

**Review of the Rhode Island Department of
Environmental Management's FY 2003 State
Enforcement and Compliance Programs**

U.S. EPA Region 1 New England

Final - March 14, 2005

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ATTACHMENT **FEBRUARY 24, 2005 LETTER FROM RIDEM TO EPA REGION 1**

EXECUTIVE SUMMARY

Overall Picture

RIDEM does a good job implementing its federally delegated NPDES, CAA and RCRA Enforcement Programs. The review indicated a thorough understanding of these programs. Since EPA New England's last multi-media review in 1996, RIDEM has made substantial improvements in identifying and documenting violations and calculating and documenting penalties. RIDEM's performance in these areas is now mostly outstanding. Two general areas are in need of improvement in each program - enforcement action timeliness and data system management. EPA New England recognizes that these issues are continuing challenges for all government programs and they do not reflect any underlying weakness in RIDEM's understanding or commitment to federal environmental enforcement.

Information Sources Included in Review

EPA New England developed these findings from review of FY 2003 (federal fiscal year 2003) inspection and enforcement case files, discussions with RIDEM program managers and staff, and data from EPA data bases.

Any Overarching Issues among the Enforcement Programs Reviewed

Resources are likely a root cause for some of RIDEM's program implementation issues. For example, a discussion in the Air section indicates that prior to 2002 there were five technical staff to accomplish the work. There are currently four technical staff and one of these individuals may leave RIDEM this year. The Air review indicates these staffing levels may be affecting inspection coverage and enforcement timeliness. The Water review indicated that RIDEM did not conduct any full compliance evaluation inspections at NPDES minor water sources. Also in Water, there were delays in responding to Significant Non-Compliance and in case development that appear to be due to a lack of enforcement technical resources. Each media program identified delays in issuing NOV's because legal staff were not available to review complaints. RIDEM has addressed this by having one person review all NOV's. However, given the extremely large caseload being handled by the Office of Legal Services attorneys, the resource-intensive nature of their work, and the small number of attorneys available to handle this work, EPA has concerns about the ability of the Office of Legal Services to bring cases to a timely resolution. Resources supporting pollution prevention and compliance assistance for non-Environmental Results Program sectors have been reduced from previous levels.

RIDEM enforcement staffing levels are down, and there is no immediate prospect of new state or federal resources. This challenge will increase as several experienced enforcement staff reach retirement. EPA New England commits to working with RIDEM in the PPA process to address the issues identified in this report and to ensure that existing federal and state enforcement resources achieve the best possible environmental outcomes in RI.

Inspection Implementation

Inspections are generally thorough and well documented. The Air program has created a Title V checklist that is very helpful. The RCRA program is exceeding expectations for the number of facilities inspected.

Enforcement Activity

Enforcement response is good in all programs. The Air program always seeks injunctive relief and provides clear, well-written penalty justifications. The RCRA and Water programs need to improve use and/or documentation of BEN in penalty calculations, especially in actions with low penalty amounts. Timeliness of various phases of follow-up is an issue.

Commitments in Annual Agreements

RIDEM's FY2003 PPA contained a commitment to implement delegated federal enforcement programs consistent with federal guidelines. RIDEM fulfilled this requirement.

Data Integrity

RIDEM's management of federal data systems is variable. RIDEM should develop plans and procedures to improve data accuracy in RCRA and Air.

Element 13 - Additional program elements reviewed at the request of RIDEM

13.1 Review of Office of Legal Services

RIDEM invited Region 1 to review how RIDEM's legal office supports RIDEM's enforcement program, with a particular emphasis on any constraints that may exist in bringing enforcement cases to a successful resolution. Region 1 encourages continued efforts at streamlining and increasing efficiency.

13.2 Output and Outcome Measures

RIDEM invited Region 1 to evaluate RIDEM's efforts to report its overall outputs and outcomes resulting from enforcement related activities. RIDEM's efforts to track and report outputs and outcomes are an important positive contribution to improving Rhode Island's and the region's environment. RIDEM's annual enforcement and compliance report is a good summary of each year's activities.

13.3 Environmental Results Programs and Compliance Assistance

RIDEM invited Region 1 to review its use of the Environmental Results Program (ERP) to address multi-media compliance issues within the automotive refinishing industry sector and the Underground Storage Tank Program. RIDEM has effectively developed ERP programs that

have combined assistance and compliance and is using them to strengthen these programs.

13.4 Underground Storage Tank Enforcement Efforts

RIDEM's enforcement under RCRA Subtitle I, operation and management of Underground Storage Tanks, is similar to its enforcement under RCRA Subtitle C.

13.5 Information System Modernization

RIDEM invited Region 1 to review its efforts to design and use an information management system to support the compliance and enforcement functions. During FY2006 PPA discussions RIDEM should identify opportunities for OES to assist this work.

Clean Air Act Stationary Source Enforcement Program

Information Sources Included in the Review

The CAA portion of the evaluation entailed reviewing 13 inspection/enforcement case files, primarily from FY 2003. The evaluation utilized EPA Headquarters' data pulls to provide national average and state specific information. The information from the file reviews and data pulls was used to answer specific questions covering 12 topic or element areas that were collapsed into four general headings: Review of State Inspection Implementation; Review of State Enforcement Activity; Review of State Performance Partnership Agreement; and Review of Database Integrity.

EPA Region 1 selected 6 major Title V (TV) and 7 Synthetic Minor 80% (SM80) sources for review. The files reviewed consisted of 8 enforcement cases of which 3 included penalty actions against High Priority Violators (HPVs), with the others still under review. Region 1 reviewed five files where inspection findings determined a source to be in compliance with all applicable regulatory requirements. The following is a list of the source case files reviewed by EPA along with each source's size classification (i.e., Title V or SM80) and whether the source was an HPV enforcement file or an inspection-only file:

Enforcement Files:

1. Brookwood Laminating (TV)
2. RI Hospital (TV)
3. Dry Bridge Sand & Stone (SM80)
4. RI College (SM80)
5. South County Hospital (SM80)
6. Sprague Energy (SM80)
7. RI Textile (TV)
8. Block Island Power (TV)

Inspection Only Files:

- | | |
|------------------------------|---------------------------|
| 1. Toray Plastics (TV) | 4. Foam Technology (SM80) |
| 2. Clariant (TV) | 5. Miriam Hospital (SM80) |
| 3. Monarch Industries (SM80) | |

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Section 1: Review of State Inspection Implementation

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

priorities) is completed.

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

According to the EPA HQ data metrics, RIDEM has an above average record, when compared to the national average, for completing full compliance evaluations (FCEs) at major Title V and SM80 facilities in a timely manner. Those not completed on time could be attributed to the fact that RIDEM was short one full-time inspector slot in FY 2003 and due to competing state priorities.

The data metrics indicated RIDEM's review of Title V annual compliance certifications was a bit below the national average. This may be because some required certifications were not submitted to RIDEM for review in a timely manner. Region 1 found that RIDEM had not put a specific due date requirement for the annual certifications in any of its Title V permits. The permits issued only require that a certification be submitted "annually" which is rather ambiguous. RIDEM has agreed to resolve this matter by indicating a specific due date for annual certifications in all future Title V permits issued and/or renewed.

RIDEM's Office of Air Resources in FY 2003 had four technical staff persons responsible for conducting Title V and synthetic minor FCEs, true minor source inspections and air toxic area source inspections. In addition, two of these staff persons are responsible for observing stack tests, relative accuracy test audits and cylinder gas audits conducted at facilities in Rhode Island. These four staff persons are also responsible for drafting informal Letters of Non-Compliance (LNCs) to companies where minor violations are encountered and preparing referrals for formal enforcement actions where egregious violations are determined. These referrals are forwarded to the Office of Compliance and Inspection which develops and issues formal enforcement actions. Prior to FY 2003, RIDEM had 5 staff persons to conduct all this work; however, one position was lost when an inspector left RIDEM in 2002, leaving RIDEM short one inspector position throughout FY 2003. RIDEM expects to lose another position early in fiscal year 2005, when another of its inspectors plans to leave. At this time, RIDEM is not sure whether that vacant position will be refilled.

RIDEM is very successful in conducting most, if not all, of the TV and SM80 inspections it committed to under the Compliance Monitoring Strategy, based on its limited inspector resources.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

CAA Stationary Source Compliance Monitoring Strategy, April 25, 2001

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

None

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)

All 13 of the files reviewed, whether enforcement or inspection files, included inspection reports. Nine of the thirteen inspection reports reviewed were very comprehensive, including general and facility information, applicable requirements, and a process description of the regulated units and the facility as a whole, along with an inventory of the regulated emission units. The remaining four inspection reports reviewed were too streamlined and did not provide either an accurate inventory of all regulated emission units located at a facility or didn't provide a compliance determination for each and every regulated unit. The following findings are from the four streamlined reports:

1. Clariant - Compliance determinations were lacking for several pieces of equipment including a biofilter, a rental boiler, various scrubber and baghouse operations, and VOC and NOx RACT;
2. Toray Plastics - No compliance verification for hazardous air pollutant emissions to the atmosphere;
3. Foam Technology - The report did not provide a compliance status for a permit condition on VOC usage; and
4. Monarch Industries - The report discussed the number of spray booths operating during the inspection but didn't indicate whether there were other booths maintained on site, but not operating during the inspection. The report didn't discuss the operating or compliance status of the boiler maintained at the facility.

