut down or currently not active, or facilities that were new and not operational during FY2004 and FY2005. If so, actual FCE coverage is even higher than presented in Data Metrics 1a1, 1a2, and 1b.

FCEs - Twelve facilities were listed in AFS as having performed multiple FCEs in the same year. A closer look revealed that the actions were being entered more than once. For example, one source showed five FCEs on consecutive days in July 2005 instead of four PCEs on the first four days and an FCE on the last day. The Review Team also noted PCEs being entered as FCEs and vice versa and found an FCE in the file that was not entered into AFS.

Unknown Compliance Status - As of 1/31/06, 11 CMS sources are listed in AFS with an “unknown” compliance status. According to PADEP, ten of these facilities are either misclassified, closed, currently under plan approval or an FCE has been conducted facility within the required time frame. However, according to AFS, eight of the 11 facilities continue to carry an “unknown” compliance status even though these facilities are operating with valid classes and are listed in PADEP’s CMS plan. The other three facilities received FCEs in November 2005, but the information was not uploaded to AFS until after January 31, 2006.

Compliance Status of Violating Sources - Compliance status appears to be a significant vulnerability. For example, in Data Metric 11A, the original metric (24.05%) was changed to **23.5 percent** for a number of reasons (see footnote 50) including inaccurate compliance status for 11 sources. Specifically, 11 HPV sources were listed in AFS as “in compliance” during the period while they were HPVs. Of these 11 sources, two are EPA-lead. All violations, not just HPVs, should be listed as “out of compliance” in AFS within 30 days of detecting the violation. The Review Team has not identified the reasons for compliance status errors for all the PADEP-lead HPVs.

Forty-eight HPVs were identified in FY 2005 at thirty-seven facilities. AFS listed 14 active HPVs as “in compliance” of which seven were on the EPA Watch List.

Title V Annual Certifications - The number of Title V Annual Certifications scheduled to be

reviewed by PADEP in FY2005 appears to be inaccurate in AFS. According to AFS, there are 580 sources for which Title V Annual Certifications were due to be reviewed by PADEP in FY2005. Unless there are a significant number of Title V permits that were issued during FY2005, the number of Title V Annual Certifications due to be reviewed in FY2005 should closely match the number of Title V permits that are currently active. PADEP interviewees stated approximately 750 Title V permits have been issued. Eleven Title V permits were issued during FY2005 and eighty two Title V permits have been withdrawn since 8/2/95. Assuming that none of the Title V permits that have been withdrawn or the Title V permits issued during FY2005 were due to submit a Title V Annual Certification, the actual total number of Title V Annual Certifications due to be received in FY2005 is approximately 657.

According to Data Metric 1f, 36 facilities that were scheduled to have a Title V Annual Certification reviewed by PADEP during FY2005 that were not reviewed. A closer look at the specific 36 facilities showed that some facilities that were scheduled to have a Title V Annual Certification submitted and reviewed by PADEP were actually classified as SM sources and therefore would not be required to submit Title V Annual Certifications. In addition, as many as six facilities were incorrectly scheduled in AFS to have more than one Title V Annual Certification reviewed by PADEP during FY2005.

Some Title V Annual Certifications reviewed by PADEP may be inaccurate in AFS. According to AFS, 704 Title V Annual Certifications at 544 facilities were reviewed by PADEP in FY2005. Theoretically, only one Title V Annual Certification per source should be reviewed during a fiscal year. During the file review metrics for both the Williamsport and Pittsburgh regional offices, it was observed that some semiannual certifications were being incorrectly coded as Title V Annual Certifications. Also, there appeared to be numerous duplicate entries in AFS for identical Title V Annual Certifications.

Because all Title V Annual Certifications in the North Central region are due September 1, a unique situation is presented whereby PADEP could review two Title V Annual Certifications for a particular facility in the same fiscal year and be in compliance with the timely data entry requirements. For example, a Title V Annual Certification for Facility X covering the time period July 1, 2003 to June 30, 2004 (due September 1, 2004) is reviewed by PADEP on October 11, 2004. The Title V Annual Certification for facility X covering the time period July 1, 2004 to June 30 2005 (due September 1, 2005) is reviewed by PADEP on September 17, 2005. In this scenario, AFS would show two Title V Annual Certifications for facility X being reviewed by PADEP in FY2005 that cover two different time periods. It appears that some Title V Annual Certifications reviewed by the North Central region were actually “duplicate” Title V Annual Certifications or Semiannual Certifications and some were correct entries for reviews covering different time periods.

Additionally, in both regions whose files were reviewed, the Review Team found documents with different dates in AFS compared to those found in file. For example, AFS shows a number of Title V Annual Certifications with a review date that occurred before the Title V Annual Certification was received. PADEP Central Office stated that the staff may not know the only

requirement is to have the Title V Annual Certification reviewed entered into AFS. In addition, PADEP staff enter all certifications using the same actions into eFACTS which makes it difficult to distinguish between an annual and semi-annual certifications when uploaded into AFS.

The team found two Title V Annual Certification documents in the files that were not entered into AFS. One action listed in AFS but was not found in the file.

PADEP interviewees stated no standard operating procedure exists with respect to Quality Assurance/Quality Control of Title V Annual Certification data.

Stack Test Results:

1) Data Metric 11b1

This metric shows that no FY2005 stack test results were entered into AFS at the time the data was downloaded (1/31/06). Given that February is five months after the fiscal year ends and two months after all FY2005 data was expected to be uploaded to AFS, this appears to be a significant vulnerability. The Review Team did not determine why this problem occurred in FY2005. However, it is possible that PADEP may have entered old results codes that had been available for inspection results.

PADEP reports that they recently have begun to use the Universal Interface to remedy problems such as this; in fact as of August, 2006, the number of incomplete results codes for PADEP was reduced from 100 percent to 37.6 percent³². Although this value is worse than the national average of 7.2 percent, it appears that PADEP has recently improved its timeliness and accuracy in entering results of stack tests.

2) Data Metric 11b2

Zero stack test failures in FY 2005 are entered as “results” in AFS. Since PADEP reported six failed stack tests as HPVs in FY2005, but not stack test results as “failed”, it is clear that stack test results are inaccurate in AFS.

The Review Team found eight stack test documents in the files that were not entered into AFS.

Other - It should be noted that as of October 1, 2005 PADEP has been using the Universal Interface to convert data from eFACTS to AFS. This is expected to improve the accuracy of the data elements. Preliminary FY2006 data runs indicate that the quality of the data has improved.

³²134 results not entered/356 stack tests conducted.

Citation of information reviewed for this criterion:

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

In addition, EPA reviewed the following files that indicated violations:

- 4 HPV files
- 4 major source files, including one delisted HPV - non-HPV
- 3 SM source files – non-HPV

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

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

Strengths:

(1) PADEP is to be commended for the proactive approach in initiating a PADEP-wide program to identify and correct all misclassified sources. PADEP has committed to correct all source class changes by March 31, 2007.

Recommendations:

(1) Quality Assure/Quality Control all data. PADEP should provide a dedicated person who would be responsible for the completeness and accuracy of PADEP’s data going into AFS. PADEP should ensure that all personnel who are entering data to be uploaded to AFS are familiar with what is required (e.g. review of Title V Annual Certifications vs. semiannual certifications, FCEs vs. PCEs,).

Action: PADEP has identified a dedicated person who will be responsible for data quality and assurance prior to entry into AFS..

(2) **Federal recommendation:** EPA should develop procedures to ensure that all EPA-lead HPVs are listed in AFS as “out of compliance” and are returned to “compliance” once the HPVs are resolved.

Action: EPA has drafted a Standard Operating Procedure to ensure that all EPA-lead HPVs are listed in AFS as “out of compliance” and are returned to “compliance” once the HPVs are resolved.

(3) To minimize sources automatically reverting to an "unknown" compliance in AFS, PADEP should be more diligent about removing sources from the CMS plan that have changed class or operating status (i.e., shut down). The “unknown compliance” generation occurs when a source does not have an FCE within the frequency designated by the State, which typically is two years for a major source.

(4) Although PADEP well exceeded the national average for completion of CMS commitments, PADEP's accomplishments were under reported because a number of sources were mis-classed. To remedy this problem, processes recently instituted should be continued to ensure the source class is consistent for both “State” and “EPA”.

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

Data Metrics:

Metric 12a1	AFS operating major sources	1016
Metric 12a2	AFS operating major sources w/ air program code = V	667
Metric 12b1	Major sources per <i>OTIS</i>	1016
Metric 12b2	Synthetic minor sources per <i>OTIS</i>	512
Metric 12b3	NESHAP minor sources per <i>IDEA</i>	15
Metric 12c1, 12c2, 12c3	Subprogram universe is accurate in AFS (NSPS, NESHAP, and MACT)	Informational only prior to FY06 (RIII requires MACT Subprogram to be entered)
Metric 12d1	Sources with FCEs in FY2004 and FY2005 (major and SM operating sources, State-only)	1265
Metric 12d2	Total FCEs completed in FY2004 and FY2005 (major and SM operating sources,	1502

Metric 12d3	Number of PCEs reported to AFS in reporting period	2195 - Informational only ³³
Metric 12e	# of sources that had violations at any point during FY2005 – combined	1206, of which 846 are major and 120 are synthetic minor sources
Metric 12f1	# of NOV's issued in FY2005 – PADEP only	631 ³⁴
Metric 12f2	# of sources with NOV's in FY2005 – PADEP - only	297 ³⁵
Metric 12g1	# of new HPV's (pathways) in FY2005 – PADEP - only	48 ³⁶
Metric 12g2	# of new source HPV's in FY2005 – PADEP – only	37 ³⁷
Metric 12h1	# of State formal actions issued in FY2005, major and synthetic minor sources	108 ³⁸
Metric 12h2	# of sources with State formal actions in FY2005, major and synthetic minor sources	112 ³⁹
Metric 12i	Total dollar amount of State-assessed penalties in FY2005 - State-lead HPV's	\$2,391,309 ⁴⁰ for 48 State-lead HPV's addressed in FY2005.

³³Original metric lists 3695 PCEs at major, synthetic minor, minor and non-AFS facilities in February, 2005. However, this includes PCEs at two facilities. Please note that the metric presented in the table was downloaded from AFS in July, 2006.

³⁴Actual metric is based on Monthly Compliance Action Reports provided from PADEP to the EPA State Liaison Officer. Original metric was 431, based on AFS.

³⁵Original metric. This value is expected to be significantly lower than the actual value (see footnote 58).

³⁶The original metric was 45 but did not include four HPV pathways missing from the original metric. Another facility was mistakenly identified as an FY2005.

³⁷Original metric was 35 HPV's. However, three new major source HPV's were not included in this data and did include one new major source HPV that was mistakenly identified as an HPV in FY2005.

³⁸See footnote 16

³⁹Original metric lists 125 sources, but 13 of these were at minor sources.

⁴⁰Original metric lists \$4,796,328, but this includes penalties associated with facilities in Philadelphia and Allegheny Counties. Furthermore, the \$4,796,328 value includes several duplicate counts. The number presented in the above table refers only to the 38 HPV's formally addressed in FY2005 and is based on EPA Region III's internal tracking system.

Metric 12j	# of major sources missing CMS Policy applicability	44 major sources w/o CMSC field
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Findings:

The following MDRs entered by PADEP appear to be incomplete:

- results for all stack tests (see discussion under Program Element 11)
- completion of Title V Annual Certification reviews (see discussion under Program Element 10)
- compliance status (see discussion under Program Element 11)
- identification of one HPV (see discussion under Program Element 9).

Metric 12f1 - The original metric, 431, is based on NOV's entered into AFS as of 1/31/2006. The actual metric, 631, is based on the Monthly Compliance Actions Reports that were provided to the EPA State Liaison Officer during FY2005. The Review Team did not determine why the AFS entries are so different from the actual NOV's issued.

Metric 12i – Assessed penalties entered by PADEP appear to be complete. PADEP assessed penalties for 38 out of 48 State-lead HPVs addressed in FY2005. As of August 2006, assessed penalties for all those 38 HPVs have been paid in full.

Metric 12j - AFS, as of February, 2005, lists 44 major sources with blank CMS Source Category (CMSC) fields. The Review Team surmised that these sources may not actually be major sources, since the Universe of major sources includes many “A” sources that are not actually major (See Metric 1). However, the Review Team did not determine the reason why these 44 major sources are not listed in PADEP’s current CMS plan. Please note that this metric actually evaluates CMS Policy applicability at the time of the data download and not necessarily what was listed in AFS in FY2005.

Citation of information reviewed for this criterion:

- *CAA Stationary Source Compliance Monitoring Strategy, April 25, 2001*
- PADEP’s § 105 Grant files
- EPA’s § 105 Grant Report for FY2005 (compliance monitoring and enforcement portions only).

Recommendations:

- (1) See Recommendations under Program Element 11 regarding stack test results.

(2) See Recommendations under Program Element 10 regarding entry of Title V annual certification reviews.

(3) See Recommendations under Program Element 11 regarding entry of compliance status where violations were found.

(4) See Recommendations under Program Element 6 to ensure that PADEP identifies all its HPVs in a timely manner.

(5) PADEP should verify the number of NOV's issued in FY2005 and correct any errors in AFS.

