



OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

Special Review

Congressionally Requested Review of EPA Region 3's Oversight of State National Pollutant Discharge Elimination System Permit Programs

Report No. 2005-S-00002

October 29, 2004

Report Contributors:

Eileen Collins
Lorraine Fleury
Randy Holthaus
Khadija Walker

Abbreviations

CFR	Code of Federal Regulations
EPA	Environmental Protection Agency
NPDES	National Pollutant Discharge Elimination System



At a Glance

Catalyst for Improving the Environment

Why We Did This Review

Senator Barbara Mikulski asked us to evaluate whether EPA Region 3 is overseeing the National Pollutant Discharge Elimination System (NPDES) permit program properly. We agreed to provide a review responding to five questions.

Background

Since 1972, the NPDES permit program has controlled water pollution by regulating point sources that discharge pollutants into United States waters. In most cases, authorized States administer the program. EPA is responsible for overseeing State implementation of the program.

For further information, contact our Office of Congressional and Public Liaison at (202) 566-2391.

To view the full report, click on the following link:

www.epa.gov/oig/reports/2005/20041029-2005-S-00002.pdf

Congressionally Requested Review of EPA Region 3's Oversight of State National Pollutant Discharge Elimination System Permit Programs

What We Found

The review answers five specific questions:

- 1. What are the statutory and regulatory requirements that EPA must follow for conducting oversight of State NPDES programs?** The oversight requirements in the law are limited, but requirements are in the regulations.
- 2. How many major and minor NPDES permitted sources are in Region 3 States?** Of the 7,499 traditional NPDES permitted sources in the Region, 750 are major sources and 6,749 are minor sources with individual permits.
- 3. How many inspections and enforcement actions were taken?** According to the information in the Permit Compliance System, from October 1, 2002, to August 9, 2004, Region 3 and States inspected 3,729 permittees and took 205 enforcement actions. However, States do not report all of their actions in the system.
- 4. What are Region 3's procedures for ensuring that States comply with grant work plans?** EPA Order 5700.6, entitled *Policy on Compliance, Review and Monitoring*, is the official policy that the Regions should follow to ensure grant recipients are complying with grant work plans. In Region 3, multiple people within the Water Division manage the grants. The project officers rely on technical staff in the Division to obtain some of the reports States should submit and inform them if they are having problems with a State. The Region also conducts joint evaluations with States regarding the grant work plan.
- 5. What are Region 3's procedures for ensuring that States are monitoring permits and taking timely enforcement actions?** Region 3 uses various tools for overseeing States, including (a) reviewing information in the Permit Compliance System, (b) making quarterly calls with States, (c) carrying out Federal inspections and enforcement actions, and (d) reviewing State programs.

Table of Contents

Letter to Senator Mikulski	1
What are the statutory and regulatory requirements that EPA must follow for conducting oversight of State NPDES programs?	2
How many major and minor NPDES permitted sources are in Region 3 States?	2
How many inspections and enforcement actions were taken?	3
What are Region 3's procedures for ensuring that States comply with grant work plans?	4
What are Region 3's procedures for ensuring that States are monitoring permits and taking timely enforcement actions?	5
Appendices	6
A. Background	6
B. Details on Federal Requirements and Other Guidance Related to the NPDES Program	7
C. Details on Inspections and Enforcement Actions	12
D. Region 3 Activities and Details on FTEs	14
E. Scope and Methodology	17
F. Region 3's Response	19



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
INSPECTOR GENERAL

October 29, 2004

The Honorable Barbara A. Mikulski
United States Senate
Washington, DC 20510-2003

Dear Senator Mikulski:

In your letter dated June 4, 2004, you asked that our office evaluate whether EPA Region 3 is overseeing the National Pollutant Discharge Elimination System (NPDES) permit program properly. You particularly wanted to know if Region 3 had routinely turned over the program to the States and then provided little to no oversight unless there was a crisis. Based on conversations with your staff, we agreed to provide a review related to five specific questions.

Your concern about Region 3's oversight of State NPDES programs focused on publicly owned treatment works. As a result, we limited the focus of this review to industrial and municipal, or traditional, point sources. In responding to a draft of this review, Region 3 explained that to fully address the sources of pollution, the NPDES program has evolved to focus on new sources that are often sporadic and the product of wet weather events, and do not fit into the traditional NPDES paradigm. The Region stated that the program shifted its emphasis in the early 1990's to address these pollution sources, and they are now a national priority for the NPDES program. While we did not expand our review to include the other types of sources, Region 3 in its response provided information regarding these sources. We did not evaluate this additional information.

The following paragraphs provide brief answers to the five specific questions. Our answers are supplemented by additional information in Appendices B through D. Appendix A provides general background information, Appendix E provides details on our scope and methodology, and Appendix F is a copy of Region 3's comments to our draft review.

1. What are the statutory and regulatory requirements that EPA must follow for conducting oversight of State NPDES programs?

Federal requirements in law that specifically relate to EPA overseeing State NPDES programs are limited. The law specifies actions that either EPA or authorized States must take to carry out the program. EPA oversight responsibilities are in the regulations at 40 CFR Part 35 and Part 123. Many of these requirements specify actions that authorized States must take to carry out the program. Generally EPA, in its oversight role, is responsible for ensuring that States take such actions.