The inspection files reviewed indicated that RIDEM made timely and accurate identification of violations 100% of the time, notwithstanding the four reports where compliance determinations were lacking for various regulated units.

RIDEM inspectors must ensure that 100% of the FCEs they conduct evaluate 100% of the regulated emission units maintained at a facility. The associated reports for the FCEs conducted must list 100% of the regulated emission units maintained at a facility and provide a complete compliance determination for 100% of the regulated emission units found at a facility.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

CAA Stationary Source Compliance Monitoring Strategy, April 25, 2001

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

RIDEM must ensure that all inspection reports provide a complete inventory of regulated units at a facility as well as a compliance determination for each specific regulated emission unit.

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)

All the inspection reports for the files reviewed by EPA were completed within 30 days of a site visit, with most reports completed within 2 weeks. RIDEM indicated that they have an unwritten rule to try and complete inspection reports within 2 weeks of a site visit, which is very admirable.

RIDEM created a Title V checklist for use during inspections of Title V sources. It lists each condition of a Title V permit, the method used to determine compliance and the compliance status of each condition. There is space for inspector comments on the checklist. This is a great feature that RIDEM has implemented, and it will help ensure that compliance determinations are made for each regulated emission unit at a Title V facility. RIDEM created an FCE checklist to make it easier for its inspectors to determine when an FCE is complete so they can provide this data to RIDEM data entry person in a timely and complete manner for entry into the EPA database. EPA applauds RIDEM's efforts in taking the initiative to develop and implement the Title V and FCE checklist to enhance its inspection and data entry objectives.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION

CAA Stationary Source Compliance Monitoring Strategy, April 25, 2001

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

None

Section 2: Review of State Enforcement Activity

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)

Though RIDEM does submit some HPV checklists to EPA on an ongoing basis to more quickly identify HPVs to EPA, many HPVs were not identified to EPA within 45 days.

This is partly because EPA Region 1, due to limited resources, only conducts quarterly face-to-face HPV discussions with RIDEM. Many of the HPVs identified are based on the quarterly EPA/RIDEM discussions. RIDEM needs to identify HPVs to EPA more expeditiously.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION

“Timely and Appropriate” Guidance, December 22, 1998

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

EPA has requested that RIDEM be more proactive in using the EPA HPV policy and its matrices to determine whether the HPV criteria have been met based on inspection findings, file reviews, etc. RIDEM stated that it will have its inspectors review the HPV criteria more thoroughly against identified violations in the future so that the violations meeting HPV status are identified to EPA in a more timely manner.

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)

Using EPA’s data metrics, RIDEM was above the national average for discovering HPVs per FCE completed and per facility universe. RIDEM does a very thorough job conducting inspections at permitted facilities. RIDEM should be commended for always seeking injunctive relief in its formal and informal enforcement actions and clearly and concisely describing the injunctive relief measures a violator must take to return to compliance expeditiously.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION

“Timely and Appropriate” Guidance, December 22, 1998

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

None

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)

Although HPVs are not always identified to EPA in a timely manner, RIDEM does take timely and appropriate enforcement action most of the time. For those cases where timely enforcement action is not taken, the primary problem appears to be a lack of resources in following up on minor infractions (i.e., minor record keeping and/or monitoring violations) found at Title V and/or synthetic minor facilities. When RIDEM finds these minor types of violations, it normally issues an informal Letter of Non-Compliance (LNC). An LNC typically gives a facility 30 days to resolve a minor violation and report back to RIDEM that the violation has been fixed. In two files, Rhode Island College and Rhode Island Textile, the minor violations were not resolved by the facilities or followed up by RIDEM in a timely fashion. Therefore, the formal enforcement that RIDEM now plans to take to address the violations will be well over the 270 day time frame established by EPA for addressing and/or resolving violations. In another file, Dry Bridge Sand & Stone, RIDEM still hasn't followed up to see if compliance was achieved. If compliance has not yet been achieved for this facility, then RIDEM will need to take formal enforcement, which again will not be timely.

A problem that impacts the RIDEM's ability to take timely enforcement is resources. RIDEM's Office of Compliance and Inspection is responsible for formal case development, and handling complaint investigations. This office is short three staff persons who primarily handle the complaint investigations (i.e., take calls and conduct follow-up site visits). Because of this staff shortage, the two technical staff responsible for drafting formal air enforcement actions are inundated with complaint calls that take time away from developing formal enforcement cases. In FY 2003, RIDEM received 1203 air complaints (includes multiple complaints for the same facility). On the legal side, RIDEM has only had 0.5 FTE dedicated to pursuing, developing and resolving formal air enforcement cases. RIDEM indicated that this lack of resources did cause somewhat of a backlog in issuing cases, in a timely manner, in FY 2003. (RIDEM has initiated changes to mitigate the problem of extended time-lines for case issuance. See Element 13.1 for a further discussion of legal resources.)

In FY 2003, RIDEM issued a total of 470 LNC-type documents (233 for Stage I/II violations, 132 inventory-related and 105 for other types of minor violations). The large number of LNCs for follow-up is very resource intensive and a resource problem with which RIDEM must contend.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

“Timely and Appropriate Guidance” dated December 22, 1998

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

To comply with EPA national enforcement response policy guidance, RIDEM must prioritize its follow-up to ensure that potential HPVs are given the highest priority to ensure that any follow-up formal enforcement necessary to address violations is done within the EPA time frame of 270 days.

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)

The calculations for both penalty components are in the files and thorough penalty justification memos are located in the files for those instances when RIDEM has reduced penalties for various reasons. RIDEM works with EPA on complex economic benefit calculations and has its own gravity penalty matrix that it utilizes to calculate the gravity portion of its penalties. RIDEM does a great job of accurately identifying violations and assessing appropriate penalties that include gravity and economic benefit components.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION

“Timely and Appropriate” Guidance, December 22, 1998

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

None

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)

In most cases, RIDEM collects monies for the penalties it has assessed against violating facilities. In those cases where a violating facility is not forthcoming in paying penalties, RIDEM seeks relief through the court system. Unfortunately, the court system, in some cases, is very slow in ordering payment of penalties.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION

“Timely and Appropriate” Guidance, December 22, 1998 and CAA Penalty Policy, October 25, 1991

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

None

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

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)

RIDEM indicated it has not met all its Performance Partnership Agreement (PPA) commitments. Its inspections at Title V and SM80 facilities fell short of the mark. In its final work plan for FY 2003, RIDEM's Office of Air Resources committed to inspections at 70% of the Title V facilities and 25% of the SM80 facilities. This is more than required by EPA's Compliance Monitoring Strategy (CMS) policy, which only requires that 50% of the Title V facilities and 20% of the SM80 facilities be inspected each year. EPA Region 1 agreed to allow RIDEM to report inspection numbers in the PPA based on RIDEM's fiscal year that runs from July 1 of each year to the subsequent June 30th, so there is a time discrepancy between what is required by the PPA and what is required by the CMS, which is based on the federal fiscal year (October 1st to the next September 30th). RIDEM tracks information on a monthly and/or quarterly basis so that all the information required can be formatted accordingly.

RIDEM stated that it did review each Title V annual certification that was submitted for review in FY 2003.

RIDEM's Office of Compliance and Inspection indicated that it did not fulfill its commitment to take timely enforcement action, in each and every case, in response to confirmed violations. The reasons for this have already been discussed under Section III above entitled "Review of State Enforcement Activity".

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION

2002-2003 Performance Partnership Agreement and OAR & OC&I workplans

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

None

Section 4: Review of Database Integrity

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)

Minimum data requirements are normally entered in a timely manner

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION

Compliance Monitoring Strategy, April 25, 2001 and February 2, 2001 Source Compliance and State Action Reporting for Stationary Sources of Air Pollution Information Collection Request (66 Fed. Reg. 8588)

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

None

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)

The following table illustrates the type of discrepancies between data that is reported in the EPA database and data maintained by RIDEM.

Fed FY	Data point	EPA database	RI database	Difference
2002	Title V FCEs	28	33	+5
2003	Title V FCEs	36	29	-7
2002	SM80 FCEs	16	30	+14
2003	SM80 FCEs	32	30	12
2003	NOVs	31	6	-25
2003	Admin Actions	7	9	+2

The EPA database indicates that RIDEM assesses two penalties against the same facility, Smithfield Peat Company, in FY 2003, in the amounts of \$45,797 and \$4,579,700. The actual enforcement documents indicate that the penalty was \$45,797. The \$4,579,700 figure was a data entry error that inflated the penalty figure by a magnitude of 100.