Action: PADEP has completed an analysis of the number of NOV's issued in FY2005. According to PADEP, the difference can be attributed to the fact that eFACTs only uploads data to AFS for facilities that have been assigned an AFS CDS Number. NOV's for open burning, odors, asbestos, etc. at facilities that have not had and/or will not be assigned a CDS number do not get uploaded. The number of NOV's in AIMS is 611. Therefore, 180 of the NOV's fall into the "no CDS Number". In addition, the numbers do not match because State II NOV's are not included in the either the eFACTs or AFS numbers but are included in the number that is provided in the Monthly Compliance Action Reports.

(6) PADEP should identify why 44 major sources had blank CMSC flags in AFS and correct the errors as appropriate.

Action: PADEP has reviewed the list of 44 major sources and determined that 32 of the facilities were classed incorrectly as "A" sources and are in fact "B" sources, 4 are inactive, 6 were merged into another facility, 1 does not exist and 1 facility should have been included in the CMS plan. That facility has been subsequently been added to the CMS plan and is scheduled for inspection in 2007 and 2009.

Appendix I

PADEP Resource Distribution

Region	Headquarters	District Offices (*)	Air Operation Chiefs	District Supervisors	Inspectors (**)	Compliance Specialists	Others (***)	Total (****)
Southeast	Norristown	1	1	3	13	3	1	20
Northeast	Wilkes-Barre	2	1	2	12	2	0	16
South Central	Harrisburg	4	1	4	14	1	1	20
North Central	Williamsport	2	1	1	6	1	0	8
Southwest	Pittsburgh	2	1	2	10	2	0	14
Northwest	Meadville	3	1	3	12	0	0	15
Totals	----		6	15	67	9	2	93

(*) Including Headquarters Office

(**) Includes vacancies. As of 5/8/06, the Southeast region had 2 vacancies and the Northwest region had 3 vacancies.

(***) In both the Southeast and Southwest regions, this position is an Environmental Chemist whose primary functions is MACT compliance.

(****) Does not include the Air Operations Chief

Appendix I, continued
Pennsylvania Department of Environmental Protection (PADEP) State Review Framework
Regional Office Review

FY2005	Southeast	Northeast	South Central	North Central	Southwest	Northwest	Average
CMS Source Universe/Inspector	23.38	17.25	28.43	34.67	21.3	16.17	22.74
CMS Source Universe/Enforcement Staff	15.2	12.94	19.9	26.00	15.21	12.93	16.39
# of Majors/Inspector	14.38	11.92	14.21	21.67	15.20	11.33	14.14
# of Majors/Enforcement Staff	9.35	8.94	9.95	16.25	10.86	9.07	10.11
# of Synthetic Minors/Inspector	8.15	5.58	17.00	8.83	4.60	3.67	8.27
# of "SMs"/Enforcement Staff	5.30	4.19	11.90	6.63	3.29	2.93	5.96
HPVs Identified/Inspector	1.54	0.50	0.29	1.00	0.20	0.83	0.72
HPVs Identified/Enforcement Staff	1.00	0.38	0.20	0.75	0.14	0.67	0.52
HPVs on Watch List/Inspector	1.00	0.42	0.29	1.33	0.00	0.83	0.60
HPVs on Watch List/Enforcement Staff	0.65	0.31	0.20	1.00	0.00	0.67	0.43
Number of FCEs at "A" Sources:							
	10.38	12.67	18.07	6.17	14.60	3.67	11.44
Reported/Inspector	7.19	5.96	7.11	10.83	7.6	5.67	7.07
Required/Inspector	6.75	9.50	12.65	4.63	10.43	2.93	8.25
Reported/Enforcement Staff	4.68	4.47	4.98	8.13	5.43	4.53	5.09
Required/Enforcement Staff							
Number of FCEs at "SM" Sources:							
	5.38	3.42	18.00	7.67	3.50	4.08	7.36
Reported/Inspector	1.63	1.12	3.40	1.77	0.92	0.73	1.65
Required/Inspector	3.50	2.56	12.60	5.75	2.50	3.27	5.30
Reported/Enforcement Staff	1.06	0.84	2.38	1.33	0.66	0.59	1.19
Required/Enforcement Staff							
Number of PCEs at "A" Sources:							
	18.85	30.00	2.93	60.50	46.60	25.50	26.58
	12.25	22.50	2.05	45.38	33.29	20.40	19.14
Number of PCEs at "SM" Sources:							
	2.62	6.42	3.43	17.67	8.80	5.00	6.16
	1.70	4.81	2.40	13.25	6.29	4.00	4.44
Reported/Inspector							
Stack Tests Conducted (June)/Major Source	0.33	0.26	0.49	0.42	0.28	0.57	0.39
Title V Annual Certs Reviewed/Inspector	12.15	7.17	10.07	14.00	1.00	8.75	8.72

Reported/Inspector
Reported/Enforcement Staff

NOVs Issued/Inspector	16.00	5.25	7.29	15.00	11.00	6.83	9.78
NOVs Issued/Enforcement Staff	10.40	3.94	5.10	11.25	7.86	5.47	7.04
Title V Annual Certs Reviewed/Title V Permit	1.17	0.86	0.78	0.93	0.11	0.95	0.82
Title V Permits/Inspector	10.38	8.33	12.86	15.00	9.50	9.17	10.60
Title V Permits/Enforcement Staff	6.75	6.25	9.00	11.25	6.79	7.33	7.63
Penalties Assessed/Inspector	\$155,786.46	\$28,062.12	\$26,377.64	\$40,995.83	\$20,723.00	\$63,957.02	\$58,984.00
Penalties Assessed/Enforcement Staff	\$101,261.20	\$21,046.59	\$18,464.35	\$30,746.88	\$14,802.14	\$51,165.61	\$42,494.00

B. Clean Water Act-National Pollutant Discharge Elimination System (NPDES) Enforcement Program

I. Introduction

State Review Framework Implementation

EPA Region 3 Water Protection Division (WPD), Office of Permits and Enforcement (OPE) conducted the NPDES portion of the State Review Framework for Pennsylvania's compliance monitoring and enforcement activities for the National Pollutant Discharge Elimination System (NPDES) program. In Pennsylvania, the NPDES program is delegated to the Department of Environmental Protection (PADEP). The review included a series of interviews, measurable data from the Permit Compliance System (PCS)¹ database (referred to as data metrics), and file reviews following the protocols of the State Review Framework (SRF) project. The timeframe for the review was the 2005 Federal fiscal year (October 2004 through September 2005).²

Interviews and file reviews were conducted in three of the six DEP Regional Offices, Northeast, Southcentral, and Southwest. These regional offices were selected because the inspection and enforcement activities in these regional offices best represented the core program and national priority implementation of the NPDES program in Pennsylvania. Stormwater construction files were also reviewed at the York County Conservation District.

PADEP Comment:

PA DEP recommends that EPA use the audit procedures and a report format similar to those used in the safe drinking water program.

NPDES Program in Pennsylvania

On May 4, 1983, EPA delegated the NPDES program to Pennsylvania Department of the Environment. This Memorandum of Agreement (MOA) was subsequently updated in 1991. PADEP is comprised of a Central Office in Harrisburg, six Regional Offices, and seventeen District Offices. Typically, PADEP uses the following organizational hierarchy: Office, Bureau, and Division. On June 10, 2005, PADEP's plan for a reorganization became effective and the primary functions of the NPDES Program are divided among:

- Operations Monitoring and Training Division (Operations Division)^{3*}, Bureau of Water Standards and Facility Regulation, Office of Water Management
- Data Systems and Analysis Division (Data Division)*, Bureau of Water Standards and Facility Regulation, Office of Water Management

¹ PCS was established as the national database for the NPDES program. Recently, legacy PCS data was migrated to ICIS-NPDES. PA is currently in the data migration process. PCS was the primary database active for PA in FY 2005.

² Traditionally, the NPDES inspection year has been slightly different from the federal fiscal year, so the 2005 inspection year was July 2004 through June 2005. This is no longer the case. Inspection data reflected in the data metrics is based on the inspection year applicable for FY 2005.

³ Short names marked with the asterisk (*) symbol are designated for purposes of this report only to facilitate ease of readability, and are not recognized by DEP in this manner.

- Conservation Districts and Nutrient Management Division (Agricultural Division)*, Bureau of Watershed Management, Office of Water Management
- Waterways, Wetlands and Stormwater Management Division (Construction Division)*, Bureau of Watershed Management, Office of Water Management
- Southeast Regional Office (SERO), Office of Field Operations located in Norriston, PA serving the following Counties: Bucks, Chester, Delaware, Montgomery and Philadelphia.
- Northeast Regional Office (NERO), Office of Field Operations located in Wilkes-Barre, PA serving the following Counties: Carbon, Lackawanna, Lehigh, Luzerne, Monroe, Northampton, Pike, Schuylkill, Susquehanna, Wayne and Wyoming with District Offices in Bethlehem, Pocono, Pottsville, Scranton, PA.
- Southcentral Regional Office (SCRO), Office of Field Operations located in Harrisburg, PA serving the following Counties: Adams, Bedford, Berks, Blair, Cumberland, Dauphin, Franklin, Fulton, Huntingdon, Juniata, Lancaster, Lebanon, Mifflin, Perry and York with District Offices in Altoona, Chambersburg, Lancaster, Reading, York, PA.
- Northcentral Regional Office (NCRO), Office of Field Operations located in Williamsport, PA serving the following Counties: Bradford, Cameron, Clearfield, Centre, Clinton, Columbia, Lycoming, Montour, Northumberland, Potter, Snyder, Sullivan, Tioga and Union with District Offices in Mansfield, Sunbury, Hawk Run, PA.
- Southwest Regional Office (SWRO), Office of Field Operations located in Pittsburgh, PA serving the following Counties: Allegheny, Armstrong, Beaver, Cambria, Fayette, Greene, Indiana, Somerset, Washington and Westmoreland with District Offices in Beaver Falls, Uniontown, PA.
- Northwest Regional Office (NERO), Office of Field Operations located in Meadville, PA serving the following Counties: Butler, Clarion, Crawford, Elk, Erie, Forest, Jefferson, Lawrence, McKean, Mercer, Venango and Warren with District Offices in New Castle, Knox, and Warren, PA.

Regulations (including general permits), policies, program guidance, and compliance assistance manuals for the NPDES regulated community are developed in the Office of Water Management which manages the support functions such as data management and training for staff that perform the compliance monitoring and enforcement activities. Certain functions are separated by type of NPDES facility. The Operation Division regulates discharges from traditional NPDES sources that routinely submit Discharge Monitoring Reports such as municipal and industrial, majors and non-majors, as well as industrial sources that discharge stormwater associated with industrial activity. Any combined sewer overflow (CSO) and sanitary sewer overflow (SSO) activities would also be managed by the Operations Division. The Agricultural Division regulates concentrated animal feeding operations. The Construction Division regulates stormwater associated with construction activities. The Data Division ensures certain NPDES

data requirements are populated into PCS while Regional Offices are responsible for other NPDES data requirements.

Regulatory functions, such as permit issuance, inspection, enforcement, and data entry, are performed by the Regional Offices. Traditional sources and industrial stormwater sources, compliance monitoring and enforcement activities addressing unauthorized CSOs and SSOs fall under the Water Program Manager. CAFOs and construction sites fall under the Watershed Program Manager.

A key change in the 2005 reorganization was the creation of the Watershed Program Manager at the regional office level. During portions of the review period, all NPDES related functions were under the Water Program Manager. From the interviews conducted with regions, there now seems to be an emphasis on staff becoming specialized in a particular field.

Review Team

EPA's review team consisted of Patricia Gleason, Chad Harsh, Ingrid Hopkins, Renee Searfoss, Lisa Trakis, and Ashley Toy.

File Reviews

A total of 56 facility files were reviewed including 20 SCRO files (5/1/06 – 5/3/06), 18 SWRO files (5/31/06 & 6/1/06), and 18 NERO files (6/13/06 & 6/14/06), and 2 YCCD files (5/1/06 – 5/3/06). It was made clear that number deviated from the 25 – 40 file range set forth in the SRF project protocols and their agreement was sought. PADEP did not object.

Files were selected by category in a random fashion from lists of eligible sources having either an inspection or a formal enforcement action dated within the 2005 Federal fiscal year review timeframe. To ensure random selection process, eligible files from both PCS and state databases were organized alphabetically by Ms. Toy in a spreadsheet for each category starting at line 2 leaving line 1 for column headings. OPE employees were asked to identify a number 1 thru x (where x = the number of eligible files) without being told the order of the facilities or the facility names. The number response was recorded. The selected facility was figured by subtracting one from the response and matching it to the row number in the spreadsheet. During the actual file reviews, substitutions were made.

Data Metrics

Ms. Toy pulled the data metrics from the OTIS State Review Framework website on February 22, 2006. An updated report was subsequently pulled to verify all the reported numbers. This information was provided electronically to Ms. Marylinda Freyermuth to disseminate to other PADEP representatives. Paper and/or electronic copies were also provided to Ms. Lisa Daniels and representatives of the Regional Offices during the interviews. The relationship of the data metrics with each of the 12 Elements is discussed under each Element.