Other documents--such as EPA guidance--also discuss oversight. See Appendix B for further details on the requirements found in the Clean Water Act, regulations, and other guidance documents.

2. How many major and minor NPDES permitted sources are in Region 3 States?

According to data from the Permit Compliance System, as of July 1, 2004, a total of 7,499 NPDES permitted sources were within Region 3--750 major and 6,749 minor sources with individual permits. These numbers represent traditional NPDES point source dischargers and do not include wet weather permittees, general NPDES permit facilities, or construction sites. A "major" municipal permitted source is a point source that has a design flow of at least 1 million gallons per day. A "major" industrial source is defined through a specified ranking system. Certain classes of permittees are automatically designated as majors, such as nuclear power plants. A "minor" facility is any permitted facility other than a major facility. Minor sources comprise about 90 percent of the universe of Region 3 permittees.

Type of Source	DC	DE	MD	PA	VA	WV	Total
Major	4	21	94	384	149	98	750
Minor	11	35	488	4,146	1,156	913	6,749
Total	15	56	582	4,530	1,305	1,011	7,499
Percentage of Total	1%	1%	8%	60%	17%	13%	100%

Source: EPA Permit Compliance System

3. How many inspections and enforcement actions were taken?

According to the information in the Permit Compliance System, from October 1, 2002, to August 9, 2004, Region 3 and the States conducted the following number of inspections and enforcement actions.

Type of Source	Region 3	DE	MD	PA	VA	WV	Total
Major	375	40	416	241	314	96	1,482
Minor	97	24	793	30	1,115	188	2,247
Total	472	64	1,209	271	1,429	284	3,729

Source: EPA Permit Compliance System

Type of Source	Region 3	DE	MD	PA	VA	WV	Total
Major	47	0	14	19	18	8	106
Minor	11	0	47	0	37	4	99
Total	58	0	61	19	55	12	205

Source: EPA Permit Compliance System

The District of Columbia is not listed separately in either of these two tables because the District is not authorized to run the program. The inspections and enforcement actions Region 3 conducted in the District are included in the tables above as part of Region 3's inspection and enforcement actions.

The tables above only include inspections and enforcement actions States include in the Permit Compliance System. However, not all actions are reported in this system. States are not required to report all inspections and enforcement actions for minor permittees.

See Appendix C for further details on inspections and enforcement actions.

4. What are Region 3's procedures for ensuring that States comply with grant work plans¹?

EPA has procedures in place to ensure that grants are properly monitored by both grants and program officials after award. EPA Order 5700.6 entitled *Policy on Compliance, Review and Monitoring* is the official policy that the Regions should follow to ensure grant recipients are complying with work plans. In Region 3, multiple people within the Water Division manage the grants. The project officers rely on technical staff in the Division to obtain some of the reports States should submit. In addition, the project officers expect the technical staff to inform them if they are having problems with a State. The project officer and technical staff each maintain files containing some of the documents submitted by the States. As a result, there is no one location for maintaining all grant reports, which increases the difficulty in locating the information.

The information that Region 3 requires the States to submit, as specified in the work plans, varies greatly from State to State. For example, four of the five State work plans required inspections to be reported. However, this one requirement ranged from strictly reporting the number of inspections conducted, to a list of facility types that were inspected, to the actual inspection reports being submitted to the Region.

In addition to the grant work plans, the Memorandum of Agreement/Understanding between the States and Region 3 require the States to submit reports, such as inspections conducted and enforcement actions taken. Each of the five States has its own Memorandum of Agreement/Understanding with the Region—all of which are over 10 years old. The amount of information that the Region requires States to submit based on these documents also varies greatly. For example, three of the five Agreements require the States to report the names of the permitted sources to be inspected. According to the State Oversight Coordinators, this information and other required reports are no longer needed. However, these requirements have not been rescinded.

The Region conducted annual joint evaluations for two of the five States (Maryland and Virginia) during fiscal year 2004. The joint evaluation process must include a discussion between EPA and the State regarding progress made in meeting grant commitments, and any existing and potential problem areas. If the evaluation shows that the State has not made sufficient progress, EPA and the State must negotiate a resolution that addresses the issues. See Appendix D for further details on Region 3 activities.

¹EPA uses grants to fund State NPDES programs.

5. What are Region 3's procedures for ensuring that States are monitoring permits and taking timely enforcement actions?

Region 3 State Oversight Coordinators are responsible for ensuring that the five Region 3 States adequately monitor and enforce their NPDES program. The coordinators rely on State-submitted data in the Permit Compliance System to determine if States are properly running the NPDES monitoring and enforcement programs. In addition to their day-to-day communications with the States, the coordinators also have quarterly meetings via telephone where they discuss enforcement cases, data management issues, and any other current activities. They also rely on information obtained from inspections and enforcement actions conducted by Region 3 staff. Region 3 conducts various types of reviews of state programs. The Region has focused most of its efforts on major sources with individual permits as opposed to minor sources with individual permits. See Appendix D for further details on Region 3 activities and resources spent on oversight.