An area of significant EPA Region 1 concern is reporting of stack test observation in the EPA database. Close review by EPA and RIDEM revealed that several stack test observations reported by RIDEM in EPA's database were erroneous. The dates on which

test reports and/or test protocols were submitted to RIDEM for review were entered into the EPA database as the dates that stack test observations were actually conducted by RIDEM. In addition, some completed stack tests were not yet reported to EPA.

The discrepancy in the Notice of Violations (NOV) count could be that RIDEM reported verbally to EPA only those NOVs issued against HPVs. Regardless, none of the figures in EPA's database match with the figures reported by RIDEM.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

Compliance Monitoring Strategy, April 25, 2001

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

EPA recommends that the RIDEM develop a plan to improve data accuracy and submit it to EPA Region 1 by April 2, 2005. EPA Region 1 suggests that the plan continue the practice of RIDEM inspectors completing timely and accurate data entry log forms that include all the minimum data reporting elements required and that are easy to understand and follow. A technical RIDEM staff person assigned to QA/QC should ensure that the data entered into the EPA database is accurate.

RIDEM requested that EPA provide contractor support to RIDEM for its data entry responsibilities to EPA as a means of resolving this data problem. Although the suggestion is well taken by EPA, due to its own budgetary constraints, EPA does not anticipate that it will have money available to hire a contractor for this work

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)

The minimum data requirements (MDRs) are complete. RIDEM does enter data for each of the required data elements; however, as alluded to above, the information provided for each MDR is not always accurate and this issue needs to be addressed by RIDEM.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

Compliance Monitoring Strategy, April 25, 2001 and February 2, 2001 Source Compliance and State Action Reporting for Stationary Sources of Air Pollution Information Collection Request (66 Fed. Reg. 8588)

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

None

Resource Conservation and Recovery Act Enforcement Program

Information Sources Included in the Review

The RCRA portion of the evaluation entailed reviewing 12 inspection/enforcement case files, from FY 2002 and FY 2003. The evaluation utilized EPA Headquarters' and Region I data pulls to provide national average and state specific information (See attachments for data runs). The information from the file reviews and data pulls was used to answer specific questions covering 12 topic or element areas that were collapsed into four general headings: Review of State Inspection Implementation; Review of State Enforcement Activity; Review of State Performance Partnership Agreements; and Review of Database Integrity.

EPA Region 1 selected 1 Treatment/Storage or Disposal (TSD) facility, 7 Large Quantity Generator (LQG) facilities and 4 Small Quantity Generator (SQG) facilities for review. Eight of the files reviewed consisted of an evaluation of the enforcement response to the inspection reviewed. Four of the files reviewed consisted of an evaluation of the inspection only. The following is a list of the facility case files reviewed by EPA along with each facility's classification and whether the facility was an enforcement case review or an inspection-only review:

Enforcement Files:

1. Bristol Industrial Park (LQG)
2. Crown Plating (SQG)
3. Mitkem Corp. (SQG)
4. Monarch Metal Finishing (LQG)
5. Newport Shipyard (SQG)
6. Northland/Phillips (TSD)
7. Swarovski Jewelry (LQG)
8. Technical Materials (LQG)

Inspection Only Files:

1. Amtrol Inc. (LQG)
2. B. A. Ballou & Co. Inc. (LQG)
3. Fielding Manufacturing (SQG)
4. International Etching (LQG)

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

According to regional data pulls and the file review, RIDEM completed inspections of 100% of its TSD universe and 37% of its LQG universe during FY2003. RIDEM had a 77% five-year coverage rate of LQGs for FYs 1999 - 2003. The bulk of the remaining LQGs not inspected during this five-year period (25 facilities total) were either inspections conducted by USEPA (5) or newly notifying facilities (16). RIDEM planned to conduct at least 75 inspections during 2003. The actual number of completed inspections by RIDEM in 2003 was 182 as determined by reviewing regionally-pulled data.

RIDEM has surpassed expectations for the number of inspections completed given the size of inspector staff and the size of the regulated universe in Rhode Island. RIDEM shows a superior effort in this area.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

RCRAInfo as well as file review data was used in reviewing RIDEM performance in this area.

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

None

2. **Degree to which inspection/evaluations reports document inspection findings, including accurate descriptions of what was observed to sufficiently identify violations.**

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

Most reports were very comprehensive, including general and facility information, applicable requirements, process descriptions and detailed descriptions of the types, quantities and management conditions of the wastes generated at the facility inspected. Nearly all supporting documentation needed to identify and bolster violations cited was

present.

Twelve files were reviewed, of these, eleven reports were in excellent condition. The outlying report was in the case of the inspection conducted at Northland Environmental by the Office of Waste Management (OWM) at RIDEM. The documentation of violations and conditions present during the inspection was not sufficient to sustain a complete and all-inclusive enforcement action. The lack of sufficient details documented in the report did not allow an adequate determination of all potential violations. The bulk of the inspection files reviewed indicates that the RIDEM does an excellent job in documenting findings and violations identified during inspections. More thorough inspection reports and documentation of violations at TSDs must be completed.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

File Review information was used in reviewing RIDEM performance in this area.

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

Documentation of the inspections of the TSDs needs to be improved. EPA believes this can be accomplished by implementing the following recommendation:
Provide additional inspection and enforcement training to OWM staff in order to assure proper TSD inspections are conducted and reports are adequately detailed to support violations in an enforcement proceeding.

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

All the inspection reports for the files reviewed by EPA were completed in a timely manner with most reports completed within 2 weeks of a site visit. The RIDEM indicated that it has an unwritten rule to try and complete RCRA inspection reports within a week of the site visit, and typically that standard is met.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

File Review information was used in reviewing RIDEM performance in this area.

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

None

- 4) **Degree to which significant violations are accurately identified and reported to EPA national databases in a timely and accurate manner.**

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

In accordance with EPA's Hazardous Waste Enforcement Response Policy, determinations of significant non-compliance should be made within 150 days of the inspection. RIDEM reported determination information within 150 days for ten of the twelve cases reviewed. In the remaining two cases, additional information gathering and investigation/inspections were needed and resulted in RIDEM not meeting the standard.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

RCRAInfo as well as file review data was used in reviewing RIDEM performance in this area.

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

None

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

RIDEM requires injunctive relief that will return facilities to compliance within a specific time frame in every single enforcement action it brings, whether formal or informal.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

File Review information was used in reviewing RIDEM performance in this area.

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

None

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

IMPROVEMENT):

The review of RIDEM's enforcement cases found that RIDEM took the appropriate response action in each of the cases reviewed. RIDEM consistently applies RIDEM and EPA policies in making its response determinations. Informal actions are all taken in a timely manner. Four formal actions were reviewed. The average time needed by RIDEM to issue these actions was 315 days. The ERP calls for formal actions to be issued within 240 days of the inspection. All of the reviewed formal actions exceeded 240 days.

Bristol Industrial Park - 425
Mitkem - 281
Monarch Metal Finishing - 300
Newport Shipyard - 254

Time frames were exceeded in these cases primarily due to delays in case development between technical and legal staff. Some delays have occurred due to a shortage of legal review resources. One case involved a delay resulting from consideration of potential criminal violations prior to civil enforcement action initiation

RIDEM does an excellent job determining the appropriate level of the enforcement response required in each case. RIDEM needs to address the delays involved with case issuance.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

File Review information was used in reviewing RIDEM performance in this area.

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

RIDEM has initiated changes to mitigate the problem of extended time-lines for case issuance. See Element 13.1 for a further discussion of legal resources.

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

The calculations for both gravity and economic benefit penalty components are in the files and thorough penalty justification memos are in the files. RIDEM uses a comprehensive penalty calculation matrix in determining appropriate penalty. New penalty calculations are compared to past calculation methodologies to ensure consistency in approach. RIDEM does not use the BEN model in all its penalty calculations. RIDEM does run the BEN model some of the time and uses that data in

assessing penalties if it believes there will be a significant benefit in other cases. RIDEM mainly adjusts economic benefit based on actual expense costs. By not using BEN RIDEM may be undervaluing all of the delayed and/or avoided costs of non-compliance. RIDEM should use a mechanism for determining economic benefit that also considers the benefits gained by the delayed and/or avoided expenditures of money. The RIDEM does a good job of accurately identifying violations and assessing appropriate and consistent gravity component penalties.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

File Review information was used in reviewing RIDEM performance in this area.

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

EPA should provide RIDEM with additional BEN training. EPA will also meet with RIDEM staff in information sharing meetings to discuss options in penalty calculation methodology.

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

All formal enforcement actions issued by RIDEM collect an appropriate penalty in accordance with the state penalty policy. There were eleven formal actions issued by RIDEM in FY 2003; 100% of these cases included penalties.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

RCRAInfo as well as file review data was used in reviewing RIDEM performance in this area.

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

None

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

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

RIDEM has a single PPA/PPG agreement that outlines RCRA enforcement related commitments. RIDEM has met or exceeded those commitment levels. As noted in Element #1 above, RIDEM far exceeded inspection commitment targets in FY 2003

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

RCRAInfo as well as file review data was used in reviewing RIDEM performance in this area.

