

**State Program Review Framework for
West Virginia Department of Environmental Protection
EXECUTIVE SUMMARY**

Introduction

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

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

Compliance/Enforcement Structure

The West Virginia Department of Environmental Protection (WVDEP) consist of a Central Office located in Charleston, WV and five offices responsible for conducting compliance and enforcement activities. The offices are located in Charleston, WV; Fairmont, WV, Romney, WV; Teays, WV; and Oak Hill, WV.

WVDEP's Hazardous Waste Management program went through a re-organization during this review period. Beginning on January 15, 2006 the Waste Management Branch was dissolved and moved into the Office of Environmental Enforcement. The Office of Environmental Enforcement was moved into the Division of Water and Waste Management. The compliance and enforcement activities for Air are conducted out of the Compliance and Enforcement Program located in the Division of Air Quality.

Process

EPA held the kick-off meeting for the West Virginia State Review by conference call on May 17, 2007. Mike Zeto WVDEP and Samantha Beers, Betty Barnes, Patricia Gleason, from EPA were on the call. There are three compliance and monitoring programs being evaluated as part of the State Review Framework: Air, NPDES, and RCRA C. EPA programs conducting this review visited the Charleston office to conduct file reviews. The file reviews took place at separate times. The reviews began in May, 2007 and

continued through July, 2007. Each program contacted their respective counterparts at WVDEP to schedule visits for file reviews, provide data metrics, and the list of files to be reviewed. Each program conducted file reviews and evaluated the data metrics and wrote program specific reports. OECEJ wrote the executive summary, collated the reports, evaluated the reports to assure all elements of the SRF have been evaluated and addressed. OECEJ provided OECA and WVDEP with a copy of the report. Once WVDEP reviewed the draft reports, each program then entered into discussions with their counterparts regarding findings and recommendations.

Review Teams - EPA

Bernie Turlinski, Associate Director, office of Enforcement and Permits Review (Air)
Kurt Elsner
Gerallyn Duke
Danielle Baltera
Louvinia Madison-Glenn

Carol Amend, Chief, RCRA Compliance and Enforcement Branch
Stacie Peterson
Jeanna Henry

Patricia Gleason, Water Enforcement
Ashley Toy

Samantha Beers, Director, Office of Enforcement, Compliance and Environmental
Justice
Betty Barnes OECEJ

State Contacts

Mike Zito, Chief Enforcement Officer
Mike Fisher, Program Manager, Office of Enforcement, Water and Waste Management
Larry Betonte, Program Manager, office of Enforcement, Water and Waste Management
Jessie Adkins, Assistant Director for Compliance and Enforcement,
Division of Air Quality

Major State Priorities and Accomplishments **Best Practices**

The following are best practices identified for the Air enforcement program:

(1) The Title V certification review template used by WVDEP provides a thorough and organized format to enable the inspector to evaluate every relevant aspect of a Title V source's compliance history.

(2) The *HPV Discovery* form and *Enforcement Tracking and Transmittal* form used by WVDEP may serve as a best practice for other state and local agencies. These forms provide a thorough and organized format to document and track the decision process and enforcement activities related to violations found.

(3) WVDEP's performance in addressing HPVs in a timely manner well exceeds the national average. WVDEP managers whom were interviewed attributed this excellent performance to:

- strong legal support
- excellent templates for drafting orders and NOV's
- training that is provided to enforcement personnel, and
- priority placed on timely and appropriate enforcement effected at all levels within the Compliance and Enforcement Program.

The following are two best practices identified by the RCRA review team:

(1) WVDEP timeliness with regards to enforcement follow-up is excellent.

(2) Identification and implementing the appropriate enforcement to violations was consistent with EPA's federal program.

Significant Cross-Media Findings and Recommendations

The Air program has concerns with WVDEP identifying and reporting significant non-compliance/high priority violations (SNC/HPV). The RCRA and Water programs found problems with WVDEP entering SNC into the appropriate data bases. All three programs identified data quality issues that need to be addressed.

Air HPV:

Substantial problems with late HPV reporting to EPA were discovered. EPA discovered two potential HPVs from the file review that were neither reported to EPA nor successfully resolved by WVDEP.

Recommendations:

- (a) WVDEP should institute processes to ensure that the *HPV Discovery* form and *Enforcement Tracking and Transmittal* form are used consistently;
- (b) WVDEP should institute processes to determine and document whether each violation discovered is an HPV;
- (c) WVDEP should evaluate why HPVs have been reported to EPA more than 60 days after the violation is discovered and assess how such late reporting may be avoided in the future;

(d) WVDEP should ensure that copies of NOV's for all HPVs as well as potential HPVs are forwarded to EPA Region III on a monthly basis, regardless of the date of the next T&A meeting.

Water SNC:

As WVDEP does not enter SEV data into PCS, often it is the case that SNC are not identified to EPA in a timely manner. The enforcement files contain sufficient supporting evidence to document SNC.

Recommendation:

West Virginia should enter all SEV, per WENDB requirements, in PCS. Where appropriate, the facility should also be designated as in SNC. EPA and WVDEP should revisit their prior understanding and discuss the required WENDB data elements entry into PCS. Complete data entry is required in order to ensure an adequate picture of the state's compliance and enforcement program.

RCRA SNC:

Of the files reviewed, two facilities were identified by the state as SNC violators, and this data was entered into RCRAInfo. However, in the reviewers' opinion, there were 12 additional with violations which should have been designated as SNC in RCRAInfo.

Recommendation:

The state should develop data management procedures to assure that SNC determinations are entered into RCRAInfo in a timely manner.

Air Data

Extensive problems with data accuracy, timeliness and completeness were found.

Recommendations:

- (a) WVDEP should establish processes to ensure accountability related to inaccurate or untimely entry of data into *Web Air Trax* (WVDEP's data tracking system which uploads monthly to *AFS*);
- (b) WVDEP should develop and implement a Standard Operating Procedure (SOP) for *AFS* data validation;
- (c) WVDEP should evaluate the causes of errors found in Compliance Status, Title V Certifications Reviewed, Stack Tests Observed and Stack Tests Reports Reviewed and institute training and other necessary procedures to resolve these problems.

Water Data:

The water program found problems with data accuracy, timeliness and completeness during the course of this review. A few of the data problems include: WVDEP fails to enter required data into PCS, does not enter SEV data into PCS, often it is the case that SNC are not identified to EPA in a timely manner, and does not enter enforcement activity into PCS.

Recommendations:

EPA and WVDEP should revisit their prior understanding and discuss the required WENDB data elements entry into PCS. Complete data entry is required in order to ensure an adequate picture of the state's compliance and enforcement program. DMR should be entering required inspection data per the WENDB requirements.

Though WVDEP appears to be running a comprehensive compliance assurance program, EE should consider either establishing an electronic data system or utilizing PCS to manage inspection and enforcement data.

West Virginia State Review Framework Executive Summary for the Air Program

Purpose: The purpose of the program assessment and this report is:

- **to evaluate the overall effectiveness of the West Virginia Department of Environmental Protection (WVDEP) air enforcement and compliance program;**
- **to determine areas of potential vulnerability which may adversely affect program performance;**
- **to provide a consistent level of environmental and public health protection across the nation; and**
- **to provide a consistent mechanism by which EPA Regions, working collaboratively with their agencies, can ensure that each agency meet agreed upon performance levels.**

This report provides the WVDEP officials the opportunity to identify, within their own governmental structure, areas of vulnerability, salary structure, training, resource capabilities, data integrity, and policies and procedures necessary to fully accomplish the mission of the Division of Air Quality. This report also helps the EPA Region III's Air Protection Division (APD) to improve its oversight authorities to better complement the WVDEP's Air Quality Program. The APD also sees this report serving as a cornerstone for future dialogue between our respective offices on compliance and enforcement matters. The Air Protection Division thanks the WVDEP for its hospitality and complete cooperation throughout the review process.

Program Overview:

The Compliance and Enforcement Program is one of six Sections and Branches under the Division of Air Quality in WVDEP. The Compliance and Enforcement Program is headed by the Assistant Director for Compliance and Enforcement. Most personnel in the Compliance and Enforcement Program work at WVDEP's Charleston office and report to the Inspections Supervisor there. Eight inspectors work primarily out of WVDEP's three Regional offices and report to the Assistant Director for Compliance and Enforcement through the Supervisor of the Regional Offices (Eastern Panhandle and North Central Regional Offices) or through the Supervisor of Compliance and Enforcement (Northern Panhandle Regional Office).

Resources are not discussed in this report. Resources will be discussed in the Compliance Monitoring Strategy (CMS) review, which will be conducted in FY2008 or FY2009 and will be reported under separate cover.

From May 15 through 17, 2007, the Review Team conducted limited interviews and reviews of the WVDEP air compliance monitoring and enforcement program files. The Review Team reviewed files in WVDEP's main office, located in Charleston, West Virginia, which is the central repository for files in the main office as well as WVDEP field offices.

Review Process:

On April 18, 2007, the Region III Office of Enforcement and Permits Review (OEPR) forwarded a letter to the WVDEP Assistant Director for Compliance and Enforcement which included: a) data metrics that had been downloaded from the SRF page of the *OTIS*¹ web-site, b) a request for state verification of data results, c) analysis of how the state program looks in regard to the data metrics only, and d) a preliminary list of files that the Region planned to review during the on-site portion of the review. On May 9, 2007, OEPR sent a revised list of files to be reviewed, in response to errors discovered in the metrics that were used to generate the preliminary list of files. From May 15 through May 17, 2007, a five-person review team from OEPR conducted its onsite evaluation of the monitoring and enforcement records.

WVDEP provided comments to the data metrics on July 25, 2007 and their comments are incorporated into the final metrics presented. The data metrics represent the air sources and activities that are reported to EPA by WVDEP for all sources in West Virginia. WVDEP provided comments on the draft report on September 24, 2007 and their comments are incorporated into the final report.

EPA's Review Team:

The following Region III individuals conducted the review:

Bernie Turlinski, Associate Director, Office of Enforcement and Permits Review
Gerallyn Duke, Team Leader
Kurt Elsner, State Liaison Officer
Danielle Baltera, State Liaison Officer
Louvinia Madison-Glenn, AIR Facility System (AFS) Manager.

Significant Findings and Recommendations: Most of WVDEP's data metrics for FY2006 compare favorably to the national averages. However, several vulnerabilities were identified through review of the data metrics as well as the file review. The most significant vulnerabilities and associated recommendations are listed below:

(1) The quality of Compliance Monitoring Reports (CMRs) varies extensively.
Recommendations include:

¹ On-Line Tracking Information System

- (a) WVDEP should redesign its inspection report template to include the General and Facility information that is required to be included in CMRs;
 - (b) WVDEP should revise its *Compliance and Enforcement Guidance Manual* to include the required elements listed in the CMS;
 - (c) Once the templates and the *Manual* are revised, the importance of including all elements that are listed in the *CMS Policy* should be emphasized through training and/or other communications with inspectors.
 - (d) Supervisory oversight should ensure that all completed work meets a minimal standard of quality.
- (2) Approximately one-third of the CMRs reviewed appeared to be completed more than 60 days after the compliance monitoring activity occurred. WVDEP's *Compliance and Enforcement Guidance Manual* should be revised to require that each compliance monitoring activity is documented within 60 days of completion of the compliance monitoring activity,
- (3) Extensive problems with data accuracy, timeliness and completeness were found. Principal recommendations include:
- (a) WVDEP should establish processes to ensure accountability related to inaccurate or untimely entry of data into *Web Air Trax* (WVDEP's data tracking system which uploads monthly to *AFS*);
 - (b) WVDEP should develop and implement a Standard Operating Procedure (SOP) for *AFS* data validation;
 - (c) WVDEP should evaluate the causes of errors found in Compliance Status, Title V Certifications Reviewed, Stack Tests Observed and Stack Tests Reports Reviewed and institute training and other necessary procedures to resolve these problems.
- (4) Substantial problems with late HPV reporting to EPA were discovered. EPA discovered two potential HPVs from the file review that were neither reported to EPA nor successfully resolved by WVDEP. Principal recommendations include:
- (a) WVDEP should institute processes to ensure that the *HPV Discovery* form and *Enforcement Tracking and Transmittal* form are used consistently;
 - (b) WVDEP should institute processes to determine and document whether each violation discovered is an HPV;
 - (c) WVDEP should evaluate why HPVs have been reported to EPA more than 60 days after the violation is discovered and assess how such late reporting may be avoided in the future;

(d) WVDEP should ensure that copies of NOVs for all HPVs as well as potential HPVs are forwarded to EPA Region III on a monthly basis, regardless of the date of the next T&A meeting.

(5) Enforcement is generally timely and appropriate. However, an SOP for the enforcement process is needed to ensure that informal enforcement is not taken when more formal enforcement is appropriate, especially for HPVs. The *Compliance and Enforcement Manual* should be revised to incorporate this new SOP.

(6) WVDEP should evaluate its processes to close out enforcement files to better ensure that all activities are completed that are necessary to return a source to compliance, and to document WVDEP's review of those close-out activities.

Principal findings with **federal recommendations** identified through this SRF include:

(1) EPA responsiveness to questions on complex sources, such as where MACTs now apply or where alternative testing is being considered, could be improved. Region III should follow up with WVDEP to identify specific support requested.

Best Practices identified through this SRF Evaluation include:

(1) The Title V certification review template used by WVDEP provides a thorough and organized format to enable the inspector to evaluate every relevant aspect of a Title V source's compliance history.

(2) The *HPV Discovery* form and *Enforcement Tracking and Transmittal* form used by WVDEP may serve as a best practice for other state and local agencies. These forms provide a thorough and organized format to document and track the decision process and enforcement activities related to violations found.

(3) WVDEP's performance in addressing HPVs in a timely manner well exceeds the national average. WVDEP managers whom were interviewed attributed this excellent performance to:

- strong legal support
- excellent templates for drafting orders and NOVs
- training that is provided to enforcement personnel, and
- priority placed on timely and appropriate enforcement effected at all levels within the Compliance and Enforcement Program.

These practices used by WVDEP may serve as best practices for other state and local agencies.

West Virginia Air Program Review

On April 18, 2007, the Region III Office of Enforcement and Permits Review (OEPR) forwarded to the West Virginia Department of Environmental Protection (WVDEP) a letter to the WVDEP Assistant Director for Compliance and Enforcement which included: a) data metrics that had been downloaded from the State Review Framework (SRF) web-site, b) a request for state verification of data results, c) analysis of how the state program looks in regard to the data metrics only, and d) a preliminary list of files that the Region planned to review during the on-site portion of the review. On May 9, 2007, OEPR sent a revised list of files to be reviewed, in response to errors discovered in the metrics that were used to generate the preliminary list of files.

From May 15 through 17, 2007, reviewers from OEPR conducted limited interviews and reviews of the WVDEP air compliance monitoring and enforcement program files. The Review Team was comprised of the following individuals from OEPR: Danielle Baltera, Gerallyn Duke, Kurt Elsner, Louvinia Madison-Glenn, and Bernard Turlinski. OEPR reviewed files in Charleston, West Virginia, which is the central repository for files in the Charleston main office as well as WVDEP field offices.

WVDEP provided a response to the data metrics on July 25, 2007. In its response, WVDEP identified four metrics that reportedly did not accurately portray WVDEP's performance. All changes requested are incorporated into the metrics presented herein. On September 24, 2007, WVDEP provided comments on the draft Air Program SRF Report. Comments from WVDEP are incorporated into the final report.

The Compliance and Enforcement Program is one of six Sections and Branches under the Division of Air Quality in WVDEP. The Compliance and Enforcement Program is headed by the Assistant Director for Compliance and Enforcement. Most personnel in the Compliance and Enforcement Program work out of WVDEP's Charleston office and report to the Inspections Supervisor there. Eight inspectors work primarily out of WVDEP's three Regional offices and report to the Assistant Director for Compliance and Enforcement through the Supervisor of the Regional Offices (Eastern Panhandle and North Central Regional Offices) or through the Supervisor of Compliance and Enforcement (Northern Panhandle Regional Office). The Performance Testing Coordinator reports directly to the Assistant Director for Compliance and Enforcement.

Compliance monitoring assignments are made by the first-line supervisor based on Compliance Monitoring Strategy (CMS) commitments, inspector familiarity with the source (experience with a source is a reason to assign the inspector to a particular type of source as well as reason to rotate sources assigned to an individual), and education. Where continuous emissions monitoring systems (CEMS) are installed, relative accuracy test audits (RATAs) are typically assigned to the Performance Testing Coordinator. That individual is expected to review all RATA reports although not all RATAs are observed on-site. All compliance monitoring staff are assigned sources where stack testing is periodically performed. Finally, each inspector provides enforcement support for violations that he/she discovers through on-and off-site compliance

monitoring.

WVDEP *Guidelines for File Organization, Management and Maintenance of Program Facility Files and Confidential Business Information* sets forth detailed procedures on file management. Please note that this Manual has existed for several years; WVDEP managers reported that certain chapters have been recently updated but did not identify which chapters were in effect in FY2006.

In the Charleston office, official Air Quality Compliance and Enforcement Program files, as well as Air Permit Program files, are located in a File Room which is managed by a full-time file clerk. The File Room is locked when the file clerk is not present and WVDEP personnel who use files from the File Room must check each file out through the File Clerk. Confidential files are maintained in separate yellow manila envelopes that are marked either “Business Confidential” or “DAQ Confidential, “ as appropriate, and filed behind public files for each source. Copies of Permit Determination Files are maintained in respective regional offices.

OEPR selected the following 25 sources for file review:

- six files for major sources reported as HPVs (no WV synthetic minor sources were listed as HPVs in FY2006)
- four major source files where violations were found but the violation was not listed as a state- or joint-lead HPV,
- three synthetic minor files where violations were found but the violation was not listed as an HPV,
- four synthetic minor files where no violations were found, plus
- eight major source files where WVDEP found no violations.

Sources within each category were randomly selected using a list of the universe of major and 80-percent-synthetic minor sources from Data Metric 1. Sources with violations were identified from Data Metric 12e. The list of sources with violations was refined by excluding sources with violations discovered by EPA as well as where noncompliance was inaccurately reported to *AFS*². Where all other factors appeared equal, the Review Team chose more complex facilities or violations to review. For example, the Review Team soon discovered that several HPVs preliminarily selected for review were HPVs simply for late Title V annual certification reporting. A couple HPVs were selected to replace those original, simpler HPVs, to ensure that a more representative sampling of enforcement files was reviewed. As another example, sources with stack tests performed were selected for review to replace those sources “with violations” originally selected but that were inaccurately listed in *AFS* as out of compliance in FY2006.

WVDEP does not differentiate between synthetic minor and 80-percent-synthetic minor (SM-80) sources, i.e., all synthetic minor sources are listed in West Virginia’s CMS Plan. WVDEP conducts a Full Compliance Evaluation (FCE) at its major sources every two years and at its SM-80 sources every five years. Compliance monitoring reports (CMRs) reviewed included those for

² AIR Facility System, the national air compliance monitoring and enforcement tracking data system

FCEs performed in FY2006 and, where none was performed in FY2006, the year of the most recent FCE (usually FY2005). CMRs for on- and off-site PCEs performed in FY2006 were reviewed as well. Off-site PCEs may include stack test protocol and report reviews as well as other documented compliance monitoring activities.

WVDEP staff moved the selected files from the File Room to the rooms in the Charleston office that WVDEP made available to reviewers for the file review. During the file review, individual reviewers found certain files to be incomplete and inquired whether additional files existed. In those instances, various personnel provided additional files. Where WVDEP indicated that requested files did not exist, the inspector who conducted the last compliance evaluation personally explained why those files did not exist. (See Element 11 for details on certain undocumented actions reported into AFS.)

Individuals from WVDEP whom were interviewed included the following:

- Jesse Adkins, Assistant Director for Compliance and Enforcement,
- Earl Billingsley, Inspections Supervisor
- Rebecca Johnson, Inspector
- Theresa Adkins, Secretary
- Joan White, File Room Clerk
- Michael Rowe, Inspector
- Paul Rader, Performance Testing Coordinator and Inspector
- John Money Penny, Inspector.

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

| Clean Air Act Source Universe | Number of Sources in Universe in FY2006 |
|---|--|
| Universe of Major Sources (Title V) | 189 ³ |
| Universe of Synthetic Minor 80% Sources | 31 |
| Universe of Synthetic Minor Sources | 31 ⁴ |
| Total Number of Major and Synthetic Minor Sources | 220 |
| Number of inspection files for review | 25 |

Data Metrics

³ Metric 12a1: AFS operating majors w/air program code = V. Original Metric 12a1 listed 192 sources, yet WVDEP reported that two of these sources are shut down (Ershigs – 2 plants) and one (H3 Synfuel) was never constructed.

⁴ Metric 12b2. Original metric listed 28 sources, but this was incorrect.

| | | National Average or Total | WV |
|------------|--|--------------------------------------|--------------------|
| Metric 1a1 | % of CAA active major sources receiving full compliance evaluation (FCE) by the state in FY2005/2006. State only. | 82.1% | 100% ⁵ |
| Metric 1a2 | % CMS major sources receiving FCEs by the state in FY2005/2006. State only. | 84.9% | 99.5% ⁶ |
| Metric 1b | % CAA synthetic minor 80% sources (SM-80) FCE coverage in FY2002 through FY2006. State only. | 85.1% | 100% ⁷ |
| Metric 1c1 | % FCEs and reported PCEs for currently active CMS SM sources (CMS SM sources with at least one FCE or reported PCE/all active CMS SM sources) - FY2002 through FY2006. State only. | | 100% ⁸ |
| Metric 1f | % Review of self-certifications completed. | 81.8% | 100 % ⁹ |
| Metric 1g | Number of sources with unknown compliance status in US. | | 2 ¹⁰ |

File Review Metric

| | | | |
|-----------|--|--|-------------------------|
| Metric 1r | Percent of planned FCEs completed at major and SM-80 sources | | 25 files to be reviewed |
|-----------|--|--|-------------------------|

⁵ Original metric listed 87.3 %. Denominator derived from Metric 12a1: AFS operating majors w/air program code = V. Original Metric 12a1 listed 192 sources, yet WVDEP reported that two of these sources are shut down (Ershigs – 2 plants) and one (H3 Synfuel) was never constructed. Thus, denominator is 192-3=189 sources. Original numerator was 167 sources, yet WVDEP responded that 22 FCEs that were completed had not gotten uploaded, due to computer problems. Thus final Metric 1a1 is 189/189=100%

⁶ Original metric was 167/187, or 89.3 percent. However, WVDEP responded that 19 “not counted” FCEs were actually completed, but failed to upload. Final metric is 186/187 = 99.5%/

⁷ Original metric was 23/25 = 92.0% . However, denominator is 31 (see Metric 12b) and all sources had FCEs either in FY2005 or FY2006. WVDEP reported that one source, Alex Energy, had an FCE but this was not uploaded to AFS. Final metric is 31/31 = 100%

⁸ Original metric was 96.8% (30/31). However, the one FCE “not counted” (Alex Energy) was actually conducted but not uploaded to AFS, according to WVDEP. Therefore, the final metric is 31/31 = 100%

⁹ Original metric was 135/165 reviews completed, or 81.8%. WVDEP reviewed this original metric and responded that the actual metric should be 167/167, or 100%. Thirty-two qualifying reviews reportedly failed to upload to AFS because of incorrect coding of data and data corruption problems. Apparently, two sources also should have been included in the denominator but were not; WVDEP did not identify the two missing sources.

¹⁰ Union Carbide and Cranberry Pipeline as of April 10, 2007

For this State Program Review, reviewers assessed WVDEP's FY2006 CMS accomplishments. Note that WVDEP's CMS Plan actually covers FY2006 and FY2007, in accordance with the CMS Strategy.

Findings:

WVDEP's CMS commitments meet national minimum suggested frequency of one FCE every two years for major sources and one FCE every five years for SM-80 sources. WVDEP has not designated any sources as mega-sites.

All WVDEP's FCEs include on-site visits. This frequency well exceeds the minimum frequency that is recommended in the CMS of one on-site visit every five years, provided that the state may effectively complete an FCE using self-reported information. WVDEP's current CMS Plan includes, in addition to completing FCEs at major and SM-80 sources, a commitment to complete an FCE at each of its area source MACT facilities on a three-year cycle.

Metric 1a - Actual FCE coverage of **100 percent** for major Clean Air Act (CAA) active sources exceeds national averages of 82.1 percent. WVDEP met its MOU commitment to complete FCEs at 100% of its major sources in two years. However, entry of these FCEs was not timely, as discussed in Data Element 10. Also, as discussed in Element 2, the Review Team found that four out of 22 CMRs reviewed did not document an inspection which met the definition of an FCE as defined in the *CMS Policy*. Thus, it is possible that WVDEP reported more FCEs as "completed" than actually were completed, in which case WVDEP's coverage may be less than 100 percent.

WVDEP conducted 186 FCEs at 187 CMS major sources, or **99.5 percent** of the CMS major sources, in West Virginia in FY2005/2006. Again, for reasons discussed in more detail in Element 2, it is possible that WVDEP reported more FCEs at SM-80 sources as "completed" than actually were completed, if the CMRs do not include the required elements. In that case, WVDEP's coverage may be less than 99.5 percent.

Metric 1b - **100 percent** of currently active SM-80 CAA sources in West Virginia have had an FCE in the last five years. WVDEP exceeded the national average of 85.1 percent coverage for SM-80 sources over five years. However, WVDEP met its MOU commitment to complete FCEs at 100% of its SM-80 sources in five years.

Metric 1c - FCE and reported Partial Compliance Evaluation (PCE) coverage between FY2002 and FY2006 is **100 percent** (31/31) for currently active CMS synthetic minor sources in West Virginia. This metric is informational only; no national average is provided in the metrics. According to the *CMS Policy*, all SM-80 sources should have received an FCE at least once over this period.