Information Considered from Other Reviews and Other Sources

The national Enforcement Management System for the NPDES programs, revised in 1986, embodies all EPA guidance and policies related to compliance monitoring, compliance tracking, and enforcement activities as well as the following:

- Memorandum of Agreement Between the Pennsylvania Department of Environmental Protection and the Regional Administrator, Region III United States Environmental Protection Agency (the "Delegation Agreement"), May 4, 1983; updated in 1991;
- The Enforcement Management System-National Pollutant Discharge Elimination System (Clean Water Act), February 27, 1986, revised 1989, [<http://www.epa.gov/compliance/resources/policies/civil/cwa/emscwa-jensen-rpt.pdf>];
- U.S. Environmental Protection Agency, NPDES Compliance Inspection Manual, September 1994, and revision July 2004 [<http://www.epa.gov/compliance/resources/publications/monitoring/cwa/inspections/npdesinspect/npdesmanual.html>];
- Code of Federal Regulations, 40 CFR §§ 123.26 and 123.27;
- U.S. Environmental Protection Agency, Region 3 work product, Pennsylvania NPDES Program Integrity Profile, August 2004.
- National Wet-Weather Strategies [<http://www.epa.gov/Compliance/data/planning/priorities/cwa.html>]
- SSWM NOI database

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

The SRF protocols clarify the expectation that all states must submit annual inspection plans if the state proposes inspection coverage less than 100% for majors, and 20% for non-majors. The 20% inspection coverage is based on the interpretation of periodic or at a minimum of at least once in a permit cycle (limited to 5 years). Inspection coverage is governed by Federal regulations, the 1991 MOA, EPA's NPDES Enforcement Management System, and the annual State Section 106 Program and Compliance Inspection Plans. Below are highlights of how these documents address the planning and execution of inspections.

Federal Regulations - The regulatory requirements for a state's compliance monitoring program are cited at 40 CFR § 123.26. In short, states should conduct comprehensive surveys to identify facilities subject to the NPDES program but have not applied for permit coverage (i.e. discharging without a permit), conduct annual inspections at major dischargers, and conduct periodic inspections at all other NPDES regulated facilities.

Delegation Agreement/State Section 106 Program Plan/State Compliance Inspection Plan - The "planning" aspect of this Element is discussed in the 1991 MOA in which PADEP and EPA are to reach an agreement upon a list of major permittees to be inspected by the State each year which supports program goals and objectives. The compliance inspection plan is finalized to include, for majors, a schedule for inspections which identifies the facility name, inspection type and frequency; and, for all other facilities subject to the NPDES program, an estimate number of inspections. This inspection plan defines the universe.

What constitutes an "inspection" is also addressed in the 1991 MOA which requires inspections to be conducted in the manner consistent with the most recent edition of EPA's NPDES Compliance Inspection Manual(which is July 2004 for this review). This manual requires an inspection report to be completed for each inspection which can be reviewed by EPA.

Completed inspections shall also be reported to EPA.

Data/File Metrics:

NPDES facilities are generally defined as a major or non-major source. For purposes of the review, non-majors were further refined into two categories, those that routinely submit Discharge Monitoring Reports (DMRs) and those that do not. According to the FY 2005 Data Metrics Report, there were 386 majors, 4,046 non-majors with DMRs, and 3,097 other non-majors. Below are the results of the data metrics.

	Metric's Description	National Average	PA Statewide* Average - PCS
Metric 1a	Majors (National Goal = 100%)	65.9%	68.1%
Metric 1b	Non-Majors with DMRs (information only)		39.7%
Metric 1c	Other Non-Majors (information only)		3.8 %

After reviewing the facility lists for those receiving at least one inspection in FY 2005 under each of the categories, we found that certain facilities that are be required to submit DMRs were included in 1b, and all the facilities under 1c had permit numbers reflective of a general permit. It may be that the data metrics retrieval grouped all non-majors covered by an individual permit into Metric 1b, and all non-majors covered by a general permit into Metric 1c, irrespective of the facilities requirement to submit DMRs. PADEP does not enter effluent limits for non-majors into the permit Compliance System (PCS) which may help explain how the data metrics could not be pulled accurately.

Based on the file review, we are confident that inspections performed by PADEP or on behalf of PADEP are entered into PCS if the facility exists in PCS.

Findings:

Based on the data metrics, PADEP has an inspection coverage rate of 68.1% at majors, and 42.5% at non-majors with DMRs. This is adequate. This is in keeping with their work plan commitment. PADEP needs to verify that information which it is entering into PCS for 1b and 1c above is accurate.

Recommendation:

PADEP needs to verify that information which is entered into PCS for non-majors and other non-majors is accurate.

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

Data/File Metrics:

Inspection reports were eligible for the review if either the inspection took place during FY 2005 or was referenced in an enforcement action to support the findings even if the inspection dates went back a few years. We reviewed 99 inspection reports from the selected files. The review team found 57 of 99 inspection reports were adequately documented.

File Metric	Description	PA SRF Review
Metric 2a	Percentage of inspection reports that are adequately documented	57.6%

Discussion and Analysis:

The 2004 PADEP form entitled, “National Data System Coding” contained much of the same information required by EPA Form 3560-3. Checklists were created for the following areas: permit verification, records and reports evaluation, operation and maintenance, flow measurement, effluent/receiving waters evaluation, effluent characteristics and compliance schedules. The blank forms were provided during the on-site discussions. Other inspection form types may exist because at least in one file, a checklist for nine minimum controls was observed. The checklists employed a rating system for each line by line item. The main difference between the 2004 and 2005 DEP forms was the elimination of the rating system. A combination of a yes/no or menu style approach is now used. Each checklist allowed space for observations. An “Additional Comment” form was also included. The more comprehensive inspections utilized all forms. A key difference in PADEP forms, whether the 2004 or 2005 version, is the lack of single event violation codes.

The forms did not and still do not have a place dedicated to identifying whether or not photographs were taken. In a couple of instances inspection reports included a statements indicating photos were taken but most were silent on the issue. It was not obvious when photographs were taken because they were not kept with the report. Instead, photographs are typically in a separate folder.

In Pennsylvania, inspections play an important role in demonstrating violations at a facility. Inspectors do detect and document violations when they are out in the field. These observations then become the driving force for an enforcement action. Over half of the inspection reports, 57 of 99, adequately demonstrated either compliance or noncompliance. When a potential violation is detected, some inspectors were able to describe the observations made to sufficiently demonstrate a violation had occurred. Other inspectors alluded to a potential violation but left important observations out. Changes in PADEP staff during the review period include new inspectors who are gaining experience in different NPDES sectors.

Overall, the use of inspection forms do not lend themselves well in achieving the purpose of an inspection report, which is to organize and coordinate all inspection information and evidence into a comprehensive, usable document. The forms allow the inspector to write notes by providing adequate space to write their own observations and draw diagrams. Some inspectors write their notes in a very comprehensive, usable manner and focus on one issue at a time and meet the narrative requirements of the NPDES Compliance Inspection Manual. The quality of the narrative observations seems to be more dependent on the experience of individual inspectors rather than the use of the forms. The two main components of an inspection report that are not

well incorporated into the checklists are how documents and photographs may be used to as evidence to support a violation.

Based on the file review, we found that an inspection report was completed and in the file for each inspection 99.9% of the time. The paper flow from staff to file and the maintenance of the files thereafter was exceptional.

Finding:

57.6% of the inspections reviewed were adequately documented. This is a level of performance that should be improved. Inspection completeness was variable and dependent upon the inspector.

Recommendations:

(1) Despite the fact that the forms used to document an inspection report have been recently updated, there should be some additional improvements including adding single event violation codes.

(2) A photo log form, which could be included with the inspection report, may help the inspectors track and document “in the moment” field notes of each photograph taken and better fulfill the requirements of the NPDES Compliance Inspection Manual. Likewise, a document receipt log could be used to record which documents were reviewed and/or photocopied to take off-site. A comment section may be included to help identify key points in the documents that are used to identify the requirement in the document that the facility is not meeting, or how the document supports the determination that a permit requirement is not being met.

(3) PADEP should develop guidelines for what constitutes a minimum for an inspection report as well as management review procedures to ensure that inspections are complete and consistent.

(4) EPA will assist PADEP in identifying upcoming NPDES inspectors’ training.

PADEP Comments:

Regarding completeness, our guidances adequately address many of EPA’s concern. PADEP’s ongoing management, quality assurance, and staff meetings address these suggestions. Compliance specialists, supervisors, and operations chiefs meet three times a year, and all other staff members receive annual in-service training.

When documenting field observations, PADEP is continuously improving consistency. We have recently revised our inspection reports. They are primarily a “checklist” that prompts the inspector to review and note pertinent aspects of a complete inspection, thus alleviating some of this variability. The new report is more comprehensive and targets areas of concern that the program has determined to elicit proper permitting, monitoring, and compliance.

Single event violations are not a metric PADEP tracks in PCS-ICIS. As part of PADEP’s continuous quality improvement efforts, PADEP will consider changes during the next

form revision so that their inspection forms highlight important violations.

PADEP will consider adding a checkbox to the inspection report form, indicating that a photo was taken.

While PADEP’s field staff maintain photo logs, the inspection reports do not have specific locations to address photos. However, multiple pages in the inspection form allow the field staff to include pages that are appropriate for the type of inspection completed. One option includes a narrative page, which staff can use to record information about photos and documents retrieved as well as describe observations. PADEP will consider adding a checkbox to the inspection report form, indicating that a photo was taken.

PADEP’s field supervisors are responsible for quality assurance for inspections conducted by their staff. This is consistent with the program quality assurance guidelines that EPA has reviewed. Staff currently add comments in inspection reports in handwriting, which admittedly leads to a variety in report quality. On the other hand, comments in reports are often intended to head off violations before they become major issues. Our field staff have a consistent, professional presence in the regulated community, which leads to compliance and a good working relationship. Our field offices are taking steps to improve consistency through meetings, training, and review sessions. PA DEP requests EPA’s assistance through inspector training courses, which were historically offered to the States.

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

	Description	PA SRF Review
Metric 3a	Percentage of inspection reports which identify potential violation in the file within a given time frame established by the Region and/or State	59%.

The review team did not review any document that stated the timeframe for when NOV's are issued, it is our understanding that Pennsylvania issues NOV's generally within 15 days from the date of the inspection or receiving the sample analysis. In most circumstances, NOV's were issued within this timeframe. There is no set date that requires the NOV to be issued. The only firm date is to complete the inspection report within 30 days of the inspection or date sample analysis is received. Though not thoroughly reviewed, the review team generally saw dates on the sample analysis reports to be close to the date of the inspection. Only a few of NOV's were issued past 30 days, but generally within 45 days which may have been due to when the sample analysis was received. Only one was out of the norm being issued several months after the inspection. This particular NOV requested a pre-enforcement meeting.

Findings:

The review team determined 59% of inspection reports are completed in a timely manner. EPA observed that all violations were either noted in an inspection report or NOV.

There seems to be an escalating process moving forward with a formal enforcement action. Generally issuing an NOV with a pre-enforcement meeting occurs close to the time of the inspection. We did not find a written enforcement response guide. Review of most information is being done and findings of violations are documented, but it was difficult for us to describe how the specific pre-enforcement screening process is associated with any timeframe or Violation Review Action Criteria (VRAC). There was no reference in any file that a VRAC had been met by a facility. We did not review any state policy that identifies how the state should respond to a violation or when it is appropriate to take a formal enforcement action.

It appears that inspection reports are the pre-enforcement screening process for observations at the facility as well as other sources of information. As found in Element 2, PADEP meets many of the requirements of completing an inspection report, but does so in stages. This also causes the findings of violations to be completed in stages. PADEP makes findings of violations in inspection reports. Additional findings may be issued in an NOV subsequent to an inspection, sample analysis or record reviews. Observations from record reviews and sample analysis are to be apart of the final inspection report according to the NPDES Compliance Inspection Manual.

Reviewing DMRs as part of the inspection is very important in Pennsylvania because it is the only means of reviewing DMRs submitted by non-majors. An NOV may be issued directly in response to the observations from an inspection (and not a sample analysis or record review); but this is generally done to schedule a pre-enforcement meeting. Therefore, the inspection report and the NOV issued based on record reviews and sample analyses together constitute the timely identification of violations. For non-majors, the inspection, record reviews and evaluation of the sample analysis is the pre-screening process. For majors, the Quarterly Noncompliance Reports (QNCR) serve as an additional step because inspections are scheduled for facilities in SNC within 6 months from appearing on the QNCR.

Beyond identification of a violation there does not seem to be written process on how to respond to the violation. Something triggers PADEP into scheduling a pre-enforcement meeting, but we could not identify how this decision was made.

Recommendations:

(1) We recommend that inspection report forms be sent to the facility after the sample analysis and file reviews have been completed with a complete list of findings. A standardized format, including timeframe, of how to communicate an inspection finding, where the State is alleging a violation, should be developed.

(2) Identification of violations is discussed in EPA's EMS documents. An inspection report, DMRs and citizen complaints are all sources of information for use in an enforcement system. Procedures should be established to integrate the information from various sources about individual discharges into an effective data flow. The data flow should be designed so that it is readily accessible at appropriate points in the decision making process. Appropriate timeframes for the information flow should be established to ensure timely response to the information. An inspection report should be available within a week for review. The pre-enforcement screening

process involves a series of steps that should occur in the review of available information to efficiently sort out non-complying sources for appropriate enforcement action. EPA’s EMS sets forth the expectation that all inspection reports will be reviewed to determine if an enforcement response is necessary. The pre-enforcement screening should include procedures that review all information to determine if a facility triggered VRAC (consistent or more stringent with EPA’s VRAC). The principles of the EMS also apply to all NPDES regulated facilities, and not just to a select few.⁴ EPA has established the enforcement response guide for majors, where the states were to establish the enforcement response for non-majors.