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

None

Section 4: Review of Database Integrity

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

Minimum data requirements are normally entered in a timely manner.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

RCRAInfo as well as file review data was used in reviewing RIDEM performance in this area.

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

None

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

Most of the data reported in RCRAInfo for the twelve case files reviewed was current and accurate. Two files had incomplete or inaccurate information in the data system. The RCRAInfo record for Swarowski Jewelry did not have universal waste violations that were documented in the written file records. Additionally, the Bristol Industrial Park

RCRAInfo record had numerous inaccuracies and omissions. The initial inspection date and the SNY (“significant non-compliance - yes” in RCRAInfo) dates were incorrect. Settlement data including details of the final order, return to compliance dates, updated violation information and an inspection date were all missing from the record. RIDEM needs to improve the accuracy of data entered into RCRAInfo.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

RCRAInfo and file review data was used in reviewing RIDEM performance in this area.

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

RIDEM should institute a process which would check the accuracy of the data in RCRAInfo at case conclusion.

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

The minimum data requirements are complete. The following table represents enforcement data reported by RIDEM for FY 2003. EPA and RIDEM agree in that this data is accurate.

Inspection Counts Complete	182
Violators	73
Informal Actions	62
SNC Counts Complete	7
Formal Actions	11

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

RCRAInfo and file review data was used in reviewing RIDEM performance in this area.

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

None

Clean Water Act NPDES Enforcement Program

Information Sources Included in the Review

The CWA portion of the review entailed reviewing 11 inspection/enforcement case files, from fiscal year 2003. The review used the EPA Headquarters data pulls to provide national average and state specific information. The information from the file reviews and data pulls was used to answer specific questions covering 11 topic or element areas, as well as, the performance partnership agreement and a review of database integrity.

EPA Region I reviewed the inspection/enforcement files for the following 8 Major facilities and 3 Minor facilities :

1. Westerly WWTF (RI0100064)
2. Jamestown WWTF (RI0100366)
3. Kenyon Piece Dye Works (RI0000191)
4. Portsmouth Middle School (RI0100242) minor
5. Bradford Dyeing Company (RI0000043)
6. Blount Seafood (RI0001121)
7. Blackstone-Smithfield Corp (MA0000485) minor
8. Warren WWTF (RI0100056)
9. Newport WWTF (RI0100293)
10. Cranston WWTF (RI0100013)
11. Briarcliffe Manor (RI0020168) minor

Of these 11 facilities, three received letters of deficiency and one received a notice of violation (NOV). The NOV included a penalty assessment. Because only one penalty action was reviewed, a partial review was done of an additional penalty action against the City of Woonsocket.

<u>EPA Evaluators:</u>	Linda Gray-Brolin	617-918-1876
	George Harding	617-918-1870
	Steven Couto	617-918-1765

State Contact: Dean Albro **Phone:** 401-222-4700 ext. 7400

Section 1: Review of State Inspection Implementation

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR

IMPROVEMENT)

According to the EPA HQ Clean Water Act Metric Results, in fiscal year 2003, RIDEM performed inspections at 21 of the 25 Major facilities (84% coverage). This is above the national average for the percentage of Majors inspected annually, although it does not meet the national goal of 100% coverage. The Metric Results show that RIDEM did not perform any inspections of NPDES Minor facilities. Two minor facilities were included in the EPA file review. These facilities were visited by RIDEM, but a full compliance evaluation inspection was not conducted. Although there is no specific national goal for inspection coverage of Minor facilities, RIDEM is well below the national average of 24% coverage by the states. Inspecting at least some NPDES Minor facilities is necessary to maintain a credible compliance monitoring program.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

2002-2003 Performance Partnership Agreement

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED

RIDEM should conduct compliance evaluation inspections each year of at least some portion of its NPDES minor facilities. The appropriate coverage level can be negotiated as part of the Performance Partnership Agreement. RIDEM should evaluate whether it is devoting adequate resources to water inspections.

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)

Nine of the eleven inspection reports were comprehensive and complete and include accurate identification of visible violations. This included all eight major facilities, for which EPA Form 3560 was used. The inspections at two of the minors (Blackstone-Smithfield Corp and Briarcliff Manor) focused on specific compliance issues. For the minor facilities, Form 3560 was not used. In addition to the form 3560, RIDEM has its own checklist that contains evaluations of the following areas: Records and Reports, Operation and Maintenance, Compliance Schedules, Self-Monitoring Program, and Effluent/Receiving Water observations. All inspection reports were completed in a timely manner.

As noted above, the inspection reports for two minor facilities focused entirely on a particular problem area, with no indication whether the facility's performance in other areas was reviewed. For example, the Blackstone-Smithfield Corp. report dealt entirely with chlorination system problems, while the Briarcliff Manor report dealt entirely with fecal coliform violations. The inspection files did not indicate if this was due to special

circumstances (e.g., the inspection was in response to a specific complaint).

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

NPDES Compliance Inspection Manual, September, 1994

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED

RIDEM should consider adding a clarifying notation in inspection files for minor facilities in which a comprehensive inspection did not occur. Such focused inspections may be appropriate in some instances due to limited resources. However, to be counted by EPA as a Compliance Evaluation Inspection, RIDEM must evaluate all aspects of the facility's operations.

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)

The inspection reports reviewed were all completed within two weeks of the inspection. Most inspection reports were completed on the day of the inspection. RIDEM indicated that it has a goal to complete inspection reports within two weeks of the site visit.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

NPDES Compliance Inspection Manual, September, 1994

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED

None.

Section 2: Review of State Enforcement Activity

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)

The Discharge Monitoring Reports submitted by the NPDES permittees are entered into EPA's Permit Compliance System (PCS) by the RIDEM in a timely manner. PCS automatically flags significant violations and reports them to EPA. RIDEM has worked closely with EPA to develop its PCS capabilities and devoted significant resources in this

area. RIDEM has volunteered to be one of the pilot states for the conversion from PCS to the new ICIS system.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

40 CFR Part 123

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED

None.

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)

Six of the eleven inspections found violations at the facility. In four cases the violations were minor and could be corrected quickly. The three that received a letter of deficiency were required to report back to RIDEM within 30 days on corrective actions taken. In the case of Portsmouth Middle School, the NOV had not yet been drafted at the time of the review. In the case of Blount Seafoods, the NOV required that the company maintain full compliance at all times. No compliance schedule was included in the NOV because the company is obligated to comply with its permit and, if necessary, has the ability to immediately do so by reducing production. The Clean Water Act states that administrative orders shall specify a reasonable time for compliance.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

Revised Policy Framework for State/EPA Agreements, August, 1986

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED

None.

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)

In two of the 11 cases reviewed, RIDEM failed to respond to violations in a timely and/or appropriate manner. For instance, Kenyon reported TSS violations from October 2002 until April 2003. The state sent a SNC letter in August 2003. EPA's Exceptions List

policy would require that the violations be addressed by a formal enforcement action (i.e., an administrative order or judicial referral) within 60 days of the end of the second quarter of violation (i.e., by the end of May 2003). The case was not referred to OCI for issuance of NOV). The Portsmouth Middle School was found to have significant compliance problems in October of 2003. The case was referred to the OCI for issuance of an NOV in April of 2004. It has not yet been issued. The delays in responding to these violations may be due to a lack of enforcement resources.

All enforcement actions are referred to the RIDEM Office of Legal Services (OLS), which is responsible for all of DEM's legal activities. OCI can request that certain cases be given higher priority by OLS.

Preparation of the enforcement documents for all complicated water enforcement cases is assigned to a single person in OCI. The lack of additional senior staff capable of working on complex cases has an adverse impact on the timeliness of enforcement response. This individual is also a supervisor, so time spent developing enforcement cases detracts from management of the water inspection and enforcement programs.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

Revised Policy Framework for State/EPA Agreements, August, 1986

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED

To insure that instances of SNC are addressed in a timely and appropriate manner, RIDEM should evaluate whether it has adequate enforcement resources. RIDEM has initiated changes to mitigate the problem of extended time-lines for case issuance. See Element 13.1 for a further discussion of legal resources. In addition, RIDEM should develop a senior position in its water enforcement program devoted to working on complicated cases.

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)

RIDEM calculates its penalties in accordance with its Rules and Regulations for Assessment of Administrative Penalties, May 2000 (The Rules). The Rules include a penalty matrix for calculation of the gravity component. The Rules also require that the penalty include the economic benefit of the non-compliance unless there is no identifiable benefit, or the amount of the benefit cannot be quantified.

Of the 11 files reviewed, there was only one penalty action (Blount Seafood). EPA also reviewed a penalty action taken against the City of Woonsocket. The gravity component

for each case was calculated in accordance with the Rules. In both cases RIDEM concluded that it did not have adequate information to quantify the economic benefit, so no economic benefit component was included in the penalty.