Metric 1f - WVDEP reviewed **100 percent** (167 out of 167) of its Title V certifications received in FY2006, which exceeds the national average. WVDEP fully met its MOU commitment to review all Title V certifications in FY2006. However, WVDEP reported that 168 Title V

certification reviews had been completed in FY2006, which includes three more in the universe of Title V sources than listed in AFS and 33 more reviews than listed in AFS. See Elements 10, 11 and 12 for details on data timeliness, accuracy, and completeness.

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

Recommendations¹¹: none

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

| | Clean Air Act Source Universe Information | Compliance Monitoring in FY2006 |
|-------------|--|--|
| Metric 12d2 | Full Compliance Evaluations - major and SM sources | 106 FCEs |
| Metric 12d3 | Partial Compliance Evaluations | 183 |
| | Total Number of Evaluations | 289 |
| | Number of inspection files for review | 25 files |

File Review Metric

| | | |
|----|--|--------------------------------|
| 2a | % of CMRs adequately documented in the files | 2/24 ¹² files = 8 % |
|----|--|--------------------------------|

The *CMS Policy* requires CMRs to include the following elements:

- general and facility information,
- applicable requirements,
- inventory/description of regulated units,
- enforcement history,
- compliance monitoring activities, and
- findings and recommendations.

Findings:

¹¹ Recommendations herein apply to WVDEP unless indicated as a “federal recommendation.”

¹² Although 25 files were reviewed, the CMR for one SM source was for a PCE that was so small it should not be compared to other CMR reports. The FCE was scheduled for FY2007.

To prepare for a compliance monitoring evaluation, each inspector conducts a file review to become familiar with the applicable regulations, permit requirements, and compliance history. No inspections are announced.

WVDEP's *Compliance and Enforcement Guidance Manual*, dated August 18, 2006, includes a chapter on how to complete a compliance monitoring evaluation and also includes forms to be completed for on-site compliance monitoring evaluations at the following types of sources:

- asphalt plants
- chrome electroplating plants
- coal handling/wet wash preparation plants
- dry cleaners with PCE
- gas stations with Stage I gasoline vapor recovery systems
- incinerators
- natural gas processing plants
- quarry, stone crushing plants
- plants with thermal dryers.

A template, entitled "Inspection Report," is included in the *Manual*. This template appears to be intended for FCEs and PCEs at other industries. The letterhead for this template includes company name, facility name, region number, plant identification number, regulation number, inspector name and title, memo date, and date facility inspected. WVDEP managers interviewed indicated that the Title V annual certification review is considered part of an FCE for Title V permitted sources.

Only two¹³ of the 24 CMR files reviewed contained all of the elements that are required in the *CMS Policy*. Those two CMRs (one of which was actually a PCE but reported as an FCE) were completed by the same inspector. Two other FY2006 FCEs reported in AFS as completed¹⁴ were actually PCEs. At these three sources¹⁵, FCEs were not completed and/or CMRs were not written to document how PCEs performed in FY2006 comprised FCEs.

The Review Team considered 22 CMRs to be inadequate. Specifically:

- 20 of 24 CMRs reviewed did not include an adequate general and facility information section; General facility information commonly missing from CMRs reviewed included:
 - identification if the compliance monitoring activity performed was an on-or off-site FCE or PCE
 - address of facility monitored
 - phone number of facility contact

¹³ Bayer Crop Science PCE and Sunoco R&M FCE

¹⁴ Banner Fiberboard and Union Carbide.

¹⁵ Bayer Crop Science, Banner Fiberboard and Union Carbide

- indication of whether the facility is a major or synthetic minor source.

Some CMRs had no dates indicating when the report was written.

- 17 of 24 CMRs reviewed did not adequately describe the applicable requirements for the facility;
- Thirteen of 24 CMRs reviewed did not include a complete inventory and description of regulated units;
- Sixteen of 24 CMRs reviewed did not include a section on enforcement history; and
- Seven of the CMRs reviewed did not describe the compliance monitoring activities conducted, such as processes and emission units evaluated, on-site observations, and whether compliance assistance was provided in sufficient detail.

Most CMRs did include findings regarding the compliance status of the source as a result of the compliance monitoring conducted, but three did not.

Of the 22 “inadequate” CMRs reviewed, the reviewers found that four¹⁶ did not document an inspection which met the definition of an FCE as defined on pages 4 and 5 of the *CMS Policy*. One CMR¹⁷ was missing all required elements described in the above paragraph. One CMR¹⁸ was missing all required elements except for Findings and Recommendations. Five CMRs¹⁹ were missing four of the six required elements.

The quality and consistency of the CMRs, in general, is considered a vulnerability when measured against compliance with the CMS Policy.

Some CMRs and off-site partial compliance evaluation reports were very good. The Review Team would have considered one²⁰ of the 22 “inadequate” CMRs reviewed to be “adequately documented” if it had included more general and facility information. Another CMR²¹ would have been “adequately documented” if it had included more facility information and findings.

The *Compliance and Enforcement Guidance Manual* appears to be very thorough, updated, and consistent with the *CMS Strategy*. However, the following details on what should be included for general facility information in a CMR, outlined in the *CMS Strategy*, do not appear to be included in the *Compliance and Enforcement Guidance Manual*: identification of whether the compliance monitoring activity was an FCE, PCE, or Investigation, facility contact phone number, Title V designation and designation of source as major, synthetic minor or minor. “Location of facility”

¹⁶ Wheeling Corrugating Company, Impress USA, Union Carbide and Short Creek Landfill

¹⁷ The Union Carbide CMR was comprised of three PCEs which together do not identify how many units comprise the source. No CMR which identifies how the PCEs comprise an FCE was found, even though a date was entered in AFS which indicates and FCE was completed.

¹⁸ Roll Coater

¹⁹ Ohio Power, Dominion Transmission, American Foam Technologies, Dalb, Inc., and Pine Ridge Coal

²⁰ Virginia Electric and Power Company

²¹ WV Alloys

is listed as part of general information to be included in the CMR, but “address of facility” is not explicitly listed. One manager interviewed said that he expects each report to identify whether it is an FCE or PCE, yet the absence of this requirement in the *Compliance and Enforcement Guidance Manual* and in the various templates may account for why so few CMRs include this. The other general information described above may be missing for the same reason.

The Review Team found that all files of sources with Title V permits but one included a report that documented review of the annual Title V certifications. One Title V certification²² was reported in AFS as reviewed on March 2, 2006, yet the Review Team did not find this file. These Title V certification review reports followed a prescribed format which the Review Team believes serves as an excellent template. However, the Review Team found six²³ Title V certification reviews listed with a Result indicating “in compliance” when violations had occurred the previous year at those sources.

Thirteen records of stack tests performed were reviewed. Eleven stack test reviews appeared to be adequate, yet two stack test reviews²⁴ reported in AFS were not documented in a compliance monitoring report or in any manner at all. The absence of any documentation on these stack test reviews performed would be considered a vulnerability if indeed the reviews were not performed.

Compliance monitoring personnel whom were interviewed affirmed that stack testing is a particular technical challenge. Reportedly, EPA’s support has been very good, yet the sheer number of compliance monitoring activities and complexity of some stack tests is a concern among WVDEP compliance monitoring personnel as well.

The serious deficiencies found in many CMRs reviewed may be attributed to inadequate supervision and inadequate training. The basis for this finding is set forth below.

WVDEP managers whom were interviewed indicated that the supervisor and Assistant Director of Compliance and Enforcement share the responsibility of determining a source’s compliance status after each compliance monitoring activity. Nonetheless, the Review Team saw no documentation of supervisory review of draft CMR reports. The Review Team found many substantive problems described above, which raised concerns about the level of supervisory review.

Managers interviewed reported that training is encouraged for all inspection and enforcement personnel. Inspectors reportedly are encouraged to attend training that is provided through the Mid-Atlantic Regional Air Management Association (MARAMA) or EPA. WVDEP does provide its own management training to employees, but only limited technical training is directly provided.

²² Virginia Electric and Power Company just received its Title V permit in October, 2005. AFS lists the Title V certification (for the period after the Title V permit was issued) as received the following March.

²³ Violations were found in 2005 at Dominion Transmission (leading to an HPV), Toyota Motor Manufacturing, Impress USA, Pleasants Energy, Columbia Gas Transmission (leading to an HPV), and Mountain State Carbon.

²⁴ Ohio Power stack test review dated 7/13/06 and Toyota Motor Manufacturing 9/13/06 review

No written training policy for compliance monitoring and enforcement personnel was provided to the Review Team. However, the Team was told that all inspectors must receive 40-hour Hazardous Waste training and an annual eight-hour refresher. WVDEP's Human Resources Department no longer maintains certifications, such as Method 9 certifications or OSHA training, in individual personnel files. One individual in the Compliance and Enforcement Program maintains a list of Visible Emissions Certification training received by personnel in WVDEP. However, no database is available to WVDEP managers to track the training received by WVDEP Air Compliance and Enforcement personnel.

The same individual in the Compliance and Enforcement Program mentioned above does provide a training coordination function by sending out announcements for training that is advertised through the internet. This individual schedules and registers individuals for the occasional technical training course that is provided directly by WVDEP and she also maintains a list of Visible Emissions Certification training received by personnel in WVDEP.

Citation of information reviewed for this criterion:

- The Evaluation Team reviewed CMRs performed in FY2006 as well as CMRs from prior years associated with the selected files as appropriate. Additionally, to evaluate timely and appropriate enforcement, FY2007 files were reviewed where FCEs in FY2006 resulted in violations being found but these were not addressed in FY2006.
- April 2001 *CMS Policy*
- WVDEP's *Compliance and Enforcement Guidance Manual*, August 18, 2006
- DEP and DAQ policies listed on WVDEP's intranet site at <http://intranet.dep.gov/Depdocs/Staffing/Policiesprocedures/policylist.html>

Recommendations:

(1) WVDEP should redesign its inspection report template to include the General and Facility information that is required to be included in CMRs.

Action: WVDEP agrees with this recommendation and will make appropriate changes.

(2) WVDEP should revise its *Compliance and Enforcement Guidance Manual* to include:

- identification of whether the compliance monitoring activity was an FCE, PCE, or Investigation,
- facility contact phone number
- Title V designation
- designation of source as major, synthetic minor or minor
- address of facility.

Action: WVDEP has agreed to change its report template in the Compliance and Enforcement

Guidance Manual to include the above required elements. This update will occur the next time the Manual is updated.

(3) Once the templates and the *Manual* are revised, the importance of including all elements that are listed in the *CMS Policy* should be emphasized through training and/or other communications with inspectors.

Action: WVDEP has agreed to communicate with inspectors, through training or other means, the importance of listing all required elements in CMRs. WVDEP expects to initiate these communications prior to updating the *Manual*.

(4) WVDEP should investigate whether the review of the one Title V annual certification that was missing from the file was actually conducted and follow up as appropriate.

(5) WVDEP should conduct training on how to determine compliance for Title V certification review.

(6) WVDEP should investigate whether the review of the one stack test that was missing from the file was actually conducted and follow up as appropriate.

(7) Supervisory oversight should ensure that all completed work meets a minimal standard of quality. Furthermore, feedback to inspectors on their reports is important for the purpose of providing informal training and thereby continuously improving the quality of FCEs, PCEs, and the reports that document compliance monitoring. Documentation of this feedback ensures accountability on the part of both the inspector and the supervisor who reviewed the work.

Action: WVDEP agrees to implement a supervisory review of CMRs.

(8) A substantial number of files were missing or not immediately made available to the Review Team. File organization should be improved to minimize the possibility that files become missing.

| |
|---|
| <p>*Best Practice – The Review Team believes that the Title V certification review template used by WVDEP may serve as a best practice for other state and local agencies. This form provides a thorough and organized format to enable the inspector to evaluate every relevant aspect of a Title V source’s compliance history. A copy of the WVDEP Title V certification review form is included as Attachment A.</p> |
|---|

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

| | Clean Air Act Source Universe Information | Compliance Monitoring in FY2006 |
|-------------|--|--|
| Metric 12d2 | Full Compliance Evaluations | 106 |
| Metric 12d3 | Partial Compliance Evaluations | 183 |
| | Total Number of Evaluations | 289 |
| | Number of compliance monitoring files for review | 25 |

File Review Metric

| | | |
|-----------|--|-----------------------------|
| Metric 3a | % CMRs or other reports which identify potential violations in the file within 60 days | 19/24 ²⁵ = 70.8% |
|-----------|--|-----------------------------|

Findings:

WVDEP’s *Compliance and Enforcement Guidance Manual* provides detailed guidance on how to conduct a compliance evaluation. Template inspection forms are available to assist in writing CMRs for several different types of industries. The *Compliance Evaluation* chapter of the *Manual* states that an inspection report “must be prepared ‘near in time’ to the inspection.” The *Procedures for Data Entry in Air Trax II* in the *Manual* provides detailed guidance on how to enter data into *Web Air Trax* (WVDEP’s database for tracking compliance and enforcement at stationary sources. See Element 10), but does not specify the timeframe for entry of data into *Web Air Trax*. No processes are outlined for communicating violations to WVDEP management so that timely enforcement may proceed.

Metric 3a - Nineteen out of 24 CMR files, or **70.8 percent**, reviewed by the Evaluation Team included CMRs or PCE reports that were completed within 60 days after the actual compliance monitoring activity, based on comparing inspection dates and dates of the reports in the files. A summary of those CMRs counted as “late” or “not completed” is provided below:

- One of the “late” CMRs²⁶ actually involved an on-site inspection plus review of additional information provided from the company as follow-up to the on-site inspection. Because of the time taken by the company to provide the needed information to WVDEP, the CMR was finalized roughly a week more than 60 days after the on-site inspection.
- A second CMR²⁷ counted as “not completed” involved several PCEs but no report

²⁵ Although 25 files were reviewed, one CMR (for Short Creek Landfill) had no date listing when it was written, so the timeliness of completing the CMR is unknown.

²⁶ Dominion Transmission, Inc., Lightburn Compression Station

²⁷ Union Carbide Corp.

was found that documents which PCEs comprise the FCE with a date which matches that in AFS. Furthermore, a CMR for one of the PCEs, dated 3/9/06, which led to discovery of a violation that became an HPV, was not found in the file.

- A third CMR²⁸ was written nine months after the on-site inspection. On the day of the inspection, a “Regulatory Agency Inspection Report Information” form was completed and signed by the inspector as well as a facility representative. WVDEP personnel interviewed for this SRF indicated they were not sure if the “Regulatory Agency Inspections Report” was a form generated by WVDEP or the company being inspected.
- A fourth CMR²⁹ was completed seven months after the on-site FCE. The Review Team noticed what appears to be a typing error on the CMR, which indicates that the CMR was written in April 2006; the on-site inspection was well-documented to have occurred on September 19, 2006, so the CMR was likely to have been written the following April. Also, at that same source two PCEs are listed in AFS³⁰ but no written report was found in the files.
- A fifth CMR³¹ was written 81 days after the on-site compliance evaluation. This source was temporarily shut down shortly after the on-site compliance evaluation; files reviewed did not indicate how or why this shut-down would have affected the ability of the inspector to write the CMR in a timely manner.

Another CMR³² is comprised of two compliance monitoring evaluations conducted five weeks apart from one another. The CMR is dated six weeks after the first inspection, where a violation was found. Writing a CMR six weeks after an on-site inspection is not considered late. However, the two inspections are reported in AFS as separate compliance evaluations with different results (the first one is “out of compliance” and the second one is “in compliance”) since the source did return to compliance after the first PCE. See Data Metric 10. Technically, this complies with the *CMS Strategy*, since the CMR clearly documents events which occurred and how compliance status changed between the two inspections and compliance status in AFS is accurate. Nonetheless, the Review Team believes that reporting the two compliance monitoring incidents in two CMRs, instead of one, best ensures that compliance monitoring is accurately documented and reported.

The CMS requires that FCEs should include a review of all required reports, including stack tests, where there is no other means of determining compliance. For stack tests being conducted pursuant to 40 CFR Part 60, the test report is to be submitted within 180 days after the initial

²⁸ Columbia Gas Transmission

²⁹ Mount Storm Power Station

³⁰ An off-site PCE on 10/31/05 and on-site PCE on 3/13/06

³¹ American Foam Technology

³² West Virginia Alloys

startup date or within 60 days after reaching maximum production rate. For those tests being conducted pursuant to 40 CFR Part 61, the test report is to be submitted within 31 days after completion of the test. If the test is being conducted pursuant to 40 CFR Part 63, the test report must be submitted within 60 days after the test is completed unless another time frame is specified in the applicable subpart.

All inspectors are assigned sources which must test their stacks. More senior or experienced inspectors are typically assigned to the more complex facilities. Those interviewed stated that stack test protocols are usually reviewed. However, these reviews are reportedly rarely documented unless the WVDEP inspector has a problem with the proposed protocol. The Review Team did not see any protocol reviews in the file. WVDEP inspectors said that many stack test protocols are very simple and they would not expect a problem with those protocols. A checklist is available to inspectors to assist them in their stack test protocol reviews.

As of June 21, 2007, 24 out of 25 stack tests performed and reported at major and synthetic minor sources in FY2006 are listed in AFS with a Results Code. Results for one stack test at a synthetic minor source³³, performed in August 2006, were not entered. Should that unreviewed stack test show a failure, WVDEP will have failed to identify this violation in a timely manner. In addition, file reviews showed documentation of one stack test review³⁴ conducted ten months after the actual stack test. Assuming the stack test report was provided to WVDEP within six months, this review appears to be late. Thus, WVDEP reviews appear to be timely for 23 out of 25 stack tests conducted in FY2006.

Inspectors that were interviewed said that they try to observe as many complex stack tests as they can, but they don't make it to all of them. They said that more training is needed on how to observe a stack test. Some check lists are available for specific methods and these reportedly are very helpful. Inspectors said that more checklists for other methods are needed. They also said that if sources provided their stack test results electronically, this would help WVDEP in analyzing the data.

Inspectors interviewed said that CEM reviews would be enhanced if *Web Air Trax* would include CEM data. Some inspectors also expressed concern that some senior inspectors are expected to retire relatively soon and a need existed to plan for this transition and the institutional and technical knowledge that would otherwise be lost.

Of the 14 Title V Certification Report Reviews that were included in the 25 files reviewed, all but one³⁵ appeared to be reviewed in a timely manner.

WVDEP personnel whom were interviewed said that all reports that are periodically required from permitted sources, such as Title V semi-annual reports, Excess Emission Reports, and quarterly MACT reports, are distributed to the assigned inspector as soon as they arrive in

³³ Columbia West Virginia Corporation

³⁴ Pleasants Energy

³⁵ Toyota Motors

WVDEP offices. Inspectors review these documents whenever they can; documentation of those off-site PCEs is reportedly inconsistent.

Citation of information reviewed for this criterion:

- *The Timely & Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs)*, June 23, 1999
- *Final Clean Air Act National Stack Testing Guidance* September 2005
- *CMS Policy*, April 2001
- *WVDEP Compliance & Enforcement Guidance Manual*, August 18, 2006.

See above for a description of the 25 files reviewed.

FCEs performed in FY2006 were reviewed as well as CMRs from prior years associated with the selected files as appropriate. Additionally, to evaluate timely and appropriate enforcement, FY2007 files were reviewed where FCEs in FY2006 resulted in violations being found but these were not addressed in FY2006.

Recommendations: (1) In those instances where several PCEs are conducted on different dates in order to complete an FCE, the final CMR should identify exactly which PCEs comprise the FCE.

(2) WVDEP should attempt to locate the missing CMRs listed below. If these are found, WVDEP should identify what processes led to these being removed from the File Room and institute processes to prevent this in the future. If the PCEs were not conducted, they should be deleted from AFS:

- Union Carbide PCE dated 3/9/06
- Mount Storm PCEs dated 10/31/05 and 3/13/06.

(3) WVDEP should investigate why the following CMRs were written more than six months after the on-site inspection:

- Columbia Gas Transmission
- Mount Storm Power Station.

If a chronic problem is identified, appropriate action should be taken to ensure timely completion of CMRs.

(4) WVDEP should institute processes to ensure that each compliance monitoring activity is documented with an associated CMR report or at least (where the activity to document is a relatively simple activity, such as review of a simple report submitted by a company) a memo to file within 60 days of completion of the compliance monitoring activity. Reporting each compliance monitoring incident conducted more than 30 days apart in a CMR or a memo to file,

instead of combining several PCEs in one CMR that would span more than 30 days of compliance monitoring, best ensures that compliance monitoring is accurately documented and reported. Documenting off-site PCEs completed, as well as on-site compliance monitoring activities completed, would ensure that compliance monitoring is conducted in a consistent manner at all West Virginia sources. To the extent that these activities are part of an FCE which is included in the CMS Plan, such documentation is required per the *CMS Policy*. These new processes should be incorporated into the *WVDEP Compliance & Enforcement Guidance Manual*.

Action: *WVDEP agrees to emphasize, through training, that CMRs must be completed in a more timely manner.*

- (5) See Recommendations in Element 11 on entry of Results of stack tests in a timely manner.
- (6) WVDEP should develop a plan to ensure that inspectors are adequately prepared to review complex stack tests. Tools to utilize in such a plan should include development of the additional checklists requested by WVDEP inspectors as well as training. WVDEP should identify its training needs through MARAMA.
- (7) WVDEP should move forward with its current initiative to enhance *Web Air Trax* to include CEM data. If WVDEP begins to require electronic submission of CEM data, *Web Air Trax* may provide a very productive tool for efficiently and effectively monitoring compliance of sources with CEMS.

Element 4 - Degree to which high priority violations and supporting information are accurately identified and reported to EPA national databases in a timely manner.

| | Clean Air Act Source Universe information | Number of Sources in Universe in FY2006 |
|-------------|---|--|
| Metric 12g1 | New High Priority Violations in FY2006 - State only | 10 WVDEP-lead ³⁶ |
| | Number of inspection files for review | 25 |

Data Metrics

| | National Average or Total | WV |
|--|----------------------------------|-----------|
| | | |

³⁶ Metric 12g1

| | | | |
|-----------|---|-------|---|
| Metric 4a | FY2006 HPV Discovery Rate - (new HPVs/major sources with FCEs) - State only | 9.5% | 11.4% |
| Metric 4b | FY2006 HPV Discovery Rate (new HPVs/active major universe) - State only | 4.5% | 4.8% ³⁷ |
| Metric 4c | No activity indicator - HPV - State only | | 10 sources that are new WVDEP- or joint-lead HPVs |
| Metric 4d | HPV sources with formal enforcement /all sources with reported formal enforcement actions in FY2006 | 77.8% | 81.8% ³⁸ |

File Review Metric

| | | |
|-----------|---|--|
| Metric 4e | % HPV determinations that are identified in a timely manner | 1/8 violations reviewed that the Review Team believes are HPVs = 12.5% |
| Metric 4f | % of HPV determinations that are accurately reported | 6 HPVs (six sources) identified by WVDEP/ 8 actual HPVs (six sources) in the 25 files reviewed = 75.0% |

Metric 4a - WVDEP's HPV discovery rate (**11.4 percent** of FCEs) in FY2006 exceeded the national average by approximately 20 percent. Please note that some HPVs were identified through PCEs and not FCEs, and this value is not reflected in the metric.

Metric 4b - WVDEP identified HPVs at **4.8 percent** of West Virginia's active major universe in FY2006. This slightly exceeds the national average of 4.5 percent.

A reasonable conclusion may be drawn that WVDEP's HPV identification rate is approximately the same as the national average. However, the Review Team believes that noting trends in discovery of new HPVs over time may complement Metric 4b. Figure I shows new HPVs discovered by WVDEP in West Virginia from FY2001 through FY2006.

³⁷ Original metric was 4.7%, but the denominator incorrectly included the following major sources that are actually not active: Ershigs Inc (St. Albans), H3 Synfuels, and Ershigs Inc (Cresap). Actual metric is 11/208 = 4.8%.

³⁸ 9/11 = 81.8%. Original metric, 11/13 (85.6%) included Viking Pools and Jeld-wen as HPVs that were addressed in FY2006. Whereas subsequent formal actions were taken at these sources in FY2006, these were actually follow-up actions to the addressing actions taken in FY2005. Final metric is 9/11 which is 81.8%

New HPVs In West Virginia FY01-FY06

Number of Major Title V sources: 187

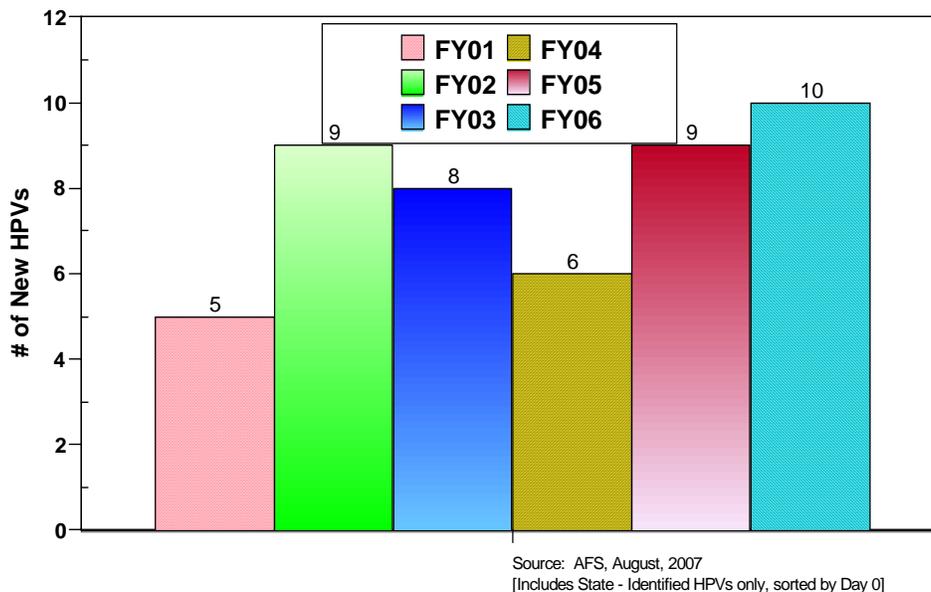


Figure I

The total number of HPVs discovered by states across the country during those years was as follows³⁹:

- | | |
|---------------|----------------|
| - FY01: 1,244 | - FY04: 1,326 |
| - FY02: 1,325 | - FY05: 1,224 |
| - FY03: 1,394 | - FY06: 1,186. |

It appears that total number of HPVs discovered by states across the country increased during the first three years, whereas West Virginia shows an upward trend from FY2001 to FY2002 and then a downward trend for the next two years. Also, the total number of HPVs discovered by states has continued to decline across the country since FY03 whereas the number of HPVs discovered in West Virginia has increased in the following years since FY2004. In fact, WVDEP discovered the greatest number of HPVs in FY2006 compared to the previous five years.