PADEP Comment:

PADEP’s inspection reports are currently available on the day of inspection, with the exception of laboratory results. Field observations and known violations are documented in a field report that is left on site. Since samples are frequently collected—with results arriving two to three weeks later—a “complete” report is staged. All sample results are then forwarded to the responsible entity completing the field report. All violations at this time are documented in an Enforcement Information Form (EIF) that becomes part of the inspectional process and concludes the inspectional timeframe. The EIF in turn is the beginning of the timeframe for PADEP’s “Guidelines for Identifying, Tracking, and Resolving Violations.” This document addresses many of the timeframe issues identified by EPA.

The ability to process the inspection report in stages allows PADEP staff to document visual findings and make recommendations that may prevent effluent and other violations, yet preserving the ability to review effluent sampling analyses and take additional actions, as warranted.

PADEP’s “Guidelines for Identifying, Tracking and Resolving Violations for Water Quality” identifies how staff response to a violation and take enforcement action.

4 - Degree to which significant violations (e.g., SNC and HPV) and supporting information are accurately identified and reported to EPA national database in a timely and accurate manner.

Data Metrics:

Metric	Description	National Goal	National Average	PCS Results	State Results
4A1	Single Event Violations (SEVs) at Majors			17	9
4A2	SEVs at Non-Majors			0	0
4B1	Major Facilities in SNC			52	
4B2	SNC Rate		17.5%	13.7%	

⁴ The principles of an EMS are: 1. Maintain a source inventory that is complete and accurate. 2. Handle and assess the flow of information available on a systematic and timely basis. 3. Accomplish a pre-enforcement screening by reviewing the flow of information as soon as possible after it is received. 4. Perform a more formal enforcement evaluation where appropriate, using systematic evaluation screening criteria. 5. Institute a formal enforcement action and follow-up where-ever necessary. 6. Initiate field investigations based on a systematic plan. 7. Use internal management controls to provide adequate enforcement.

* SEVs are non-automated violations arising from inspections and compliance monitoring.

Data Metric 4A1 – PADEP does not enter SEVs into PCS as a means of tracking the compliance status of violations detected via inspection or compliance monitoring, nor designating facilities to be in SNC based on SEVs. There were seventeen (17) major facilities that had “active” SEVs during FY 2005. Both EPA and PADEP have entered eight (8) SEVs into PCS. The SEVs entered by PADEP are not true SEVs. It appears that an SEV is created as a placeholder for the purpose of linking the enforcement action to a violation. The SEVs entered by EPA for nine (9) facilities which were pretreatment violations.

Data Metric 4A2 – PADEP does not enter SEVs into PCS as a means of tracking the compliance status of violations detected via inspection or compliance monitoring.

Data Metric 4B1 – All fifty-two (52) facilities in SNC were based on DMR data and/compliance schedule violations.

Data Metric 4B2 – PADEP’s rate of SNC is 13.7% which is lower than the national average.

File Metric:

Metric	Description	
4D	Percentage of SNC determinations that are accurately reported	12/22 = 55%

This element only pertains to Majors. There were twenty-three (23) files for Majors randomly selected for review. Four (4) of these reviewed facilities triggered SNC at least one-quarter in SNC during the review period, and were included in Metric 4B1. One (1) file had no information to review for SNC; and, therefore is excluded from this Metric. Eleven (11) files contained information indicating the facility had SNC violations such as unauthorized discharges, pollutant pass-throughs, bypasses, and spills. Three (3) of the four (4) facilities already in SNC had additional SNC violations that were not reported to EPA. The other facility in SNC was inspected as a result of the SNC violations. The inspection report documented information obtained about the effluent violations.

A unique aspect of PADEP is that they have a process in place to enter inspection findings into a state database called eFACTS. The database maintains the inspection dates, as well as findings and any NOVs that are issued as a result. We also observed some instances where SEVs detected through other types of compliance monitoring activities or self-reported spills were being entered into eFACTS. However, these other types of compliance monitoring activities or spill reports are entered with an inspection date. There is no means of making a distinction of how the violation was detected. The review team found it difficult to search for NPDES permitted facilities because the permit number is not a primary identifying feature.

Finding:

As PADEP does not enter SEV data into PCS for inspection based or self-reported violations, often it is the case that SNC are not identified to EPA in a timely manner. Inspection reports for

majors are not submitted to EPA. eFACTS is available for public access to see the findings from an inspection. The files with SNC level violations contain sufficient supporting evidence to document SNC; however, there is no record in the file that supports that the findings of the inspections or record reviews are reviewed to make SNC determinations. The only SNC identified to EPA are those resulting from DMRs and compliance schedule milestones.

Recommendations:

PADEP needs develop a process for making SNC determinations for single event violations and reporting this information. This process will need to be developed in conjunction with the RIDE policy upon implementation.

PADEP Comment:

In Pennsylvania’s Section 106 work plan, PADEP has not agreed to enter single event violations (SEV) into PCS-ICIS.

5. Degree to which the State enforcement actions require complying actions that will return facilities to compliance in a specific timeframe.

Data/File Metrics

File Metric	Description	PA SRF Review
Metric 5a	Percentage of formal state enforcement actions that contain a compliance schedule of required actions or activities designed to return the source to compliance. This can be in the form of injunctive relief or other comply actions.	33%
Metric 5b	Percentage of actions or responses other than formal enforcement that return source to compliance.	28%

Files evaluated under 5a and 5b are a small subset of all PADEP files. EPA recalculated the case summaries data and need to make the following adjustments:

5a files evaluated=24, 8=33% Yes and 16=67% No

5b files evaluated=14, 4=28% Yes and 10=72% No

Findings:

There were several cases where Act 537 (Planning) was used to require injunctive relief instead of a formal enforcement action. PADEP does not have a policy or guidance as to when an Act 537 revision is appropriate vs when an enforcement action is appropriate. Response to SSOs, wildcat sewers, and other POTW issues are inadequate. Milestones and schedules do not appear to be enforceable. DEP uses the planning process, and only when that is exhausted, does DEP consider enforcement and the establishment of an enforceable schedule.

Recommendations:

A strategy needs to be developed to insure that compliance with the Clean Water Act and the NPDES regulations is maintained and describes when it is appropriate to use Act 537 for compliance purposes. When violations occur, it is critical to have a fair and equitable process in place to return that facility to compliance status as quickly as possible. All formal state enforcement actions need to contain a compliance schedule of required actions or activities that returns the facility to compliance.

6. Degree to which the State takes timely and appropriate enforcement actions, in accordance with policies relating to specific media.

EPA Policy –The NPDES EMS established an Enforcement Response Guide (ERG) for various types of violations, and required the timely and appropriate enforcement for majors, adding a time factor to the various enforcement responses. The EMS gives flexibility to the states on the timely and appropriate nature for handling violations at minors. At the time of writing EPA’s ERG, EPA’s ability to assess penalties was only proposed. There does not seem to be a clear distinction when a penalty must be assessed. However, for majors, the state must take timely and appropriate enforcement for facilities that are in SNC. The significance of SNC has been discussed. A quarterly enforcement meeting takes place among the agencies which allows EPA to weigh-in on the enforcement decision for facilities in SNC. In practice, Region 3 believes penalties should be considered in all SNC cases. When no formal enforcement action is determined, a written justification is required for these cases specifically.

Data/File Metrics

Data Metric	Description	National Total/Average	PA Statewide* Average - PCS
Metric 6a	Major facilities without timely action taken to address SNC	7.7%	6.7%
Metric 6b	Number of Actions	NA	7

File Metric	Description	PA SRF Review
Metric 6c	Percentage of SNCs addressed appropriately	25%

Findings:

DEP does not take timely enforcement actions to address significant non-compliers. PADEP took formal enforcement actions against seven (7) major facilities. There were fifty-three (53) facilities that were in SNC based on DMR data or failure to meet compliance milestones. One (1) of the formal enforcement actions issued was to a facility in SNC; however, eleven (11)

facilities in SNC paid stipulated penalties under existing orders.

Recommendations:

PADEP needs to take timely enforcement actions to address significant non-compliance. When looking at PCS there appears to be more violations that triggered 2 quarters of non-compliance. These SNCs should have been addressed with formal enforcement actions. There could be more SNCs that were not identified or entered properly into PCS and therefore not addressed appropriately.

EPA will meet with PADEP to review the timely and appropriate policy regarding SNC and refocus EPA/PADEP quarterly calls to ensure PADEP comports with the policy with regards to timeliness.

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

File Metric	Description	PA SRF Review
Metric 7a	Percentage of formal enforcement actions that include calculation for gravity and economic benefit consistent with applicable policies	0/3 = 0%

Findings:

For this element, the documentation of penalty calculations used to support a penalty assessed, sought, or agreed to by the State serves as the basis for this measurable outcome. Out of the 236 formal enforcement actions, 95 had penalties. Of these formal enforcement actions that included penalties, the state had three actions in which the penalty calculations had been preserved.

PADEP has had a penalty policy since at least 1988 according to the Enhancement of the Penalty Calculation Methodology. Though this document was not dated, blank samples of the three different penalty matrices were dated February 18, 2004. These matrices were similar in nature just slightly modified to be used in different situations. The most important distinction is that economic benefit was a line item in one of the matrices. However, it was unclear how the value entered for economic benefit was incorporated into the total penalty. In the penalty policy reviewed, there was no reference to the BEN Model.

The penalty matrix used in the three cases reviewed did not match any of the three “enhanced” versions. They appeared to be the original penalty methodology matrix. The older and enhanced versions of the penalty calculation methodology takes into account the nature, circumstances, extent and *gravity* of the violation, or violations, and the degree of culpability. DEP has also included factors that fall under the “other matters as justice may require” category which have been tailored to the states needs. The enhance methodology added consideration for any prior history of such violations. All three penalty actions reviewed seemed to be calculated within the context of the penalty matrix, but did not include economic benefit.

The enhanced penalty calculation methodology adequately addresses four of the six statutory factors. PADEP’s methodology is creative in being tailored to state needs, while maintaining much of the integrity of EPA’s penalty policy. It is unclear how economic benefit is considered in all penalty calculations. The enhanced penalty calculation methodology seems like it would ensure consistency if used by all regions.

Recommendation: PADEP should document penalty calculations to support assessed and final penalties. Calculations should include gravity and economic benefit.

PADEP Comment:

All enforcement actions that may result in a settlement or penalty use the penalty matrix, and the economic benefit is determined case-by-case. For instance, if a major facility does not participate in a DMR-QA study, the cost of the study is included in the penalty. The decision to calculate a possible economic benefit is determined early in the processing of the inspection, once completed. The EPA BEN is available, but in most instances, the BEN model requires excessive data that is not easily accessible and is frequently too burdensome to be of value. PA DEP noted that calculations and justifications are exempt under the Freedom of Information Act.

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

Data Metric	Description	National Total/Average	PA Statewide* Average - PCS
Metric 8a	Actions with penalties entered into PCS	NA	0
Metric 8b	Percent of enforcement actions with penalty	NA	0%

- In Pennsylvania’s Section 106 work plan, PADEP has not agreed to enter enforcement actions into PCS-ICIS other than high-level enforcement actions for major dischargers (i.e., Consent Order & Agreement, DEP Order, and Consent Decree).*

File Metric	Description	PA SRF Review
Metric 8c	Percentage of final enforcement actions that appropriately document penalties to be collected	19%
Metric 8d	Percentage of final enforcement actions resulting in penalties	81%

Findings:

For this element, the national database and the files with formal enforcement actions in which a penalty assessed, sought, or agreed to by the State serve as the basis for the measurable outcome. However, PADEP does not enter penalty amounts or enforcement actions for non-majors into the national database, but does submit copies of enforcement actions for majors and non-majors on a routine basis. The monthly activities are summarized in tables which include information on penalties paid during the month. This information was used to meet the requirements of the data metrics

Out of the 16 formal enforcement actions reviewed, 13 had penalties. Of these formal enforcement actions that included penalties, the state had three actions in which the penalty calculations had been preserved. In all the enforcement actions reviewed, the formal enforcement actions which included penalties were initiated and settled within the same action. There was one unilateral formal enforcement action that sought a penalty in one document and settled the action in another document.

All three penalty actions which had documentation of penalty calculations documented a high and a low value. The value in the Consent Order and Agreements were within the allowable range of the penalty matrix used. There did not appear to be any departure from the penalty calculation methodology to necessitate written justifications. The files also included proof of payments for penalties paid. Only two COA documents contained information regarding collection of economic benefit and gravity portions of the penalty.

Recommendations:

Calculations for economic benefit and gravity need to be included in penalty assessment documentation. Actions with penalties need to be entered into PCS.

PADEP Comment:

PADEP has a number of penalty calculation guidance available for staff. These guidance provide methodologies that address the magnitude (gravity) of the violations. They incorporate the damage, willfulness, history, cooperation, Instream Waste Concentration, etc. It may not be evident to those unfamiliar with the penalty process that “economic benefits” is part of the penalty calculation. When the violator has reaped a clear economic benefit, PA DEP includes it in the penalty amount.

In Pennsylvania’s Section 106 work plan, PADEP has not agreed to enter penalty amounts into PCS-ICIS.

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.

Data/File Metrics

	Description	PA Total/ Average
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Metric 9a	State agreements (PPA/PPG/SEA, etc) contain enforcement and compliance commitments that are met	1
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Findings: PADEP is not tracking all of the minimum data requirements. For specific findings, see Findings for elements 4, 6, and 8. The 2005 106 grant workplan requires that:

1. Permit and enforcement related compliance schedules are entered into PCS such as CSO Schedule Events: Nine Minimum Controls (04503); Long term CSO Control Plan (04603); and CSO Draft LTCP and schedule (045PA) All schedules are to be entered 10 days upon receipt of action.