Based on discussions with RIDEM personnel, in most cases there is limited information available to quantify the economic benefit. RIDEM has no statutory authority analogous to Section 308 of the Clean Water Act to require violators to provide such information. Because they may have to testify at hearing on how the economic benefit was estimated, RIDEM personnel are reluctant to attempt an economic benefit calculation unless they have solid data. When the information is available, the economic benefit is calculated and included in the proposed penalty.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

Revised Policy Framework for State/EPA Agreements, August, 1986

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED

It would be useful for RIDEM to get the authority to require facilities to provide relevant information, including that required to quantify the economic benefit. Ideally RIDEM should seek statutory authority under state law. An alternative approach would be to “piggyback” on EPA’s Section 308 authority by having EPA issue the information request and provide the response to RIDEM. EPA would be willing to work with RIDEM to develop a protocol for providing this assistance.

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)

Of the 11 files reviewed, there was only one penalty action (Blount Seafood). As noted above, RIDEM concluded that it could not quantify the economic benefit from the violations. The proposed penalty was \$65,000. This was dropped to \$22,500 in the 6/3/2004 Consent Agreement. The basis for the reduction was improper sampling by Blount (use of a 10-hour composite sample rather than a 24-hour composite as required by the company’s permit) that made some of the violations suspect. No additional penalty was assessed for Blount’s failure to collect samples as required by the permit.

In addition, EPA evaluated a penalty action taken against the City of Woonsocket for unpermitted overflows from its sewer system. The proposed penalty was \$25,000. As noted above, RIDEM concluded that it could not quantify the economic benefit from the violations. This was reduced to \$7,500 in the October 24, 2003 Consent Agreement. The basis for the reduction was that the City had provided information about the

discharge points to RIDEM prior to issuance of the City's discharge permit, and the City had made substantial efforts to clean a clogged siphon that contributed to the overflows.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

Revised Policy Framework for State/EPA Agreements, August, 1986

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED

DEM should insure that economic benefit is calculated for all penalty calculations. Significant economic benefit and at least some gravity component should be recovered absent compelling justification

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

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)

The RI PPA does not contain any specific numerical water inspection or enforcement targets. Subject to its resource constraints, RIDEM's performance is consistent with the non-quantified enforcement statement appended to the FY 2002-3 PPA with the exception of not ensuring that economic benefit is recovered in penalty actions.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

2002-2003 Performance Partnership Agreement

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED

None

Section 4: Review of Database Integrity

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)

Based on discussions with EPA PCS staff who have been working closely with RIDEM data entry staff, minimum data requirements are entered in a timely manner.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

Delegation Memorandum of Agreement 1994

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED

None.

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)

DEM is responsible for entering all discharge monitoring report (DMR) and state inspection and enforcement data into PCS. Based on discussions with EPA PCS staff who have been working closely with RIDEM data entry staff, data in the system appears to be accurate.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

Delegation Memorandum of Agreement 1994

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED

None.

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)

Based on discussions with EPA PCS staff who have been working closely with RIDEM data entry staff, minimum data requirements appear to be complete.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

Delegation Memorandum of Agreement 1994

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED

None

Element 13 - Additional program elements reviewed at the request of RIDEM

RIDEM proposed five issues for review as part of Element 13. EPA drafted both the “Issue for Review” and the “Findings and Recommendations” for 13.1. For 13.2 through 13.5, RIDEM wrote and submitted to EPA the “Issue for Review” and EPA wrote the “Findings and Recommendations.”

13.1 Office of Legal Services

EPA Contact - Joel Blumstein, 617-918-1771

Issue for Review

The primary purpose of the review of the RIDEM Office of Legal Services was to gain an understanding how the legal office supports RIDEM’s enforcement program, with an emphasis on any constraints that may exist in bringing enforcement cases to a successful resolution. Among the factors reviewed were: 1) staffing in the legal office; 2) the range and quantity of matters addressed by the legal office; 3) the types of enforcement matters handled by the legal office (and which matters do not receive legal support); 4) communications and priority setting efforts between the legal office and enforcement managers in RIDEM; 5) quality and timeliness issues; and 6) interactions with the AG’s office.

Findings

- The Rhode Island DEM Office of Legal Services consists of 11 staff: the Executive Counsel (Gerald McAvoy); 3 Deputy Chief Legal Counsel; 2 Senior Legal Counsel; 3 Legal Counsel; and 2 support staff.
- The Office of Legal Services provides legal support for all of RIDEM and covers an extremely wide spectrum of activities including many which do not have a direct counterpart at EPA (e.g., natural resources and acquisitions, agriculture, fish and wildlife).
- The Executive Counsel has designated a lead counsel and support counsel for each of approximately 15 subject-specific activity areas covering all of the legal support provided to RIDEM.
- Five attorneys are assigned to environmental enforcement activities. Because these attorneys also perform other functions, it is estimated that they devote approximately 3.5 to 4 FTE to environmental enforcement activities. Note that these environmental enforcement activities include work in both federally delegated programs (e.g., RCRA hazardous waste, CWA NPDES, CAA stationary source) and non-delegated programs (e.g., septic systems, solid waste).
- The Office of Legal Services handles an estimated 800-1000 active matters at any given

time, of which in excess of 200 are enforcement cases. (This total does not include an estimated 198 old open wetlands enforcement files, which were recently discovered and which are now in the process of being closed.)

- Among the enforcement-related tasks performed by the Office of Legal Services attorneys are the following:
 - Reviewing Notices of Violation (NOVs) prior to issuance (now performed exclusively by the Executive Counsel)
 - Participating in settlement discussions
 - Preparing for and conducting evidentiary hearings before the Administrative Adjudication Division (AAD)
 - Enforcing final administrative orders and consent agreements before the Superior Court
 - Directly prosecuting cases before the Superior Court
 - Filing claims related to bankruptcies or receiverships

- Many of these activities are extremely resource-intensive ones requiring considerable hearing and litigation work.

- The schedules established by the AAD hearing officers in cases pending before them (which totaled 76 cases as of August 2, 2004) often drive the work of the Office of Legal Services attorneys.

- The Rhode Island Attorney General's Office becomes involved in only a limited a number of environmental enforcement cases and, when it does, its attorneys act as co-lead with the Office of Legal Services attorneys.

- The Office of Legal Services has attempted to make its operations as efficient as possible, for example, by having the attorneys specialize in particular practice areas and by having a single person review all NOVs. The latter has reduced the review time on NOVs from numerous months to a few days. However, given the extremely large caseload being handled by the Office of Legal Services attorneys, the resource-intensive nature of their work, and the small number of attorneys available to handle this work, EPA has concerns about the ability of the Office to bring cases to a timely resolution. This is particularly so when it is necessary to bring a case to the Superior Court (i.e., for cases where there was no response to an NOV; cases where consent agreements need to be enforced; and, cases where AAD decisions need to be enforced). As of August 17, 2004, there were eighty-two (82) cases awaiting Superior Court complaints for enforcement followup. There also appear to be delays involved when it is necessary to file a claim in a bankruptcy or receivership proceeding.

Information Reviewed

The above findings are based on interviews conducted with Gerald McAvoy, Executive Counsel who directs and manages the RIDEM Office of Legal Services, and Dean Albro, Chief of the

Office of Compliance and Inspection, and the review of materials which they provided.

Recommendations

Continued efforts at streamlining and increasing efficiency are encouraged. It is also recommended that RIDEM pay particular attention to the pace at which enforcement cases in federally delegated environmental programs are handled and that, in consultation with EPA, opportunities be explored for working jointly with EPA on some of these cases or on referring some of these cases to EPA. However, in order to significantly increase the pace at which environmental enforcement cases are brought to timely resolution, it is acknowledged that it will be necessary to increase the legal resources devoted to these cases.

13.2 OUTPUT AND OUTCOME MEASURES

EPA contact - Mark Mahoney, 617-918-1842

Issue for Review

As part of EPA's evaluation of the RIDEM's state enforcement program, RIDEM would like EPA to evaluate RIDEM's efforts to report its overall outputs and outcomes resulting from enforcement related activities.

Since 1999, RIDEM has prepared for public review an accomplishment summary of enforcement related activities. These documents are available on RIDEM's web site at www.state.ri.us/dem/. The purpose of the accomplishment summary is to provide documentation on RIDEM's efforts in the form of outputs and outcomes. The accomplishment summaries have evolved from documents that initially reported bare bone outputs to documents that include outcome information related to the protection of the environment and the public's health, safety and welfare. In addition, RIDEM is including some trend information to allow the public to see how efforts compare over time and to provide some perspective as to how much in the way of human resources is available to carry out our enforcement efforts. While the majority of RIDEM's reports focus on the Office of Compliance & Inspection, the most recent 2003 accomplishment summary included compliance output efforts in other regulatory divisions. Also, in addition to OC&I's accomplishment summary, the RIDEM has prepared annual reports that provide overall efforts and measures that have resulted in outcomes that protect the environment.