Of the seven files reviewed with violations that were not initially reported as HPVs, none

³⁹ from *OTIS*, August 2007

appeared to rise to the level of an HPV. However, the Review Team discovered two additional violations at facilities already listed as HPVs⁴⁰ that also rose to the level of an HPV. The failure to test a flare at the first source was discovered on February 24, 2006 and the Review Team believes meets General Criteria 7, yet never was reported to EPA. The second violation that the Review Team believes is an HPV was a violation of an outstanding Order that had been issued to address an HPV, also for failing to test a flare to ensure that the flare was operating properly. The company did not comply with the schedule in the Order and received a subsequent NOV from WVDEP. The Review Team believes General Criteria 4 applies to this violation.

When the Review Team pointed these out to WVDEP managers, WVDEP managers agreed that the first violation should have been identified as an HPV. According to WVDEP, their failure to list this HPV as such was related to the expectation that additional violations were about to be reported and these were expected to be combined as one new HPV. Regarding the second potential HPV, WVDEP responded that they did not believe the violation of the Order was “substantive.” EPA and WVDEP are continuing discussions to resolve the issue of whether the second potential HPV that the Review Team discovered is in fact an HPV. Neither of these new violations/potential HPVs have been reported in AFS as of August 25, 2007.

Metric 4d – Of the 11 sources with formal enforcement actions undertaken by WVDEP in FY2006, nine were at HPVs. Three formal actions were taken at two major sources and not reported as HPVs. The Review Team concurs that HPV Criteria did not apply to any of the three violations.

WVDEP managers reported that they do expect inspectors to document all findings of noncompliance. However, they indicated that no specific timeline exists for completion of a compliance monitoring report after the on- or off-site compliance monitoring activity is completed. The *Compliance Evaluation* chapter of WVDEP’s *Compliance and Enforcement Manual* appears to be geared towards on-site compliance evaluations only. Managers reported that documentation of off-site compliance monitoring is inconsistent, i.e., some inspectors prepare CMRs for off-site compliance monitoring activities and some do not.

When an inspector believes he/she has discovered an HPV, the inspector must complete the “HPV Discovery Form” that is included in WVDEP’s on-line *Compliance and Enforcement Manual*. The completed form is submitted to the Assistant Director of Compliance and Enforcement for review. Upon verbal approval from the Assistant Director of Compliance and Enforcement (note the form does not provide for written concurrence from the Assistant Director), the form is forwarded to the Secretary for entry into *Web Air Trax*. The *HPV Policy* and the Region III Memorandum of Understanding (MOU; See Element 9) requires NOVs for HPVs identified in the previous month to be forwarded to Region III on a monthly basis.

Metric 4e - Of the six HPV pathways (six HPV sources) selected for review, records show that WVDEP identified and reported five of these HPVs more than 60 days after Day Zero.

⁴⁰ Bayer Crop Science violation from 2/24/06 PCE and Dominion Transmission

Specifically:

- One HPV⁴¹ was reported to EPA 11 months after the violation was identified
- One HPV⁴² was reported to EPA nine months after the violation was identified and two months after the HPV was addressed
- One HPV⁴³ was reported to EPA four months after the violation was discovered
- One HPV⁴⁴ was reported to EPA three months after Day Zero
- One HPV⁴⁵ was reported to EPA seven months after the violation was discovered.

In addition, the Review Team discovered two HPVs⁴⁶ that were never reported to EPA or listed in AFS as HPVs (see Metric 4b). Thus, two additional HPVs were neither reported accurately nor in a timely manner.

Metric 4f - Data Metric 10a indicates that six out of eleven (54.5%) HPVs entered into AFS in FY2006 were entered more than 60 days after Day Zero. According to EPA records of Timely and Appropriate meetings, eight⁴⁷ of the ten state-lead HPVs with a Day Zero in FY2006 were reported to EPA more than 30 days after Day Zero. The average number of days reported after Day Zero in FY2006 was 77 days. The late reporting depicted in metrics 4e and 4f is considered a vulnerability to be addressed.

The WVDEP inspector who conducted a compliance monitoring activity writes the CMR and enters the FCE, PCE, or other compliance monitoring activity into *Web Air Trax*. No concurrence from the first-line supervisor is mentioned in the *Compliance and Enforcement Manual*, although managers interviewed indicated that the first-line supervisor and the Assistant Director of Compliance and Enforcement share the responsibility for determining compliance status of a source after an inspector finds a potential violation. No CMRs reviewed as part of the file review indicated whether a violation found rose to the level of an HPV.

WVDEP's *Compliance and Enforcement Manual* includes one form that is used to document discovery of an HPV (the *High Priority Violators Discovery* form) and another form to track issuance of formal enforcement actions (the *Enforcement Tracking and Transmittal* form). The inspector's name is listed on the *High Priority Violators Discovery* form but no signature space is provided. A concurrence block from the inspector, through the first-line supervisor, to the

⁴¹ Dominion Transmission

⁴² Union Carbide

⁴³ M&G Polymers

⁴⁴ Second Sterling III

⁴⁵ Columbia Gas Transmission

⁴⁶ Bayer Crop Science and Dominion Transmission II

⁴⁷ Columbia Gas Transmission (Flat Top) Day 0 = 1/12/06 reported 6/1/2006, Columbia Gas Transmission (Smithfield) Day 0 = 1/20/06 reported 6/1/06, M&G Polymers Day 0 9/1/06 reported 10/3/06, Brentwood Industries Day 0 = 6/10/06 reported 10/3/06, Markfork Coal Day 0 = 9/6/06 reported 10/3/06, Bayer Crop Science Day 0 8/25/06 reported 10/3/2006, Venture Coke Day 0 = 9/1/06 reported 10/17/06, and Union Carbide Corp Day 0 = 4/23/06 reported 12/12/2006.

Assistant Director of Compliance and Enforcement is included on the *Enforcement Tracking and Transmittal* form. Reviewers found these completed forms in enforcement files.

The Review Team believes these two forms are excellent tools to document and track the decision process and related enforcement activities for violations found. In particular, the *High Priority Violators Discovery* form lists all the criteria and data elements that must be considered and entered into AFS for HPVs discovered, thus ensuring that HPV information entered into AFS is accurate. The *Enforcement Tracking and Transmittal* form not only provides details on the violation and the recommended enforcement action; it also requires that the *High Priority Violators Discovery* form be attached where HPVs are discovered.

With what appear to be excellent forms and protocols to gain concurrence on HPV determinations in a timely manner, the Review Team is puzzled about why WVDEP has such a poor track record of reporting HPVs to EPA. However, the problem may be due, in part, simply to failure to abide by WVDEP's own protocols; in three out of five HPV files reviewed⁴⁸, the *HPV Discovery* form and *Enforcement Tracking and Transmittal* forms were not found in the file. In two instances where these forms were missing⁴⁹, the PCE which led to discovery of an HPV was not documented in a CMR, as well. (The discovery event related to the second HPV was actually a meeting with the Company to follow-up on a self-reported violation.) In addition, it is possible that the late HPV reporting may be due to inattention, on the part of WVDEP, in sending out NOVs on a monthly basis as required in the MOU and *HPV Policy*. With only two T&A meetings in FY2006 (see Element 9 for more discussion on why this occurred), there may have been fewer reminders/less impetus to send the required NOVs on a monthly basis.

Furthermore, no protocol or form is used to document decisions where it is determined that a violation does not rise to the level of an HPV. Thus, Reviewers had to interview inspectors/WVDEP managers where violations appeared to be HPVs but had not been reported as HPVs. In the one instance⁵⁰ where Reviewers discovered an HPV that was never reported as such, this HPV had not received timely enforcement. WVDEP officials agreed that the source should have been listed as an HPV.

Citation of information reviewed for this criterion:

- *The Timely & Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs)*, June 23, 1999
- Minutes of FY2006 Timely and Appropriate meetings
- AFS Business Rules, August 2007
- *WVDEP Compliance and Enforcement Manual*, August 18, 2006.

Recommendations:

⁴⁸ Dominion Transmission, Columbia Gas Transmission Flat Top, and Union Carbide

⁴⁹ Union Carbide and Columbia Gas Transmission Flat Top

⁵⁰ Bayer Crop Science violation discovered 2/7/06

(1) The Review Team believes the *HPV Discovery* form and *Enforcement Tracking and Transmittal* form are excellent tools to document and track the decision process and enforcement activities related to violations found and recommends these forms as examples of best practices (see below). WVDEP should develop a plan to ensure that these forms are used consistently.

(2) To ensure that all violations discovered are evaluated against the HPV criteria, WVDEP should institute processes to determine and document whether each violation discovered is an HPV. These new processes should apply to those that are found to NOT rise to an HPV as well as to those that are found to be HPVs. Also, WVDEP should communicate more with Region III about violations that are not necessarily determined to be HPVs but are potential HPVs. This would minimize the possibility of a violation that is an HPV not being listed as such.

(3) WVDEP should evaluate why HPVs have been reported to EPA late and assess how such late reporting may be avoided in the future. New HPVs may be reported to EPA outside of the periodic Timely and Appropriate meetings when waiting for the upcoming meeting would substantially delay reporting. EPA then may evaluate the information provided and concur on the HPV recommendation or discuss the potential HPV with WVDEP officials as appropriate.

Action: For the preceding three recommendations, WVDEP responded that they have implemented processes to address concerns related to late reporting of HPVs. EPA Region III will continue a dialogue with WVDEP to monitor the effectiveness of these new processes in reducing late reporting of HPVs.

(5) See Recommendation in Element 6 on listing the two potential HPVs discovered by the Review Team as HPVs.

(6) See Recommendations in Element 3 on documentation of findings of compliance. To avoid disputes about the validity of compliance determinations, a first-line manager, at a minimum, should concur on findings in CMRs

(7) WVDEP should take whatever steps are needed to ensure that copies of NOV's for all HPVs as well as potential HPVs are forwarded to EPA Region III on a monthly basis, regardless of the date of the next T&A meeting.

***Best Practice** – The Review Team believes that the *HPV Discovery* form and *Enforcement Tracking and Transmittal* form used by WVDEP may serve as a best practice for other state and local agencies. These forms provide a thorough and organized format to document and track the decision process and enforcement activities related to violations found. Copies of the WVDEP *HPV Discovery* form and *Enforcement Tracking and Transmittal* form are included as Attachments B and C.

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

time frame.

| Clean Air Act Source Universe Information | Number of Enforcement Actions |
|---|---|
| State formal enforcement actions | 17 total at major and SM sources, of which 8 ⁵¹ address HPVs |
| Number of enforcement files for review | Out of 25 files, 4 addressed HPVs with FY2006 Day Zeros ⁵² , 2 addressed HPVs with FY2005 Day Zeros ⁵³ , 3 unaddressed HPVs ⁵⁴ with FY2006 Day Zeros+ 0 non-HPVs w formal enforcement action = 9 files (including 3 files with 2 HPVs or potential HPVs) |

File Review Metrics

| | | |
|-----------|---|-------------|
| Metric 5a | % formal state enforcement actions that contain a compliance schedule or activities designed to return source to compliance | 4/5 = 80% |
| Metric 5b | % formal or informal enforcement responses that return sources to compliance | 5/6 = 83.3% |

Information on state enforcement activities must be reported so that EPA may fulfill its obligations to conduct oversight of state and local agency compliance and enforcement efforts for major sources under Title V operating permit programs. The information is also necessary for EPA to fulfill its oversight responsibilities to ensure that State Implementation Plans fulfill the testing, inspection and enforcement requirements of 40 CFR 51.212 on an ongoing basis.

Findings:

One inspector interviewed said that CMRs that cite violations are targeted to be completed within two weeks of the compliance monitoring activity, as NOVs must be issued within two weeks of the violation discovery. The inspector noted that he submits, to the Inspection Supervisor, draft penalty calculations and a draft NOV when he submits the CMR with the violation(s) cited. This inspector said that submission of a memo with recommendations for corrective action is optional at the time the CMR is submitted.

The *Compliance and Enforcement Manual* does not include a section which outlines procedures

⁵¹ Metric 12h1. Original metric was changed as discussed in Metric 12h1.

⁵² Union Carbide Corp., M&G Polymers, Second Sterling IV, and Columbia Gas Transmission

⁵³ Dominion Transmission Lightburn and Second Sterling Corp III (addressed informally)

⁵⁴ Bayer Crop Science listed HPV plus two unlisted HPVs that the Review Team discovered

to follow when a violation is found through on-or off-site compliance monitoring. Whereas the above procedures may be verbally communicated to inspectors, one WVDEP manager whom was interviewed stated that the decision to proceed with formal enforcement is not based on a written policy. This manager said the decision to proceed with enforcement is left to the judgment of enforcement personnel. Indeed, the Review Team found, in the *Compliance and Enforcement Manual*, no specific written guidelines which direct enforcement personnel on how to proceed when an HPV is found or which outlines any particular timeframes for enforcing against HPVs.

According to WVDEP managers whom were interviewed, most violations are settled administratively. When a claim cannot be settled administratively, WVDEP may refer the case to its attorney general for resolution in court.

Metric 5a – Eighty percent of the FY2006 formal state actions reviewed contained a compliance schedule or activities designed to return the source to compliance. In one instance⁵⁵, the file showed that the source had returned to compliance prior to the enforcement action being taken. Such action is commendable, since a rapid return to compliance is the main objective of the compliance monitoring program.

Two HPVs that had been addressed in FY2005 but were unresolved at the beginning of FY2006 were not resolved in compliance with the FY2005 orders. In both instances, WVDEP followed up with additional formal enforcement action in FY2006, one of which involved assessment of stipulated penalties for failure to comply with the original order. One of these two HPVs is now resolved. However, the other HPV had been inaccurately listed as “resolved.” As a result of this Review, this HPV has been moved back to “addressed” but not “resolved” since all requirements of the current Order have not been met as of July, 2007. Please note that these two sources were not selected for review by the Review Team, but review of the FY2006 formal actions reported in AFS led to further inquiry.

Procedures are set forth in the *Timely & Appropriate Policy* to ensure that HPVs are not only addressed but also resolved, i.e., all activities necessary to return a source to compliance, along with penalties paid, are complete. Some state/local agencies have formal protocols in place to formally close out all enforcement activities, regardless of whether a violation is an HPV or not an HPV.

Metric 5b - Out of the six HPV files selected for review, formal state enforcement actions were associated with five HPVs. All of these actions included activities designed to return the sources to compliance or documented that the source had already returned to compliance. **83.3 percent** of the formal and/or informal enforcement responses that were evaluated by the Review Team had actually returned the violating source to compliance by the time of the File Review.

WVDEP issued an NOV to the one source, out of the six, that had not returned to compliance⁵⁶.

⁵⁵ Columbia Gas Transmission

⁵⁶ Dominion Transmission NOV issued in 2006 but undated in file

The Review Team believes this noncompliant source should be re-listed as an HPV (See discussion under Data Metric 4b) and the violation should be addressed formally.

One additional HPV file reviewed⁵⁷ was not addressed through formal enforcement action. One WVDEP manager whom was interviewed stated that no violations are addressed informally. This statement does not comport with the addressing action for that one source reported in AFS (“2L-St HPV Addr Und”) and which is currently considered “Resolved.”

Two additional enforcement responses⁵⁸ were still pending at the time of the File Review. No formal enforcement responses were noted in FY2006 files reviewed for sources in violation but not HPVs.

All inspectors and WVDEP management whom were interviewed demonstrated great familiarity with the *HPV Policy*.

Citation of information reviewed for this criterion:

- *The Timely & Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs)*, June 23, 1999
- *WVDEP Compliance and Enforcement Manual*, August 18, 2006.

See above for a description of the six enforcement files reviewed.

Recommendations: (1) WVDEP should evaluate its processes to close out enforcement files to better ensure that all activities necessary to return a source to compliance and to document WVDEP’s review of those close-out activities.

Action: *WVDEP responded that procedures are already underway to improve the documentation of enforcement close-outs.*

(2) WVDEP should revise its *Compliance and Enforcement Manual* to specify that all HPVs should be addressed through formal enforcement. It also should include clear guidance on when formal enforcement is appropriate for non-HPVs.

Action: *WVDEP requested clarification on what EPA intends with this recommendation. EPA Region III will provide to WVDEP copies of other Region III State Enforcement Policies that prescribe when formal, versus informal, enforcement is considered appropriate.*

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

⁵⁷Second Sterling III

⁵⁸ Both at Bayer Crop Science, one at the currently-listed HPV and one to address the violation that the Review Team believes is an HPV

| Clean Air Act Source Universe Information | Number of Enforcement Actions |
|--|---|
| Formal enforcement actions at HPVs | 8 by WVDEP or jointly at HPVs |
| Number of enforcement files for review | Out of 25 files, 4 addressed HPVs with FY2006 Day Zeros, 2 addressed HPVs with FY2005 Day Zeros, 3 unaddressed HPVs with FY2006 Day Zeros+ 0 non-HPVs w formal enforcement action = 9 files (including 3 files with 2 HPVs or potential HPVs) |

Data Metric

| | | National Average | WV |
|-----------|---|----------------------------|--|
| Metric 6a | % sources that were HPVs for at least one month in FY2006 and that remained unaddressed >270 days | 45.0% | 7.7% |
| Metric 6b | % of state-lead HPVs that were unaddressed as of 9/30/06 or were addressed in FY2006 but had exceeded the 270-day timeliness threshold. | 59.6% (Region III average) | 7.1% state & joint-only ⁵⁹ |
| Metric 6c | All state formal actions taken during FY2006 | | 17 ⁶⁰ at major and SM sources |

Findings:

WVDEP addressed nine HPVs in FY2006, either as state or joint-lead enforcement. Of these nine HPVs, eight were addressed formally and one was addressed informally. Of the nine sources that WVDEP addressed in FY2006, the average number of days after Day 0 to address violations was 170 days. This is well below the 270 days to address HPVs that is specified in the *HPV Policy*.

Ten major and synthetic minor sources were issued NOV's from WVDEP in FY2006 and 15 major and synthetic minor sources⁶¹ were subject to formal actions that year. WVDEP discovered some of the violations at the 15 sources prior to FY2006.

Metric 6a: One out of thirteen of West Virginia's state or joint-lead sources with HPVs in

⁵⁹ No metric was available at time of April *OTIS* download. Numerator is 1 (i.e., Second Sterling III) and denominator is 14 (total HPV pathways). Note that one source had two HPV pathways, which is why the denominator is 13 for Metric 6a and 14 for Metric 6b.

⁶⁰ Metric 12h1.

⁶¹ Metric 12h2

FY2006, or **7.7 percent**, remained unaddressed for more than 270 days, compared to a national average of 45.0 percent. WVDEP managers whom were interviewed attributed what appears, based on this metric, to be excellent relative timeliness in addressing HPVs to:

- strong legal support
- excellent templates for drafting orders and NOV's
- training that is provided to enforcement personnel, and
- priority placed on timely and appropriate enforcement effected at all levels within the Compliance and Enforcement Program.

Metric 6b: One out of 14, or **7.1 percent**, of West Virginia's reported state or joint-lead HPVs at any time in FY2006 were not addressed within the 270-day time line specified in the *Timely & Appropriate Policy* or were unaddressed at the end of the fiscal year. This is much lower than the Regional average of 59.6 percent (the National Average was not available so the Region calculated its own). Eight of the HPVs addressed by WVDEP in FY2006 were addressed within the 270-day time frame that is set forth in the *Timely & Appropriate Policy*. Five of the 14 reported active HPVs in FY2006 were not addressed in FY2006. One state-lead HPV⁶² that was an HPV in FY2006 continued to be unaddressed as of July 3, 2007.

Metric 6b does not include HPVs that were not reported in FY2006. Two violations, discovered by WVDEP in FY2006 but not counted in Metric 6b because they were unreported HPVs, were still unaddressed as of July 2007. Since formal enforcement has not proceeded at either source and neither source appears to have returned to compliance, the Review Team believes these newly-discovered HPVs have not been addressed appropriately. Thus, counting all reported and unreported FY2006 HPV, nine out of 16 actual state-lead HPVs, or **56.3 percent** were addressed in a timely and appropriate manner. Details on the two unreported HPVs are discussed below.

During the file review, Reviewers determined that one violation⁶³, discovered by WVDEP through a PCE conducted in FY2006 but expected to be part of an FCE, appeared to meet HPV criteria. However, the violation had not ever been identified as an HPV by WVDEP. When the Review Team raised this issue with WVDEP, Agency managers agreed that this violation meets General Criteria 7. Reportedly, WVDEP did not report this violation as an HPV because WVDEP anticipated that subsequent completion of the FCE would lead to identification of more violations, and they expected to notify the Company and proceed with formal enforcement in a single action. However, neither notice nor formal enforcement action has ensued and the timing to do so is well past the 270-day window to address HPVs under the *Timely and Appropriate Policy*.

The second HPV discovered by the Review Team⁶⁴ also is unaddressed as of July 2007. This was a violation of an outstanding Order that had been issued to address an HPV that related to failing to conduct a required test of a flare. The company did not comply with the schedule in the Order,

⁶² Bayer Crop Science

⁶³ Bayer Crop Science

⁶⁴ Dominion Transmission

WVDEP sent a follow-up NOV, but this did not result in the source returning to compliance in a timely manner. WVDEP responded that they did not believe the violation was substantial, so they did not list this as an HPV. The Review Team believes this violation meets General Criteria 4 and should have been formally addressed, to comply with the *HPV Policy* and attain more timely compliance.

The file reviewed showed one HPV⁶⁵ addressed informally rather than with a formal enforcement action. Over \$1.5 million in penalties were assessed, yet only injunctive relief was obtained; no penalties were collected. The Review Team believes this is not consistent with the *HPV Policy* and is not appropriate. T&A minutes show that WVDEP asked EPA to conduct an inspection at the source, but this was not done. Reportedly, the EPA inspector decided his involvement was not needed and that the WVDEP had addressed the violation appropriately. No Regional management appears to have participated in this decision. Consequently, it appears that actions by WVDEP and Region III (i.e., jointly consider a case strategy, considering EPA taking the lead on an HPV when the state agency fails to address the HPV by Day 150) did not comport with the *Timely and Appropriate Policy*. The Review Team believes that the lead should have been changed to EPA-lead if WVDEP was skeptical that penalties would have not been collected.

According to the *WVDEP Compliance and Enforcement Manual*, an NOV or Order of Compliance may be used to address an occurrence of noncompliance. The Manual does not indicate when an Order of Compliance is mandatory. The *Timely and Appropriate Policy* requires that, in most cases, HPVs be addressed with formal enforcement actions other than NOVs. Even though Data Metrics 6a and 6b show that WVDEP's timeliness is much better than the Regional average, WVDEP's one HPV on the Watch List, failure to address two unreported HPVs in a timely manner, and the informal means of addressing the one reported HPV could be viewed as a vulnerability.

Two⁶⁶ of the three EPA-lead HPVs in West Virginia in FY2006 had been unaddressed for more than 270 days at the time of the File Review or were Watch List sources in FY2006. One of these two cases was a judicially referred case. The second was addressed in April 2007.

Eight major and/or synthetic minor sources⁶⁷ that Metric 12e lists with Compliance Status indicating "in compliance" in the first quarter of 2006 were also listed in Metric 12e as "out of compliance" during at least one subsequent quarter in FY2006. Based on Metrics 12f and h, three of these eight sources⁶⁸ were issued a subsequent NOV, issued an administrative order, or newly listed as an HPV in FY2006. A minimum of five non-HPV violations discovered in FY2006 were not addressed formally. According to Metric 12e, only two⁶⁹ of these five sources had returned to compliance by the end of FY2006.

⁶⁵ Second Sterling Corp III

⁶⁶ Allegheny Energy Supply Co. I (Pleasants Plant) and Alcan Rolled Products

⁶⁷ Brentwood Industries, Wheeling Corrugating Co., Steel of WV, WV Alloys, Quebecor World, Mullican Lumber, Viking Pools, and Falcon Land Company

⁶⁸ Brentwood Industries, Mullican Lumber, Viking Pools

⁶⁹ Wheeling Corrugating Company and Steel of WV

There may be additional sources that were considered out of compliance initially in the first quarter of FY2006 and also were not addressed formally. This data was not readily available through the SRF metrics, so the Review Team did not consider these.

Based on compliance status presented in Data Metric 12e and enforcement actions listed in Data Metric 12h, three non-HPV violations⁷⁰ discovered in FY2006 appear to be still unaddressed. However, one of those three sources was selected for the file review and files show that the source had returned to compliance. It appears the Compliance Status was not changed back to “in compliance” in AFS (This is a data problem discussed in Element 10). The remaining two non-HPV violations are listed in AFS with Compliance Status that indicates they are out of compliance. Further investigation, using AFS, showed that one was subject to an order and two subsequent PCEs are listed with Results codes that indicate the source has returned to compliance. This may be another instance where Compliance Status has not been updated in AFS. The second non-HPV was issued an NOV but no formal enforcement action was taken. Assuming this last source actually remains out of compliance, it appears that WVDEP’s informal enforcement action has not been effective in addressing the violation.