Recommendation: For specific recommendations, please see Recommendations for elements 4, 6 and 8.

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

Data/File Metrics:

	Description	PA Total Average - PCS
Metric 10a	Regions should evaluate what is maintained in PCS by the State and ensure that all minimum data elements are properly tracked and entered according to accepted schedules.	Evaluated

Findings: Region has found that not all of the minimum data elements are properly tracked and entered as required under the FY 2005 106 workplan.

Recommendations: For specific recommendations, please see Recommendations for elements 4, 6, and 8.

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

Data/File Metrics:

Data Metric	Description	National Goal	PA Total - PCS
Metric 11a	Actions linked to violations	80%	0%

Findings: The minimum data requirements entered are not complete and/or accurate. For specific findings, See Findings 4,6, and 8.

Recommendations: For specific recommendations, please see Recommendations for elements 4, 6, and 8.

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

Data/File Metrics:

	Description	National Total/Average	PA Total Average-PCS
Metric 12a1	NPDES Majors	NA	386
Metric 12a2	NPDES non-majors with DMRs	NA	4,046
Metric 12b1	Majors: correctly coded limits	88.2%	91.5%
Metric 12b2	DMR entry rate at majors	95.5%	99.7%
Metric 12b3	Rate of manual override of SNC to a compliant status	NA	12.5%
Metric 12c1	Limits at non-majors with DMRs	NA	1.6%
Metric 12c2	DMR entry rate for non-Majors	NA	20.6%
Metric 12d1	# of facilities inspected	NA	2,354
¹ Metric 12d2	Total # of inspections performed	NA	3,880
Metric 12f2	Total # of state NOVs	NA	0
Metric 12g1	Noncompliance rate in database at non-major facilities	NA	0.9%
Metric 12g2	Noncompliance rate reported to EPA under the ANCR for non-majors.	NA	0
Metric 12g3	Number of non-major facilities in database with DMR non-receipt for three continuous years	NA	12
Metric 12h1	Facilities with formal actions	NA	7
Metric 12h2	Total formal actions taken	NA	7
		NA	0

Metric 12i1	Action with penalties		
Metric 12i2	Total state penalties	NA	0

Findings: For specific findings, please see Findings for elements 4, 6, and 8.

Recommendations: For specific recommendations, please see Recommendations for elements 4, 6, and 8.

Pennsylvania Compliance and Enforcement Evaluation (Resource Conservation and Recovery Act (RCRA) Program Media)

Introduction

The RCRA portion of this evaluation entailed reviewing 90 inspection/enforcement case files, primarily from federal fiscal year 2005 (there had been 94 files originally identified for review; two of them were found to have had no inspection or enforcement taken during the review period, and two other files were not available for EPA's review). The Region gathered data directly from RCRAInfo (the RCRA Subtitle C program's national data system) and EPA Headquarters supplied data from OTIS for additional state specific and national average information. The information from the file reviews and data pulls were used to answer specific questions covering 12 topics of element areas regarding State inspection implementation, State enforcement activity, State Grant Work Plan requirements, and data integrity.

PADEP's RCRA Subtitle C program is operated in a decentralized manner. Central Office oversees, coordinates, and gives direction regarding the enforcement/compliance program, which is carried out through the six Regional Offices. Regional Offices conduct the field evaluation inspection and sampling, identify violations, and are responsible for the initial development of all enforcement actions.

The files reviewed were not randomly selected. The files selected for review included the universe of Significant Non-Compliers (SNCs) identified by the State in FY05, facilities in which the State had taken enforcement action, and facilities for which multiple inspections were performed in FY05. After identifying facilities across the state which met this criteria, it became obvious that the bulk of these facilities were in the Southeast Regional Office (located in Norristown), Southwest Regional Office (located in Pittsburgh), and the Northwest Regional Office (located in Meadville). We therefore, selected these regional offices to conduct the file reviews. Resource constraints would not allow file reviews in all of Pennsylvania's regional offices. The remaining facilities were randomly selected facilities which had been inspected by PADEP during FY05 for which violations had been identified. Therefore, a high percentage of the facility files which were selected for the review had a history of violations and would not be considered a "neutral" selection of the universe of Pennsylvania facilities; thus, findings cannot be extrapolated to the State program as a whole. Data supplied from OTIS covers the State as a whole; in some instances, where practical and useful to the review, data has been broken out by State Regional Offices.

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

Core Program - Inspection coverage for operating TSDF (Treatment, Storage, and Disposal Facilities) - Region/state should inspect all operating TSDFs within two years. Time frame of the data pull is FY04 and FY05.			
Pennsylvania only	National Average (State only)	Pennsylvania and EPA Region 3 combined	National Average (Combined)
93%	90.6%	93%	93.9%
Core Program - Annual inspection coverage for LQGs (Large Quantity Generators). National guidance calls for 20% annual coverage. Time frame of the data pull is FY05.			
Pennsylvania only	National Average (State only)	Pennsylvania and EPA Region 3 combined	National Average (Combined)
38%	26.2%	38%	28.2%
Core Program - Five year inspection coverage for LQGs (Large Quantity Generators). National guidance calls for 100% inspection coverage of LQGs over five years. Time frame of the data pull is FY01 through FY05.			
Pennsylvania only	National Average (State only)	Pennsylvania and EPA Region 3 combined	National Average (Combined)
79%	67.8%	81%	73.0%

Findings:

This element was satisfied to a high degree; the State has exceeded the national averages for TSDF and LQG inspection. There are no other inspection requirements identified in the Core Program Guidance. Please see Element 9 for a further discussion of obligations under the State grant work plan.

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

PADEP’s Hazardous Waste Management Compliance/Enforcement Strategy states “Field inspections or field evaluations are documented by completion of an inspection checklist and narrative report.” Nearly all inspection reports reviewed contained a narrative report. Approximately three quarters of the inspection reports reviewed contained one or more checklist as part of the report, and a large number also included documentation such as photos and analytical sampling results.

Regional Office	SE	SW	NW	Total
Number of inspection reports reviewed	77	51	42	170
Number (percent) of inspection reports which contained narrative	76 (99%)	51 (100%)	42 (100%)	169 (99%)
Number (percent) of inspection reports which contained checklists	67 (87%)	34 (67%)	23 (55%)	124 (73%)

PADEP’s Bureau of Waste Management Document Number 250-4000-001 (Citing Inspection Violations) seeks to further establish a uniform methodology across all PADEP Regions for citing violations. It states:

When, during the course of an inspection, the inspector notes a violation of the regulations, statutes, enforcement orders, agreements or permit conditions, the inspector shall bring the violation to the attention of the regulated facility and shall note the violation in the inspection report on the date of the inspection. ... Occasionally, due to a required regulatory clarification, sample results, records production, etc. it may not be feasible to cite a violation on the initial date of inspection. In these instances, the inspector will mark the inspection report checklist for the potential violation under the column headed “To Be Determined”. A copy of this ‘preliminary report’ will be left with the facility. When the regulatory clarification or sample result, etc., is received by the inspector, the inspector will complete the inspection report for the facility. If additional violations are determined during the facility inspection, they should be cited on the inspection report with an explanation on the comments page. If the unresolved issues are determined not to be violations after the receipt of the sample results or regulatory clarification, the facility will be noted as ‘in compliance’ on the inspection report.

It appears in some instances that the inspector elected “not to evaluate” items with regard to their compliance status, rather than identify a violation. From our review, in these instances it seems that the inspector believed violations may have been present, but avoided making a formal violation determination by “not evaluating” this area; it does not appear that the inspectors consistently follow up their “preliminary” findings with a “completed” report as suggested in the Waste Management Document Number 250-4000-001, cited above. (This is considered a separate issue from instances where inspection reports identified violations that did not get entered into the data system, which the reviewers viewed more as a data management issue.) The eight instances where this issue was identified are listed below:

- Facility 1-1 had “potential” violations identified in the inspection report which were not entered into RCRAInfo, including (1) cracks, peeling of containment pad, (2) misidentified, unidentified material on pad, and (3) bulb labeling. The reviewers understand how item number 2 could be potential, since it’s not obvious that the material at issue was actually hazardous waste, but the other two seem to be actual rather than potential violations, and should have been entered into the data system. In response, the State reported that the inspector did not determine the cracking/peeling to be a violation and was advising the facility to address the situation before it deteriorated to the point where it would be a violation. The material on the pad was not “unidentified” and it was cited as a continuing violation. It is not known why the bulb boxes were not cited as a violation.

- Facility 5-5 had some violations entered in RCRAInfo associated with the 1/27/05 inspection, but there was nothing in the system with respect to training requirements. The narrative of this inspection says “Training documentation for personnel involved in the management of hazardous waste was not reviewed. Training should be done yearly and documented.” This seems to suggest that the inspector had a concern about training, but made a choice not to “formally” review this item, so as not to have to make the compliance determination. The checklist for this, as well as the previous inspection (1/29/04), listed training as “Not Determined”.

- Facility 5-8 was inspected on 5/5/05. The narrative of this inspection says “[Facility 5-8] should perform a physical inspection of the hazardous waste tank conservation vent annually.” It appears that the inspector had concerns about this item but did not make a formal compliance determination on this point, and no related violations was entered into the system. In response, the State reported that it is believed this item was raised as a reminder to the facility, and that the inspector did not have adequate evidence at the time of the inspection to support citing this as a violation.

- Facility 5-9 appears to have identified some violations which were not entered into RCRAInfo. The report narrative states that the PPC plan should be updated (the implication is that the plan is out of date), but no related violation was entered into the system. In addition, the checklist identified non-compliance of Subparts AA/BB/CC, however, this is neither mentioned in the narrative, nor entered into RCRAInfo as a violation. Satellite violations noted during inspection were in RCRAInfo.

- Facility 5-15 was inspected on 8/9/05. The narrative discusses a waste determination that was not made, and an unlabeled tank; these (potential) violations were not in RCRAInfo. This appears to be a data entry problem on EPA’s part, as the completed data entry sheet was available as part of the file.

- Facility 5-26 was inspected twice during the review period. During the first of these inspections, the facility was cited for failing to notify of a change in name and change in

status (from SQG to LQG), but it appears that DEP elected not to review compliance with the LQG requirements such as training, contingency planning, reporting, etc. Statements in the reports suggest that the facility was probably in violation of these requirements, however, they were marked as “not determined”. During the second inspection, the LQG requirements were identified as “not in violation”.

- Facility 6-11 had inconsistent information on the two checklists which were part of the inspection report. Personnel training was listed as “not determined” on the Hazardous Waste checklist, but was listed as “compliance” on the Permit By Rule checklist. Further, the narrative discusses that tarps covering the tanks might not be adequate to assure compliance, but the checklist indicated that compliance with container requirements was “not determined”. The State responded that, though not addressed in the 7/05 inspection report narrative, the inspector recalled evaluating personnel training requirements for the individuals associated with the permit-by-rule activities, but did not conduct a comprehensive evaluation of the training requirements for other facility personnel. Clear violations associated with the cut tank containers were observed and documented during a prior State inspection (7/04). The company made physical and operational improvements and were determined to be in compliance during a follow up inspection (11/04). The inspector provided detailed description of the condition of the cut tank containers in the 7/05 report narrative and restated “the Department’s concerns over the use of the cut tanks”. The company ceased use of cut tanks for RCRA waste storage as of the 4/06 inspection. The question as to whether tarps over the cut tanks ensured compliance with all regulatory requirements has been repeatedly debated within the State and with the company. Given the condition of the cut tanks on 7/05 and the history of debate on this issue, the State believes it was appropriate for the related checklist items to be marked as compliance “Not Determined”.

- Facility 6-23 had one violation listed in RCRAInfo, which was a labeling violation that was corrected during the inspection. However, the narrative portion of the report also identified unlabeled satellite containers, training, and manifest violations which were not entered into RCRAInfo; these items were checked as “did not evaluate” (training and manifest) or “compliant” (satellite) on the State inspection checklist. The State responded that the inspection revealed that a container in the satellite accumulation area was not labeled, but corrected at the time of inspection. It was noted as a violation in the inspection report as a labeling violations (not as a satellite violations) and so noted on the RCRA data entry form. The personnel training issue was marked as “Not Determined” because there was some confusion as to when the training was last completed; the facility’s consultant had most recently completed it and this information was subsequently provided to the State. The requested copy of the manifest was located and provided to the State; this is the reason this item was not marked as a violation.

Based on data available from RCRAInfo State-wide, for one quarter of the RCRA inspections performed during the review period, violations were identified. By PADEP Regional Office, this violations identification rate ranges from 20% to 37%, as can be seen in the chart below:

Regional Office	SE	NE	SC	NC	SW	NW	Total
Number of inspected facilities (FY05)	655	66	157	113	145	176	1,321
Number of inspected facilities with violations identified (FY05)	133	23	40	34	54	42	326
Percentage of inspected facilities with violations identified (FY05)	20%	35%	25%	30%	37%	24%	25%

Findings:

It does not appear that the State is consistently following its guidance with regard to citing violations.

Recommendation:

The State should take steps to more consistently follow their guidance with regard to potential violations. The guidance on citing violations suggests that potential violations are to be marked at “to be determined” on the preliminary report, and the inspection report completed with a violation or compliance determination, after clarification/sampling results/ etc are received.