OUTPUTS

Much of the information RIDEM gathers on outputs comes from individual data systems that record such information as the

- ▶ # of complaints received,
- ▶ # of complaints investigated,
- ▶ #of inspections conducted (complaint and compliance monitoring),

of informal enforcement actions issued,
of formal enforcement actions issued and
of enforcement actions closed or resolved.

ENVIRONMENTAL OUTCOMES

In the last few years, the OC&I has developed case conclusion data sheets for its programs that assist the office in the ability to gather information regarding outcomes to our enforcement actions. Some of the outcome information related to enforcement activities includes the

of lead paint sites cleaned/resolved,
of air pollution sources resolved (e.g., visible emissions, fugitive dust, odors, etc.),
amount of petroleum contaminated soil removed or amount of petroleum released and removed from the environment,
amount of hazardous waste or hazardous chemicals removed from the environment,
of propane bottles removed,
amount of mercury removed from locations that cause a threat to the environment or the public,
amount of pollutants removed,
of batteries removed,
amount of asbestos cleaned up,
of failed septic systems brought into compliance,
of RCRA hazardous waste generators brought into compliance,
amount of solid waste removed from the environment including waste tires,
amount of UST facilities brought into compliance or abandoned USTs removed from the environment,
amount of illegal water pollution discharges eliminated and
amount of wetland acreage restored.

ENFORCEMENT OUTCOMES

As part of RIDEM's traditional outcome measures, we also collect information on the
amount of penalties proposed and actually collected,
amount of cost recovery collected and
of Supplemental Environmental Projects agreed to with an approximate monetary worth of the project.

Much of RIDEM's results on outcomes relates to considerable informal enforcement and an enforcement presence in the field. RIDEM acknowledges that EPA's evaluation process is presently limited to specific aspects of the CWA NPDES program, CAA and RCRA. That notwithstanding, RIDEM feels that looking beyond the limited scope of those programs is important to judge the overall benefits of a state enforcement program. Going beyond the accomplishments derived from strict formal enforcement is also enlightening and should be considered when evaluating enforcement efforts to protect the environment and the public's health, safety and welfare.

FINDINGS

Region 1 applauds RIDEM's efforts to more systematically track outputs and outcomes from enforcement and compliance programs. EPA is making similar efforts. In recent years, Region 1 has worked with all New England states to improve our ability to understand how our combined efforts are making a difference in New England's environment. This will allow us to work with our state partners to better utilize state and federal resources to address New England's most pressing environmental problems. RIDEM's efforts to track and report outputs and outcomes are an important positive contribution to improving Rhode Island's and the region's environment.

RIDEM's annual enforcement and compliance report is a good summary of each year's activities. Making it available on the RIDEM website greatly increases its public availability. This should lead to greater public appreciation of the benefits of environmental enforcement and compliance programs.

Enforcement outputs are an important management tool to ensure that critical activities such as inspections, cases, orders, penalties, etc. are occurring and allows RIDEM and Region 1 to see how productivity shifts over time. Currently, the majority (80% or more) of RIDEM's outputs and outcomes are the result of state-mandated programs such as solid waste enforcement, septic enforcement, etc. RIDEM's tracking and reporting of outputs and outcomes does not identify those that are the result of the delegated Federal programs that are the subject of this evaluation.

RIDEM has developed and is using a "case conclusion data sheet" (RICCDS) to record outputs and outcomes. RIDEM modeled the RICCDS on EPA's case conclusion data sheet.

RECOMMENDATIONS

Region 1 offers the following recommendations to RIDEM as steps that should contribute to our shared goals of improved environmental problem solving, more efficient regional planning and coordination and public accountability.

1. Region 1 recommends that RIDEM track and report outputs and outcomes from delegated federal programs in a way that distinguishes them from the outputs and outcomes from state programs. Region 1 recognizes that the level of outputs in any given year may fluctuate up or down reflecting RIDEM's decisions on how to allocate resources to achieve the most environmental benefit. Region 1 expects that, all things being equal, over time the proportion between state and federal outputs will remain roughly constant.
2. EPA's case conclusion data sheet changes each year. RIDEM should request the most recent version during annual Performance Partnership discussions. This should include the guidance that accompanies it. Where possible, Region 1 encourages RIDEM to track its outputs and outcomes using the metrics and definitions described in EPA's case conclusion data sheet guidance.

3. RIDEM should consider modifying the RICCDs to allow identification of outputs and outcomes from delegated federal programs.

13.3 Environmental Results Projects and Compliance Assistance

EPA contact - Chris Rascher - 617-918-1834

Issue for Review

RIDEM chose to use the Environmental Results Program (ERP) to address multi-media compliance issues within the automotive refinishing industry sector and staffing and resource reduction issues within the Underground Storage Tank Program. This decision was made as a result of our strategic planning process that is performed annually. Compliance with environmental and occupational health regulatory requirements was found to be lacking during early field investigations (supported in part by EPA Region I grant funds) that were directed toward pollution prevention and occupational/environmental health issues. In some cases, noncompliance discovered during regulatory inspections resulted in the issuance of fines by RIDEM's Office of Compliance and Inspection. Lack of compliance has resulted in costly remediation options that can be prevented through a stronger assistance effort.

The UST and Auto Body ERP development process included a number of meetings with stakeholder groups consisting of industry representatives, EPA and other public and private parties. All groups agreed with the need for this approach and offered valuable comments that were incorporated into the program. Stakeholder meeting minutes are available on the RIDEM website:

<http://www.state.ri.us/DEM/programs/benviron/assist/index.htm>.

Degree to which state tracks and measures results of compliance assistance activities.

The Environmental Results Program uses a unique tracking method to measure performance. Based on past research and RIDEM's experience with these industry sectors, Environmental Business Practice Indicators (EBPIs) were chosen to measure the most important compliance requirements specific to each sector. Baseline inspections that were statistically derived have been performed and a number of post-implementation inspections equal to the baseline are conducted to measure statistically valid improvements in compliance. A paper describing the statistical methodology "Draft ERP Statistical Methodology for Baseline Audits" is available at: <http://www.state.ri.us/DEM/programs/benviron/assist/abdycert/abdycert.htm>

RIDEM's Office of Technical and Customer Assistance (OTCA) routinely partners with other state agencies and industry groups to provide compliance assistance. Training sessions are designed for the targeted audience to make them as meaningful as possible and are provided at times most convenient to increase attendance.

For example, compliance and technical assistance was provided for the auto body sector in a

number of areas including:

- satellite accumulation (e.g., drum labeling and container management),
- contingency planning,
- personnel training,
- hazardous waste identification,
- pollution prevention,
- vehicle wash water management,
- sanding dust hazards and control,
- referrals to occupational health physicians for employees who wear respirators, and
- referrals to RIDOH industrial hygienists.

In addition, the University of Rhode Island's Center for Pollution Prevention has visited a number of shops and offered free technical assistance (e.g., on-site industry training in the use of ventilated sanding equipment with the Davies Career and Technical High School and the design of vehicle wash water recovery systems). Technical assistance efforts have also been coordinated with the Narragansett Bay Commission, RIDEM media program offices, and industry partners.

Findings

RIDEM is developing and implementing Environmental Results Programs (ERP) programs for industrial sectors where it has identified a human health and the environment need. These programs have combined assistance and compliance programs and developed measurement tools into an effective coordinated effort where the sum is greater than its parts. The Region commends RIDEM in its effective use of ERP to strengthen the assistance and compliance programs.

OTCA uses voluntary and mandatory ERPs for specific industrial and commercial sectors that need sector-wide compliance and technical assistance and to address multi-media compliance and human health and the environment issues. These sectors include auto-body, underground storage tanks (including retail gasoline, heating oil and hazardous chemical storage), auto salvage yards, and exterior lead paint removal contractors.

The auto-body ERP program has been fully implemented; the underground storage tank (UST) program is about to mail out self-certification forms; the lead paint removal contractor effort is still completing the assistance documents. An auto salvage yard ERP program recently received \$200,000 in federal assistance and is in the initial development stages. Components of RIDEM's ERP programs include self-certification checklists, return to compliance forms, performance measurement (statistically based inspections and analysis of self-certification checklists), and technical and compliance assistance including workshops, workbooks, and on-site assistance.

RIDEM selected its ERP sectors as part of its annual strategic planning process and during Performance Partnership Agreement (PPA) discussions with the Region. The UST sector

selection process included consideration of new legislative requirements in Rhode Island while RI DEM had to accommodate resource and staffing restrictions.

ERP provides RIDEM with a great deal of performance measurement data. The program generates a complete assessment of compliance data from the self-certification checklists for the entire sector. Baseline and follow-up inspections provide compliance information from a statistically significant subset of the sector and help to assure the accuracy of the self-certification checklists. For the auto-body and UST sectors, RIDEM is working with stakeholders to develop Environmental Business Practice Indicators (EBPIs) to separate and more easily track the most important sector-specific environmental performance indicators. The performance measures for both sectors are primarily linked to compliance-related and pollution prevention activities, and BMPs. For the auto-body sector these indicators are linked to a specific regulation. Pollution prevention EBPI examples for the auto-body sector include ventilated respiratory protection, high volume low pressure (HVLP) paint guns and compliance paint coatings (i.e., low VOC). These are all linked to RI DEM's air regulations.