Citation of information reviewed for this criterion:

- *The Timely & Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs)*, June 23, 1999.
- *WVDEP Compliance and Enforcement Manual*, August 18, 2006.

See above for a description of the 25 files reviewed.

Recommendations: (1) **Federal Recommendation:** When WVDEP requests support from Region III, EPA APD Management Officials should be involved in all decisions that relate to the support requested.

(2) The one FY2006 HPV that was not addressed as of July 2007 should be addressed as soon as possible.

(3) The two unreported HPVs should be added to AFS as HPVs and addressed as soon as possible. To the extent that these violations were not addressed in a timely and appropriate manner because they were not identified as HPVs, WVDEP should consider procedures to ensure that all violations are reviewed to determine if they meet HPV criteria, as discussed in Element 5. If WVDEP employs a Standard Operating Procedure to screen all violations against HPV criteria, the likelihood that WVDEP would miss listing a source as an HPV is minimized.

Action: *WVDEP has agreed to list the first violation as an HPV. EPA and WVDEP are in the process of resolving differences regarding whether the second potential HPV is in fact an HPV.*

⁷⁰ WV Alloys, Quebecor World, and Falcon Land Company

(4) See Recommendations in Element 5 on the need for guidance which addresses when formal enforcement is appropriate for non-HPVs.

***Best Practices** – WVDEP’s performance in addressing HPVs in a timely manner well exceeds the national average. WVDEP managers whom were interviewed attributed this excellent performance to:

- strong legal support
- excellent templates for drafting orders and NOV’s
- training that is provided to enforcement personnel, and
- priority placed on timely and appropriate enforcement effected at all levels within the Compliance and Enforcement Program.

The Review Team believes that these practices used by WVDEP may serve as best practices for other state and local agencies.

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

| Clean Air Act Source Universe Information | Number of Enforcement Actions |
|---|---|
| Formal enforcement actions at HPVs | 8 ⁷¹ by WVDEP or jointly at HPVs |
| Number of enforcement files for review | Out of 25 files, 4 addressed HPVs with FY2006 Day Zeros, 2 addressed HPVs with FY2005 Day Zeros, 3 unaddressed HPVs with FY2006 Day Zeros + 0 non-HPVs with formal enforcement action = 9 files (including 3 files with 2 HPVs or potential HPVs) |

File Review Metric

| | | |
|-----------|---|------|
| Metric 7a | Percentage of formal enforcement actions that include calculation for gravity and economic benefit. | 100% |
|-----------|---|------|

The *Clean Air Act Stationary Source Civil Penalty Policy* requires that penalties be calculated based on the economic benefit of noncompliance and the seriousness of the violation.

Findings:

⁷¹ Aker Plastics Company, PPG Industries, Dominion Transmission, Century Aluminum, Columbia Gas Transmission Flat Top, Columbia Gas Transmission Smithfield, Brentwood Industries, Markfork Coal,

Chapter 22, Section 5-6 of West Virginia Code provides authority to the Secretary of WVDEP to recover civil penalties of up to ten thousand dollars per day for violations of West Virginia's air rules. WVDEP may issue administrative orders with penalties. The West Virginia Air Quality Board (AQB) hears appeals pertaining to the Division of Air Quality's enforcement and permitting actions.

Clear guidance is provided in the *WVDEP Compliance and Enforcement Manual*, as well as the electronic penalty spreadsheets that are contained in the Manual, to assist enforcement personnel in calculating consistent, fair penalties. *WVDEP's Compliance and Enforcement Manual* very clearly states that gravity as well as economic benefit should be assessed as part of the penalty assessment process. The penalty spreadsheet provides a clear format to assess gravity as well as economic benefit for different types of violations and also shows how to fairly consider mitigating factors.

In the files where penalty assessments were documented, the basis for the initial penalty calculation was clear in all instances. Five out of five files reviewed where WVDEP had initiated formal enforcement action, or **100 percent**, included documentation of initial penalty calculations. (The sixth addressed HPV that was reviewed was addressed informally.) One formally addressed violation did not include penalty amounts that included economic benefit to the source that was in violation, but the documentation was very clear in the files that no economic benefit had been gained. WVDEP's thorough documentation of penalty calculated is viewed as a Program strength.

However, in many of the files reviewed where formal enforcement action had been taken, information on enforcement actions, including penalties assessed, was not included with the main files. Penalty information, where provided to reviewers, was typically filed separately with the Assistant Director for Compliance and Enforcement. Such separation of compliance monitoring files from enforcement files could hinder an inspector's ability to characterize the enforcement history of a source when completing a CMR. An incomplete enforcement history could hinder an inspector's ability to conduct the requisite follow-up at units that may have been problematic in the past.

Citation of information reviewed for this criterion:

- *EPA Clean Air Act Stationary Source Civil Penalty Policy* (1991)
- *WVDEP Compliance and Enforcement Manual*, August 18, 2006.
- W. Va. Code, §22-5-6(a) (Administrative and Civil Penalties)
- W. Va. Code, §22-5-6(b) (Criminal Actions)
- *Timely & Appropriate (T&A) Enforcement Response to High Priority Violations* (HPVs), June 23, 1999.

See above for a description of the six enforcement files reviewed.

Recommendations: None.

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

| Clean Air Act Source Universe Information | Number of Enforcement Actions |
|--|--|
| Formal enforcement actions at HPVs | 8 ⁷² by WVDEP or jointly at HPVs |
| Number of enforcement files for review | Out of 25 files, 4 addressed HPVs with FY2006 Day Zeros, 2 addressed HPVs with FY2005 Day Zeros, 3 unaddressed HPVs with FY2006 Day Zeros+ 0 non-HPVs with formal enforcement action = 9 files (including 3 files with 2 HPVs or potential HPVs) |

Data Metric

| | | National Average or Total | WV |
|-----------|---|----------------------------------|-----------------------------------|
| Metric 8a | No activity indicator - actions with penalties | Not available | 9 ⁷³ (State-lead HPVs) |
| Metric 8b | Percent formal actions at HPVs with Penalty (national goal is $\geq 80\%$) | 76.4% | 100% ⁷⁴ |

Findings:

Metric 8a – WVDEP issued penalties with formal actions to address violations at nine major and synthetic minor sources in FY2006. Eight of these actions were at HPVs.

Metric 8b - Eight out of eight, or **100 percent**, of WVDEP’s HPVs formally addressed in FY2006 included penalties. This meets the national goal of greater-than-or-equal-to 80 percent and exceeds the national average of 76.4 percent.

Neither metric in Element 8 includes HPVs that were not addressed formally. WVDEP addressed

⁷² Aker Plastics Company, PPG Industries, Dominion Transmission, Century Aluminum, Columbia Gas Transmission Flat Top, Columbia Gas Transmission Smithfield, Brentwood Industries, Markfork Coal,

⁷³ Since the T&A Policy focuses on HPVs, the actions with penalties for state-lead HPVs addressed in FY2006 only are listed in the above chart. Original metric for 8a was 13, but this includes non-HPVs at four minor sources.

⁷⁴ Original metric was 80%, (8/10), but two “not counted” HPVs with formal action were actually addressed in FY2005 and WVDEP had issued follow-up orders in FY2006 to address new issues that emerged during the implementation of the orders. One of these two orders involved penalties but is not included in the final metric as it is not an “Addressing Action.” Final metric is 8/8 = 100%.

one HPV⁷⁵ in FY2006 informally and did not collect penalties. Thus eight out of nine HPVs addressed by WVDEP in FY2006, or **88.9 percent** resulted in penalties collected. Although the Review Team does not believe the informally addressed HPV was appropriately addressed (see Element 7), WVDEP has generally been very successful in assessing final penalties for its HPVs.

No HPVs addressed in FY2006 were at federal facilities. WVDEP management personnel stated that WVDEP has authority to collect penalties at federal facilities and there is no reason why they would not do so, should a violation be found.

Final penalties are typically equal to the original assessed amount. Penalty matrices observed in the file showed consideration of both gravity and economic benefit. However, a significant proportion of penalties assessed included, in the final calculation, a fine of \$0 for economic benefit, i.e., it appears that WVDEP determined that these violators did not gain economic benefit from their violations. It was not clear to the Review Team what effort was undertaken to determine the economic benefit.

Assessed penalties for the five state-lead HPVs that were addressed in FY2006 totaled \$260,900. Penalties assessed, as reported to EPA, ranged in amounts from as low as \$2,500 to as high as \$69,000. The collected amounts reported to EPA at Timely and Appropriate meetings and in *AFS* equal the assessed amounts.

Since WVDEP has authority to assess up to \$10,000 per day in penalties for economic benefit alone, the Review Team looked more in-depth at how WVDEP's penalties compare to those assessed by other Region III state and local agencies. In FY2006, WVDEP addressed 7.6 percent⁷⁶ of the state-and local-lead HPVs addressed in Region III. During FY2006, WVDEP collected eight percent⁷⁷ of the penalties associated with state- and local-lead HPVs addressed in the Region. Thus, even though one might expect to see higher penalties collected, it appears that WVDEP's penalties collected are typical of the amounts collected through state-lead settlements in the Region.

The Review Team found no guidelines in WVDEP's *Compliance and Enforcement Manual* on how to incorporate Supplemental Environmental Projects into settlements. In fact, WVDEP has reported only one SEP to EPA as part of a settlement of an HPV (in FY2005) during the period from FY2001 through FY2006.

Citation of information reviewed for this criterion:

- *EPA Clean Air Act Stationary Source Civil Penalty Policy* (1991)
- *WVDEP Compliance Enforcement Manual*, August 18, 2006
- W. Va. Code, §22-5-6(a) (Administrative and Civil Penalties)
- W. Va. Code, §22-5-6(b) (Criminal Actions)

⁷⁵ Second Sterling Corp. III

⁷⁶ 10 addressed by WVDEP/132 state and joint-lead HPVs addressed in Region III

⁷⁷ \$160,900 collected by WVDEP/\$3,246,732 collected throughout Region III for state- and joint-lead HPVs

- *The Timely & Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs)*, June 23, 1999.

See above for a description of the six enforcement files reviewed.

Recommendation: (1) **Federal Recommendation** - See Element 6 for recommendations related to management involvement when WVDEP requests support from Region III in addressing an HPV.

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

| Clean Air Act Source Universe Information | Number of Agreements |
|---|-----------------------------|
| Performance Partnership Agreements | NA |
| Performance Partnership Grants | NA |
| Categorical Grants (SEAs) | NA |
| Other applicable agreements (e.g. enforcement agreements) | 1 |
| Total number of agreements | 1 |
| Number of agreements reviewed | 1 |

File Review Metric

| | |
|----------|---|
| Metric a | State agreements (PPA/PPG/SEA, etc.) contain enforcement and compliance commitments that are met. |
|----------|---|

Findings:

FY2006 marks the first year that Region III state Air Compliance Monitoring and Enforcement Programs operated under a Memorandum of Understanding (MOU) with EPA Region III instead of the Region’s Section 105 Grant. WVDEP managers whom were interviewed indicated that they much preferred operating under the MOU instead of the grant because it enabled WVDEP to work directly with Region III Air Enforcement Management without the involvement in formal mid- and end-of-year reviews and documentation.

WVDEP’s FY2006 MOU with EPA Region III lists the following compliance monitoring and enforcement commitments:

- Submit by July 1 of each year a revised Compliance Monitoring Plan;

- By 11/1/05, identify in *AFS* all sources planned to be inspected for FY2006;
- Participate in quarterly Timely & Appropriate conference calls/meetings;
- Identify to EPA all sources subject to the *Timely & Appropriate Policy* within the policy's time-frames and Air Protection Division enforcement guidance;
- On a monthly basis, provide copies of NOV's and other non-compliance determinations for major and synthetic minor sources identified as HPVs during the monthly/quarterly conference calls and/or meetings. Provide copies of follow-up enforcement actions, penalty amounts, and dates paid.
- Provide the number of Supplemental Environmental Projects (SEPs) used in enforcement actions, penalty amounts mitigated, and value of each SEP;
- Report specified data elements into *AFS* within 60 days of completion of activity;
- Resolve actions consistent with the *Timely & Appropriate Policy*.

Commitments that were met:

WVDEP submitted its revised FY2006/2007 CMS Plan on schedule and uploaded the revised Plan to *AFS* on schedule. WVDEP met 100 percent⁷⁸ of its FY2006 inspection commitments at major sources. Please note that the CMS Plan is a two-year plan; FCEs scheduled during the two-year period may be scheduled for year one or year two and flexibility exists to switch sources between years, provided the CMS Plan is updated accordingly.

No HPVs addressed by WVDEP in FY2006 were reported to include SEPs. The Review Team has no reason to believe that SEPs were unreported.

WVDEP's timeliness in addressing HPVs is viewed as a Program strength. **7.7 percent** of WVDEP's State or joint-lead HPVs in FY2006 remained unaddressed for more than 270 days (see discussion under Element 6). Such a low percentage of late addressing actions is much below the national average.

Commitments that were not met:

The Review Team found several instances where activities being undertaken by WVDEP were not reported to EPA accurately or in a timely manner. This does not conform with the *HPV Policy*. These include:

- Five of the six HPVs selected for review were identified or reported to EPA more than 60 days after Day Zero (see File Review Metric 4e).

⁷⁸Metric 1a1

- The Review Team discovered two violations which the Team believes rose to the level of an HPV but were not reported to EPA as such.
- One FY2006 administrative order⁷⁹ that was a follow-up enforcement action related to an HPV addressed in FY2005 had not been reported in FY2006. The Review Team believes this should have been discussed with EPA as a potential new HPV and to ensure that the actions were properly reported in *AFS* (see Element 11). However, the Review Team agrees with WVDEP that officials had properly not listed this new deviation from the original Order as an HPV.
- In one instance⁸⁰, an HPV was reported to EPA as resolved when in fact it was not. The resolution of this HPV was particularly complicated, involving issuance of a follow-up Order which was reported in *AFS*. The Review Team recognizes that this was simply an error in interpreting the *HPV Policy*; the problem could have been avoided if the matter had been raised to EPA earlier and if the subsequent Order had been entered into *AFS* in a more timely manner.

The Review Team found a significant amount of late data entry. This is discussed in Element 10. The Review Team also identified significant data accuracy and data completeness problems. These are discussed in Elements 11 and 12, respectively. The timeliness, accuracy, and completeness of this data is increasingly important as it is available to the public through *ECHO*⁸¹.

Timely & Appropriate minutes and emails since 2004 document EPA communications with WVDEP about poor data timeliness and quality in *AFS*. The Region III Air Division Director wrote a letter in December 2004, expressing concern about data timeliness and accuracy. The Region III State Liaison Officer and *AFS* Data Manager reported that this concern has been repeatedly discussed in informal conversations as well as formal meetings with WVDEP. EPA has hosted numerous *AFS* training sessions over the years and WVDEP has attended these training sessions, yet the quality of data continues to be poor.

Commitments Partially Met/Unmet

WVDEP participated in two Timely & Appropriate meetings in FY2006. Although the MOU specifies that four meetings should be held, two were held pursuant to verbal agreement between EPA and WVDEP in the course of the year. Specifically, the Region had proposed that only three Timely & Appropriate meetings be held in FY2006, due to resource limits within Region III that year, and WVDEP agreed to that frequency. The last meeting was to be held in September, but WVDEP asked to reschedule the meeting due to conflicts with the date, and the meeting was rescheduled for early October. October actually begins the next fiscal year, so only two Timely

⁷⁹ Viking Pools

⁸⁰ Jeld-Wen Inc.

⁸¹ Enforcement and Compliance History Online, a public EPA web-site

& Appropriate meetings were held in FY2006.

In most instances, copies of noncompliance determinations, follow-up enforcement actions, penalty amounts, and dates paid were provided to EPA in a timely manner. However, several NOV's were not sent in a timely manner, leading to late HPV reporting.

Citation of information reviewed for this criterion:

- *Air Quality Management Title V Operating Permits Program and Air Compliance and Enforcement Program Memorandum of Understanding Between the West Virginia Department of Environmental Protection Division of Air Quality and U.S. EPA Region III Air Protection Division, August 2005*
- Timely and Appropriate Meeting minutes
- *AFS Business Rules, August 2007.*

Recommendations:

- (1) **Federal Recommendation:** Timely and Appropriate meetings should be held at the frequency specified in the MOU.
- (2) See Recommendations in Element 4 to address late HPV reporting.
- (3) See Recommendations in Element 4 to address vulnerabilities related to HPV identification.
- (4) See Recommendations in Elements 10, 11, and 12 to address late, inaccurate and incomplete entry of data in *AFS*.
- (5) See Recommendations in Element 4 regarding transmittal of enforcement to EPA on a monthly basis.

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

Data Metric

| | | National Average | WVDEP |
|------------|---|-------------------------|---------------------|
| Metric 10a | Percent of HPV's that are entered to <i>AFS</i> more than 60 days after Day Zero - state only | 57.6% | 50.0% ⁸² |

⁸² Original metric was 54.5% (6/11) but did not include Second Sterling and should have. Final metric is 6 "late" HPV entries/12 entries in FY2006 = 50%. The final numerator and denominator each includes two HPV's entered in FY2006 but with Day Zeros in FY2005. The final metric also includes Second Sterling in the denominator.

File Review Metric

| | |
|----------|--|
| Metric r | HPVs are identified within 45 days after inspection, review, etc. |
| | FCEs and PCEs are entered into <i>AFS</i> within 60 days of inspection date |
| | Final stack test results are entered into <i>AFS</i> within approximately four months of conduct of test |

The Clean Air Act (CAA) describes in detail the reporting requirements for agencies authorized with delegation. *AFS* is the national repository for air stationary source surveillance and state enforcement activity. It maintains a universe of sources considered to be “Federally Reportable”.

Minimum Data Requirements (MDRs) represent the minimum amount of data that is necessary to manage the national air stationary source compliance monitoring and enforcement program. FCEs, Results of stack tests, Results of Title V annual certification reviews, and Compliance Status are just a few examples of the 26 MDRs. The MOU required that WVDEP enter MDRs in FY2006 into *AFS* within 60 days of completion.

Findings:

WVDEP has used a *Fox-Pro*-based program, called *Air Trax*, for tracking its Air Program compliance monitoring, enforcement, and permitting activities. Beginning April 2007, a new *Web Air Trax* system based on an *Oracle* platform is used.

Each inspector has access to *Web Air Trax* on his/her office personal computer. Inspectors reportedly enter their completed PCEs and FCEs into *Web Air Trax* within three days of completing the CMR. One of the amenities of the redesigned *Air Trax* compared to its former version is reportedly the ability of data from WVDEP Regional Offices to be uploaded quickly and accurately. Inspectors enter the Results of those compliance monitoring activities and change Compliance Status using the “Web Air Trax Inspection Codes” that are included in the “Procedures for Data Entry in *Air Trax II*” chapter of the *Compliance and Enforcement Guidance Manual*. Where HPVs are found and/or enforcement action is to be taken, HPV Discovery and Enforcement Transmittal forms are signed by WVDEP inspectors and managers as appropriate. These forms are then provided to the Administrative Professional for entry of HPV and enforcement information into *Web Air Trax*. Staff in Charleston as well as the Regional Offices meet monthly with the Inspections Supervisor in the Charleston office to discuss protocols and issues related to *Web Air Trax*.

Certain data elements in *Web Air Trax* are uploaded to *AFS* on a monthly basis. WVDEP has long been aware of programming or logic problems that have resulted in failure of some required data elements to be uploaded to *AFS*. *Air Trax* was redesigned, in part, to resolve some of those problems, but WVDEP continues to find problems.

Other data elements that are entered into *Web Air Trax* are not uploaded to *AFS*. Some of these are not intended to be uploaded, as they are not MDRs. However, some MDRs were never programmed to be uploaded because of limited programming resources. These include stack test observations with results that are pending and more than one pollutant tested during stack tests.

Reports are generated out of *Web Air Trax* on a monthly basis to enable data managers to perform quality assurance/quality control checks on the data that was entered into *Web Air Trax*. The universal interface performs its own quality control checks, but WVDEP data managers said that logic problems related to how data is extracted from *Web Air Trax* will not be flagged through the data validation function of the universal interface. *OTIS* is available to also help verify data uploaded to *AFS*, through production of reports that may be manually checked after the monthly *OTIS* refresh. However, *OTIS* reportedly is used only occasionally by WVDEP for this purpose. It appears to the Review Team that WVDEP dedicates few resources to ensure that what is entered into *Web Air Trax* is accurately and timely uploaded to *AFS*.

Metric 10a – 50.0 percent of the HPVs entered into *AFS* by WVDEP in FY2006 were reported to EPA more than 60 days after Day Zero. This is better than the national average of 57.6 percent. Despite this metric being below the national average, WVDEP’s timeliness in this metric is significantly below the Regional average of 37.5 percent. The Review Team considers 50 percent late reporting to be a vulnerability.

Minutes from the January 30, 2007 T&A meeting state that 87 **FCEs** had been entered into *AFS* as completed by WVDEP in FY2006. As shown in Metric 12d1 (which was downloaded the following April), 102 sources are reported in *AFS* with FCEs completed in FY2006. From comparing the FCEs in *AFS* in January to those in *AFS* the following April, 15 FCEs were reported as completed in *AFS* at least four months after actual completion.

Nineteen out of 24 files reviewed by the Evaluation Team included CMRs or PCE reports that were completed within 60 days after the actual inspection, based on comparing inspection dates and dates of the reports in the files. See File Review Metric 3A. With one-fourth of the files reviewed showing late completion of CMRs, it is very possible that the 15 FCEs were entered late because the CMRs were completed late. WVDEP managers affirmed that late CMR completion is a likely cause of late HPV discovery. Thus, late CMR completion may have resulted in not only late reporting but late HPV discovery and subsequent enforcement, as well. If so, this would be a significant vulnerability as well.

The Review Team selected the initial files for review based on **Compliance Status** reported through Data Metric 12e. In developing that list the Review Team discovered five⁸³ sources listed in *AFS* as “out of compliance” at the end of FY2006 that actually were “in compliance.” Upon further inquiry, the Review Team found that these sources had been out of compliance

⁸³ Virginia Electric and Power Company, Flowers Baking Company, Gilco Lumber, Wheeling Corrugating Company, and Sunoco Inc. (R&M),

during a prior period but the sources had not been returned to “in compliance” in *AFS*. Thus, this data timeliness problem is also a data accuracy problem.

WVDEP managers interviewed indicated that sometimes the wrong Compliance Status codes are used due to lack of understanding of what each of the many Results and Compliance Status codes mean, and sometimes the wrong Compliance Status codes are seen in *AFS* because the inspector failed to change compliance status when a violation is resolved. One official said that many data inaccuracies result from lack of attention to detail on the part of those entering the data.

The Review Team evaluated the “Air Trax Inspection Codes” list that is included in the *Compliance and Enforcement Guidance Manual*. Several obsolete codes were found on the list. It is possible that the problems related to accuracy of Compliance Status and Results may stem, in part, from too many codes being available in *Web Air Trax* for these two data elements.

In one instance⁸⁴, file reviews showed that Compliance Status was determined based on a stack test review on July 19, 2006, yet the Compliance Status was not changed in *AFS* until May 4, 2007. A memo to file says “the delay was mainly due to the inspector getting sidetracked with other work and the inspector’s belief that making the change in *Air Trax* was not very important.”

As discussed in Element 3, one CMR⁸⁵ is comprised of two compliance monitoring evaluations, each conducted five weeks apart. The two inspections are properly reported in *AFS* as separate compliance evaluations with different Results Codes (the first one is “out of compliance” and the second one is “in compliance”) since the source did return to compliance after the first PCE. The CMR clearly documents events which occurred and how Results changed between the two inspections. Nonetheless, Compliance Status, which is an MDR, reported in *AFS* is not accurate i.e., no change is shown between the two compliance monitoring activities.

January 2007 Timely & Appropriate Meeting minutes state that WVDEP verbally reported entry of 168 **Title V certification reviews** completed in FY2006, yet the number of Title V certifications reviewed by WVDEP was listed in *AFS* as only 134. Data Metric 1f shows that 100 percent of the Title V certifications due were reviewed in FY2006. The original metric of 81.8 percent was inaccurate because WVDEP had not entered or uploaded to *AFS* within 60 days of completion all Title V certification reviews. Managers interviewed said that WVDEP inspectors may have entered some certification reviews with wrong codes, entering “date received” instead of “date reviewed.” They reported that *Web Air Trax* is rather limited in its ability to reject wrong codes that may be entered, so quick feedback to those entering data is not being provided. In addition, a software problem, reported at the January 2007 T&A meeting, may have affected the ability of WVDEP to upload its Title V certification reviews to *AFS*. WVDEP data management personnel had hoped that the redesigned *Air Trax* would have fixed this and other uploading problems, but problems still persist.

⁸⁴ Pleasants Energy

⁸⁵ West Virginia Alloys

As of June 21, 2007, the Results code for one **stack test** performed⁸⁶ in August 2006 are not listed in *AFS*. Twenty-five stack tests conducted in FY2006 are listed in *AFS* with Results Codes. *AFS* Business Rules require that stack tests should not be reported to *AFS* until the results of the test are known. If WVDEP has reviewed the report from the August 2006 stack test and not entered those Results, WVDEP would not have met the MOU requirement to enter stack test results into *AFS* within 60 days at this one source.

Citation of information reviewed for these criteria: See above for a description of the 25 files reviewed.