If you or your staff have any questions, please contact Eileen McMahon, Assistant Inspector General for Congressional and Public Liaison, at (202) 566-2391.

Sincerely,

/s/

Nikki L. Tinsley

Appendices (6)

Background

Water pollution degrades surface waters making them unsafe for drinking, fishing, swimming, and other activities. As authorized by the Clean Water Act, the National Pollutant Discharge Elimination System (NPDES) permit program, since 1972, has been used to control water pollution by regulating point sources that discharge pollutants into waters of the United States. Point sources are discrete conveyances such as pipes or man-made ditches. Individual homes that are connected to a municipal system, use a septic system, or do not have a surface discharge do not need an NPDES permit; however, industrial, municipal, and other facilities must obtain permits if their discharges go directly to surface waters.

In most cases, authorized States administer the NPDES permit programs. EPA Region 3 oversees the NPDES program of five States—Delaware, Maryland, Pennsylvania, Virginia, and West Virginia. Delaware and Maryland received EPA authorization to run the program in 1974, Virginia in 1975, Pennsylvania in 1978, and West Virginia in 1982. The District of Columbia does not have EPA authorization to run the program. When EPA authorizes a State to run the program, the State is then responsible for writing the permits, reviewing monitoring data that sources submit, and taking enforcement actions, when appropriate, against sources. Even though a State is authorized to run the program, Region 3 can conduct its own inspections of, and take enforcement actions on, permit holders.

The Permit Compliance System is the national data system EPA uses to support the NPDES program. This system, which is managed by EPA's Office of Enforcement and Compliance Assurance, is a critical information system for EPA's Office of Water. According to EPA, the system tracks NPDES permit issuance, permit limits, self monitoring data, and enforcement and inspection activity for more than 64,000 facilities regulated under the Clean Water Act. For minor permitted sources, neither EPA nor States are required to input information into the Permit Compliance System for all enforcement actions, parameter limits, and measurement data. In practice, some States input this information for some minor sources.

Details on Federal Requirements and Other Guidance Related to the NPDES Program

Federal requirements for the NPDES program are in the Clean Water Act (Act) and the Code of Federal Regulations (CFR). In addition to the CFR, other EPA guidance documents and individual Memorandums of Agreement between Region 3 and its States discuss oversight. Many of the key guidance documents that EPA's Office of Enforcement and Compliance Assurance and the Office of Water issued to EPA Regions are from the late 1980s.

Federal Requirements in the Law

EPA is authorized, under Section 106 of the Act, to issue grants to States for the purpose of assisting in establishing and carrying out pollution prevention programs.

Under Section 308 of the Act, EPA and authorized States must require the owner or operator of any point source to establish and maintain records; make reports; install, use, and maintain monitoring equipment; sample effluents in accordance with methods prescribed by EPA; and provide other information as required. EPA and authorized States have the right of entry to, upon, or through any premises where an effluent source is located or in which any records required to be maintained are located. EPA and authorized States may have access to and copy any records, inspect any monitoring equipment or method required, and sample any effluents that the owner or operator of such source is required to sample.

Section 309 of the Act allows EPA and authorized States to issue administrative orders and assess criminal and civil penalties for violations of permit conditions and limitations. Further, EPA must establish guidelines for monitoring and reporting requirements, as well as enforcement provisions. Whenever EPA finds that any permittee violates any condition or limitation of the Act in a permit issued by a State under an approved permit program, EPA must notify the permittee of the violation and the State of the finding. If EPA notifies the State and the State does not commence enforcement actions within 30 days, EPA must issue an order requiring the permittee to comply with such condition or limitation or must bring a civil action in accordance with Section 309. If EPA finds that violations of permit conditions or limitations are so widespread that such violations appear to result from a failure of the State to enforce such permit conditions or limitations effectively, EPA shall notify the State that it has 30 days to correct the problems. If the State does not correct the problems, EPA must take corrective actions.

Requirements in the Regulations

Regulations related to Federal oversight of the NPDES program are in 40 CFR Parts 35 and 123. Regulations at 40 CFR Part 35 specify the requirements related to Section 106 grants. Title 40 CFR Part 123 specifies what States are required to report, and, therefore, the information EPA should be reviewing as part of its oversight of the States.

Regulations at 40 CFR Section 35.107 require that EPA and the States negotiate work plans, considering factors such as national program guidance, as well as regional guidance, goals, and priorities. The work plan is the basis for managing and evaluating performance under the grant agreement. A work plan must specify, among other things, the commitments for each work plan component, a time frame for accomplishing each activity, and the roles and responsibilities of the States and EPA in carrying out the commitments.

According to 40 CFR Section 35.115, EPA and the States must develop a process for jointly evaluating and reporting progress and accomplishments under the work plan. The State must report at least annually to EPA on its progress. The evaluation process must provide, among other things, a discussion of progress against the commitments made and a discussion of existing and potential problems. If the joint evaluation reveals that the State has not made sufficient progress under the work plan, EPA and the State must negotiate a resolution that addresses the issues. Copies of evaluation reports are to be maintained in EPA's official files and provided to the State.

Title 40 CFR Section 35.168 describes the minimum requirements that States must meet to be eligible for water pollution control grants. The minimum requirements include compiling and reporting water quality data, and coordinating work plan activities with activities the States propose, as part of their water quality management planning grants.