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

Findings:

This element was satisfied to a high extent. Of all the inspection reports reviewed, there were no instances where it could be demonstrated that the reports, including identification of violations, were completed more than 50 days after the inspection. The SRF guidance requirement is for inspection reports to be completed within 50 days of the inspection. See Element 4 for additional discussion of identification and entry of violations into the national data system.

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

Identification of violations in RCRAInfo:

For 79 of 90 facility files reviewed, the violations were accurately reflected in RCRAInfo; however, for 11 facilities this does not appear to be the case.

- Facility 1-5 had one violation identified in the narrative portion of the report (open container) which did not get entered into the system. Others, such as unlabeled and undated containers, were entered into RCRAInfo. The State responded that the staff who performed this inspection was a new Environmental Trainee with the Waste Management Program, and misunderstood that corrected violations are to be entered into all applicable data systems as violations.

- Facility 1-14 had one violation identified in the inspection report (failure to get/retain TSD signed/returned copy of manifest) which did not get entered into RCRAInfo. Other violations did get entered into the system. The State responded that the staff who performed this inspection was a new Environmental Trainee with the Waste Management Program who did not completely understand data management processes.

- Facility 1-19 had one violation from the 3/9/05 inspection which was not entered into RCRAInfo (manifest discrepancies) and one violation from the 4/18/05 inspection which was not entered into RCRAInfo (failure to make a waste determination). A number of other violations for each inspection were entered into the system. The State responded that the manifest discrepancy may not have been reported because copies were faxed to the facility during the inspection, but agrees that it should have been reported to the system. It is not clear why the waste determination violation was not entered into the data system.

- Facility 1-20 had one violation identified during the 5/19/05 inspection which was not entered into RCRAInfo (open containers). The other violation identified during that inspection was entered into the system. The State responded that the staff who performed this inspection was a new Environmental Trainee with the Waste Management Program, and misunderstood that corrected violations are to be entered into all applicable data systems as violations.

- Facility 5-3 was inspected several times during the review period. Violations identified during 1/13/05 inspections were not listed in RCRAInfo. It appears that the same violations were also identified/confirmed during inspections conducted on 1/31/05 and 4/6/05; violations from those inspections were listed in the system.

- Facility 5-27 had one violations identified during the 5/25/05 inspection (manifest completed under wrong ID number) that did not appear to have been entered into RCRAInfo. All other violations identified during that and the other inspections that year were in the system. Further investigation revealed that the RCRAInfo data entry sheet was found to have been properly completed by the State inspector, and listed all violations. The problem appears to be a data entry error on the part of EPA.

- Facility 5-34 had a number of violations identified during the inspection of this transport facility, included manifest violations and storage greater than 10 days; while the inspection was entered into RCRAInfo, the violations were not.

- Facility 6-14 was inspected on 10/7/04; the inspection narrative identified problems with dating of containers, which were corrected at the time of the inspection, but this violation was not entered into RCRAInfo. The State responded that this follow up inspection revealed that a few containers in the storage area did not have the accumulation start data on them, but were labeled as "satellite". This problem was corrected immediately, observed by the inspector and documented in a written response from the company. This was considered to be a violations in the inspection report, and it was an oversight not to include this violation on the RCRAInfo data entry form.

- Facility 6-15 had two violations entered into RCRAInfo (undated containers and open containers). However, the inspection report narrative identified two additional concerns, which were improper placement of containers ("many drums had to be moved to see the labels") and potential failure to make waste determination/mismanagement of containers ("... drums were observed outside the fence and in the area where empty drums are accumulated prior to being sent to a drum re-conditioner. The drums were not labeled or identified in any way as to what was in them. A determination should be performed ...") which were not entered into RCRAInfo. The State responded that discussions with the inspector confirmed that the waste storage area was congested and it may have been appropriate to indicate a violation, but it should be noted that the wording in the regulations concerning the actual aisle spacing requirement is somewhat obscure:

Section 265.35 Required aisle space. The owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

The second item of concern involved three partially full containers and one completely full container of unknown material stored outside. The inspector requested in writing that the company determine the contents of the containers and report back to the State. The company submitted a letter stating that the containers contained frozen rainwater; they were taken inside, allowed to thaw and the contents were pumped to the sanitary sewer system.

- Facility 6-18 was assessed a penalty for improperly transporting and accepting waste that was deemed to be a hazardous waste; this violation was not entered into RCRAInfo. The company entered into a Consent Assessment of Civil Penalty (CACP) and paid a \$35,000 penalty for failing to comply with their residual waste general permit. All violations cited in the inspection reports, NOVs and CACP documents were from Chapter 298 (Management of Waste Oil) of the Residual Waste Regulations and Act 97; a decision was made by the State at that time not to track this in RCRAInfo.

- Facility 6-24 had six inspections performed during FY05, with no violations entered into RCRAInfo. A review of the inspection reports revealed that the 7/21/05 inspection identified a shipment which was received without a manifest. This violation was not entered into RCRAInfo. The State responded that the 7/21/05 inspection was conducted based on the company's self-disclosure of accepting a load of hazardous waste without a manifest, which was subsequently provided. In hindsight, this should have been indicated as a violation, with appropriate return to compliance designation, in RCRAInfo.

It should be noted that the reviewers' experience in case development supports the concept that the potential violations initially identified during the inspection are not always the same violations which are alleged in the follow up enforcement action. Information and records can come to light after the inspection which resolve the suspected violation(s); in addition, suspected violations cannot always be proven based on the evidence which the regulators are able to gather.

Determination and entry of SNC violations:

Significant Non-Compliers (SNCs) are defined in EPA's Hazardous Waste Civil Enforcement Response Policy (December 2003) as "those violations that have caused actual exposure or a substantial likelihood of exposure to hazardous waste or hazardous waste constituents; are chronic or recalcitrant violators; or deviate substantially from the terms of a permit, order, agreement or from RCRA statutory or regulatory requirements."

Pennsylvania inspected 1185 facilities in FY05, with 16 facilities identified in SNC status based on violations discovered during those inspections, for a rate of 0.014 new SNCs per facility inspected. The national rate of SNC identification by States in FY05 was 0.031 new SNCs per facility inspected.

	Pennsylvania	National
SNCs identified in FY05	16	--
Facilities inspected in FY05	1185	--
SNC per facility inspected	1.4%	3.1%

Of the files reviewed, 12 facilities were identified by the State as SNC violators, and this data was entered into RCRAInfo. However, in the reviewers' opinion, there were 10 additional facilities with violations which should have been designated as SNC, and 15 other facilities which might be considered to be SNC. That is, there were 10 facilities which EPA would have identified as SNC, and we would expect that some (although not necessarily all) of these other 15 facilities should have been designated as SNC.

Regional Office	SE	SW	NW
Number of reviewed files with State identified SNCs	4	6	2
Number of additional files with violations which should be considered SNCs	3	4	3
Number of additional files with violations, any of which could possibly be considered SNCs	7	7	1
Number of files appropriately designated as "not SNC" (this includes facilities with non-SNC violations as well as facilities where no violations were found)	19	15	19

Facilities which **the reviewers believe were in Significant Noncompliance (SNC)** but were not identified as such by the State:

- Facility 1-10 was inspected two times during the review period to investigate the disposal/dumping of perc (and other related hazardous waste) on the ground on-site. The facility is CESQG, but dumping of perc is a serious violations that would seem to qualify as SNC. The State responded that the violations were corrected within one month of the original inspection.
- Facility 1-16 is a SQG, which was inspected on 10/14/04, and found to have stored hazardous waste for greater than one year. This appears to be a repeat of the same violation which was identified during an inspection on 10/22/03 (the year before). No SNC was identified in the data system, however, EPA would consider the repeating nature of the violation to be an important factor, and probably consider this facility to be a SNC.
- Facility 1-29 is a LQG, which did not comply with a number of the requirements for 90-day generators; containers were not label as "hazardous waste" (containers were labeled either "wet waste" of "dry waste"), were not dated, there was no contingency plan or training provided, weekly inspections were not being performed, Biennial Report had not been submitted, and there were discrepancies on the manifests (lead/chromium waste identified as D005, which is the code for barium waste). No SNC designation was

entered into the data system, however, EPA would probably have identified these violations as SNC. The State responded that this facility had a change in status from SQG to LQG. However, as it took almost a year to come into full compliance, the State agrees that this could have been identified as a SNC.

- Facility 5-4, a CESQG, was the subject of a 10/4/04 Consent Agreement, includes \$4,000 penalty addressing violations identified during 5/28/04 inspection (sludge from solvent recycling unit (F003/F005) was being disposed on in a municipal landfill). No SNC was identified in the data system; EPA normally considers violations which are serious enough to be addressed by a penalty action to be violations which should have been considered SNC. The State noted in their response that all violations were properly cited and addressed with a penalty action. The issue here is one of data management.

- Facility 5-19 was assessed a civil penalty of \$2,500 in response to violations discovered during a November 2004 inspection. No SNC was entered into the data system; EPA normally considers violations which are serious enough to be addressed by a penalty action to be violations which should have been considered SNC. The State noted in their response that all violations were properly cited and addressed with a penalty action. The issue here is one of data management.

- Facility 5-20 was assessed a civil penalty of \$22,260 in response to violations discovered during a February 2005 inspection; violations included releases of hazardous waste. No SNC was into the data system; EPA normally considers violations which are serious enough to be addressed by a penalty action to be violations which should have been considered SNC.

- Facility 5-29 was assessed a civil penalty of \$12,000 in response to violations discovered during a March 2005 inspection. No SNC was entered into the data system, although a code of SNN (which is the code which removes/resolves a SNC designation from the system) was in RCRAInfo, with the date of a follow up inspection, which had revealed a return to compliance. EPA normally considers violations which are serious enough to be addressed by a penalty action to be violations which should have been considered SNC. The State noted in their response that all violations were properly cited and addressed with a penalty action. The issue here is one of data management.

Facility 6-6 was inspected four times by the State during FY05. Violations identified include open containers and violations associated with weekly inspection of 90-day storage areas. The open container violation continued to be observed during two follow up inspections, finally resolved (documented) at the time of the fourth inspection. In addition, releases of hazardous waste were observed in the area associated with the open container. No SNC was identified in the data system; the reviewers feel that a history of continuing violations, particularly one that lead to releases of hazardous waste, meets the standard of a Significant Noncompliance, and should have been identified as such.

Facility 6-7 is a transporter which was assessed a penalty by the State of \$7,750 for incomplete manifests, based on violations discovered during an inspection. No SNC was identified in the data system; EPA normally considers violations which are serious enough to be addressed by a penalty action to be violations which should have been considered SNC. The State responded that no evidence of any actual environmental degradation or increased potential for a release was evident in this case, and suggest that these violations are more properly classified as secondary violations, for which the State elected to take a penalty action.

Facility 6-18 is a transporter which was assessed a penalty by the State of \$35,000 for improperly transporting and accepting waste that was deemed to be a hazardous waste. No SNC was identified in the data system; EPA normally considers violations which are serious enough to be addressed by a penalty action to be violations which should have been considered SNC. The company entered into a Consent Assessment of Civil Penalty (CACP) and paid a \$35,000 penalty for failing to comply with their residual waste general permit. All violations cited in the inspection reports, NOVs and CACP documents were from Chapter 298 (Management of Waste Oil) of the Residual Waste Regulations and Act 97; a decision was made by the State at that time not to track this in RCRAInfo.

Facilities which the reviewers feel **might be** considered in Significant Noncompliance, that is, some (but not necessarily all) of these facilities should have been designated as SNC:

- Facility 1-1 was inspected on 10/12/04, at which time a number of violations were identified, including (1) cracks, peeling of containment pad, (2) misidentified, unidentified material on pad, and (3) bulb labeling. There were also some releases, but they are reported to have been a minor amount of material. No SNC was entered into RCRAInfo, however, depending on the details of the problems, particularly with regard to the mismanaged material on the pad, these violations may have been SNC. The State feels that the amount of material was minor, and these violations did not raise to the level of SNC.

- Facility 1-9 was inspected on 12/6/04, at which time a number of violations were identified, including undated containers, unlabeled containers, storage greater than 90 days, and it appeared to take two follow up inspections on the part of the State to get the violations corrected. However, there appeared to have some confusion between satellite requirements and 90-day storage requirements. No SNC was identified in the system, however, depending on the details of the violations (ie: what percentage of the waste was being mismanaged), this may have been SNC. The State agrees that based on the number (violations and containers), the types of violations observed, and the period of time it took for the facility to return to full compliance, this facility could have been listed in SNC status.

- Facility 1-11 was inspected on 6/28/05, followed by two additional inspections within the next three months. Violations identified at this LQG facility included storage greater than 90 days, failure to perform weekly inspections of the storage area, open containers, and improperly labeled containers. No SNC was identified in the system, however, depending on the details of the violations, this may have been SNC. The State responded that the initial inspection did reveal a large number of violations, possibly placing the company in SNC status. However, a majority of the violations were corrected within two weeks, and the remainder were corrected within three months. The State believes that, in light of the facility's timely response, SNC status was not warranted.

- Facility 1-14 was inspected on 7/28/05. The inspection noted undated containers. No SNC was identified in the system, however, depending on details of how much waste was being mismanaged, this may have been SNC. The State responded that due to the number of containers at issue during the inspection, the facility probably could have been listed in SNC status. However, as the violations were corrected in a few weeks, and the inspection was performed by a trainee, SNC designation was not made.