Recommendations:

- (1) See Recommendations under Elements 3 and 4 regarding late completion of CMRs and late identification and reporting of HPVs.
- (2) Institute processes to ensure accountability related to inaccurate or untimely entry of data, including Title V certification review data and FCEs completed, into *Web Air Trax*. WVDEP management should clearly communicate to inspectors that data timeliness, accuracy and completeness are important. One way to do this would be to add a data quality and timeliness standard into performance measures for those individuals whom are responsible for entering data into *Web Air Trax*.
- (3) Institute programming changes that are needed to enable all MDRs to be uploaded to *AFS*.
- (4) Until automatic validation is successfully established for WVDEP, the state should consider utilizing *OTIS* on a monthly basis to verify what was actually uploaded to *AFS*.
- (5) Results and Compliance Status codes available should be reduced to only those that in fact may be uploaded to *AFS* to minimize errors in entering wrong Compliance Status and Results may be minimized. WVDEP data managers should work with the EPA *AFS* Manager to identify the actual currently used codes and then delete the obsolete codes from *Web Air Trax*. WVDEP should follow up with training to ensure that WVDEP inspectors understand the meaning of various Compliance Status and Results codes.
- (6) WVDEP should institute programming changes in *Web Air Trax* so that the invalid codes that the Universal Interface cannot sort out are rejected immediately, before uploading to *AFS*.

Action: *WVDEP is in the process of enhancing Web Air Trax and resolving Universal Interface problems with the intent that this should filter possible errors in data recording. WVDEP expects that this should improve data accuracy.*

- (7) See Element 3 Recommendations regarding completion of one compliance monitoring report

⁸⁶ Columbia West Virginia Corporation, Craigsville. See Metric 11b1
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for each compliance monitoring activity completed.

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

| Clean Air Act Source Universe Information | Number of Sources in Universe |
|--|--------------------------------------|
| Full Compliance Evaluations - Major and SM sources | 106 FCEs ⁸⁷ |
| Partial Compliance Evaluations | 183 |
| Total Number of Evaluations | 289 |
| Number of inspection files for review | 25 |

Data Metric

| | | National Average | WVDEP |
|-------------|---|-------------------------|--------------|
| Metric 11a | #HPVs/ # sources in violation - operating major sources only - combined | 96.2% | 76.6% |
| Metric 11b1 | % of stack tests conducted & reviewed without pass/fail results code entered to <i>AFS</i> - state-only (National goal is 0%) | 16.3% | 3.8% |
| Metric 11b2 | # of sources with stack test failures - state-only | | 2 |

File Review Metric

| | | |
|------------|---------------------------------------|--|
| Metric 11c | Accuracy of minimum data requirements | 23 out of 25 files reviewed (92%) and compared to <i>AFS</i> showed errors in <i>AFS</i> |
|------------|---------------------------------------|--|

Findings:

The Review Team found significant data accuracy problems. These include:

- inaccurate reporting of FCEs. For example, an FCE at one facility⁸⁸ was reported as a completed FCE when in fact the FCE was not finished; at two other facilities⁸⁹, the date the FCE was completed did not match the date listed in *AFS*;

⁸⁷ Metric 12d2

⁸⁸ Bayer Crop Science

⁸⁹ M&G Polymers and VEPCO Mt. Storm

- two FCEs reported in *AFS* as completed⁹⁰ were actually PCEs; at another facility⁹¹, an FCE reported in *AFS* was not found in the files;
- inaccurate reporting of PCEs. For example, two PCEs reported⁹² were not written into CMRs, so they should not be reported in *AFS*;
 - CMS Class was found to be inaccurate in eight instances;⁹³
 - Three CMRs⁹⁴ were incomplete and should not have been reported as completed FCEs;
 - Day Zeros for two HPVs⁹⁵ were incorrectly reported in *AFS*;
 - Discovery date, NOV date, and date of Consent Order issuance for one HPV⁹⁶ were incorrectly reported in *AFS*;
 - One HPV⁹⁷ was reported in *AFS* as Resolved when it actually was Addressed but not Resolved;
 - inaccurate reporting of facility address in some instances.

Other significant data accuracies found include:

Title V Annual Certifications – As discussed in Elements 1 and 10, the number of Title V certifications reviewed appears to be significantly underreported. Also, the dates of several Title V certification reviews did not match the date in *AFS*. In many instances the “reviewed” date was actually the date received.

Stack Tests: West Virginia stack test reviewed dates reported in *AFS* are actually the dates the stack tests were conducted in four files⁹⁸ reviewed. Conversely, two stack tests at one source⁹⁹ are reported as conducted on the dates they actually were reviewed. The date of a stack test conducted at another source¹⁰⁰ is reported in *AFS* incorrectly with the date of the stack test report instead of the date of the test. Finally, several stack tests at two sources cited in files¹⁰¹ reviewed were not reported in *AFS*.

Minor Discrepancies - Of the 25 files reviewed for data accuracy, general and facility information on the plant was inconsistent for 21 sources, thus limiting the ability of the Review Team to validate information reported in *AFS*. For example, many CMRs reviewed did not indicate whether the compliance monitoring activity was an FCE or PCE. As another example,

⁹⁰ Banner Fiberboard and Union Carbide.

⁹¹ Union Carbide 9/21/06 FCE

⁹² VEPCO Mt. Storm PCEs dated 10/31/05 and 3/13/06

⁹³ See Data Metrics 12b1 and 12b2

⁹⁴ Wheeling Corrugating Company, Impress USA, and Short Creek Landfill

⁹⁵ M&G Polymers and Dominion Transmission

⁹⁶ M&G Polymers

⁹⁷ Viking Pools

⁹⁸ LCS Services, Second Sterling, Roll Coater, and VEPCO

⁹⁹ Mountain State Carbon stack tests dated 1/7/05 and 1/17/05

¹⁰⁰ Toyota Motor Manufacturing June, 2006 stack test

¹⁰¹ Toyota Manufacturing stack test in March, 2006, Union Carbide stack tests in first and fourth quarters, 2005, and in March and April, 2006

the physical address of the plant was often missing in the CMR reviewed.

In several instances, the Review Team found information¹⁰² in *AFS* that were not included in the files provided during the review or vice versa. Subsequently, copies of these documents were provided to the Review Team.

The Review Team found the same FCE¹⁰³ entered two times into *AFS*, the same Title V Certification Review¹⁰⁴ entered three times into *AFS*, the same NOV¹⁰⁵ entered twice, and the same Order¹⁰⁶ entered twice.

Data Metric 11a - This metric is a data quality check to ensure that HPVs are listed as “out of compliance.” **76.6 percent** of the sources listed as out of compliance in FY2006 were HPVs. The metric does not capture the fact that an HPV¹⁰⁷ that is addressed but unresolved as of August 2007 is listed in *AFS* as “in compliance.” All HPVs should be listed as “out of compliance” until the HPV is returned to physical compliance and all penalties have been paid.

Compliance Status was wrong in many instances. For example, at one source¹⁰⁸, a stack test was overdue for several months and therefore the source was out of compliance during the period when the stack test was overdue. However, the compliance status between the date when the stack test should have been conducted and when it actually was conducted is inaccurately listed in *AFS* as “in compliance.” As another example, the review team had to re-select certain files for review after initially selecting sources that were listed in *AFS* as out of compliance that were later found to be in compliance. WVDEP had not changed the Compliance Status to reflect a return to compliance at those sources after the violations were addressed. See Data Element 10 for a discussion of how late entry of compliance status changes not only affected data accuracy but may also have affected the timeliness of HPV determinations.

Data Metric 11b1 - This metric shows that one out of 26 FY2006 stack test results were not entered into *AFS* as pass (“pp”) or fail (“ff”) at the time the data was downloaded (04/10/07). The current MOU (effective October 1, 2005) requires stack testing events to be entered into *AFS* within 60 days. Stack test results must be entered within the next 60 days, so that results are available in *AFS* within 120 days of each stack test date. Results were still not uploaded to *AFS* as of July 27, 2007.

Data Metric 11b2: Two stack test Results out of 26 stack tests performed in FY 2006 are entered as failures in *AFS*. These are not HPVs because the source was classified as minor for the

¹⁰²VEPCO PCEs dated 10/31/05, 3/13/06 and 9/19/06, Union Carbide FCE dated 9/21/05 and PCEs dated 5/18/06 and 2/1/06, Wheeling Corrugating Company FCE dated 5/25/06, Roll Coater 1/24/04 stack test report, LCS Services FCE dated 9/13/06, Impress USA FCEs dated 11/16/04 and 1/11/05.

¹⁰³SDR Plastics

¹⁰⁴Columbia Gas

¹⁰⁵M&G Polymers

¹⁰⁶EI DuPont order dated 8/22/06

¹⁰⁷Century Aluminum

¹⁰⁸Toyota’s stack test was due to be completed in December, 2005 but was not completed until March, 2006

pollutants tested.

Citation of information reviewed for this criterion:

- *The Timely & Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs)*, June 23, 1999
- *Final Clean Air Act National Stack Testing Guidance*, September 2005
- *AFS Business Rules*, August 2007.

CMRs performed in FY2005 and FY2006 were reviewed as well as CMRs associated with the selected HPVs identified in prior years as appropriate. Where no FY2006 CMRs were available, FY2005 CMRs were reviewed. Additionally, to evaluate timely and appropriate enforcement, FY2007 files were reviewed where FCEs in FY2005 or FY2006 resulted in violations being found but were not addressed in FY2006.

For the metric data, EPA reviewed the following in *AFS* for FY2006:

- HPV data,
- Compliance data
- Title V Annual Certification data
- Stack Test data
- "Classification" data
- NOVs issued.

Recommendations: (1) The Review Team believes the various data errors described above are due primarily to a lack of understanding, among WVDEP personnel, of the importance of data quality in *AFS* and absence of adequate quality control procedures to validate data that is uploaded and entered directly into *AFS*. See Recommendations under Element 10 for use of performance standards, correction of codes available for Results and Compliance Status, and provision of training to ensure timely and accurate entry of data into *AFS*.

(2) Compliance status is a minimum data requirement. WVDEP should investigate why Compliance Status was not updated for the following sources:

- EI DuPont DeNemours
- Wheeling Corrugating Company
- Sunoco Inc. R&M
- Flowers Baking Company
- Gilco Lumber
- Short Creek Landfill
- Toyota Motors.

WVDEP should institute new procedures to ensure that Compliance Status is kept updated.

(3) WVDEP should investigate the results of the one stack test, performed in August 2006, follow up as appropriate, and enter the results into *AFS*. WVDEP should investigate why the results of this stack test, and the associated Compliance Status, took so long to be entered and initiate procedures to ensure that this situation is not repeated elsewhere.

(4) WVDEP should ensure that dates of Title V certification reviews entered into *AFS* are the dates of the actual review and not the dates received. See Element 10 for several other Recommendations to improve WVDEP’s reporting of Title V certification reviews.

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

Data Metrics

| | | |
|-------------|---|--------------------------|
| Metric 12a1 | <i>AFS</i> operating major sources | 189 ¹⁰⁹ |
| Metric 12a2 | <i>AFS</i> operating major sources w/ air program code = V | 187 |
| Metric 12b1 | Active major sources | 189 ¹¹⁰ |
| Metric 12b2 | Active synthetic minor sources | 31 ¹¹¹ |
| Metric 12b3 | Active NESHAP minor sources | 21 |
| Metric 12d1 | Sources with FCEs in FY2006 (major and SM operating sources, state-only) | 102 |
| Metric 12d2 | Total FCEs completed in FY2006 (major and SM operating sources, state-only) | 106 |
| Metric 12d3 | Number of PCEs reported to <i>AFS</i> in reporting period | 183 – Informational only |

¹⁰⁹ Original metric listed 192 sources, yet WVDEP reported that two of these sources are shut down (Ershigs – 2 plants) and one (H3 Synfuel) was never constructed.

¹¹⁰ Original metric listed 192 sources. See footnote above.

¹¹¹ Original metric listed 28 sources but two (Consolidation Coal 54-051-00012 and Speedway Superamerica 54-039-00486) were mistakenly identified in *AFS* as SM sources and the following sources are SM sources that should have been originally included or added at some point to the FY07 CMS Plan but were not: Kidde Fire Fighting, PC West Virginia Synthetic Fuel #3, Zim’s Bagging Company, Inc, Hollinee Corporation (Fibair Division) and American Woodmark

| | | |
|-------------|---|---|
| Metric 12e | # of sources that had violations at any point during FY2006 - combined | 127, of which 107 are major and 6 are synthetic minor sources |
| Metric 12f1 | # of NOV's issued in FY2006 - state only | 16 ¹¹² , of which 9 are to major sources and one is to a synthetic minor source |
| Metric 12f2 | # of sources with NOV's in FY2006 - state-only | 16 ¹¹³ , of which 9 are to major sources and one is to a synthetic minor source |
| Metric 12g1 | # of new HPVs (pathways) in FY2006 - state-only | 10 HPVs |
| Metric 12g2 | # of new source HPVs in FY2006 - State-only | 10 |
| Metric 12h1 | # of State formal actions issued in FY2006, major and synthetic minor sources | 17 ¹¹⁴ |
| Metric 12h2 | # of sources with state formal actions in FY2006, major and synthetic minor sources | 15 ¹¹⁵ |
| Metric 12i | Total dollar amount of state-assessed penalties in FY2006 - state-lead HPVs | \$260,900 ¹¹⁶ for nine state-lead HPVs addressed in FY06. |
| Metric 12j | # of major sources missing CMS policy applicability | 5 major sources w/o CMSC field, of which two actually should have CMSC field ¹¹⁷ |

Findings:

The MDRs entered by WVDEP and described below appear to be incomplete:

Stack Tests – Three stack test reports¹¹⁸ were observed in the files that were not in *AFS*.

MACT Subparts – WVDEP did not enter MACT Subparts with FCEs entered in FY2006. *AFS*

¹¹² Original metric listed 17, but one NOV, M&G Polymers, was a duplicate

¹¹³ Original metric listed 17 but one source, M&G Polymers, was a duplicate

¹¹⁴ Original metric lists 29 sources, but 12 of these were at minor sources

¹¹⁵ Original metric lists 26 sources, but 11 of these were at minor sources. Two of the 15 sources included in the actual metric were follow-up orders to formal enforcement already undertaken to address HPVs.

¹¹⁶ Original metric lists \$357,175, but this includes penalties associated with five violations that were not HPVs. The number presented in the above table refers only to HPVs, since that is the focus of the T&A Policy.

¹¹⁷ H3 Synfuels actually never was built and two Ershigs plants are not in operation

¹¹⁸ Union Carbide performance tests dated 3/29/06 and 4/7/06 as well as the 3/06 stack test for NOx at Toyota Manufacturing.

Business Rules state that these are MDRs for major and synthetic minor sources beginning FY2006.

Metric 12a – Three out of 192 sources listed in *AFS* as **major operating sources** were not actually major operating sources.

Metric 12b – Three out of 192 sources listed as **active major sources** in *AFS* were not actually active major sources. One out of 31 **active synthetic minor sources** in *AFS* was not actually an active synthetic minor source. Four actual synthetic minor sources were not listed in *AFS* as synthetic minor sources.

Metric 12d – According to metric 12d1, WVDEP conducted **FCEs at 102 major and SM sources in FY2006**. Metric 12d2 indicates that WVDEP conducted **106 FCEs at major and SM sources in FY2006**. At one source¹¹⁹ listed in Metric 12d2 but not 12d1, WVDEP reported conducting two FCEs – one on-site and one off-site. At another source¹²⁰ listed in Metric 12d2 but not 12d1, two FCEs are reported for the same date. The third and fourth sources listed on Metric 12d2 but not 12d1 are closed down.

The Review Team found one FCE¹²¹ in the file that was not in *AFS*. The Review Team also found three compliance monitoring activities¹²² that were cited in an Order that was reviewed but that did not appear to be listed in *AFS*. From reading the Order, it was not clear whether these compliance monitoring activities were FCEs or PCEs. Whereas most PCEs are not MDRs, Region III has historically asked its states to list all violations in *AFS*, so where violations were found through PCEs, entry of these PCEs has been encouraged. PCEs that lead to discovery of HPVs are MDRs, beginning in FY2006. A Discovery Date must now be entered for all HPVs, along with the compliance monitoring activity that led to discovery. In one instance¹²³, the PCE that led to discovery of an HPV was not listed in *AFS*.

WVDEP managers interviewed said that little supervisory review occurs of data entry for off-site PCEs. This may relate to the inconsistency in CMRs found/not found in the files for off-site PCEs.

Metric 12e - Compliance Status was found to be incomplete in many instances. This is a data timeliness and accuracy problem as well (see discussion under Element 11).

According to the *AFS* Business Rules, Compliance Status is an MDR (see Element 10) and must be kept updated. If a violation is discovered through an off-site PCE, the Region prefers that off-site PCE to be entered into *AFS*, even though it may not be required under the *AFS* Business Rules or the MOU. (Title V certification reviews and stack test reviews have special codes and

¹¹⁹ Quad Graphics

¹²⁰ Pinnacle Mining

¹²¹ Mountain State Carbon 7/17/06 FCE

¹²² Union Carbide - PCEs or FCEs dated 10/28/05, 11/15/05 and 3/9/06 were cited in a 10/06/2005 Consent Order

¹²³ Second Sterling PCE dated 8/1/05

must be entered into *AFS* with those special codes, per the *AFS* Business Rules, regardless of the result.) Because Compliance Status must be changed to “out of compliance” when compliance monitoring activities lead to discovery of a violation, it makes good sense to report into *AFS* that compliance monitoring activity that led to violation discovery, even if that activity is not an MDR such as an off-site PCE. Even if a particular off-site PCE is not entered into *AFS*, the Compliance Status must be changed to timely and accurately reflect compliance when a source is found to be out of compliance or when a source returns to compliance through completion of a PCE or any other compliance monitoring activity.

Metric 12f – The Review Team found one **NOV**¹²⁴ that was not listed in *AFS*.

Metric 12g – The Review Team discovered two **HPVs** which WVDEP failed to identify (see discussion under Element 4).

Metric 12j - Two major sources¹²⁵ were inaccurately listed in *AFS* with a blank **CMS Source Category** (CMSC) field as of February, 2007. WVDEP responded that these two sources actually have been and continue to be scheduled for biennial FCEs with two other contiguous plants¹²⁶ owned by the same company and which are assigned CMSC fields in *AFS*. Region III has requested, in the past, that each be assigned CMSC fields, even if the FCEs are combined.

Citation of information reviewed for this criterion:

- April 2001 *CMS Policy*
- *Air Quality Management Title V Operating Permits Program and Air Compliance and Enforcement Program Memorandum of Understanding Between the West Virginia Department of Environmental Protection Division of Air Quality and U.S. EPA Region III Air Protection Division, August, 2005*

Recommendations:

(1) WVDEP should investigate why all stack tests and NOV's are not reported in *AFS* and institute appropriate follow up actions.

(2) WVDEP should upgrade *Web Air Trax* as soon as possible to enable direct entry into *Web Air Trax* of MACT Subparts with FCEs entered. Such an upgrade would enable automatic uploading of these data elements, which are all MDRs, to *AFS* and thereby improve timeliness, accuracy, and completeness of this data in *AFS*.

(3) The two sources that are missing a CMSC field should be entered into the current CMS Plan. Every individual Title V source should be listed in the CMS Plan separately. Also, WVDEP

¹²⁴ Second Sterling - NOV dated 3/28/05

¹²⁵ Monongahela Power Company- Pleasants Power Station and Ohio Power –Kammer Plant

¹²⁶ Allegheny Energy Willow Island and Pleasants plants, respectively

should check that all major and synthetic minor sources are accurately associated with accurate *AFS* classification and CMS Class in *AFS*.

(4) WVDEP should correct the incomplete FCEs described in data metric 12d.

(5) See Recommendations under Program Element 11 regarding entry of Compliance Status where violations were found.

Attachment A

Sample Title V Certification Review Form

| | | | | |
|----------|--|------------|------------------|--|
| Company: | | | Facility: | |
| Region: | | Plant ID#: | Title V Permit # | |

Inspected By:

Title:

Review Date:

On-site Inspection Date:

Contact Name:

Phone Number:

Section 2 - Technical Review of Forms

| Document | Received Date | Status Code | Reviewed Date | Status Code |
|--|---------------|-------------|---------------|-------------|
| _____ Title V Annual Certification | | | | |
| 1 st Half Semi-Annual Monitoring Report | | | | |
| 2 nd Half Semi-Annual Monitoring Report | | | | |

*Received (10 or 30) Reviewed Title V Certification (MC, MV, or MU) Reviewed Semi-Annual Monitoring Report (10 or 30)

- a. Was the Certification filled out properly? Yes No
- b. Were all requirements of the permit listed in the Certification? Yes No
- c. Was the Certification signed and dated by a responsible official? Yes No
- d. Were the Semi-Annual Monitoring reports filled out properly? Yes No
- e. Were all monitoring and record keeping requirements from the Title V permit listed in the Semi-Annual Monitoring reports? Yes No
- f. Were the Semi-Annual Monitoring reports signed and dated by a responsible official? Yes No
- g. Do the Semi-Annual Monitoring reports list any separate reports that have been submitted to the DAQ? Yes No
- h. If so, are those records located in the appropriate company file? Yes No
- i. If so, have those records been entered into Air Tracks? Yes No
- j. Have all deviations listed on Form C from the Semi-Annual Monitoring reports been identified in the Title V Annual Certification as well? Yes No

If not, list any discrepancies below and make a determination if a violation exists. If so, include your findings in Section 5 of this report.

Section 3 - Facility Wide Requirements

a. Has the Certified Emission Statement been submitted to the DAQ? Yes No

Date of Submission? _____

b. Have the Title V fees been paid? Yes No

c. Has the appropriate performance testing been completed? Yes No

Has the test information been entered into Air Tracks? Yes No

Date of testing: _____ Compliance Status: _____

Were initial operating parameters chosen during the performance testing if required by the test? Yes No

Was the facility operating at maximum conditions? Yes No

d. Has an Asbestos notification been received to the DAQ? Yes No

Dates of Notification(s): _____

Section 3 - Facility Wide Requirement(s) (continued)

e. Have any odor complaints been received by this office during the year of certification?

Date of complaint: _____ Yes No

f. Have any open burning complaints been received by this office during the year of certification?

Yes No

Date of complaint: _____

g. Did any deviations or malfunctions occur at the facility which required notification within 24 hours and a written report within 10 days? Yes No

Is there a written notification in the appropriate company file? Yes No

Section 4 - Specific Requirements (On-Site Investigation)

a. What criteria pollutants make this source a major source?

| Pollutant | Amount (T/yr.) |
|-----------|----------------|
| | |
| | |
| | |
| | |
| | |

Based on the criteria pollutants listed above, chose the process or APC device to investigate which controls this pollutant. If there are Hazardous or Toxic Air pollutants present, choose the device or process which emits this pollutant. Based on source size, if you chose more than one APC device or process, attach additional Appendices.

b. What process or control device has been chosen?

Name of process or control device: _____

Emission unit ID: _____

Name of process or control device: _____

Emission unit ID: _____

Section 4 - Specific Requirements (On-Site Investigation) cont.

Name of process or control device: _____

Emission unit ID: _____

List any and all records or equipment in **Appendix A** which was investigated or reviewed on site to determine compliance with Title V Annual Certification.

ATTACH APPENDIX A FOR EACH APC DEVICE OR PROCESS

Section 5 - Compliance Determination and Recommendations

a. Compliance Status Code of Title V Annual Certification: MC MV MU

*Enter date of review (completion off on-site and off-site) and compliance code in Air Tracks

b. If status code is (MV), explain what part(s) of Annual Certification is in violation:

d. Compliance Status Code of Semi-Annual Monitoring Reports?

1st Half Semi-Annual Monitoring Report: 10 30
 2nd Half Semi-Annual Monitoring Report: 10 30

If status code is (10), explain what part(s) of Semi-Annual Monitoring report is in violation:

Section 5 - Compliance Determination and Recommendations (cont.)

c. If recommended, what enforcement action will be initiated?