Regulations at 40 CFR Part 123, entitled *State Program Requirements*, specify what States are required to enforce and report to EPA for the NPDES program. These regulations require that States (1) provide quarterly reports for major facilities in noncompliance, (2) submit an annual report to EPA of noncompliance for minor sources, (3) submit a semi-annual report to EPA listing major permitted sources with two or more violations of the same monthly average permit limit in a six-month period, and (4) have procedures for and the ability to inspect the facilities of all major dischargers at least once per year.

Title 40 CFR Section 123.24 specifies that the Memorandum of Agreement, which is between EPA and the States and delegates the program to individual States, should include, among other things, "provisions specifying the frequency and content of reports, documents, and other information which the State is required to submit to EPA. State reports may be combined with grant reports where appropriate." This section also states that the Memorandum of Agreement should have provisions for coordinating compliance monitoring and enforcement activities by the States and by EPA.

Title 40 CFR Section 123.26, entitled *Requirements for Compliance Evaluation Program*, covers the State NPDES compliance evaluation programs; it requires the States to maintain a comprehensive inventory of all sources covered by NPDES permits and a schedule of reports required to be submitted by permittees to the State agency. This section also requires that the States have procedures for and the ability to inspect the facilities of all major dischargers at least once per year.

Headquarters' Guidance

Numerous Headquarters' guidance documents, some from the 1980s, contain procedures that Region 3 can use to oversee the NPDES program and water grants. The EPA guidance primarily pertains to oversight of major permitted sources, and not minor permitted sources. These key documents include (1) NPDES Program Guidance for Development and Review of State Program Application and Evaluation of State Legal Authorities, (2) National Guidance for Oversight of NPDES programs, (3) the Enforcement Management System, (4) Quarterly Non-Compliance Report Guidance Manual, (5) Office of Enforcement and Compliance Assurance Guidance for Memorandum of Agreement, and (6) EPA Order 5700.6 Policy on Compliance, Review and Monitoring.

NPDES Program Guidance for Development and Review of State Program Application and Evaluation of State Legal Authorities (July 1986): This guidance addresses the legal aspects of State program oversight and the methods for resolving program deficiencies. Specifically, the guidance refers to an annual review that the Region prepares outlining the State's accomplishments and indicating areas needing improvement. This report should be provided to the Office of Water in Headquarters. The guidance also addresses how a properly drafted work plan should contain quantifiable outputs for each described activity that can be used to evaluate the State's progress toward meeting its commitments. When a State does not meet its commitments, the guidance contains resolution options ranging from informal dialogues with the State to program withdrawal.

National Guidance for Oversight of NPDES Programs (May 1987): This guidance requires the Region to conduct audits of the State programs by taking random samples of discharge monitoring reports and Permit Compliance System data to ensure the States are properly monitoring the NPDES program. Oversight of the enforcement program should assess the timeliness and appropriateness of the States' response to violations. States should have quarterly and annual inspection plans. States should conduct audits of each local program at least once every 5 years, conduct annual pretreatment inspections of publicly owned treatment works with approved local programs, and review monitoring reports.

The Enforcement Management System (1989): The guidance provides both EPA and State enforcement agencies with a system for developing their own compliance and enforcement policies. The intent of the system is to provide consistency across the nation regarding enforcement policies, yet allow flexibility. The Enforcement Response Guide

within the system provides examples of noncompliance incidents, the circumstances in which the incidents occurred, and a range of responses that are applicable.

Quarterly Non-Compliance Report Guidance Manual (April 1994): This guidance manual illustrates how to review and interpret the information contained in the quarterly report. The manual describes the different types of violations and explains that “significant non-compliers” is not a regulatory distinction but a program definition used for management purposes and serves to classify those violations EPA believes merit priority enforcement attention. In addition, it provides explicit detail on how to interpret the Permit Compliance System data elements included in the report. The last section of the manual provides a four-step approach for reviewing the quality of the report.

Office of Enforcement and Compliance Assurance Guidance for Memorandum of Agreement (June 2001): This Headquarters’ guidance for the Regions is a tool for developing grant work plans between the Regions and their States. The guidance covered fiscal years 2002 and 2003. The Memorandum of Agreement guidance identified the overall program directions, work plans, specific activities, and expected results. State work plans should take into consideration national, regional, and State priorities. This guidance identified wet weather sources as the national priority. The guidance also identified the goal of inspecting 100 percent of the major NPDES permittees. However, priority minor permittees are allowed to be traded for major permittees at a ratio of 2 minors to 1 major. The minors that can be traded for majors are sources in priority watersheds, sources that discharge to impaired waters, or wet weather sources.

The Memorandum of Agreement guidance requires Regions to review the discharge monitoring report information that is put in the Permit Compliance System for the required data elements. The Permit Compliance System is to include data on all major permittees, and any minor permittees the State has included as part of its inspection requirement.