- Facility 1-15 was inspected three times during the review period. This LQG, which trucks hazardous waste to a POTW, appears not to have notified of hazardous activities (they appear to have stored waste in an unlabeled tank, then trucked waste to POTW). It seems that they were performing very few of the LQG requirements, so there were a number of violations, including failure to make a waste determination, failure to prepare and submit biennial reports, failure to provide training, and failure to label a tank containing hazardous waste. No SNC was entered into the system, however, EPA would probably consider this set of facts to constitute SNC. The State responded that the wastewater was determined to be a residual waste, not a hazardous waste, therefore the facility is a non-generator of hazardous waste, and not a LQG. The violations were noted as corrected upon receipt of the waste analysis documenting that the waste was not hazardous. The State feels that a SNC determination was not appropriate in this instance.

- Facility 1-17 is a LQG, which was inspected on 1/14/05, and at that time appeared to be meeting very few of the requirements necessary for 90-day storage - the inspection revealed open and improperly labeled satellite containers, no contingency plan, no training, biennial report not submitted, no containers dated with accumulation start dates, no weekly inspections being performed. No SNC was identified in the data system, however, EPA would likely have identified these violations as SNC. The State responded that the facility had previously been a SQG and most of the violations were a result of their change in generator status. All violations were corrected by the follow up inspection.

- Facility 1-30 had a number of inspections conducted during the review period. During two of them, failure to comply with permit conditions was noted, along with some other violations. Often repeat violations are considered to be SNC, however, this determination

can be case specific, so it is not clear if this violation should be consider SNC or not. The State responded that during the review period, several violations were noted, and based on the type of violations, the facility should have been listed in SNC status. They would further like to note that they have taken an enforcement action, including collection of a penalty, and the facility has been in compliance during 2006 and 2007.

- Facility 5-3 was inspected three times during the review period. The inspection conducted 1/13/05 revealed a number of violations, including hazardous waste containers on the ground, on its side, not labeled, not within secondary containment. These same violations appeared to exist during the two follow up inspections. It further appears that an NOV was developed (not clear if it was issued), and a penalty calculated (also not clear if it was issued). In light of the repeat nature of the violations, along with the fact that the State considered the violations to be serious enough to warrant a penalty, the reviewers believe that the violations were serious enough to meet the definition of SNC and should have been thus designated. In response, the State reports that this facility was abandoned with no one on-site during any of the inspections. The initial inspection was a joint inspection with Water management. A NOV was mailed to the responsible party, as well as a Notice of Proposed Assessment (NOPA) letter detailing a penalty assessment. Neither correspondence was claimed. The NOPA letter, which was resent, also remained unclaimed.

- Facility 5-10 was inspected in July 2005; violations identified were failure to submit biennial reports and storage exceeding 90-days. An NOV was issued addressing these violations shortly after the inspection. Depending on the details of the problems identified by the inspector, these violations may have been SNC.

- Facility 5-21 was issued an NOV (non-penalty) in response to violations, which included satellite accumulation problems, open containers, undated containers, CC violations, failure to make a waste determination, paperwork violations. No SNC was entered into RCRAInfo, however, depending on the details of the problems observed by the inspector, these violations may have been SNC. The State responded that the facility proceeded to take corrective action, and did not believe that SNC status was warranted unless there were delays of additional violations.

- Facility 5-23 was assessed a civil penalty of \$15,400 in response to hazardous waste and residual waste violations discovered during inspections in 10/03, 2/04, and 6/04; hazardous waste violations included containers stored outdoors in an uncontained area, three roll-off boxes of hazardous waste stored on site for more than three days, spillage of hazardous waste. No SNC was identified in the data system; EPA normally considers violations which are serious enough to be addressed by a penalty action to be violations which should have been considered SNC. However, in this case, it's not clear how much of the penalty applied to the residual waste violations vs. the hazardous waste violations, thus the relative "significance" of the two types of violations is not clear; since we don't

know if the penalty was primarily directed to the residual waste violations, hazardous waste violations, or split between the two, we had difficulty assessing if this should have been a SNC or not. The State responded that four of the six violations cited were related to residual waste and not hazardous waste, and they are not clear on how to assess such a set of facts for SNC determination purposes.

- Facility 5-26 failed to notify of a change in name and change in status (from SQG to LQG). It is not clear that all violations were fully identified and entered into the system at the time of inspection, as it appears that DEP elected not to review compliance with the LQG requirements such as training, contingency planning, reporting, etc. Statements in the reports imply that the facility was probably in violation of these requirements, however, they were marked as “not determined”. Since it’s not clear what the entire compliance status is, it is difficult to determine if the facility should have been identified as SNC or not.

- Facility 5-30 was found to have a number of violations, including undated containers, unlabeled containers, and contents not identified on labels, all of which were corrected at the time of inspection. Depending on the details of the problems observed by the inspector at this SQG, these violations may have been SNC. The State responded that, because the violations were corrected quickly, they do not feel a SNC designation was appropriate.

- Facility 5-34, a transporter, was found to have manifest violations which were addressed with enforcement actions, which included penalties of \$1,000 in 5/05 and \$1,500 in 11/05. No SNC was identified in the data system; normally violations which are serious enough to warrant a penalty are considered to be SNC. However, the reviewers have limited experience with enforcement of transport violations; it is not clear how SNC determinations would apply to this type of facility or violations. The State responded that these manifest violations were forwarded from Central Office to the Regional Office for enforcement, and no inspection report was filed. The State feels that these violations are more properly classified as secondary violations, for which the State elected to take a penalty action.

Facility 6-3 was found to have 38 containers (of 128 on-site) stored in excess of 90 days, along with 9 undated containers. Follow up work was performed to verify that the containers were shipped off-site, which happened more than four months after the start of accumulation. Depending on the details of the problems observed by the inspector, including how long in excess of 90 days the waste was stored, these violations may have been SNC. The State responded that the facility had ceased operations and was bankrupt. Their primary concern was to ensure that the parent corporation properly managed the remaining material, and does not believe that a SNC designation was appropriate in this case.

Findings:

The State is not IOR (Implementor of Record) for the CM&E module of RCRAInfo. The State completed data entry forms, which are forwarded to EPA for entry into the national data system. This is contributing to some data quality issues, and should be resolved when Pennsylvania becomes IOR (anticipated to occur sometime in late calendar year 2007). See Elements 10/11/12 for further discussion.

The State does not appear to have a process in place for making SNC determinations at the management level, and it is not clear that the data entry forms are well formatted to allow the consistent entry of this data into RCRAInfo when it is so indicated by the State.

There does not appear to be a common understanding across the State Central and Regional Offices as to the working, practical definition of SNC violations.

Recommendations:

The State should continue to move forward, and EPA should provide support to the State, toward becoming RCRAInfo Implementor of Record (IOR).

The State and EPA should work together to develop clear guidance on SNC determinations, and work together to train State staff and managers on implementation of such guidance.

The State should develop procedures to review violations to determine which are SNC, which are secondary violators, and which should be addressed with formal enforcement action. These procedures should include data entry and management.

The State should take full advantage of training opportunities as they become available for new staff and managers, and refresher training opportunities for more seasoned staff and managers.

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

Of the files reviewed, 16 facilities were the subject of formal enforcement action brought by the State. For the violations which were the subject of the enforcement action, 12 of these facilities had documentation of a returned to compliance in response to the enforcement action. The following facilities did not:

- Facility 5-14 was the subject of a Consent Assessment of Civil Penalty for violations discovered during the review period. This enforcement action addressed several

violations, including failure to notify the Department of a change of name, generator status, etc. All violations addressed by the enforcement action returned to compliance with the exception of the notification violation. During a follow up inspection it was revealed that the facility still had not provided this notice to the Department, thus a return to compliance was not documented for this violation.

- Facility 5-23 was the subject of a Consent Assessment of Civil Penalty in response to hazardous and residual waste violations identified through several inspections prior to and during the review period; hazardous waste violations included storage violations and spills/releases. It is not clear, based on the file review and information available in RCRAInfo, that the facility has returned to compliance with the violations addressed through the enforcement action. It was noted, however, during subsequent inspections, that the facility was negotiating a sale of the property and no waste was observed on-site.

- Facility 5-34 was the subject of a Consent Assessment of Civil Penalty in response to manifest violations. It is not clear, based on the file review and information available in RCRAInfo, that the facility has returned to compliance for the violations addressed through the enforcement action.

- Facility 6-7 was the subject of a Consent Assessment of Civil Penalty for incomplete transporter information on manifests. It is not clear, based on the file review and information available in RCRAInfo, what actions were taken by the facility to return the violations to compliant status. However, the facility was subsequently issued a Notice of Violation for the same type of violations, which were discovered during an inspection later in the review period. A return to compliance was documented with regard to the violation which was the subject of the Notice of Violation. The State responded that this company operates approximately 250 trucks which routinely transport RCRA regulated wastes, predominantly contaminated soils. Manifest errors have historically been a problem for this company. The company routinely self-reports manifest errors which they discover during weekly monitoring of the manifests and has taken disciplinary actions against drivers who fail to properly complete manifests. The State has participated in supplemental training sessions the company drivers in which the importance of properly completing manifests was stressed. The company's manifest error rate has been reduced over the past few years.

Findings:

State enforcement actions require actions for the facility to take in order to return to compliance. The data in RCRAInfo generally supports the return to compliance status as documented in the files. The bulk of the unresolved violations are items which cannot be physically corrected (such as spills or incomplete manifests at the time of shipment). The State's enforcement actions appear to address the violations and result in improved compliance at the cited facilities.

Recommendation:

The State and EPA should continue to work toward Pennsylvania assuming IOR status, which should address many data issues.

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

Based on information available from RCRAInfo, the following is a summary of formal enforcement actions and penalty actions brought by the State during the FY05 review period.

Regional Office	SE	NE	SC	NC	SW	NW	Total
Formal Enforcement Actions	0	3	2	7	5	3	22
Formal Enforcement Actions with Penalties	0	3	2	6	5	3	21

Timeliness of enforcement actions:

EPA’s March 15, 1996 Hazardous Waste Civil Enforcement Response Policy (1996 ERP) provides 300 days from the evaluation date (the first day of an inspection) for a final or consent order to be entered. This guidance was superceded by the December 2003 ERP, which became effective of February 15, 2004. One difference between the two documents is that the 2003 ERP provides 360 days for entry into a final or consent order with a violator. Both policies recognize that circumstances arise where the enforcement response times specified may be insufficient to prepare and initiate the appropriate enforcement response as set forth in the policy. The 2003 ERP specified that when certain circumstances exist, up to 20% of the enforcement cases may exceed the standard response times. Sixteen (16) formal enforcement actions taken by the State were reviewed; all met the ERP criteria for timeliness.

Appropriateness of enforcement actions:

EPA’s Hazardous Waste Civil Enforcement Response Policy (December 2003) states

A SNC should be addressed through formal enforcement. This formal enforcement response should mandate compliance and initiate an administrative or civil action that results in an enforceable agreement or order and imposes sanctions. The formal enforcement response should seek injunctive relief that ensures that the violator resolves its violations and expeditiously returns to compliance. An enforcement response against a SNC by the implementing agency should be considered appropriate when sanctions are incorporated in the formal enforcement response. Penalties incorporated in the formal enforcement response that recover

the economic benefit on noncompliance plus some appreciable amount reflecting the gravity of the violation should be considered appropriate. Additionally, if warranted by the circumstances, the implementing agency may include other sanctions against the violator.

PADEP's Hazardous Waste Management Compliance/Enforcement Strategy, section IV.B(1) states

High Priority Violations require an enforcement action including civil penalties be taken within ninety (90) days of the discovery date of the violation. No NOV should be issued for High Priority Violations. A consent order may be negotiated prior to the Administrative Order if that can be accomplished within ninety (90) days.

Section IV.A defines "high priority violations":

High priority violations are those violations that:

- pose a substantial likelihood of exposure to hazardous waste of have resulted in actual exposure, or
- realize a substantial economic benefit as a result of noncompliance, or
- have intentionally committed violations, or
- are chronic or recalcitrant violators, or
- operators who have violated a schedule or condition in Orders or decrees.

For purposes of this review, we assume that the State's definition of high priority violations is functionally equivalent to the definition of SNC violations, and thus high priority violations should be addressed through formal enforcement action, including appropriate penalties.

The following are facilities which were identified by the State as SNC, for which no formal enforcement action was taken:

- Facility 1-18
- Facility 1-19
- Facility 1-23
- Facility 5-15

The State reported that with regard to Facility 1-18, the property owner is deceased and the State is working with the executor of the will on the disposal of the remaining material; the facility is no longer in operation. Facility 1-23 was the subject of a number of formal enforcement actions taken by the State in the past, including two Administrative Orders, a Commonwealth Court Order, a Petition for Contempt, and a Commonwealth Court Order for Incarceration, along with numerous requests for EPA assistance.

The following are facilities which the reviewers believe were in SNC (and should have been addressed by formal enforcement action) where no formal enforcement action was taken:

- Facility 1-10
- Facility 1-16
- Facility 1-29
- Facility 6-6

Regarding Facility 6-6, the State agrees that formal enforcement action should have been considered in light on the number of violations and the length of time they were outstanding.

For more detail, see the description of these cases, contained in Element 4.

The following are facilities which the reviewers believe may have been in SNC, where no formal enforcement action was taken; we believe that formal enforcement should have been taken in some (although not necessarily all) of these cases:

- Facility 1-1
- Facility 1-9
- Facility 1-11
- Facility 1-14
- Facility 1-15
- Facility 1-17
- Facility 1-30
- Facility 5-3
- Facility 5-10
- Facility 5-21
- Facility 5-26
- Facility 5-30
- Facility 5-34
- Facility 6-3

Facility 6-3 had ceased operation and is in bankruptcy; the State's primary concern has been to ensure that the parent corporation properly manages the remaining material. For additional detail, see the description of this cases, contained in Element 4.