NOV

NOV/Administrative Order

NOV/C&D

Name _____

Date _____

| Appendix A - Title V Certification Review | | | | | | |
|--|--|------------------------------------|--|---|-------------------------|---|
| Permittee: | | | Facility: | | Permit Number: | |
| Year of Title V Annual Certification _____ | | | | | | |
| Emission Unit ID or Process Investigated | Condition Number of Compliance Demonstration | Method of Compliance Demonstration | Other Information Reasonably Available or Otherwise Known Relating to the Status of Compliance | What there a deviation from the standard? | What was the deviation? | Deviation Time Period Date (mo/day/yr) Time (hr/min) |
| | | | | | | Beginning _____ <input type="checkbox"/> am <input type="checkbox"/> pm Ending _____ <input type="checkbox"/> am <input type="checkbox"/> pm |
| | | | | | | Beginning _____ <input type="checkbox"/> am <input type="checkbox"/> pm Ending _____ <input type="checkbox"/> am <input type="checkbox"/> pm |
| | | | | | | Beginning _____ <input type="checkbox"/> am <input type="checkbox"/> pm Ending _____ <input type="checkbox"/> am <input type="checkbox"/> pm |
| | | | | | | Beginning _____ <input type="checkbox"/> am <input type="checkbox"/> pm Ending _____ <input type="checkbox"/> am <input type="checkbox"/> pm |

Appendix A - Title V Certification Review

Permittee:

Facility:

Permit Number:

Year of Title V Annual Certification _____

| Emission Unit ID or Process Investigated | Condition Number of Compliance Demonstration | Method of Compliance Demonstration | Other Information Reasonably Available or Otherwise Known Relating to the Status of Compliance | What there a deviation from the standard? | What was the deviation? | Deviation Time Period Date (mo/day/yr) Time (hr/min) |
|--|--|------------------------------------|--|---|-------------------------|---|
| | | | | | | <input type="checkbox"/> am <input type="checkbox"/> pm |
| | | | | | | Beginning ___/___/___ :___ <input type="checkbox"/> am <input type="checkbox"/> pm Ending ___/___/___ :___ <input type="checkbox"/> am <input type="checkbox"/> pm |
| | | | | | | Beginning ___/___/___ :___ <input type="checkbox"/> am <input type="checkbox"/> pm Ending ___/___/___ :___ <input type="checkbox"/> am <input type="checkbox"/> pm |

Attachment B

WVDEP Enforcement Transmittal Form

ENFORCEMENT TRACKING AND TRANSMITTAL

INSPECTOR:

| FROM | DATE | TO | COMMENTS |
|------|------|-----------|----------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | T. Adkins | |

DISCOVERY DATE: _____

DATE MAILED: _____ **CERTIFIED MAIL ARTICLE NUMBER:** _____

FACILITY NAME: _____ **FACILITY ID#:** _____

| ACTION TYPE: | NOV | NOV/C&D | CONSENT ORDER | OTHER |
|--|-----------|---------|---|-------|
| | DATE | DATE | DATE | DATE |
| Is There a Previous Action for This Violation | YES | NO | WHAT: | |
| IS THIS VIOLATION AN HPV? | YES | NO | IF "YES" INCLUDE A "HPV" DISCOVERY FORM." | |
| NOTIFICATION OF ABATEMENT, DEMOLITION, OR RENOVATION REQUIRED: | YES | NO | IF "YES" INCLUDE A COPY | |
| SAMPLES TAKEN: | YES | NO | IF "YES" INCLUDE LAB REPORT | |
| INSPECTION PHOTOS : | ATTACHED: | FILED: | FILE LOCATION | |

DESCRIBE THE VIOLATION:

FCE OR INTERIM INSPECTION REPORT MUST BE INCLUDED.

DESCRIBE THE FACILITY'S COMPLIANCE HISTORY:

RECOMMENDED FURTHER ACTION(S) - IF REQUIRED:

Attachment C

WVDEP HPV Discovery Form

High Priority Violators Discovery

| | |
|--|---------------------------------|
| Facility Name: Brentwood Industries | Facility ID #: 003-00041 |
|--|---------------------------------|

| | | |
|---|-------------------|----------------------------------|
| Physical Address: 2011 Industrial Park Rd. Martinsburg, WV 25401 | Inspector: | Mo ney pen ny |
|---|-------------------|----------------------------------|

| | |
|------------------------|--|
| Discovery Date: | Day Zero Date(2E): Normally the sooner of the NOV or discovery date + 45 days. |
|------------------------|--|

| | |
|---|--|
| Plant Operating Status at Time of Violation: | Day Zero Action # (OFFICE USE ONLY) : |
|---|--|

Air Programs in Violation (Check all programs that apply)

| | | | | | | |
|---------------|-------------------|----------------|---------------|----------------|--------------------|------------------|
| SIP(0) | TITLE 5(V) | MACT(M) | PSD(6) | NSPS(9) | NSR (7) | NESHAP(8) |
|---------------|-------------------|----------------|---------------|----------------|--------------------|------------------|

Pollutant in Violation (Check all pollutants that apply.)

| | | | | | | | | | |
|-----------|--------------|-----------------------|------------|-----------------------|------------------|------------|-----------|-----------|-------------|
| PT | CO | NO₂ | VOC | SO₂ | PM 10 | HAP | FE | PB | VHAP |
| VE | FACIL | Comments: | | | | | | | |

Pollutant Compliance Status at Time of Violation (See page 2 for pollutant compliance codes.)

General (GCX) and Matrix (MCX) Criteria (Mark all that apply)

GC1 - Failure to obtain PSD permit(and/or install BACT), NSR permit (and/or install LAER or obtain offsets) and/or permit for major modification of either.

GC2 - Violation of air toxics requirement that either results in excess emissions or violates operating parameter restrictions.

GC3 - Violation of Synthetic Minor emission limit or permit condition that affects the source's PSD, NSR, or Title 5 status.

GC4 - Violation of substantive term of local, state, or federal order, consent decree or administrative order.

GC5 - Substantial violation of source's Title 5 certification obligations.

GC6 - Substantial violation of the source's obligation to submit a Title 5 permit application.

GC7 - Violations that involve testing, monitoring, record keeping or reporting that substantially interferes with enforcement or determining source's compliance with applicable emission limits.

GC8 - Violation of an allowable emission limit detected during a reference method stack test.

GC9 - CAA violations by chronic/recalcitrant violators.

GC10 - Substantial violations of CAA 112(r) Requirements(for permitting authorities not implementing agencies under 112(r) program limited to failure to submit a risk management plan.

M1C - Violation of allowable emission limit - stack testing.

M2C - Violation of allowable emission limit - coating analysis, fuel sample, material sampling, raw/process materials, etc.

M3C - Violation of parameter limits where the parameter is a direct surrogate for an emission limitation

M4C - Violation of applicable non-opacity standard

M5C - Violation of applicable opacity standard (based on applicable averaging period eg: 6 minute block averages).

M2C - Violation of direct surrogate of > 25% for 2 reporting periods

M3A - Violation of non-opacity standard via CEM of > 15% for > 5% of operating time

M3B - Violation of non-opacity standard via CEM of the supplemental significant threshold

M3C - Violation of non-opacity standard via CEM of > 15% for 2 reporting periods

M3D - Violation of non-opacity standard via CEM of > 50% of the operating time during report period

M3E - Violation of non-opacity standard via CEM of > 25% during 2 consecutive reporting periods

M3F - Any violation of non-opacity standard via CEM

M4A - Violation of opacity standards (0-20%) via CEM

M4B - Violations of opacity standards > 3% of opacity via CEM during 2 consecutive report periods

M4C - Violation of opacity standards (>20%) via CEM for > 5% of operating time

M4D - Violation of opacity standards (> 20%) via CEM for > 3 ≤ 5% operating time

M4E - Violation of opacity standards (0 - 20%) via method 9 VE readings > 50% over limit

M4F - Violation of opacity standards (> 20%) via method 9 VE readings > 25% over limit

| Addressing Action (Check Action Code Below) | Action Number (OFFICE USE ONLY): |
|---|--|
| <p>48 - Consent Order (This is generally the addressing action)</p> <p>46 - State Court Consent Decree Signed Civil</p> | <p>49 - Notice of Violation</p> <p>OT - Referred to Legal Services</p> |
| Date Addressed: | Penalty Amount: |

High Priority Violators Discovery (cont'd)

Resolving Action (Check Action Code Below)

Action Number (OFFICE USE ONLY):

VR - Violation Resolved by State

CO - State Close Out Memo Issued

93 - Consent Order and Any Applicable Penalty Collected

2K- Source return to compliance by State or EPA.

Date of Resolving Action:

Penalty Amount:

Pollutant Compliance Status at Time of Resolution (Indicate compliance for all pollutants shown in violation above. See below for codes)

| PT | CO | NO ₂ | VOC | SO ₂ | PM10 | HAP | FE | PB | VHAP |
|----|------------------|-----------------|-----|-----------------|------|-----|----|----|------|
| VE | Comments: | | | | | | | | |

Plant Operating Status at Time of Resolution (See codes below)

Pollutant Compliance Status Codes:

- A - Unknown with regard to procedural compliance
- B - In violation with regard to both emissions and procedural compliance
- C - In compliance with procedural requirements
- M - In compliance - CEMS
- P - Present (See other programs)
- W - In violation with regard to procedural compliance
- Y - Unknown with regard to both emissions and procedural compliance
- 0 - Unknown compliance status
- 1 - In violation - no schedule
- 2 - In compliance - source test
- 3 - In compliance - inspection
- 4 - In compliance - certification
- 5- Meeting compliance schedule
- 6 - In violation - Not meeting schedule
- 7 - In violation - unknown with regard to schedule
- 8 - No applicable state regulation
- 9 - In compliance - shut down

Plant Operating Status Codes

- | | | | |
|------------------------|--------------|------------------------|-----------------------|
| O - Operating | P - Planned | U - Under Construction | T- Temporarily Closed |
| X - Permanently Closed | I - Seasonal | D - NESHAP Demolition | R - NESHAP Renovation |
| S - NESHAP Spraying | | | |

II. MEDIA PROGRAM REVIEWS

Media Program Evaluated: Clean Water Act – NPDES Program

Regional Contact: Ashley Toy Phone: (215) 814-2774

State Contact: Mike Zeto Phone: (304) 926-0470

A. BACKGROUND INFORMATION

Structure

In 2006, there was reorganization within the West Virginia Department of Environmental Department that affected the National Pollutant Discharge Elimination System (NPDES) Program. Currently, the roles and responsibilities of the NPDES Program are divided among the Division of Water and Waste Management (DWWM) and Division of Mining and Reclamation (DMR). Within DWWM, Environmental Enforcement (EE) has responsibility for non-mining NPDES. As a result of the reorganization, EE assumed responsibility for the following programs: Hazardous Waste, Underground Storage Tanks, and Dam Safety. DMR has had primary inspection and enforcement responsibility for mine related NPDES permits. The State Framework Review is much more weighted toward the universe of facilities under the NPDES purview of DWWM, than DMR.

DWWM's Permitting Section manages the NPDES permitting program for all facilities/sites that discharge other than those related to mining activities, and maintains the Permit Compliance System (PCS) within their purview. Environmental Enforcement (EE) supports the compliance monitoring and enforcement activities for all statutes under the DWWM's purview, including the NPDES permits (except mining). EE has 83 full time staff members distributed among six field offices. Of the 83 full time staff, approximately 32.5 FTE are dedicated to work associated with water pollution control. The field offices are responsible for conducting compliance inspections, while the central office is responsible for formal enforcement.

EE has significant interactions with other programs to help carry out compliance monitoring and enforcement activities for WVDEP. The interactions are important in regulating permitted and unpermitted facilities. Examples of the interactions are below:

- There is internal coordination within DWWM regarding enforcement actions to ensure consistency. The Permit Branch is included on the concurrence package for enforcement actions, and participates in the quarterly enforcement meetings with EPA. The Engineering Section conducts technical reviews for POTWs and manages the Clean Water State Revolving Fund Program. It meets quarterly with other organizations, including EE, to set priorities for funding. This ensures EE's

ability to provide proper oversight of compliance schedules for POTWs in light of their funding timeline.

- While NPDES inspections are program specific, inspectors are encouraged to share information about violations of other regulations with the other program inspectors.
- EE's Emergency Response investigations that find discharges to water are included in the overall compliance monitoring of NPDES permitted facilities/sites, as well as unpermitted facilities/sites.
- When businesses close in West Virginia, EE conducts closure inspection. Essentially, this is a multi-media environmental audit that takes place prior to a business closing down. EE finds this to be a beneficial tool to help identify and correct potential compliance and environmental problems resulting from the closure. Businesses find the audit beneficial for providing a level of certainty that future environmental liabilities have been identified and abated.
- Since EE is responsible for multiple statutes, violations of these various statutes will be combined into a single enforcement action, as the opportunities present themselves, building in a level of efficiency.
- WVDEP has a River Patrol Program that looks for problems along the rivers, including sanitary sewage overflows (SSOs), which are a federal priority. When problems or concerns are identified, the company is notified immediately. The River Patrol Program provides a rapid identification of environmental or compliance problems along a watershed. Additionally, it achieves often immediate corrective action with minimal effort. The program is usually able to document the corrective actions on the same day.
- EE has routine coordination meetings with EPA's Criminal Investigation Division.
- Due to a history of noncompliance at highway projects, EE implemented quarterly meetings with WV Department of Highways (WVDOH) to discuss projects prior to their commencement. WVDOH instituted the position of Environmental Coordinator and the dialogue has improved compliance levels.
- For sampling inspections, EE uses contract laboratories to conduct sampling, and coordinates with EPA's Wheeling Field Office for toxicity analyses.
- WVDEP has, in coordination with EPA, conducted compliance assistance workshops for CSO communities and the construction sector.

DMR's Permitting Unit issues NPDES permits for coal and non-coal mining operations. DMR's Inspection and Enforcement Unit conducts inspections within their purview, including sampling inspections, and enforcement. The administrative staff maintains the state's Environmental Resource Information System (ERIS) and PCS for the mining operations.

B. REVIEW PROCESS

Key Dates

- The review period was Federal Fiscal Year 2006 (10/1/05 – 9/30/06).
- The inspection year for FY 2006 was actually (7/1/05 – 9/30/06) due to the shift to align the inspection year with the fiscal year. The fiscal year was used to select inspection files and report inspection data.
- The Data Metrics were pulled on May 21, 2007, and shortly thereafter sent to WVDEP
- On-Site reviews, including file reviews and interviews, were conducted July 9th – 12th at the central office in Charleston, WV.
- There is no separate Data Analysis report. The Region's analysis of the data is within the text of this document.

Review Process

The NPDES Enforcement Program is centralized, even though there are field offices. Based on the size of the universe and the centralized approach to implementation, the Region chose to select thirty (30) files to review. The on-site review was conducted at the central office in Charleston on July 9-12, 2007. File reviewers included Ashley Toy, Pat Gleason, and Ingrid Hopkins. Formal interviews were conducted by Ms. Gleason on July 10th which covered program implementation, and by Ms. Toy on July 12th which covered the data metrics. West Virginia assigned Larry Betonte to oversee the file reviews and coordination among the EE staff to answer any question arising during the review of a particular file.

C. FILE SELECTION PROCESS

Universe

The original plan was to review a total of 30 files, comprised of 15 enforcement files and 15 inspection files each, in groups of five per the following categories: Majors, Non-Majors, and Other. We made one modification from our original selection plan, as it related to majors. The plan was to review 10 major files consisting of five enforcement files and five inspection files. Since there were only four major enforcement files in the universe to select from, we reviewed one additional major inspection file. Therefore, four major enforcement files and six major inspection files were reviewed.

File Selection

Once the group universe was established, the files were selected by random irrespective of regions. Each file in the universe was given a number and selections were made. The list of files was provided to WVDEP at least two weeks prior to the on-site review visit. Once the list of review files were selected, no changes were made.

Of the 30 files reviewed, 28 files were from EE and two were from DMR. Both DMR files were selected based upon the inspection criteria. No enforcement files from DMR were reviewed.

File Maintenance

The EE files were complete and in good order. Inspection reports, enforcement actions, external communications, and internal records were all found in the files.

DMR file maintenance was not reviewed. The selected files were provided from DMR to EE in preparation for the on-site review visit. Only the inspection reports for the review period were provided.

D. Metrics Summary

| Metric | Description | National Goal | PCS Data | State Results | National Average |
|--------|--|---------------|----------|---------------|------------------|
| 1A | Inspection coverage: NPDES Majors (individual) | 100% or 70% | 57.7 | 98% | 65.9% |
| 1B | Inspection coverage: NPDES Non-majors (individual) | NA | 8% | | |
| 1C | Inspection coverage: Other | NA | | | |
| 1R | Percent of planned inspections completed | NA | | | |

| Metric | Description | |
|--------|--|--------------|
| 2A | Percentage of inspection reports that are adequately documented. | 21/24* = 88% |

| Metric | Description | |
|--------|--|------------|
| 3A | Percentage of inspection reports which identify potential violations in the files within a given timeframe established by the Region or State. | 20/24*=83% |

| Metric | Description | National Goal | PCS Data | National Average |
|--------|---|---------------|----------|------------------|
| 4A | Single Event Violations (SEVs)* reported to national system | | 0 | |
| 4B | Frequency of SNC | | 24.7% | 19.2% |
| 4C | Wet-weather SNC placeholder | | | |

| Metric | Description | |
|--------|---|------------|
| 4D | Percentage of SNC determinations that are accurately reported | 5/10 = 50% |

| Metric | Description | |
|--------|--|--------------|
| 5A | Percentage of formal state enforcement actions that contain a compliance schedule of required actions or activities designed to return the source to compliance. | 13/14* = 93% |
| 5B | Percent informal enforcement response that return sources to compliance. | 6/10** = 60% |

| Metric | Description | National Goal/Results | PCS Results | State Results | National Average |
|--------|---|-----------------------|-------------|---------------|------------------|
| 6A | Major Facilities without timely action taken (to address SNC) | ≤ 2% | 13.4% | | 7.9% |
| 6B | No activity indicator – Number of Formal Actions (Majors) | NA | 1 | 5 | |

| Metric | Description | |
|--------|---|----------|
| 6C | Percentage of SNCs addressed appropriately. | 6/6*=100 |

| Metric | Description | |
|--------|--|--------------|
| 7A | Percentage of formal enforcement actions that include a calculation for gravity and economic benefit consistent with applicable policies | 10/10 = 100% |

| Metric | Description | National Goal/Results | PCS Data | State Results |
|--------|--|-----------------------|----------|---------------|
| 8A | No Activity Indicator – Actions with Penalties | NA | 0 | 43 |
| 8B | Percent Actions with Penalty | NA | 0 | 51.2% |

| Metric | Description | |
|--------|--|--------------|
| 8C | Percentage of final enforcement actions that appropriately document penalties to be collected. | 10/10 = 100% |
| 8D | Percentage of final enforcement actions resulting in penalties collected. | 10/10 = 100% |

| Metric | Description | State Results |
|--------|---|---------------|
| 9A | State agreements (PPA/PPG/SEA, etc.) contain enforcement and compliance commitments that are met. | 100% |

| Metric | Description | Positive File: File Universe |
|--------|---------------------------------|------------------------------|
| 10A | Timeliness QNCRs data elements. | 6/10* = 60% |

| Metric | Description | National Goal/Results | PCS Results |
|--------|------------------------------|-----------------------|-------------|
| 11A | Actions Linked to Violations | NA | 0% |

| Metric | Description | PCS Results |
|--------|----------------------------------|---|
| 11B | Accuracy of WENDB data elements. | WVDEQ does not use PCS for Enforcement Data |

| Metric | Description | National Goal/Results | PCS Data | State Results |
|--------|--|-----------------------|----------|--|
| 12A1 | NPDES Majors | | 97 | 98 |
| 12A2 | NPDES non-majors with DMRs | | 826 | |
| 12A3 | Reserved (other non-major permit info) | | 2088 | |
| 12B1 | Limits at majors | ≥ 95% | 99% | 99.0% |
| 12B2 | DMR entry rate at majors | ≥ 98.5% | 98.5% | 98.5% |
| 12B3 | Rate of manual override of SNC to a compliant status | | 0 | 0.0% |
| 12C1 | Limits at non-majors with DMRs | | 36.8% | |
| 12C2 | DMR entry rate | | 33.5% | |
| 12D1 | # of facilities inspected | | 151 | |
| 12D2 | Total # of inspections performed | | 243 | 4731 Inspections and 1230 Investigations |
| 12E | Reserved (SEV linked to inspections) | | 0 | |
| 12F1 | # of facilities with state NOV's | | 0 | |
| 12F2 | Total # of state NOV's | | 0 | 4276 |
| 12G1 | Noncompliance rate in database at non-major facilities | | 27.6% | |
| 12G2 | Noncompliance rate reported to EPA under the ANCR | | | |
| 12G3 | Number of facilities in database with DMR non-receipt for three continuous years | | 23 | 44 |
| 12H1 | Facilities with formal actions | | 1 | 84 |
| 12H2 | Total formal actions taken | | 1 | 84 |
| 12I1 | Action with penalties | | 0 | 43 |
| 12I2 | Total state penalties | | 0 | \$701,740 |
| 12J1 | Majors with schedule violations | | 1 | 1 |

| | | | | |
|------|---|--|----|--|
| 12J2 | Majors with compliance schedule | | 42 | |
| 12K1 | Majors with unresolved permit schedule violations | | 5 | |
| 12K | Majors with permit schedule | | 65 | |

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

| NPDES Source Universe | Number of Sources in WVDEP Universe in FY 2007 |
|-----------------------------------|--|
| NPDES Majors | 97 (1 major mining permittee) |
| NPDES Minors (individual permits) | 821 (364 minor mining permittees) |
| NPDES Non-Major General Permits | 2088 |

Data Metrics:

| Metric | Description | National Goal | PCS Data | State Results | National Average |
|--------|--|---------------|----------|---------------|------------------|
| 1A | Inspection coverage: NPDES Majors (individual) | 100% or 70% | 57.7 | 98% | 65.9% |
| 1B | Inspection coverage: NPDES Non-majors (individual) | NA | 8% | | |
| 1C | Inspection coverage: Other | NA | | | |
| 1R | Percent of planned inspections completed | NA | | | |

Discussion and Analysis:

EE's planning process for scheduling inspections is not a formal process resulting in a written document. The compliance monitoring strategy in the 106 Grant is based on a target number, rather than a list of facilities to be inspected with a planned schedule for conducting the inspections. The exception to this is the planning of compliance sampling inspections (CSIs) which are conducted by a select group of inspectors for the entire state. EE's approach is to conduct inspections to address the most significant environmental and human health risks and takes into account the most recent Quarterly Noncompliance Report (QNCR), citizen complaints, spill and other noncompliance notifications, river surveys, recommendations from staff based on incidental observations, past history, notice of termination, etc. WVDEP also devotes compliance assurance resources to support EPA national priority areas. Below are several observations regarding WVDEP's compliance assurance program:

- **Core Program** – Historically, West Virginia has committed to conducting a CEI or CSI at 100% of majors. In FY 2006, based on EPA's recommendation to focus on priority wet-weather facilities, West Virginia has reduced that commitment to 70%, per national policy.

- **Combined Sewer Overflows** – A unique aspect of West Virginia’s regulatory program is to issue permits to municipalities that only own collection systems. CEIs at municipalities includes evaluation of the collection system, such as unauthorized discharges and bypasses, implementation of nine minimum controls and long term control plans, I/I programs, etc. EE staff also conduct CSO inspections of collections owned by the POTW or satellite communities. In FY 2006, WVDEP conducted 74 individual CSO inspections.
- **Sanitary Sewer Overflows** – EE staff also conduct SSO inspections of the collections owned by the POTW or satellite communities. EE staff conducted 21 SSO inspections during the review period.
- **Stormwater** – In or about FY 2006, DEP hired two new inspectors to be solely dedicated to conducting inspections at construction sites. EE conducted a total of 2136 inspections at construction sites, 156 of which were in response to complaints. EE also conducted two MS4 inspections
- **Concentrated Animal Feeding Operations** – As a result of CAFOs becoming a national priority in 1998, WDEP invested heavily in conducting CAFOs determination inspections in FY 1999. Various types of operations were inspected within the Potomac River Basin. All facilities fell under the small AFO category. Inspection resources are directed in this sector, as agreed upon or deemed necessary. In FY 2006, four (4) CAFO determination inspections were conducted at medium and small AFOs.
- **Landfills** – EE conducted 254 municipal and industrial landfill inspections, including landfill stormwater. All facilities had either leachate treatment or transmission systems.
- **Mining** – DMR is required by its Surface Mining Act to inspect active mines on a monthly basis. For each quarter, one inspection must be complete, while the rest may be a reconnaissance inspection. Inactive mines must be inspected quarterly.

All inspection activity is tracked by EE through monthly administrative reports, though there has been a desire to develop an electronic database system. PCS is used to track certain classes of data depending upon source category. For major facilities, EE enters into PCS all Compliance Evaluation Inspections, Compliance Sampling Inspections, and Reconnaissance inspections. For minor facilities, EE enters into PCS only Compliance Evaluation and Compliance Sampling Inspections. For general permitted facilities, EE enters no information into PCS.

DMR does not consistently enter inspection data into PCS for either majors or minors.

Metric 1A – Metric 1A is reported by PCS as 57.7%, which is below the national average of 65.9%. EE has provided information that demonstrates only one facility was not inspected during FY 2006. This would result in inspection coverage of 98% for non-

mining facilities. West Virginia maintains that it enters all inspection data for majors into PCS.

Metric 1B – Metric 1B is reported by PCS as 8%. As noted above, EE only enters CSI and CEI in PCS for minors. According to WVDEP, during the review period, WVDEP conducted, according to data submitted by EE: 1099 inspections at non-mining individually permitted facilities and 2328 inspections at non-mining general permitted facilities.

Metric 1C – WVDEP reports that 2136 inspections were conducted at storm water construction sites and 4 CAFO determination inspections.

Metric 1R – WVDEP does not enter planned date of inspection data into PCS.

Finding:

WVDEP has a comprehensive inspection program, however, it fails to enter required data into PCS.

Citation of Information Reviewed for this Criteria:

- 106 Grant Work Plan and End-of-Year Reports
- PCS Data
- WVDEP internal monthly reports
- Significant Violators Non-compliance Reports

Recommendations:

- (1) EPA and WVDEP should revisit their prior understanding and discuss the required WENDB data elements entry into PCS. Complete data entry is required in order to ensure an adequate picture of the state's compliance and enforcement program. DMR should be entering required inspection data per the WENDB requirements.
- (2) Though WVDEP appears to be running a comprehensive compliance assurance program, EE should consider either establishing an electronic data system or utilizing PCS to manage inspection and enforcement data.
- (3) The goal for NPDES inspections coverage at major sources is 100%. At minor sources, the goal is one inspection during the permit cycle. However, EPA does permit major to minor trade-offs at a ratio of 1-to-2 provided that the inspection coverage at minor sources does not fall below 70%. WVDEP should develop a formal inspection plan that clearly indicates its compliance assurance investments and trade-offs.

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

File Review Metric:

| Metric | Description | |
|--------|--|--------------|
| 2A | Percentage of inspection reports that are adequately documented. | 21/24* = 88% |

*Universe reviewed included Cases: 1, 2, 4, 6, 11, 12, 13, 14, and 15 – 30.