With regard to performance measurement, RI DEM measured blood-lead levels of a number of auto-body sector workers to demonstrate the level of exposure and to establish a baseline. RIDEM used this information in meetings with the auto-body workers to demonstrate the need to reduce exposure.

RIDEM issued self-certification checklists, a certification workbook, and assistance material to each of the 371 licensed auto-body shops. One hundred and seventy-one facilities completed and returned the self-certification checklists and included 237 return to compliance forms. OTCA performed 40 multi-media baseline inspections prior to mailing the self-certification and assistance materials. Forty follow-up inspections were performed, 22 by the Office of Compliance and Inspection, and eighteen by the OTCA. The follow-up inspections evaluated compliance, determined the accuracy of the checklist responses and determined where revisions to the program may be needed. One hundred and eighteen baseline inspections were performed for the UST ERP. This is an increase from 60 inspections performed in the year prior to the initiation of UST ERP.

Since launching the auto body ERP, OTCA has provided workshops, telephone consultation and on-site compliance assistance to numerous auto body shops. They provide compliance, pollution prevention and technical assistance in several areas, based in part on the baseline inspections and results of the self-certification checklists. As part of the program, the University of Rhode Island's Center for Pollution Prevention has visited a number of shops and offered free technical assistance. Technical assistance efforts have been coordinated with the Narragansett Bay Commission, RIDEM media program offices, and industry partners. OTCA has been available for on-site assistance and has responded quickly to calls for technical assistance. It provides assistance via telephone for those calling in for more general types of assistance.

For the UST sector ERP effort, results from the baseline inspections will be used to identify specific assistance and compliance information for the 6 ERP workshops scheduled for later this

year. RIDEM expects that the vast majority of the 400 UST facilities will attend the UST ERP workshops. They developed the workbook with input from stakeholders and trade groups.

By measuring blood-lead levels in auto-body sector workers, RI DEM has worked towards protection of both human health and the environment. While not required and perhaps being resource and budget prohibitive, performance measurement would increase if follow-up blood lead level measurements were performed. While the auto-body workbook and outreach material discuss P2 methods, the checklists and inspections only evaluate those efforts that correspond to a related regulation. RI DEM could increase its measurement of P2 successes by including more P2-related questions in the checklist. The UST checklist does not evaluate best management practices (although it is included in the workbook). RI DEM could go further in measuring best management efforts if it included them in the checklist.

Recommendation

RI DEM has focused most of its compliance assistance resources towards the industrial/commercial sectors involved with ERP. The thoroughness of these efforts with regard to performance measurement and outreach should be commended. However, resources towards more traditional pollution prevention and compliance assistance to other sectors have been reduced from previous levels. RIDEM should consider increasing these efforts given its traditional success in these areas.

13.4 Underground Storage Tank Enforcement Efforts

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Issue for Review

RIDEM first developed rules and regulations for the management and operation of Underground Storage Tanks in 1984. In 1992, RIDEM's Underground Storage Tank program and its Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials obtained EPA approval and delegated authority.

In order to ensure compliance with RIDEM's UST Regulations, RIDEM maintains an inspection presence in the field to monitor compliance. RIDEM's strategy on targeting UST facilities for inspections has been to focus on groundwater protection and particularly drinking water supplies that are likely to be threatened or actually impacted from a release from a UST facility. RIDEM has experienced loss of drinking water supplies in the past due to a release from leaking USTs as well as threats to lives and properties as a result of vapors from leaking USTs released through underground utilities. RIDEM's inspections of UST facilities are quite comprehensive. In general, inspections focus on operational requirements and critical areas of concern that ensure a reduced threat of a release to the environment. In particular, inspections focus on continuous monitoring requirements for USTs (e.g., continuous operation of monitoring systems, monthly and annual testing, calibration, record keeping, etc.), tightness testing requirements, daily inventory and monthly reconciliation, continuous interstitial monitoring of double walled USTs,

annual testing for pressurized single walled USTs, spill containment requirements, overfill protection, cathodic protection for USTs including operating and maintenance requirements. RIDEM also ensures that all installations meet all new tank standards and that facilities that replace tanks follow all tank closure requirements including detection of any releases and clean up standards. Abandonment of USTs is prohibited. Over the past five years, RIDEM has conducted an average of 123 compliance-monitoring inspections per year.

In the event of non-compliance, RIDEM's enforcement response is similar to the criteria it would follow for RCRA Subtitle C hazardous waste generators. Secondary violations are initially handled through informal enforcement, and the facility is provided a specific time (usually sixty days) to return to compliance. In the event that the facility does not return to compliance within that time frame or the violations uncovered represent significant non-compliance, formal enforcement action is issued. Such actions include enforceable orders and an assessment of a penalty. Since 1998, RIDEM's formal enforcement efforts to enforce its UST Regulations have resulted in 142 formal enforcement actions. Total penalties proposed in those actions equal \$3,710,089.00. Cases with negotiated settlement to date have resulted in agreed upon cash penalties totaling \$1,292,143.37. RIDEM has also negotiated and agreed upon eight Supplemental Environmental Projects worth a total of \$469,081.57.

Formal enforcement actions for UST non-compliance include penalties that have both a gravity and economic benefit component. In contrast, EPA's enforcement response policy for UST compliance is very different. EPA's practice is to incorporate the use of field citations with very minor penalties for non-compliance. RIDEM has considerable concern over EPA's practice since it reverses the traditional role of the state and federal enforcement programs and has a high likelihood of sending the wrong message to the regulated community. RIDEM believes that the message this disparate practice sends is one of minimizing the importance of maintaining compliance with the UST Regulations. Accordingly, RIDEM has not agreed to allow EPA to carry out this practice in Rhode Island.

RIDEM acknowledges that EPA's state enforcement program evaluation process is presently limited to specific aspects of the CWA NPDES program, CAA and RCRA. That notwithstanding, RIDEM believes that looking beyond the limited scope of those programs is important to judge the overall benefits of a state enforcement program. RIDEM has placed considerable effort in UST compliance to reduce the threat or prevent the actual release of contaminants and hazardous chemicals into the environment from USTs. While RIDEM maintains delegated authority from EPA for its UST program, RIDEM operates its program very differently than EPA as it relates to incorporating substantial penalties for significant non-compliance. In particular, RIDEM operates its UST enforcement program similar to EPA's RCRA Subtitle C program to ensure that UST facilities that pose a threat to the environment and the public's health and safety are monitored. Those facilities that are found to be in non-compliance are informed in a timely manner and tracked to ensure that they achieve compliance in a relatively short time frame. Appropriate and timely formal enforcement is taken against those UST facilities, operators and owners that do not achieve compliance as required. Significant non-compliance results in formal enforcement including an assessment of penalties.

RIDEM is prepared to provide documentation to EPA regarding its formal enforcement efforts in the area of UST facility compliance.

Findings

Rhode Island has approximately 1,400 facilities with underground storage tanks. Inspections are conducted by both the Office of Waste Management and the Office of Compliance and Inspection. RIDEM has averaged over 130 inspections per year since 2000. During the last year the Office of Compliance and Inspection was responsible for two-thirds of the total inspections (102 of 155). Targeting of these inspections began with tanks located in specific watersheds with high risk, drinking water protection areas and other sensitive areas. Targeting has since shifted to focus on facility sectors with a high likelihood of non-compliance, municipalities and tanks adjacent to water bodies. Within the context of each inspection, an emphasis is placed on operational requirements - those physical and record-keeping requirements which affect the operations and effectiveness of the tank system and spill prevention. All enforcement actions whether formal or informal related to the Underground Storage Tank program are issued by the Office of Compliance and Inspection.

EPA reviewed seven inspection/enforcement case files, from federal fiscal years 2003 and 2004. These seven files were chosen by the Office of Compliance and Inspection to represent the type of case work that UST enforcement program encounters. All of the cases involved an informal enforcement action (LNC or LOD) followed by a formal enforcement action (NOV). The following is a list of the facility case files reviewed by EPA:

1. Ballards Service Center, New Shoreham
2. Cumberland Farms (Diamond Hill Market and Gas), Cumberland
3. Diamond Hill Food and Fuel (Valero), Cumberland
4. Original Pizza of Boston, Lincoln
5. South County Hospital, Wakefield
6. Warwick Cove Marina, Warwick
7. Woonsocket Consumers Coal Company, Woonsocket

The file review showed that when violations are found during an inspection, the facility is issued a Letter of Non-Compliance (LNC). The facility has sixty days to comply with the conditions of the LNC. After the sixty day period has lapsed, RIDEM follows up with a letter to the facility warning of pending formal enforcement if the facility does not comply with the terms of the LNC within 10 days. After the lapse of that period an Notice of Violation (NOV) is prepared and issued. The total time period from inspection to issuance of an NOV was between 5 ½ to 7 months in the cases reviewed. Penalties assessed are commensurate with penalties assessed under RCRA subtitle C enforcement. Three of the NOV's were issued after referral from the Office of Waste Management. These referrals were a result of facilities not complying with Letters of Deficiencies issued in response to UST Financial Responsibility Fund Review Board activities. These referrals were made to the Office of Compliance and Inspection years after the Letters of Deficiencies were issued. There are no written procedures or other protocols found to refer UST violations detected by the Office of Waste Management to the Office of Compliance

and Inspection to ensure timely enforcement. Once the Office of Compliance and Inspection was referred the case, it proceeded in the same timely manner as inspection cases.