EPA Order 5700.6 Policy on Compliance, Review and Monitoring (January 2004)²: This policy was issued to create more effective post-award grants management and monitoring within the Agency. The policy identifies baseline monitoring responsibilities for grant offices and program offices that are to be carried out annually. As part of baseline monitoring, the grants management office is to ensure (a) the recipient satisfies administrative award conditions, (b) the recipient files single audit reports, (c) financial status reports are reconciled with available funds for the project, and (d) the program office receives quality assurance documents. Baseline monitoring for the program offices includes the project officer ensuring that programmatic terms and conditions are

²The purpose of this policy was to consolidate, improve, make consistent, and streamline all existing EPA post-award management policies.

satisfied, and progress reports and quality assurance reports are received and acceptable. Project officers are also required to reconcile the financial status of the award with the project's progress. Much of this activity is dependent upon sharing information between the two offices. All baseline monitoring information must be documented in the respective official project officer and grant specialist files.

Region 3 Guidance

Region 3 has developed further guidance for taking timely and appropriate enforcement actions. These guidelines were disseminated to the Region 3 States in May 1997. Region 3's goal (although not a requirement) is that violations will be addressed before they become exceptions—that is, before a system is out of compliance for two consecutive quarters. This Regional process presumes that States would be able to address most violations within 6 to 8 months of their occurrence. Specific time frames for what is considered acceptable depend upon the nature of the violation and the extent and schedule of enforcement action that the State has committed to undertake. Region 3's timely and appropriate enforcement policy complements the national timely and appropriate guidelines that are included in the *National Guidance for Oversight of NPDES Programs*.

Region 3 uses the EPA and Regional strategic plans to set out priorities for the NPDES program. The strategic plans identify objectives for program implementation and state oversight and establish key measures of progress and reporting requirements. The strategic plans, along with national program guidance, are used in developing State grant work plans.

Details on Inspections and Enforcement Actions

Region 3 conducted the following inspections, by State, from October 1, 2002, through August 9, 2004.

Type of Source	DC	DE	MD	PA	VA	WV	Total
Major	10	14	79	255	8	9	375
Minor	8	3	45	35	4	2	97
Total	18	17	124	290	12	11	472

Source: EPA Permit Compliance System

The Region uses different targeting approaches depending upon the purpose of the inspection. For example, if the purpose of the inspection is to assess the quality of a state inspection, the Region will select a facility the State recently inspected. If the purpose of the inspection is to identify sources of water impairments, the Region will select facilities based on the nature of the water impairment and characteristics of target facilities. The Region may also select a facility for inspection based on a citizen complaint.

States conducted the following number of inspections:

Type of Source	DE	MD	PA	VA	WV	Total
Major	40	416	241	314	96	1,107
Minor	24	793	30	1,115	188	2,150
Total	64	1,209	271	1,429	284	3,257

Source: EPA Permit Compliance System

The inspections listed in tables 4 and 5 include Compliance Evaluation Inspections and Compliance Sampling Inspections. The intent of the inspections is to ensure that permittees comply with the self-monitoring requirements, effluent limits, and compliance and sampling schedules. Also, States reported in the Permit Compliance System that they conducted 5,441 reconnaissance inspections. Reconnaissance inspections are not as comprehensive as the

evaluation and sampling inspections, as less time and fewer resources are used. However, these inspections, according to Region 3, are particularly useful in responding to citizen complaints, maintaining a regular compliance presence, and targeting future investigations.

The Region conducted the following enforcement actions from October 1, 2002, to August 9, 2004, by State:

Table 6: Enforcement Actions Taken By Region 3							
Type of Source	DC	DE	MD	PA	VA	WV	Total
Major	3	3	4	32	2	3	47
Minor	0	0	0	5	2	4	11
Total	3	3	4	37	4	7	58

Source: EPA Permit Compliance System

States took the following enforcement actions from October 1, 2002, through August 9, 2004.

Table 7: Enforcement Actions Taken by States						
Type of Source	DE	MD	PA	VA	WV	Total
Major	0	14	19	18	8	59
Minor	0	47	0	37	4	88
Total	0	61	19	55	12	147

Source: EPA Permit Compliance System

EPA and State enforcement actions ranged from consent decrees to letters of warning. A consent decree is the result of a judicial action and can include cash penalties. A letter of warning notifies a party of some infraction or violation.

Region 3 Activities and Details on FTEs

Region 3 uses several tools for overseeing State programs.