Discussion and Analysis:

Of the 30 files reviewed, 16 were selected based on an inspection date falling within the review period and 14 were selected based on an enforcement action date occurring within the review period. Regarding the 16 inspection date files selected, one file had a missing inspection report. In place of this inspection report, another inspection report outside the timeframe was reviewed. Of the 14 files selected based on an enforcement action date, 8 files had at least one inspection date directly referenced within the text of the action. Therefore, in total, 24 out 30 files had inspection reports reviewed under this element.

The types of inspections reviewed in the files varied. The CEI/CSI inspections reports for majors essentially mirrored the requirements of NPDES Inspection Manual, including sample results, photographs, and documents obtained on site. These reports are compiled in the office and reviewed by management. Most other inspection types (reconnaissance, construction stormwater, incident/investigations, etc) have been adapted to be able to conclude the inspection report at the end of the inspection, or shortly thereafter. To facilitate the inspector’s ability to write on-the-spot reports, inspectors are provided laptops and printers. The on-the-spot reports still contain descriptions of observations important for determining noncompliance, documenting statements made by the facility representatives, and incorporating photographs taken by the inspector.

In general, the reports were documented on various inspection report forms specific to a given sector but included information similar to EPA’s NPDES Compliance Inspection Report Form. Supplemental narratives focusing on areas of concern were included in the reports. West Virginia is not heavily dependent on lengthy checklists. Checklist type items were generally incorporated into the NPDES Compliance Inspection Report Form. Photographs were well incorporated into reports. Additional supporting evidence such as CDs with photographs, videotapes, chain-of-custody forms were in the file. Also, visual observations generally were found to be well documented; and inspectors documented the relevant facts (who, what, when, where, and why) and environmental nexus surrounding the violation such as the duration of the violations, the cause of the violation, the extent of damage to the environment, etc. Three (3) reports failed to elaborate on the circumstances surrounding a potential violation to the degree to conclude a violation had occurred. Specific examples of this observation are below:

- EE – An inspector made the observation that a pump was missing. The review team could not conclude the missing pump was a violation. Further elaboration could have included: the date the pump was taken out, the reason for its removal, the current status, project installation date, and any known impacts to the environment for not having the pump in place.
- EE – The report listed 26/60 elements as being reviewed. Among the elements reviewed and rated, the facility was rated unsatisfactory for collection system and pump stations. No observations were documented in the report to support these findings. In addition, the cover letter stated the facility had no deficiencies, although corrective actions based on observations made from records (a separate matter not relating to the collection system or pump stations) were included in the report.
- DMR – An inspector made the observation that DMRs were not being submitted and then in a subsequent inspection report noted that DMRs were currently being submitted. Further elaboration could have included: the timeframe applicable to this observation, whether or not any of the past DMRs were included in the submittal, or whether or not samples had been taken during months the DMRs were not being submitted, the circumstances of why the DMRs were not being submitted, and the change that the facility implemented to correct the potential violation. The review team could not determine the month(s) for which DMRs were not submitted, nor whether the missing DMRs were ever submitted.

Finding:

The inspection reports document well observations of potential violations. The reports are sufficiently quality to independently conclude a violation had occurred.

Citation of Information Reviewed for this Criteria:

- NPDES Compliance Inspection Manual
- Enforcement and Inspection files

Recommendations: None.

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

File Review Metric:

| Metric | Description | |
|--------|--|------------|
| 3A | Percentage of inspection reports which identify potential violations in the files within a given timeframe established by the Region or State. | 20/24*=83% |

*Universe reviewed included Cases: 1, 2, 4, 6, 11, 12, 13, 14, and 15 – 30.

Discussion and Analysis:

The same files included in Element 2 served as the universe for Element 3. Reports are required to be completed within 30 days from either the date of the inspection or the date the sample analyses were received, whichever is later. For the purpose of this metric, the completion date was considered to be the date of the cover letter. Of the 24 files reviewed, only three were deficient. One stormwater report had an incomplete Permit/Site Evaluation section. Three CSI/CEI reports were only marginally past the 30 days by 5 days or less.

The practice of writing “on-the-spot” inspection reports works well for West Virginia to expedite the completion of inspection reports, without sacrificing quality. Overall, the CEI/CSI inspection reports are completed timely. Management review may add some time in the finalization process, but it ensures quality.

Finding:

WVDEP inspection reports are completed timely and are well documented.

Recommendations

No recommendations.

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

Data Metrics:

| Metric | Description | National Goal | PCS Data | National Average |
|--------|---|---------------|----------|------------------|
| 4A | Single Event Violations (SEVs)* reported to national system | | 0 | |
| 4B | Frequency of SNC | | 24.7% | 19.2% |
| 4C | Wet-weather SNC placeholder | | | |

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

File Metric:

| Metric | Description | |
|--------|---|------------|
| 4D | Percentage of SNC determinations that are | 5/10 = 50% |

| | | |
|--|---------------------|--|
| | accurately reported | |
|--|---------------------|--|

*Universe reviewed included Cases 1-4, and 15-20.

Discussion and Analysis:

This element only pertains to Majors; and, therefore, EE was the only office in WVDEP that was reviewed for this element. Twenty-four majors experienced at least one quarter of SNC level violations in FY2006. Ten majors were reviewed. Of the ten majors reviewed, four experienced at least one quarter in SNC. Based on the file review and discussions with EE, EE does not enter SEVs into PCS as a means of tracking the compliance status of violations detected via inspection or compliance monitoring, nor designating facilities to be in SNC based on SEVs. Of the ten files reviewed, there were five incidences where SEVs were identified that would have resulted in the facility being listed in SNC for that violation. In all cases where there were violations of SNC, whether they were entered into PCS or not, EE took appropriate action in a timely manner.

Despite the fact that West Virginia does not consistently report SEVs, EPA is able to exercise enforcement oversight. For majors, EPA receives copies of inspections report, DMRs, and other correspondences between the State and permittees. For enforcement actions against Majors, EPA has oversight opportunity of enforcement actions prior to their execution via Quarterly Enforcement Meetings and West Virginia occasionally will request review of enforcement actions prior to execution.

Below is a brief description of each file, including applicable enforcement actions taken by West Virginia.

Facilities Identified in PCS as in SNC:

- Case 3: Single event violations of SNC level were self reported. These included SSOs which constitute SNC violations. **Facility should have been identified as SNC for the SEV.** [Formal Action]
- Case 4: Single event violations were detected through inspections, and were not reported in PCS. These SEVs would have constituted SNC violations. **Facility should have been identified as SNC for the SEV.** [Formal Action]
- Case 16: Inspection report included a comprehensive review of DMRs and a self-reported spill information, but did not seem to make any additional observations of other violations. The SEV was not reported in PCS. **Facility should have been identified as SNC for the SEV.** [Civil Referral]
- Case 18: The facility was rated unsatisfactory for pump stations and collections system, but was not supported by independent observations.

Facilities Not Identified in PCS as in SNC:

- Case 1: SEV of SNC level detected through investigation for an SSO causing a fish kill. The SEV was not reported in PCS. **Facility should have been identified as SNC for the SEV.** [Formal Action]
- Case 2: Single event violations were detected through inspection which was not reported in PCS. However, the facility was already under Order to address CSOs. An additional action was taken due to the circumstances surrounding the SEV. **Facility should have been identified as SNC for the SEV.** [Formal Action]
- Case 15: No SNC violations to report.
- Case 17: No SNC violations to report.
- Case 19: No SNC violations to report.

Data Metric 4A - EE does not enter SEVs into PCS as a means of tracking the compliance status of violations detected via inspection or compliance monitoring, nor designating facilities to be in SNC based on SEVs. However, WVDEP does maintain an internal database to track spills and overflows reported to them.

Data Metric 4B – WVDEP’s rate of SNC is 24.7%. This is 29% higher than the national average. Before any significant conclusions could be drawn from this, a careful comparison between West Virginia and national facility and violation type distribution would have to be made.

File Metric 4D – 10 Files were reviewed. In five cases, five facilities were found to have no determination of significant violation. In five other cases, there were SEV violations that would have triggered

Finding:

As WVDEP does not enter SEV data into PCS, often it is the case that SNC are not identified to EPA in a timely manner. The enforcement files contain sufficient supporting evidence to document SNC.

Recommendations

- (1) West Virginia should enter all SEV, per WENDB requirements, in PCS. Where appropriate, the facility should also be designated as in SNC. EPA and WVDEP should revisit their prior understanding and discuss the required WENDB data elements entry into PCS. Complete data entry is required in order to ensure an adequate picture of the state’s compliance and enforcement program

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

File Review Metrics:

| Metric | Description | Positive File: File Universe |
|--------|--|---------------------------------|
| 5A | Percentage of formal state enforcement actions that contain a compliance schedule of required actions or activities designed to return the source to compliance. | 13/14* = 93% |
| 5B | Percent informal enforcement response that return sources to compliance. | 6/10** = 60% |

*5.A The universe of files included: 1-14.

** 5.B. The universe of files included: 16, 26

Discussion and Analysis:

The review team reviewed 30 files. Of 30 files, 14 contained formal enforcement actions. The information contained in these files were used in the evaluation of Metric 5A. The remaining 16 files did not have formal enforcement actions and were therefore used in the evaluation of Metric 5B.

WVDEP’s initial enforcement response for lesser violations is to notify the permittee of potential violations. This is done either through an NOV or a cover letter to the inspection report. These documents identify the deficiencies and require a response within 20 days. Normally, a “pre-enforcement” meeting may also be held with the permittee in a final effort to resolve violations prior to initiation of formal enforcement. Both require a response from the facility. The responses were generally found in the file.

File Metric 5A - All fourteen enforcement files had actions issued by EE. 93% of formal state enforcement actions met this metric. Most actions required the appropriate injunctive relief, as necessary, either by including compliance milestones in the enforcement action directly, or indirectly through a corrective action plan. A summary of our observations is below:

- Seven of the actions were consent orders with injunctive relief and penalty.
- Two of these actions were consent orders with a penalty only. One permittee had already returned to compliance; therefore it was appropriate to not include injunctive relief. The other permittee was already under a CD with injunctive relief to address overflows, but additional circumstances (failure to notify state of overflow and impact to the environment) were at the heart of this additional action above and beyond the CD.

- Four of the actions were unilateral orders. Two required respondent to cease and desist until a permit was obtained. One unilateral action transferred injunctive relief requirements of a pre-existing Order from the previous owner to the new owner. The remaining unilateral action was an interim enforcement response to enforce a previous Order (which had compliance milestones already); while other enforcement options were being considered.
- The only exception was a Consent Decree covering a multitude of effluent violations at three plants under one permit. One of the three plants had SNC violations for ammonia nitrogen as well as other conventional pollutants which had not to raised to the level of SNC. No injunctive relief was included in the CD for this plant. West Virginia could not specifically recall all circumstances that played a role in their decision that injunctive relief was not warranted. A copy of permit modification was provided as justification. The file did not document how this modification impacted the facilities ability to comply with the new standards, or making the past violations obsolete. No justification for not requiring injunctive relief for the other parameters has been provided. A review of the plant's current compliance status shows continued noncompliance with the same parameters as prior to the CD. The plant seems to have seasonal noncompliance (winter months), although not to a level of SNC.

File Metric 5B – WVDEP uses informal enforcement effectively and elevates when appropriate. Of the 16 inspection files reviewed, ten had violations detected during an inspection that would have required the facility to take action to come into compliance. Six of the facilities had information in the file demonstrating that they had taken action to return to compliance. The following is a summary of the 10 files reviewed under Metric 5.B:

- Four had letters from the permittee documenting steps taken to return to compliance for observed violations,
- Two had follow-up inspections documenting compliance,
- Two had follow-up inspections documenting continued noncompliance (construction site). Formal enforcement was then initiated, but not concluded at the time of review.
- One file had no documentation of return to compliance. Violation was minor and no action appears to have been taken.
- One file had no documentation of return to compliance for a CSO related issues. Enforcement was initiated.

The initiation of enforcement begins at the inspector and/or field supervisor level. When violations are detected by inspectors, the inspector has the authority to issue a Notice of Violation (NOV). Inspectors are equipped with laptops/printers to issue inspection reports and NOVs on-site. There is a slight variation when the violations are found via a more comprehensive inspection (e.g. comprehensive evaluation inspection (CEI), comprehensive sampling inspection (CSI), etc.). These inspection reports are generally more detailed and issued with a cover letter. The cover letter signed by the field supervisor directs attention to deficiencies that must be corrected. When deemed

appropriate to initiate formal enforcement, the inspector will draft an administrative order which is then routed through the EE chain of command with a tracking slip.

Findings:

WVDEP enforcement actions include required injunctive relief that will return facilities to compliance. WVDEP uses informal enforcement effectively and elevates to formal actions when appropriate.

Recommendations

None.

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

Data Metrics:

| Metric | Description | National Goal/Results | PCS Results | State Results | National Average |
|--------|---|-----------------------|-------------|---------------|------------------|
| 6A | Major Facilities without timely action taken (to address SNC) | ≤ 2% | 13.4% | | 7.9% |
| 6B | No activity indicator – Number of Formal Actions (Majors) | NA | 1 | 5 | |

File Metrics:

| Metric | Description | |
|--------|---|----------|
| 6C | Percentage of SNCs addressed appropriately. | 6/6*=100 |

*The universe of files included: 1-4, 16, and 18.

Discussion and Analysis:

Data Metric 6A - The state does not enter enforcement data into PCS. The approach that WVDEP takes to resolving violations is preferably through the use of consent orders and agreement. The first step in this process is the pre-enforcement conference. This is followed by negotiation, and then to a consent order and agreement. This process often requires more time than the 180 day milestone in EPA guidance, however, it results in comprehensive agreements.

Data Metric 6B – The state does not enter enforcement data into PCS. However, the WVDEP was able to provide a list of five formal actions from their internal database.

File Metric 6C – Six files were reviewed. Four were identified in PCS as being in SNC. The other two had SEVs that were not entered into PCS, but would have triggered SNC. All six had appropriate action requiring the facility to come into compliance and provided a schedule.

Findings:

WVDEP does not always meet the timely criteria, but its actions are always appropriate.

Recommendations

None

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

File Metrics:

| Metric | Description | |
|--------|--|--------------|
| 7A | Percentage of formal enforcement actions that include a calculation for gravity and economic benefit consistent with applicable policies | 10/10 = 100% |

*The universe of files included: 1, 2, 3, 4, 6, 9, 10, 11, 13, and 14.

Discussion and Analysis:

There were 14 formal enforcement actions reviewed. All enforcement actions were issued by EE. Of the formal enforcement actions reviewed, ten were issued upon consent. The remaining four enforcement actions were unilateral enforcement actions. West Virginia can not issue unilateral administrative actions with a penalty. Regarding the actions including a penalty, all of these actions were backed by documentation of how the penalty was calculated. West Virginia has a standard excel spreadsheet to calculate gravity and economic benefit for each violation, as well as other factors established by the Clean Water Act and implementing regulations. While inspectors may propose a calculated penalty, each penalty is finalized by one member of the EE staff.

- **Economic Benefit** – EE staff has received training on all EPA models to support penalty calculations, and included the models into their penalty calculations. In seven calculations, it was determined by EE that a facility did not enjoy economic benefit. At least one of these calculations was performed prior to receiving training on the EPA models (BEN and all).
- **Gravity** – When assessing gravity, EE’s calculations include potential for harm and extent of deviation. These factors are considered per type of violation. The

calculations may go up to \$10,000 for gravity alone. This works well for short term violations. A multiple factor is also included. For example, WVDEP considers history of noncompliance and does adjust the base penalty accordingly, up to a 100% increase. In most of the cases reviewed, the multiple factor was not used to further increase the gravity. There is no additional guidance on how to implement the “multiple factor” in the calculation methodology.

File Metric 7A - EE has developed a consistent methodology in accessing penalties which follows the national penalty policy.

Findings:

WVDEP penalty practices are consistent with EPA policy.

Recommendations

- (1) EE should develop written guidance on utilizing the “multiple factor” to capture the days, months, and/or years the violations have extended.

8 - Degree to which final enforcement actions (settlements or judicial results) collect appropriate economic benefit and gravity portions of a penalty.

Data Metrics:

| Metric | Description | National Goal/Results | PCS Data | State Results |
|--------|--|-----------------------|----------|---------------|
| 8A | No Activity Indicator – Actions with Penalties | NA | 0 | 43 |
| 8B | Percent Actions with Penalty | NA | 0 | 51.2% |

File Metrics:

| Metric | Description | |
|--------|--|--------------|
| 8C | Percentage of final enforcement actions that appropriately document penalties to be collected. | 10/10 = 100% |
| 8D | Percentage of final enforcement actions resulting in penalties collected. | 10/10 = 100% |

Discussion and Analysis:

There were 14 formal enforcement actions reviewed. All enforcement actions were issued by EE. Of the formal enforcement actions reviewed, ten were penalty actions.

issued upon consent. For an explanation of the other four actions see Element 5. In general, penalties calculated and documented are the penalties sought and settled. For Consent Orders, a draft Consent Order is sent to the respondent with the proposed penalty. The respondent may sign, agreeing to pay penalty and meet compliance schedule, or schedule an enforcement meeting to discuss the matter with EE staff. There were only two of the ten actions that had changes from the proposed to the settled penalty. Each change was documented and was close to the proposed penalty. The payment of penalties is tracked in an Access database. Proof of payment is maintained in all the files. WVDEP collect over \$700,000 during the review period.

Data Metric 8A - WVDEP does not enter penalty data into PCS. However, EE has provided data that is maintained in their Access database. During the review period, the state issued 43 actions with penalties.

Data Metric 8A - WVDEP does not enter penalty data into PCS. However, EE has provided data that is maintained in their Access database. During the review period, over 51% of their actions are actions with penalty, collecting over \$700,000.

File Metric 8C – All penalty action files that were reviewed contained adequate documentation.

File Metric 8D – All final actions of the files reviewed resulted in a penalty collected.

Finding:

WVDEP has an aggressive penalty program. Collected amounts are close to the proposed penalty and adequately documented.

Recommendations

1. EPA and WVDEP should revisit their prior understanding and discuss the required WENDB data elements entry into PCS. Complete data entry is required in order to ensure an adequate picture of the state's compliance and enforcement program

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

File Metric:

| Metric | Description | State Results |
|--------|---|---------------|
| 9A | State agreements (PPA/PPG/SEA, etc.) contain enforcement and compliance commitments that are met. | 100% |

Finding:

File Metric 9A – WVDEQ completed its grant work plan in full and met all dates.

Recommendations

None

10. Degree to which the minimum data requirements are timely.

File Metrics

| Metric | Description | State Results |
|--------|---------------------------------|---------------|
| 10A | Timeliness QNCRs data elements. | 6/10* |

* The universe of files included: 1-4 and 15-20.

File Metric 10A - Four of the 10 files had information not entered timely, which impacted the adequacy of QNCRs due to the fact that formal enforcement actions are not entered into PCS for majors. In general, DMRs are entered in a timely fashion.

- **Enforcement Data Entry** – There were a total of four enforcement actions issued to majors in the enforcement files reviewed. EE does not enter any enforcement actions into PCS; therefore, all are enforcement actions are not entered in a timely fashion. The formal actions that are entered into PCS are entered DWWM. These formal actions were not reviewed.
- **DMR Data Entry** – DWWM is responsible for entering DMR data. Of the ten major permittee files reviewed, only one (#2) file had a DMR non-receipt on the QNCR for one quarter. The file review did not document whether this was an accurate DMR non-receipt occurrence or a timeliness issue.

Finding:

WVDEP does not enter enforcement activity in PCS.

Recommendations

- (1) EPA and WVDEP should revisit their prior understanding and discuss the required WENDB data elements entry into PCS. Complete data entry is required in order to ensure an adequate picture of the state's compliance and enforcement program

11. Degree to which the minimum data requirements are accurate.

Data Metric:

| Metric | Description | National Goal/Results | PCS Results |
|--------|------------------------------|-----------------------|-------------|
| 11A | Actions Linked to Violations | NA | 0% |

File Metric:

| Metric | Description | PCS Results |
|--------|----------------------------------|-----------------------|
| 11B | Accuracy of WENDB data elements. | See Explanation Below |

Discussion and Analysis:

Data Metric 11A - The only formal action linked to a violation in the database was not reviewed. This particular action was issued by the permitting group, not EE or DMR and, therefore, was not subject to the review.

File Metric 11B - WVDEP makes use of PCS to enter facility data relative to limits and DMR data. This data is accurate. Additionally, inspection data of the files reviewed for Majors was accurate. Beyond that, however, WVDEP does not consistently enter other required data elements.

Finding:

WVDEP does not enter enforcement data into PCS.

Recommendations

- (1) EPA and WVDEP should revisit their prior understanding and discuss the required WENDB data elements entry into PCS. Complete data entry is required

in order to ensure an adequate picture of the state's compliance and enforcement program

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

Data Metrics:

| Metric | Description | National Goal/Results | PCS Data | State Results |
|--------|--|-----------------------|----------|--|
| 12A1 | NPDES Majors | | 97 | 98 |
| 12A2 | NPDES non-majors with DMRs | | 826 | |
| 12A3 | Reserved (other non-major permit info) | | 2088 | |
| 12B1 | Limits at majors | ≥ 95% | 99% | 99.0% |
| 12B2 | DMR entry rate at majors | ≥ 98.5% | 98.5% | 98.5% |
| 12B3 | Rate of manual override of SNC to a compliant status | | 0 | 0.0% |
| 12C1 | Limits at non-majors with DMRs | | 36.8% | |
| 12C2 | DMR entry rate | | 33.5% | |
| 12D1 | # of facilities inspected | | 151 | |
| 12D2 | Total # of inspections performed | | 243 | 4731 Inspections and 1230 Investigations |
| 12E | Reserved (SEV linked to inspections) | | 0 | |
| 12F1 | # of facilities with state NOVs | | 0 | |
| 12F2 | Total # of state NOVs | | 0 | 4276 |
| 12G1 | Noncompliance rate in database at non-major facilities | | 27.6% | |
| 12G2 | Noncompliance rate reported to EPA under the ANCR | | | |
| 12G3 | Number of facilities in database with DMR non-receipt for three continuous years | | 23 | 44 |
| 12H1 | Facilities with formal actions | | 1 | 84 |
| 12H2 | Total formal actions taken | | 1 | 84 |
| 12I1 | Action with penalties | | 0 | 43 |
| 12I2 | Total state penalties | | 0 | \$701,740 |

| | | | | |
|------|---|--|----|---|
| 12J1 | Majors with schedule violations | | 1 | 1 |
| 12J2 | Majors with compliance schedule | | 42 | |
| 12K1 | Majors with unresolved permit schedule violations | | 5 | |
| 12K | Majors with permit schedule | | 65 | |

Discussion and Analysis:

WVDEP makes use of PCS to enter facility data relative to limits and DMR data. In fact in these areas, WVDEP performs well above the national averages. Beyond that, however, WVDEP does not consistently enter other required data elements. WVDEP is able to produce requested data from its internal Access database. EPA has been aware of this for years, and has concurred with WVDEP’s use of the alternative Access data base to maintain enforcement information. WVDEP has also gone to great lengths to keep EPA apprised of its enforcement actions.

Finding:

WVDEP does not enter enforcement data into PCS.

Recommendations

- (1) EPA and WVDEP should revisit their prior understanding and discuss the required WENDB data elements entry into PCS. Complete data entry is required in order to ensure an adequate picture of the state’s compliance and enforcement program.

West Virginia Compliance and Enforcement Evaluation (Resources Conservation and Recovery Act (RCRA) Program Media)

Introduction

The RCRA portion of this evaluation entailed reviewing 42 inspection/enforcement case files, primarily from federal fiscal year 2006. The break down of facility types was as follows:

21 LQGs (Large Quantity Generators)

8 SQGs (Small Quantity Generators)

4 CESQG (Conditionally Exempt Small Quantity Generators)

8 TSDFs (Treatment, Storage, Disposal Facilities)

3 Transporters

9 Non-generators or facilities not in operation (includes used oil handlers)

(Please note that this totals to more than 42 because a number of facilities fit into more than one category.)

The Region gathered data directly from RCRAInfo (the RCRA Subtitle C program's national data system) and EPA Headquarters supplied data from OTIS for additional state-specific and national average information. The information from the file reviewed and data pulls were used to answer specific questions covering 12 topics of element areas regarding State inspection implementation, State enforcement activity, State Grant Work Plan requirements, and data integrity.

During the time leading up to, and into the review period (FY2006), West Virginia's Hazardous Waste Management Program was the subject of internal reviews and reorganization. Starting in March 2005, the RCRA Enforcement Unit staff's actions were limited when agency enforcement was subject to a review. On July 14, 2005, as a result of the review:

- RCRA Enforcement Unit personnel were transferred to other positions within the agency.
- The Civil Administrative Penalty Program (CAP) was re-instituted.
- RCRA (Subtitle C and I) Inspectors were given all ongoing enforcement cases to pursue, in addition to their inspection workload.
- Procedures for penalties associated with civil actions were unchanged (more egregious cases to be referred to DEP's Office of Legal Services for civil action).

Additional changes took place on January 15, 2006:

- The Waste Management Branch was dissolved.

enforcement activities are managed in the Office of Environmental Enforcement, which is within WVDEP’s Division of Water and Waste Management. This Office is made up of three sub-units, one of which houses the RCRA inspection and enforcement program (Waste Compliance and Enforcement). Waste Compliance and Enforcement is further divided into the Hazardous Waste Northern Unit, the Hazardous Waste Southern Unit, and UST. The Department’s Office of Legal Services provides all legal services to the agency, including taking enforcement actions and defending the agency and its office against lawsuits and appeals.