Section III.A of the State's Compliance/Enforcement Strategy discusses the Hazardous Waste Management enforcement philosophy.

The goal of the Hazardous Waste Compliance/Enforcement Program is to attain and maintain a high rate of compliance within the regulated community, thus preventing actual and reducing potential harm to the environment and the public.

To accomplish this goal a credible enforcement program must exist to take

timely corrective action. ... The regulated community has been allowed a reasonable opportunity to come into compliance after initial violation discovery where the violator was counseled by the Department as to what was being done incorrectly and what steps should be taken to correct the violation and avoid reoccurrence. This “education” approach delayed the more formal legal actions.

Under this enforcement strategy the formal enforcement action including Administrative Orders and judicial actions are now mandated for certain classes of violations at hazardous waste facilities on specific timelines and civil penalty assessment is obligator (sic) for the more egregious violations.

It appears that, in practice, many facilities are inspected repeatedly over a short period of time, in what appears to be an attempt to counsel the facilities into compliance. Of the facilities reviewed, a large percentage of them were inspected twice or more during the review period. It bears noting, however, that multiple inspections can be necessary in developing evidence needed to bring enforcement action.

Number of inspections performed (in FY05) per facility	SE	SW	NW
One inspection	4	14	14
Two or three inspections	25	16	8
Four or more inspections	4	2	3

Findings:

All formal enforcement actions taken by the State which were reviewed met the ERP criteria for timeliness.

There were instances of violations which should have been addressed through formal enforcement action, but were not.

Recommendation:

In conjunction with a more formal process to make SNC determinations, the State should develop and implement a process which provides for more management involvement in developing appropriate enforcement responses to violations.

Element 7/8- Degree to which the state includes both gravity and economic benefit calculations for all penalties, appropriately using the BEN model or consistent state policy/ Degree to which penalties in final enforcement actions include economic benefit and gravity in accordance with applicable penalty policies.

There were no files containing penalty actions reviewed in the Southeastern Regional Office.

Eleven files were reviewed in the Southwestern Regional Office which contained formal enforcement action where penalties had been assessed. Nine of these files had documentation which demonstrated a consideration of both gravity and economic benefit in the calculation of penalties. In two files, the reviewers did not find documentation regarding the calculation of penalties.

Four files were reviewed in the Northwestern Regional Office which contained formal enforcement action where penalties had been assessed. The reviewers did not find documentation regarding the calculation of penalties in these files.

The following is a list, based on information available in RCRAInfo, combined with information gathered during the file review, of formal enforcement actions taken by the State in FY05.

Regional Office	Facility Type	Enforcement Action Type	Penalty Amount	Comments
SE	CESQG	Order	None	Info from file review, not in RCRAInfo
NE	SQG	Initial Civil Judicial Action for Compliance and/or Monetary Penalty	\$25,000	Data from RCRAInfo
NE	TSDf	Initial Civil Judicial Action for Compliance and/or Monetary Penalty	\$4,750	Data from RCRAInfo
NE	LQG	Final 3008(A) Compliance Order	\$16,250	Data from RCRAInfo
SC	TSDf	Initial Civil Judicial Action for Compliance and/or Monetary Penalty	\$6,000	Data from RCRAInfo

SC	LQG	Initial Civil Judicial Action for Compliance and/or Monetary Penalty	\$8,000	Data from RCRAInfo
NC	CESQG	Initial Civil Judicial Action for Compliance and/or Monetary Penalty	\$9,000	Data from RCRAInfo
NC	SQG	Initial Civil Judicial Action for Compliance and/or Monetary Penalty	\$1,500	Data from RCRAInfo
NC	SQG	Initial Civil Judicial Action for Compliance and/or Monetary Penalty	\$7,500	Data from RCRAInfo
NC	SQG	Initial Civil Judicial Action for Compliance and/or Monetary Penalty	\$6,000	Data from RCRAInfo
NC	Transporter	Initial Civil Judicial Action for Compliance and/or Monetary Penalty	\$500	Data from RCRAInfo
NC	SQG	Initial Civil Judicial Action for Compliance and/or Monetary Penalty	\$7,500	Data from RCRAInfo
NC	SQG	Initial Civil Judicial Action for Compliance and/or Monetary Penalty	\$0	Data from RCRAInfo
SW	SQG	Initial Civil Judicial Action for Compliance and/or Monetary Penalty	\$6,000	Data from RCRAInfo
SW	SQG	Initial Civil Judicial Action for Compliance and/or Monetary Penalty	\$10,000	Data from RCRAInfo
SW	CESQG	Initial Civil Judicial Action for Compliance and/or Monetary Penalty	\$2,500	Data from RCRAInfo
SW	CESQG	Initial Civil Judicial Action for Compliance and/or Monetary Penalty	\$4,000	Data from RCRAInfo

SW	LQG	Initial Civil Judicial Action for Compliance and/or Monetary Penalty	\$2,000	Data from RCRAInfo
SW	generator	NOV with penalty	\$16,560	Info from file review, not in RCRAInfo
SW	LQG TSDF	Initial Civil Judicial Action for Compliance and/or Monetary Penalty	\$48,000	Info from file review, not in RCRAInfo
SW	LQG	Initial Civil Judicial Action for Compliance and/or Monetary Penalty	\$22,260	Info from file review, not in RCRAInfo
SW	LQG Transporter	Initial Civil Judicial Action for Compliance and/or Monetary Penalty	\$15,400	Info from file review, not in RCRAInfo
SW	SQG Transporter	Initial Civil Judicial Action for Compliance and/or Monetary Penalty	\$1,000	Info from file review, not in RCRAInfo
NW	Transporter	Initial Civil Judicial Action for Compliance and/or Monetary Penalty	\$7,750	Info from file review matches data in RCRAInfo
NW	LQG	Initial Civil Judicial Action for Compliance and/or Monetary Penalty	\$500	Data from RCRAInfo, file not reviewed
NW	LQG	Initial Civil Judicial Action for Compliance and/or Monetary Penalty	\$8,500	Info from file review matched data in RCRAInfo

Note - Additional enforcement actions were reviewed, but they were not taken during the FY05 review period.

Findings:

Documentation of penalty calculations, when available, demonstrated a consideration of both gravity and economic benefit in the calculation of penalties.

There appear to be inconsistencies across the Regional Offices as to the documentation and record retention of penalty calculations.

Recommendation:

The State will develop a consistent policy for documentation and record retention of penalty calculations, in accordance with the State’s Penalty Policy.

Element 9 - 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:

This element was satisfied to a high extent, with regard to inspection commitments. All numeric inspection commitments in the work plan were met.

The following inspections were accomplished by PADEP in FY05, in accordance with their grant work plan:

Facility Type	Commitment	Accomplishment
Federal TSDs	5	5
Private TSDs	36	40
Land Disposal Facilities	25	60
LQGs	285	315
SQGs	50	344

As can be seen from the chart, PADEP met all the numeric commitments for inspections.

PADEP’s Work Plan also contains other (non-numeric) program objectives, including “DEP will continue to conduct compliance and enforcement activities in conformance with the 1996 Enforcement Response Policy” and “The Department will continue to identify SNCs and forward such data appropriately.” Based on the findings of this review, it does not appear that PADEP has fully satisfied these program objectives (see Elements 4 and 6 above for further discussion and recommendations).

Elements 10/11/12 - Degree to which the Minimum Data Requirements (Nationally Required Data Elements for the RCRA program) are timely/accurate/complete.

PADEP is not Implementer of Record for the Compliance, Monitoring and Enforcement (CM&E) module of RCRAInfo, the national data system for the RCRA Subtitle C program. As a result, PADEP provides inspections reports and enforcement actions, accompanied by completed data entry forms, to EPA for entry of this information into RCRAInfo. This arrangement appears

to have had some (unintended) adverse impact on data quality. The State has noted occasions where data entry forms had to be submitted multiple times before the data was entered successfully into RCRAInfo. Another issue identified during the review is mis-identification of inspections as either a “Significant Non-Complier” (code SNY) or “Not a Significant Non-Complier” (code SNN) in RCRAInfo. In some instances, it appears that inspectors checked the box on inspection data entry form to designate a Significant Non-Complier identified during an inspection, and that inspection record was entered into the system as a SNY “evaluation” rather than the appropriate inspection “evaluation” (for instance, Compliance Evaluation Inspection, RCRAInfo code CEI). Likewise, when an inspection identified a former SNC which was no longer in SNC status, that inspection record went into the system as a SNN “evaluation” rather than the appropriate inspection “evaluation”. This situation was observed for the following facilities:

- Facility 1-27
- Facility 5-11
- Facility 5-14
- Facility 5-15
- Facility 5-17
- Facility 5-24
- Facility 5-29
- Facility 5-33
- Facility 6-12
- Facility 6-14

The reviewers identified a number of “evaluation” records which appear to have been mis-identified as inspections. It appears that in some instances the “evaluation” codes of CEI (Compliance Evaluation Inspection) or CSE (Compliance Schedule Evaluation), which are both defined as on-site inspections, were used to identify an activity which was an evaluation conducted in the Department’s office involving a review of non-financial records, and should have been entered into the system with code NRR. Examples of this include:

- Facility 5-5 - A CSE (dated 5/5/05) was entered into the system, with no related inspection found in the file. It appears that this “evaluation” relates to a note to file/data system resolving violations of 1/05 inspection.
- Facility 5-16 - A CSE (dated 8/18/05) entered into the system appears to be related to the receipt of a notification form submitted from the facility.
- Facility 5-28 - A CEI (dated 10/13/04) entered into the system appears to be the record of a phone call with the facility.
- Facility 6-5 - A CSE (dated 4/26/05) entered into the system appears to be related to a waste analysis for waste oil which was received by the inspector.

- Facility 6-19 - A CEI (dated 11/15/04) entered into the system appears to be a submission from the facility of Notice to change contact person.

There were a number of inspection records which were in RCRAInfo for which we did not find corresponding inspection reports in the State's files:

- Facility 1-9 - Two inspection records in RCRAInfo (dated 12/6/04 and 3/31/05) were not found in the State's file. The State responded that these inspection reports were located in a municipal general file associated with the location of the facility. They have now been placed in the facility file.

- Facility 1-28 - Two inspections (dated 3/29/06 and 4/14/05) were in RCRAInfo but the reports were not found in the State's file. The State responded that these inspection reports were located in a municipal general file associated with the location of the facility. They have now been placed in the facility file.

- Facility 1-29 - Neither of the two inspection records in RCRAInfo (dated 11/19/04 and 12/29/04) were in the State's file, although they were present in EPA's file. The State responded that these inspection reports were located in a municipal general file associated with the location of the facility. They have now been placed in the facility file.

- Facility 5-3 - One inspection (dated 12/6/04) was listed in RCRAInfo but was not found in the State's file.

- Facility 5-5 - One inspection (dated 5/5/05) was listed in RCRAInfo, but was not found in the State's file.

- Facility 6-2 - One inspection (dated 11/15/04) was entered into RCRAInfo with the evaluation code of "OTH", but no associated documentation was found in the State's file. The State reported that in response to a violation (failure to have a hazardous waste source reduction strategy on file) identified during an inspection of this facility earlier in 11/04, the completed strategy was submitted on 11/15/04. Upon review and approval of this document, the inspector indicated that the violation was corrected by completing the "OTH" RCRAInfo form. In an effort to reduce paper, the inspector did not print off the waste source reduction strategy and place it in the file; an actual inspection report would not typically be generated in this type of situation.

- Facility 6-21 - One inspection (dated 1/19/05) was listed in RCRAInfo, while the State's file contained only the completed RCRAInfo form, with no inspection report. The State reported that in response to a violation (failure to have a hazardous waste source reduction strategy on file) identified during an inspection of this facility in 11/04, the completed strategy was submitted on 1/19/04. Upon review and approval of this document, the inspector indicated that the violation was corrected by completing the RCRAInfo form. In

an effort to reduce paper, the inspector did not print off the waste source reduction strategy and place it in the file; an actual inspection report would not typically be generated in this type of situation.

For additional discussion of data quality issues, please refer to Element 4 (under the sections entitled Identification of violations in RCRAInfo and Determination and entry of SNC violations). Refer also to the table of enforcement actions in Element 7/8, which identifies six enforcement actions which were not entered into RCRAInfo.

Findings:

The State is not IOR (Implementor of Record) for the CM&E module of RCRAInfo. The State completed data entry forms, which are forwarded to EPA for entry into the national data system. This is contributing to some data quality issues, and should be resolved when Pennsylvania becomes IOR (anticipated to occur sometime in late calendar year 2007).

Recommendations:

The State should continue to move forward, and EPA should provide support to the State, toward becoming RCRAInfo Implementor of Record (IOR).

The State should take full advantage of training opportunities as they become available for new staff and managers, and refresher training opportunities for more seasoned staff and managers.

Note:

PADEP Regional Offices are designed as

- SE - Southeast Regional Office, located in Norristown
- NE - Northeast Regional Office, located in Wilkes-Barre
- SC - Southcentral Regional Office, located in Harrisburg
- NC - Northcentral Regional Office, located in Williamsport
- SW - Southwest Regional Office, located in Pittsburgh
- NW - Northwest Regional Office, located in Meadville