- Region 3 relies on the Permit Compliance System database to monitor State activities. Region 3 reviews the data States enter into the system for completeness, but it does not check the data for accuracy. The Region does, however, check the accuracy of the data that Region 3 staff enter. It is the responsibility of the States to ensure the accuracy of the data that they enter.
- Region 3 uses quarterly calls with States to monitor progress on enforcement actions. During quarterly calls, the Region and States discuss the Watch List and quarterly reports to determine whether States are taking timely and appropriate action. The Watch List is used to track facilities with serious or chronic violations for which no formal enforcement response had been taken. The Region generally documents these meetings and covers major topics with its States, including discussing how to bring significant non-compliers back into compliance, tracking progress in implementing agreed upon strategies and work plans, assessing the status of ongoing cases, and identifying progress in addressing citizen complaints. Regional staff also consult with States regarding the status of ongoing cases and implementation of State strategies and work plans at other times besides during the quarterly calls.
- Region 3 uses information it gathers when conducting Federal inspections of facilities to evaluate the quality of inspections the State has performed at that facility, and the adequacy of the facility's permit, which the State prepared. When Region 3 initiates enforcement actions, it discusses the rationale for initiating the enforcement action with the State, so that the State can incorporate Region 3's expectations and policies into its program.
- Region 3 conducts various types of reviews of State programs. The Region conducted a comprehensive review of the NPDES program in Maryland and a preliminary review of Delaware in 2002. However, the Region never finalized these reports. As part of the National Permitting for Environmental Results Project, in fiscal year 2004, Region 3 conducted NPDES program evaluations by preparing program profiles for Delaware, Maryland, Pennsylvania, Virginia, and West Virginia. These profiles are expected to be available in December 2004. Maryland is also a pilot state in the Office of Enforcement and Compliance Assurance's State Review Framework project, an effort to standardize the approach that Regions will use to review State enforcement programs. In June 2004, Region 3 evaluated the adequacy of the Maryland inspection program by conducting joint inspections at three sewage treatment plants. Region 3 concluded that Maryland's inspection procedures were comparable to those of EPA.

Region 3's Procedures to Ensure Its Own Enforcement Actions are Addressed Timely and Appropriately

According to the Region, the Region 3 inspector who detects a violation is responsible for proposing the appropriate enforcement action. Once a month, several Regional offices hold a screening meeting where they go over new cases and determine if the action is appropriate and set a date for issuing the penalty. The case will be assigned a docket number and progress of the enforcement action is tracked monthly.

Regional Resources

According to Region 3, it spent about 16 full-time equivalent positions³ to execute its compliance and enforcement water program in FY 2003, which includes its own direct activities as well as oversight of State NPDES programs.

	FY1999	FY2000	FY2001	FY2002	FY2003
Number of FTEs	15.5	15.5	15.6	16.85	16.45

Of the resources shown in Table 8⁴, five positions were used specifically on State oversight responsibilities over the last 3 years. Two positions were for State Oversight Coordinator positions within the Region. Three positions were devoted to maintaining and reviewing the Permit Compliance System.

³A full-time equivalent position is equal to 2,087 hours of work per year.

⁴Table 8 represents the resources for the Region's NPDES branch only. This table does not include the resources from other offices involved in enforcement, such as the Office of Regional Counsel or the Office of Environmental Justice.

Table 9: NPDES Branch Resources Used by Major Program Area					
Activity	FY1999	FY2000	FY2001	FY2002	FY2003
Core Program - Major Facilities	3.0	2.0	1.35	1.6	1.5
Core Program - Minor Facilities	1.5	1.0	1.0	1.0	0.7
Combined Sewer Overflows (CSOs) /Sanitary Sewer Overflows (SSOs) ⁵	1.5	4.0	5.0	6.0	6.0
Storm Water	1.0	2.0	3.0	3.0	3.0
Concentrated Animal Feeding Operations	0.5	0.5	.25	.25	.25
State Oversight Responsibilities	3.0	2.0	2.0	2.0	2.0
Other Activities - Permit Compliance System and Data	5.0	4.0	3.0	3.0	3.0
TOTAL	15.5	15.5	15.6	16.85	16.45

The NPDES enforcement branch also receives support from the immediate Office of the Director and the Office of Watersheds. In addition to the staff resources Region 3 spent on NPDES monitoring and enforcement, Region 3 stated that it committed \$32,000 in travel funds in both 2003 and 2002, and \$25,000 in both 2001 and 2000, for all travel related to compliance monitoring and enforcement, of which State oversight is just a part.

⁵The resources for wet weather issues increased from 1999 to 2003 due to the Office of Enforcement and Compliance Assurance making this area a national priority.

Scope and Methodology

The purpose of our work was to obtain, review, and summarize the Federal oversight requirements for the NPDES program and to identify what efforts Region 3 has taken to oversee State programs. This work was not an audit in accordance with generally accepted Government auditing standards. We did not complete this work with the intent of providing an independent assessment of the performance of a Government organization or activity, as required by generally accepted Government auditing standards. We performed our work from June 17, 2004, through September 17, 2004.

Our scope was Region 3 and its five States—Delaware, Maryland, Pennsylvania, Virginia, and West Virginia, plus the District of Columbia. We focused only on the monitoring and enforcement aspects of the NPDES program; we did not include permit writing. We focused on the fiscal year 2003-2004 timeframe and limited our review to industrial and municipal, or traditional, point sources and did not include wet weather permittees, general NPDES permit facilities, and construction site permits.

To complete our work, we reviewed the Clean Water Act as well as the relevant regulations pertaining to oversight found in 40 CFR Parts 35 and 123. We interviewed Region 3 managers and staff in the Water Protection Division's Office of Compliance and Enforcement. We also obtained relevant documents from Region 3 staff, including national oversight guidance, Memorandums of Agreement, and Section 106/Performance Partnership grant work plans for the States of Delaware, Maryland, Pennsylvania, Virginia, and West Virginia.

We relied on data provided by Region 3 officials from EPA's Permit Compliance System database. We did not independently verify the accuracy of the data.

We also interviewed officials in EPA's Office of Enforcement and Compliance Assurance in Headquarters to identify any expectations that the office had of Region 3 in conducting oversight.