This review substantiated RIDEM's accounting of their UST enforcement program. Region I commends RIDEM for their aggressive, timely and proficient enforcement program in Underground Storage Tank compliance. RIDEM is committed to a strategy to protect precious groundwater and surface water resources in a State that relies heavily on both.

Recommendations

RIDEM should work to ensure that more timely referrals from the Office of Waste Management are made in cases where formal enforcement responses are required. RIDEM should consider establishing written procedures and protocols for referrals from program offices to OCI.

EPA has developed standard definitions and measures for UST enforcement outputs and outcomes for RCRA subtitle I. While RIDEM does not report its UST enforcement outputs and outcomes to EPA, it should consider using EPA's standard definitions and measures.

13.5 Improving Compliance and Enforcement through Information Technology RIDEM

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Issue for Review

Background: The Bureau of Environmental Protection in the Rhode Island Department of Environmental Management is responsible for regulating a wide variety of parties and verifying compliance with environmental laws, rules, and requirements. Compliance is checked through various reporting and inspection processes implemented by five offices within the Bureau. Instances of non-compliance are addressed through the issuance of informal and formal enforcement actions, often in a progressive process that may include the assessment of monetary penalties, until compliance is reached and impacts are addressed.

Investigations are initiated through two processes: planned compliance inspections and response to complaints. The Office of Compliance and Inspection (OCI) has primary responsibility for responding to citizen complaints. In 2003, OCI responded to over 3,300 complaints in 7 environmental media (air, water, waste, etc.). Of those, 900 required emergency response. Response to these complaints resulted in over 3246 site inspections/investigations by RIDEM personnel.

All four offices within the Bureau conduct planned compliance inspections. In the 2003 Department Work plan, over 930 inspections of regulated entities were planned to check compliance in 22 different regulatory programs.

Following through on these response actions and investigations is critical to ensure compliance and corrective action and to recognize entities that are in compliance. Follow up may involve a combination of nine administrative processes in multiple programs and offices.

Areas to Improve Compliance and Enforcement: Although the current processes are the result of significant effort and have improved greatly over the past five years, there are many areas deserving continued attention. A study done by the Governor's Fiscal Fitness team estimated the amount of time spent by OCI staff in tracking the various aspects of this process. That analysis identified 23 different data tracking systems in use that required an estimated \$325,000 per year in staff time to operate and maintain. Even this level of effort may not be sufficient to ensure consistent, predictable, and timely follow through to investigations and inspections.

In order to improve this situation, the Department seeks to develop an information management system to support the compliance and enforcement functions in the Bureau to meet the following objectives:

1. Better, More Efficient Case Tracking and Management- Per the findings of the fiscal fitness analysis, too much time, effort and money is being spent on tracking cases as opposed to ensuring better environmental results. A goal of the new, consolidated IT system supporting compliance and inspection must be to minimize administrative support tasks and result in more staff and management time being devoted to actual cases. Furthermore, timely follow up may increase compliance and collection of penalties.
2. Better Reporting: Currently, a series of paper reports are generated monthly from a wide array of tracking systems to update program managers on compliance and enforcement efforts. Data is collected from other program managers in other Offices through a manual process. Data presented is thorough, but dense, making summarization and analysis difficult. Furthermore, relatively little reporting is done for outside partners (EPA) and stakeholders. A goal of the system must be to create a transparent reporting process that shows the status of the compliance and enforcement activities across the applicable offices. That update should be available real time to RIDEM managers, EPA, and members of the public.
3. Increased efficiency: Currently, inspectors and investigators may have administrative responsibilities to enter data, prepare reports, and prepare and issue follow up actions. A goal of the system must be to minimize these administrative tasks, maximize the time available for inspectors to conduct inspections, and keep field staff in the field as much as possible.
4. Improved Compliance at Permitted Facilities: Currently, permitting offices and their staff often rely on word of mouth and general enforcement reporting to hear about compliance issues related to the facilities that could come under their review. Opportunities to potentially fix systematic problems are lost if permitting staff are unaware of the compliance issues, or enforcement history of facilities under review, or like facilities. A goal of the system must be to integrate permitting information systems to facilitate effective sharing of

enforcement actions and compliance histories with permitting offices and provide enforcement staff with current and accurate information on environmental permits.

5. Increased accountability: Enforcement cases are often handled at the individual level and it is often left to the individual to set priorities. In some cases, decisions may be made by default when cases seen as lower priority are not actively tracked or followed up on. While prioritization is necessary, and critical, to managing a caseload such as this, decisions should be deliberate actions as opposed to being made by default and the consequences of prioritization should be tracked. A goal of the system must be to consistently define individual responsibility, and accountability, for all investigations and follow up actions outlined in the plan.

Proposed Approach for Improvement:

The Department has been conducting pilot studies on the development of several aspects of a system that could meet these goals and objectives. The two main projects underway are a pilot study to use Tablet PC's to improve the efficiency of inspections and a pilot study to track the tasks associated with the work flow in the leaking underground storage tank program. The lessons learned and prototypes developed in these pilots will be the basis for a more comprehensive system that will be designed and implemented in 2005 and 2006.

- Tablet PC Pilot: In the pilot study on the use and deployment of Tablet PC's to support inspections, the Department has partnered with Microsoft Corporation and retained Systems Engineering Inc. (SEI) to evaluate our business processes and build a prototype application to support and automate several aspects of the inspection of underground storage tank systems. The system prototype will allow the inspector to fill out an electronic checklist in the field, automatically upload that information to a compliance information database on return to the office, and forward the completed checklist and recommendation for follow up to the program supervisor.
- Tracking Work Flow: In this second pilot, RIDEM retained Kyran Associates to create a web based application to allow the tracking of tasks and timelines in the leaking underground storage tank program. The business processes were defined and incorporated into the system, target timelines were defined, and a regular, automatic reporting function was set up. The system is operational and is being enhanced, and considered for application in other programs, including the enforcement programs.

The Department is currently looking at applying the lessons learned from these pilot projects and other related projects, such as the complaint tracking database developed by OCI, to create a robust compliance and enforcement information system. This system will include tablet based electronic checklists for most, if not all, inspectors. The system will allow the automatic upload of inspection results into a compliance information database, which will be closely integrated with the Department's permitting information system. Work flow on follow up processes, including both informal and formal enforcement actions and various appeals and performance

tracking requirements, will be monitored and measured against target timelines using a work flow system.

Reporting will be provided “real time” through a web interface to RIDEM managers, EPA partners and the general public with appropriate security features necessary for an enforcement system, eliminating the need for “batch processed” update reports. The effort freed by eliminating collection and compilation of this information can be redirected to increased compliance and enforcement effort and greater efficiencies through the analysis of information collected.

“Dashboards” can be created to provide customized status reports to users depending on their perspective within, and outside, the organization. For instance, the Director will have a dashboard that provides a broader level status report than provided to a Division chief. The Director could drill into a more detailed status report, at the Bureau, Division, Program, or individual level, if needed. As we move forward, dashboards would be the integrated report showing the status of both projects and ongoing work processes.

The Road to the Improvement: For planning purposes, the development of the initial system will be directly linked to the implementation of the One Stop Grant.

In order to develop and implement this solution, the Department has begun discussions with the Information Technology unit at the Department of Administration and is formulating an inception phase for this project. Due to limitations on the One Stop funding, this project needs to be completed within an eighteen month period.

The RIDEM is committed to improvements to its compliance and enforcement programs through information technology changes. These improvements should facilitate the use of RIDEM’s limited human resources to better enforcement decision capabilities that will foster timely enforcement issuance and resolution.

Findings

EPA Region 1 looks forward to working with RIDEM as it implements its data system modernization.

Recommendations

1. During FY 2006 PPA discussions RIDEM should identify opportunities for OES to assist this work. During system development and implementation, OES will seek to insure that
 - a. there is efficient communication between RIDEM’s new system and EPA’s legacy systems;
 - b. the new processes maintain appropriate quality control of the automation of the paper processes in delegated federal enforcement programs;
 - c. RIDEM’s systems are appropriate for periodic reporting of RIDEM outputs and outcomes to OES.

- 2) The Recommendations for Element 13.3 “Outputs and Outcomes” above apply to this finding in their entirety.