The files reviewed were not randomly selected. The files selected for review included the universe of Significant Non-Compliers (SNC) identified by the State in FY06, facilities in which the State had taken enforcement action, and facilities for which multiple inspections were performed in FY06. After these facilities were identified, the remaining facilities were randomly selected files which had been inspected by the State during FY06 for which violations had been identified by the State. Therefore, a high percentage of the facility files which were selected for the review had a history of violations and would not be considered a “neutral” selection of the universe of West Virginia facilities; this, findings cannot be extrapolated to the State program as a whole.

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

| | | | |
|---|-------------------------------|---|-----------------------------|
| Core Program - Inspection coverage for operating TSDF (Treatment, Storage, and Disposal Facilities) - Region/state should inspect all operating TSDFs within two years. Timeframe for the data pull if FY05 and FY06. | | | |
| West Virginia only | National Average (State only) | West Virginia and EPA Region 3 combined | National Average (Combined) |
| 93.3% | 92.0% | 93.3% | 95.6% |
| Core Program - Annual inspection coverage for LQGs (Large Quantity Generators). National guidance calls for 20% annual coverage. Time frame for the data pull is FY06. | | | |
| West Virginia only | National Average (State only) | West Virginia and EPA Region 3 combined | National Average (Combined) |
| | | | |

| | | | |
|--------------------|-------------------------------|---|-----------------------------|
| West Virginia only | National Average (State only) | West Virginia and EPA Region 3 combined | National Average (Combined) |
| 84.9% | 47.0% | 84.9% | 50.6% |

Findings:

This element was satisfied to a high degree. The measure for operating TSDF core program inspected requirement of 93.3% represented all TSDFs inspected but one; however, the State reports that the one facility not inspected is a conditionally exempt small quantity generator which closed out their RCRA permit years ago. So, the inspection coverage for operating TSDFs is actually 100%, consistent with the core program guidance. The State’s inspection coverage for LQGs is far above the national average.

Recommendation: The TSDF designation should be removed from RCRAInfo for this facility.

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

Finding:

This element was satisfied to a high degree. All 42 facilities reviewed had inspections which occurred during the review period, and a number of them had more than one inspection report during that period. We reviewed 92 inspection reports in total. All inspections reports contained a narrative, and half included additional documentation, such as photographs, maps, sample analysis. Some inspection reports contained a completed checklist, but it does not appear that the State routinely makes this a part of inspection reports. All but two met this element:

Facility 5 - This facility generates spent solvents which are reclaimed in a distillation unit located at the facility. The 11/15/05 inspection report identified ten containers of spent solvent awaiting reclamation. It appears that these containers were evaluated for compliance with speculative accumulation requirements, as opposed to the generator requirements of 262.34 (spent materials are solid waste, even when destined for reclamation, and must be managed in accordance with the generator requirements). It was not clear from the inspection report if the containers were labeled, dated, inspected

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

Finding:

This element was satisfied to a high degree. We could find no instances where inspection reports, including identification of violations were not completed in a timely manner (within 50 days of the inspection). See Element 4 for additional discussion of identification and entry of violations into the national data system.

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

Identification of violations in RCRAInfo:

For 33 of the 42 facility files reviewed which had inspections conducted during the review period, the violations were accurately reflected in RCRAInfo; however, for 9 facilities this does not appear to be the case.

| | |
|--|----|
| Facilities where violations matched data in RCRAInfo | 33 |
| Facilities where violations did not match data in RCRAInfo | 9 |
| Total facility files with inspections reviewed | 42 |

Facility 5 - This facility generates spent solvents which are reclaimed in a distillation unit located at the facility. The 11/15/05 inspection report identified ten containers of spent solvent awaiting reclamation. It appears that these containers were evaluated for compliance with speculative accumulation requirements, as opposed to the generator requirements of 262.34 (spent materials are solid waste, even when destined for reclamation, and must be managed in accordance with the generator requirements). It was not clear from the inspection report if the containers were labeled, dated, inspected weekly, and not stored in excess of 90/180 days, thus the compliance status is unclear. Further, the facility is claiming SQG status, but they do not appear to be counting the spent solvents in their monthly hazardous waste generation; they are potentially a LQG, and subject to the more stringent LQG requirements. It appears that violations were

1500-gallon hazardous waste tanks were evaluated for compliance with Subpart J.

Facility 10 - During the 7/21/05 inspection, unlabeled, undated containers were observed. These violations were not entered into RCRAInfo. In response, the State reports that they made a strategic decision to not formally cite these violations. The inspector was working with the facility to address improper disposal of hazardous waste, which ultimately resulted in compliance and the payment of a \$100,000 penalty. He was actively working with the facility during this process to assure that the waste chemicals which were the crux of the case were disposed of properly. At that point, he had managed to generate a good report with the facility, and felt it would have been counterproductive to cite them for these few unlabeled containers, the same containers that the waste material in question was being put into.

Facility 14 - The 6/7/06 inspection report identified manifest and training violations, which were not entered into RCRAInfo.

Facility 15 - The 12/5/06 inspection report suggests that a one cubic yard box of hazardous waste was open. This violation was not entered into RCRAInfo.

Facility 25 - During the 7/18/06 inspection, a container of crushed (used) lamps was assessed for compliance with universal waste requirements. Once (universal waste) used lamps are crushed, they lose their status as universal waste, and should have been evaluated for compliance based on hazardous waste requirements. As it appears that the containers were not labeled or dated, these are violations which should have been entered into RCRAInfo. The State responded that, as it had not been established that the crushed bulbs exhibited a hazardous characteristic, the proper violations should have been failure to make a waste determination.

Facility 29 - The inspection performed on 12/7/05 was not entered into RCRAInfo, nor were the violations identified at that time.

Facility 31 - During the 9/5/06 inspection, mislabeled used oil container and contingency plan violations were identified which were not entered into RCRAInfo.

Findings:

The majority of violations appear to have been properly identified and entered into

for inspectors during FY08.

Determination and entry of SNC violations:

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

West Virginia inspected 448 facilities in FY06, with 3 facilities identified in SNC status based on violations discovered during those inspections, for a rate of 0.7% new SNCs per facility inspection. The national rate of SNC identification by States in FY06 was 3.2% new SNCs per facility inspected.

| | WV | National | WV + EPA combined | National combined |
|------------------------------|------|----------|-------------------|-------------------|
| SNCs identified in FY06 | 3 | -- | 3 | -- |
| Facilities inspected in FY06 | 448 | -- | 451 | -- |
| SNC per facility inspected | 0.7% | 3.2% | 0.7% | 3.5% |

As part of our review, we examined facilities which had been identified in the data system as SNC status not only in FY06 (the review period), but the years immediately before and after (FY05 and FY07 to date of the file review). We did this because we find that enforcement actions are often related to inspections from a prior year. So, during our review, we considered SNC status of facilities in FY05, FY06 (the review period), and FY07.

Of the files reviewed, two facilities were identified by the State as SNC violators, and this data was entered into RCRAInfo. However, in the reviewers’ opinion, there were 12 additional facilities with violations which should have been designated as SNC in RCRAInfo. There were 28 facilities which we reviewed which were appropriately designated as not in SNC status.

| | |
|---|---|
| Number of reviewed files with State identified SNCs (entered into | 2 |
|---|---|

were not identified as such by the State:

Facility 2, a LQG and TSDF, was the subject of a 5/06 Civil Administrative Penalty, which included a penalty of just under \$9,000, addressing violations identified during a 9/20/05 inspection. No SNC was identified in the data system; EPA normally considers violations which are serious enough to warrant a penalty action to be violations which should have been entered into RCRAInfo as SNC. The State does not agree that these violations met the definition of SNC, that is they did not cause actual exposure or a substantial likelihood of exposure to hazardous waste or hazardous waste constituents, the facility was not a chronic or recalcitrant violator, nor did the violations deviate substantially from the terms of a permit, order, agreement or from RCRA statutory or regulatory requirements. The State does not agree with the general view that any violations which warrant a penalty should be designated as SNC, and feels that violations at this facility fell in the category of secondary violations.

Facility 6, a LQG and TSDF, was the subject of a 11/06 Civil Administrative Penalty, which included a penalty of just over \$23,000 addressing violations identified during a 7/20/05 inspection. No SNC was identified in the data system; EPA normally considers violations which are serious enough to warrant a penalty action to be violations which should have been entered into RCRAInfo as SNC.

Facility 12, was the subject of a 7/06 Civil Administrative Penalty, which included a penalty of just under \$5,000 addressing violations identified during a 4/25/06 inspection. No SNC was identified in the data system; EPA normally considers violations which are serious enough to warrant a penalty action to be violations which should have been entered into RCRAInfo as SNC. In response, the State points out that the violations at issue in this matter involved used oil, and they did not have the understanding that the Hazardous Waste Civil Enforcement Response Policy addressed used oil, but rather, focused exclusively on hazardous waste. However, the State will consider any facility with serious used oil violations to be SNC, and enter them as such into RCRAInfo.

Facility 21, a CESQG, was the subject of a 7/06 Civil Administrative Penalty, which included a penalty of \$5,000 addressing violations identified during inspections performed on 4/4/06 and 11/4/05. No SNC was identified in the data system; EPA normally considers violations which are serious enough to warrant a penalty action to be violations which should have been entered into RCRAInfo as SNC.

No SNC was identified in the data system; EPA normally considers violations which are serious enough to warrant a penalty action to be violations which should have been entered into RCRAInfo as SNC. The State does not agree that these violations met the definition of SNC, that is they did not cause actual exposure or a substantial likelihood of exposure to hazardous waste or hazardous waste constituents, the facility was not a chronic or recalcitrant violator, nor did the violations deviate substantially from the terms of a permit, order, agreement or from RCRA statutory or regulatory requirements. The State does not agree with the general view that any violations which warrant a penalty should be designated as SNC, and feels that violations at this facility fell in the category of secondary violations.

Facility 24, a LQG, TSD, and transporter, was the subject of a 9/06 Civil Administrative Penalty, which included a penalty of just under \$9,000 addressing violations identified during a 1/11/06 inspection. No SNC was identified in the data system; EPA normally considers violations which are serious enough to warrant a penalty action to be violations which should have been entered into RCRAInfo as SNC. The State does not agree that these violations met the definition of SNC, that is they did not cause actual exposure or a substantial likelihood of exposure to hazardous waste or hazardous waste constituents, the facility was not a chronic or recalcitrant violator, nor did the violations deviate substantially from the terms of a permit, order, agreement or from RCRA statutory or regulatory requirements. The State does not agree with the general view that any violations which warrant a penalty should be designated as SNC, and feels that violations at this facility fell in the category of secondary violations.

Facility 34, a CESQG, was the subject of a 8/06 Civil Administrative Penalty, which included a penalty of just over \$3,000 addressing violations identified during a 4/27/06 inspection. No SNC was identified in the data system; EPA normally considers violations which are serious enough to warrant a penalty action to be violations which should have been entered into RCRAInfo as SNC. The State does not agree that these violations met the definition of SNC, that is they did not cause actual exposure or a substantial likelihood of exposure to hazardous waste or hazardous waste constituents, the facility was not a chronic or recalcitrant violator, nor did the violations deviate substantially from the terms of a permit, order, agreement or from RCRA statutory or regulatory requirements. The State does not agree with the general view that any violations which warrant a penalty should be designated as SNC, and feels that violations at this facility fell in the category of secondary violations.

permit, order, agreement or from RCRA statutory or regulatory requirements. The State does not agree with the general view that any violations which warrant a penalty should be designated as SNC, and feels that violations at this facility fell in the category of secondary violations.

Facility 36 was the subject of a 11/06 Civil Administrative Penalty, which included a penalty of just over \$8,600 addressing violations identified during a 3/17/06 inspection. No SNC was identified in the data system; EPA normally considers violations which are serious enough to warrant a penalty action to be violations which should have been entered into RCRAInfo as SNC.

Facility 40, a SQG, was the subject of a 10/06 Civil Administrative Penalty, which included a penalty of \$66,400 addressing violations identified during a 6/27/06 inspection. No SNC was identified in the data system; EPA normally considers violations which are serious enough to warrant a penalty action to be violations which should have been entered into RCRAInfo as SNC.

Facility 41, a SQG, was the subject of 4/06 Civil Administrative Penalty, which included a penalty of just under \$3,600 addressing violations identified during a 1/13/05 inspection. No SNC was identified in the data system; EPA normally considers violations which are serious enough to warrant a penalty action to be violations which should have been entered into RCRAInfo as SNC.

Recommendation: The State should develop data management procedures to assure that SNC determinations are entered into RCRAInfo in a timely manner.

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

The following were the formal enforcement actions which were examined as part of the file review:

Facility 2, penalty of \$8,983.50
Facility 6, penalty of \$23,292.75
Facility 10, penalty of \$100,000.00
Facility 12, penalty of \$4,839.00

Facility 40, penalty of \$66,400.00
Facility 41, penalty of \$3,597.50

Findings:

This element was satisfied to a high degree. Of the files reviewed, 14 facilities were the subject of formal enforcement action by the State. Of these enforcement actions, all had been preceded by a Notice of Violation, which required a response, including documentation of actions taken by the facility to return to compliance. No injunctive relief was required by the enforcement action, as compliance had been achieved in advance of the settlement.

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

Findings:

This element was met to a high degree; the reviewers were quite impressed with both timeliness and appropriateness of the State's RCRA enforcement program.

Appropriateness of enforcement actions:

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

A SNC should be addressed through formal enforcement. This formal enforcement response should mandate compliance and initiate an administrative or civil action that results in an enforceable agreement or order and imposes sanctions. The formal enforcement response should seek injunctive relief that ensures that the violator resolved its violations and expeditiously returns to compliance. An enforcement response against a SNC by the implementing agency should be considered appropriate when sanctions are incorporated in the formal enforcement response. Penalties incorporated in the formal enforcement response that recover the economic benefit of noncompliance plus some appreciable amount reflecting the gravity of the violation should be considered appropriate. Additionally, if warranted by the circumstances, the implementing agency may include other sanctions against the violator.

WVDEP's Environmental Enforcement Employee Handbook (Appendix H) provides the

of a Civil Administrative Penalty, the Assessment Officer shall provide the alleged violator with either a **Notice of Civil Administrative Penalty** or a **Notice of Dismissal**.

An Inspector may advise that a civil administrative penalty is appropriate to deter the violator from future noncompliance. If a penalty is deemed appropriate, the Inspector, Inspector Supervisor, and management staff must collectively decide whether a penalty under the civil administrative penalty is appropriate or whether a penalty should be sought under the civil judicial process. This determination requires judgment on the part of all involved, but the following factors should be considered:

The amount of the penalty that could be recovered under the civil administrative process and whether that amount is sufficient considering the seriousness of the violations, i.e., the potential harm to the environment and the extent of deviation from regulatory requirements. If insufficient, a judicial referral should be considered.

The amount of economic benefit associated with the noncompliance. If the amount of economic benefit is greater than 10% of the overall penalty, the matter should be considered for judicial referral.

The length of time the violation(s) occurred. If the length of time is substantial such that the maximum amount of penalty available under the CAP process is insufficient the matter should be considered for judicial referral.

A **facility** has **20 calendar days** from the date of receipt of Notice of Civil Administrative Penalty in which to request an informal hearing before the Assessment Officer. However, an **individual** has **30 calendar days** from the date of receipt of Notice of Civil Administrative Penalty in which to request such a hearing before the Assessment Officer.

If the alleged violator (facility or individual) does not request this informal hearing, the Notice of Civil Administrative Penalty becomes a **final Order** and is due and payable.

and payable.

Findings:

It is the opinion of the reviewers that all violations identified by West Virginia were followed up with appropriate enforcement action. The following were the formal enforcement actions which were examined as part of the file review:

- Facility 2, penalty of \$8,983.50
- Facility 6, penalty of \$23,292.75
- Facility 10, penalty of \$100,000.00
- Facility 12, penalty of \$4,839.00
- Facility 21, penalty of \$5,000.00
- Facility 22, penalty of \$8,733.75
- Facility 23, penalty of \$2,484.00
- Facility 24, penalty of \$8,733.00
- Facility 29, penalty of \$8,000.00
- Facility 34, penalty of \$3,105.00
- Facility 35, penalty of \$1,280.00
- Facility 36, penalty of \$8,636.25
- Facility 40, penalty of \$66,400.00
- Facility 41, penalty of \$3,597.50

After review of 42 files, the reviewers could find no violations which we would have recommended for enforcement action, aside from those 14 facilities listed above, where the State did, in fact, take enforcement action.

Timeliness of enforcement actions:

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

Twelve (12) of the State's 14 formal enforcement actions were finalized within EPA's timeframe of 360 days of the date of inspection as defined in the 2003 ERP. The State concluded these 12 cases within one to 10 months of the date of inspection, and the large majority of these cases went through the Informal Hearing process. With 2 of 14 not meeting the 360 day goals, this is within the 20% established by the ERP for cases which exceed the standard response time. The two cases where the timeliness goals with regard to formal enforcement action were not met are as follows:

Facility 6 was inspected on 7/20/05, at which time a Notice of Violation was issued. The violations were referred to the CAP program about a year later (in 8/06), and the enforcement process moved very quickly after that point, with an Informal Hearing taking place in 11/06, and the case concluded and penalty paid that same month. It may be that the State's reviews and reorganization may have impacted the timing of the referral process.

Facility 10 was inspected on 6/25/05, a Notice of Violation issued in 10/05, and Notice of CAP sent to the facility in 2/06. Settlement of the matter was reached in late July, 2006, and the penalty was paid on 8/8/06.

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

West Virginia Title 33 (Legislative Rules, Division of Environmental Protection, Office of Waste Management) Series 22 (Assessment of Civil Administrative Penalties) set out criteria and procedures to be followed in assessment of civil administrative penalties:

3-22-7. Civil Administrative Penalty Calculation Procedures

7.1. The director shall calculate a civil administrative penalty by taking into account the seriousness of the alleged violation, negligence or good faith on the part of the violator, the type of facility, and any history of noncompliance by the violator.

7.1.a. Seriousness of Violation. The director shall take into account the seriousness of the violation by assigning a rating for the extent of deviation from

TABLE A
Ratings for Deviations from Requirements

1 to 3 - The violator has completed nearly all requirements of the statute, rule, regulation, order, or permit condition in question. However, there were some aspects of the requirements which were clearly not accomplished or the requirements were completed in most, but not all, areas of the facility.

4 to 6 - The violator had completed approximately one-half of the requirements of the statute, rule, regulation, order, or permit condition in question or the requirements were not completed in approximately one-half of the areas of the facility.

7 to 9 - The violator has completed almost none of the requirements of the statute, rule, regulation, order, or permit condition in question. However, some aspects of the requirements clearly were accomplished or the requirements were not completed in most, but not all, areas of the facility.

10 - The violator had not completed any of the requirements of the statute, rule, regulation, order, or permit condition in question or the requirements were not completed in any area of the facility.

TABLE B
Ratings of Potential for Harm

1 to 3 - the violation is of an administrative nature and could not result in a potential for harm to human health of the environment.

4 to 6 - The violation is of an administrative or a physical nature and may result in a minor potential for harm to human health or the environment.

7 to 9 - The violation is of an administrative or a physical nature and may result in moderate potential for harm to human health or the environment.

10 - The violation is of an administrative or physical nature and may result in a major potential for harm to human health or the environment.

| Potential for Harm | | | | | | | | | | |
|--------------------|------|------|------|------|------|------|------|------|------|------|
| 1 | 200 | 245 | 300 | 365 | 440 | 525 | 620 | 730 | 855 | 1000 |
| 2 | 300 | 345 | 400 | 465 | 540 | 625 | 720 | 830 | 955 | 1100 |
| 3 | 500 | 545 | 600 | 665 | 740 | 825 | 920 | 1030 | 1155 | 1300 |
| 4 | 800 | 845 | 900 | 965 | 1040 | 1125 | 1220 | 1330 | 1455 | 1600 |
| 5 | 1200 | 1245 | 1300 | 1365 | 1440 | 1525 | 1620 | 1730 | 1855 | 2000 |
| 6 | 1700 | 1745 | 1800 | 1865 | 1940 | 2025 | 2120 | 2230 | 2355 | 2500 |
| 7 | 2250 | 2295 | 2350 | 2415 | 2490 | 2575 | 2670 | 2780 | 2905 | 3050 |
| 8 | 2850 | 2895 | 2950 | 3015 | 3090 | 3175 | 3270 | 3380 | 3505 | 3650 |
| 9 | 3500 | 3545 | 3600 | 3665 | 3740 | 3825 | 3920 | 4030 | 4155 | 4300 |
| 10 | 4200 | 4245 | 4300 | 4365 | 4440 | 4525 | 4620 | 4730 | 4855 | 5000 |

7.2. Negligence/Good Faith. The director shall take into account the negligence or good faith which the violator displayed with regard to the alleged violation by assigning a rating in accordance with Table E of this rule. The negligence/good faith rating shall be used to determine the multiplying factor to be applied to the base penalty amount through the use of Table F of this rule.

TABLE E
Ratings for Negligence/Good Faith

1 - The violation is not the result of negligence and the violator expended all possible effort to comply with the requirements in question or the violator has completed all action to correct the violation.

2 to 4 - The violation is a result of an oversight by the violator and could have been avoided if a more conscientious effort had been made in the operation of the facility or the violator has begun but not completed current actions to correct the violation.

TABLE F
Negligence/Good Faith

| Negligence/Good Faith | Multiplying Factor |
|-----------------------|--------------------|
| 1 | 0.5 |
| 2 | 0.6 |
| 3 | 0.7 |
| 4 | 0.8 |
| 5 | 1.0 |
| 6 | 1.2 |
| 7 | 1.4 |
| 8 | 1.6 |
| 9 | 1.8 |
| 10 | 2.0 |

7.3. Adjustment Factor. The director shall take into account the type of facility by assigning an adjustment factor in accordance with Table G of this rule. The subtotal calculated pursuant to subsections 7.1 and 7.2 if this rule shall be multiplied by the adjustment factor.

TABLE G
Adjustment Factor

| Type of Facility | Multiplying Factor |
|---|--------------------|
| Conditionally Exempt Small Quantity Hazardous Waste Generator; Hazardous Waste Transporter | 0.5 |
| Small Quantity Hazardous Waste Generator; | |

| | |
|--|-----|
| Hazardous Waste Treatment, Storage, or Disposal Facility; Class A Solid Waste Facility; Class F Solid Waste Facility | 1.5 |
|--|-----|

7.4. History of Noncompliance. The director shall take into account the violator's history of noncompliance by determining the number of previous enforcement actions (administrative, civil, or criminal) which have been taken against the facility during the twenty-four (24) months prior to the violations. Those enforcement actions which were withdrawn, dismissed, or vacated shall not be included in this determination. The number of previous enforcement actions shall be used to determine the dollar amount to be added to the penalty through the use of Tables H and I of this rule. Table H of this rule shall be used for hazardous waste violations. Table I of this rule shall be used for solid waste violations.

TABLE H
History of Hazardous Waste Noncompliance

| Number of Previous Enforcement Actions | Dollar Amount |
|--|---------------|
| 1 | \$250.00 |
| 2 | \$500.00 |
| 3 | \$1000.00 |
| 4 | \$1750.00 |
| 5 | \$2750.00 |
| 6 | \$4000.00 |
| 7 or greater | \$5500.00 |

7.5. The civil administrative penalty shall be calculated by multiplying the base penalty amount (established from the seriousness of violation pursuant to

Calculation of Civil Administrative Penalty Assessment

| | |
|--------------------------|---------|
| Seriousness of Violation | _____ |
| Negligence/Good Faith | X _____ |
| Subtotal: | _____ |
| Adjustment Factor | X _____ |
| Subtotal: | _____ |
| History of Noncompliance | + _____ |
| Total Assessment: | _____ |

Findings:

These elements were satisfied to a high degree. All formal enforcement actions (with penalties) contained documentation in the file which demonstrated how the penalty was calculated. In all instances, the reviews found that penalties were calculated in accordance with West Virginia Title 33, Series 22. All assessed penalties were collected.

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

The following inspections were accomplished by the State in FY06, in accordance with their grant work plan:

| Facility Type | Commitment | Accomplishment |
|---|------------|----------------|
| Federal TSDs | 1 | 1 |
| State and Local TSDs | 1 | 1 |
| Private TSDs not inspected during FY2005 | 10 | 12 |
| LDFs not inspected in last 3 fiscal years | 4 | 4 |
| 20% LQGs | 20 | 41 |
| Minimum Percentage of SQGs | 0 | 37 |
| | | |

Conduct activities in conformance with EPA's 2003 RCRA Enforcement Response Policy (ERP).

Enter all required data obtained from compliance inspections into RCRAInfo no later than 30 days following the inspection. This includes violations, enforcement response, etc. The inspections should also identify Significant Non-Compliers (SNCs), and the appropriate SNC data should be entered into RCRAInfo within 30 days.

See Element 4 for more discussion regarding data management with regard to SNC entry into RCRAInfo.

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

The following data quality issues were identified during the course of the file review:

In general, there seems to be a little inconsistency regarding the entry of enforcement actions, particularly all the steps in the process. Notices of Violation are generally in the system, but the other steps of the process (such as Notice of a proposed CAP, Informal Hearing, EQB hearing, final decision) are not uniformly entered into RCRAInfo. Part of the issue may be that appeal rights make it unclear that any action is final (or the date it becomes final) at the time it is taken. However, in general we found enough information on individual enforcement actions in RCRAInfo to understand the status of each case.

Facility 1 had a 8/17/06 site visit documented in the file which was not entered into RCRAInfo. In addition, a 9/5/06 Notice of Violation was observed in the file which was not in RCRAInfo.

Facility 10 was issued a Notice of Violation on 11/15/05 which was not entered into RCRAInfo.

Facility 12 was issued a Notice of Violation on 7/5/06 which was not entered into RCRAInfo.

Facility 18 was inspected on 11/2/06, but the date of this inspection was entered into the data system as 12/2/06.