We provided EPA Region 3 an opportunity to review and comment on this review before issuance. Based on their comments we made revisions to the text of the review, as well as some of the statistical data on inspections and enforcement actions. In discussing the response with the Region, we identified several reasons for differences between the statistics in our draft review and those Region 3 provided in response to the draft. First, the Region included inspections and enforcement actions for Pennsylvania and West Virginia that are not included in the Permit Compliance System. For this review, we only used the data in the system, which is what EPA uses to report accomplishments. Second, the Region included enforcement actions for violations of general permits and non-permitted sources. Since these were not within the scope of our review, we did not include these actions. Third, the data was obtained from the Permit

Compliance System on different dates and reflected more current information the States provided. We updated the tables to include the more current statistics.

Region 3's Response

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

SUBJECT: Region III Comments on “*Review of EPA Region III's Oversight of State National Pollutant Discharge Elimination System Permit Programs*”

FROM: Donald S. Welsh, Regional Administrator
Region III

TO: Nikki L. Tinsley, Inspector General
Office of the Inspector General

I would like to thank you for the opportunity to review and comment on your report “*Review of EPA Region III's Oversight of State National Pollutant Discharge Elimination System Permit Programs*”. The enclosed comments focus on three overarching issues that we believe need clarification. Additionally, specific suggestions are made for changes to the five sections of the report that would provide for a more complete understanding of Region III's oversight program. We request your consideration of these points in the final report of this review and any subsequent phases of your review of the Region III NPDES program. The three overarching areas are:

The Changing NPDES Program - The NPDES program has changed dramatically over the last decade to address significant environmental problems that are affecting water quality. The review should reflect these changing conditions.

Our Oversight Philosophy - Region III implements a multi-faceted state oversight process that continually ensures that states are implementing the program appropriately and environmental results are achieved. The review should give a fuller picture of this program.

NPDES National Leadership - By adapting to the changing program and practicing a continual process of oversight driven by outcomes, Region III has played a national leadership role.

We again welcome the Inspector General's review as a means to promote continuous improvement in the delivery of EPA and state NPDES programs. If you or your staff have any questions, please do not hesitate to contact me, or Jon Capacasa, Director, Water Protection Division, at (215) 814 - 5422.

Enclosure

Original Signed by Donald S. Welsh on October 20, 2004

Region III Comments on: “Review of EPA Region III's Oversight of State National Pollutant Discharge Elimination System Permit Programs”

I. The Changing NPDES Program

Major Points:

The NPDES program is not static and changes to address the environmental priorities of today.

- *Municipal and Industrial Point Sources have been and continue to be successfully addressed by the permit and compliance program. The most significant environmental challenges of today are from wet weather sources. This is an ever-growing universe of sources that pose a special permitting and compliance oversight challenge.*
- *Useful state and Federal program evaluation should focus on environmental outcomes and will require modernization of the Permit Compliance System (PCS) and revision to key guidance documents*

The goal of the NPDES Program is to ensure that dischargers of pollutants into waters of the United States do not interfere with the designated uses of waters. As the major source of pollutants change so do the emphases of the program. Over the last decade, the NPDES program has changed dramatically to address our new significant environmental problems.

In the early history of the NPDES program, the most significant sources of pollutants were industrial and municipal point sources, basically, those facilities that discharge waste water from a treatment plant. The program focused its attention on these sources and both the permitting and compliance programs were successful in securing major reductions in pollutant loadings from these traditional point sources. However, even after significant reductions at point sources and continuing progress, EPA realized that more would need to be done to meet Water Quality Standards.

In examining the origins of current water impairments, it became apparent that in order to fully address the sources of major pollution, the NPDES program would have to evolve as the sources were changing. These new sources are often sporadic and the product of wet weather events, and therefore, they did not fit into the traditional NPDES paradigm. The program shifted its emphasis in the early 1990s to start to address these pollutant sources and they are now cited as national priorities for the NPDES program. These include:

- **Combined Sewer Overflows** are discharges from sewage collection systems that collect both rain water and sanitary sewage in the same pipe. During rain events, these systems become surcharged and discharge, adversely affecting water quality and posing a threat to public health. EPA is implementing a combined permitting and enforcement strategy to address this problem. Region III has the second highest number of these communities in the nation, *224 communities* and

solutions will continue to require huge investments by municipalities throughout the nation, and a commensurate investment by the Region and states.

- **Sanitary Sewer Overflows** are discharges of raw sewage and industrial waste from Separate Sewer systems into our waters. As our collection system infrastructure becomes older and communities continue to grow, the systems become surcharged due to infiltration of water into the system and increased inflow to the system from new housing and industry. These overflow events pose a threat to public health and the environment. There are literally thousands of sanitary systems in Region III, and the number that are overflowing are unknown. To identify and address these require a substantial investment by state and Federal compliance staff.
- **Municipal Separate Stormwater Systems.** Every time it rains, pollutants (oil, grease, heavy metals, trash) and pathogens are washed into our waters from storm sewer systems. EPA and the states began implementing an extensive permitting and compliance program in the early 1990s to minimize these discharges and ensure that water quality is protected. There are over a 1000 MS4s that are regulated in Region III.
- **Concentrated Animal Feeding Operations** are one of the leading causes of water impairment in Region III, particularly for the Chesapeake Bay. Animal waste carried by rainwater runoff from large scale agricultural operations are regulated under the CAFO NPDES permitting program. This program represents a difficult and complicated permitting and compliance challenge.
- **Industrial and Construction Stormwater** activities are a leading cause of water impairment in Region III. Stormwater runoff from these activities carry large amounts of sediment and pollutants into our waters. These activities are regulated under the Industrial and Construction Stormwater permitting program and pose a significant compliance challenge due to the nature and number of sources.

Permits issued to these sources, whether individual or general permits, do not normally fall within the traditional major or minor source category (with the exception of POTWs with CSO systems and MS4 Phase I facilities) upon which many previous guidance documents were crafted. However, these sources are an ever-increasing universe. In fact, in Region III, these classes of permittees represent the overwhelming majority of permits issued, as can be seen from the table below.

NPDES Permitted Universe							
	DC	DE	MD	PA	VA	WV	Total
Majors*	4	21	94	384	149	98	750
Minors*	11	35	488	4146	1156	913	6749
General Permittees	0	0	1611	1979	18	2094	5702
Industrial Storm Water Permittees	9	0	146	2155	63	39	2412
MS4 Permittees*	0	3	60	923	60	40	1086
Estimated Ongoing Construction Sites	n/a	1190	2000	2500	n/a	1000	6690
Total	24	1249	4399	12087	1446	4184	23389

As the permitted universe has changed, so has the emphasis of the compliance and state oversight program. Previously, the Region III compliance program was principally concerned with major, and occasionally minor industrial and municipal point sources. Within the last decade, and particularly during the last five years (when Wet Weather became a national priority), Region III shifted its compliance and enforcement resources to address the compliance challenges posed by these sources. Region III has actively encouraged the states to make a similar shift in their resources and programs. Region III and the states were able to make this shift in resource deployment based upon our confidence in the traditional Discharge Monitoring Report (DMR)-driven compliance program’s ability to detect problems at major sources.

From an outcomes standpoint, we have found that the significant non-compliance (SNC) rate has remained stable and there has been an increase in environmentally beneficial enforcement cases. There has been some difficulty in tracking these improvements given that guidance, reporting requirements, and data systems established previously concerned themselves primarily with major and minor sources. However, with the modernization of PCS and revisions to some key guidance documents, both of which are currently ongoing at the national level, the ability to accurately capture the effectiveness of the program and its oversight will improve.

II. Our Oversight Philosophy

Major Points:

- *Region III’s state oversight program relies on multiple tools not limited to PCS reporting or grants oversight.*
- *Strong oversight of states’ permit issuance is the underpinning of an effective compliance and enforcement program. Region III has one of the best programs in the nation.*

- *Our oversight program is driven by the National and Regional Strategic Plans and is environmental results driven.*

Region III maintains an aggressive oversight program that emphasizes the quality and timeliness of permitting as well as timely and appropriate enforcement. Region III state oversight program relies on an array of tools which go beyond the grant oversight and case-by-case work described in the review. Our approach involves continual evaluation and correction. We place emphasis on building capacity and addressing deficiencies in areas of regional and national priority, as identified in yearly program guidance and the national and regional strategic plans. Major elements of oversight program include:

- **The EPA National and Regional Strategic Plans and National Program Guidance** provide the central planning and implementation frameworks for the water programs. These are the most encompassing statements of our objectives for program implementation and state oversight and establish key measures of progress and reporting requirements. Region III has worked hard to engage the states in the development of the national and regional strategic plan. Together, Region III and its states establish targets on a yearly basis in order to ensure that national and regional strategic plan objectives are met.
- **CWA 106 Grants**, while an important resource for the states in the implementation of the water programs (e.g., Standards, Monitoring, Permitting, and Compliance), typically fund in the range of 25% to 33% of the state's efforts. Because of this, states have a great deal of latitude in developing annual work plans submitted to EPA, and can choose to develop a grant work plan that addresses elements of the overall program. Region III utilizes other avenues to supplement grant reporting, such as MOUs and letters of agreement. The Strategic Planning targets and measures as noted above constitute the most inclusive statement of program commitments and oversight expectations.
- **Permit Reviews** are a prerequisite to a credible compliance program. Region III utilizes a diverse array of tools to ensure that permits are timely issued, protect water quality and are enforceable. Utilizing criteria such as permit expiration, environmental importance, national and regional program priorities, and identified state program weaknesses, Region III reviews a large number of permits each year in detail. For all major permits, the Region requests that the states complete checklists to ensure that the permits are complete and protective. Coordination occurs between permitting and enforcement staff to identify particular areas of concern based on other oversight activities. A Permit Tracking System is also maintained as a key tool to analyze and track reoccurring issues and propose systemic solutions.
- **The Permit Compliance System** is an important planning, tracking and oversight tool. The Region expends significant effort in ensuring that the required data is entered completely and timely. Regular system checks and audits are performed

and deficiencies are brought to the states attention . Previous data concerns have been addressed by withholding 106 grant money. Using Sector Indexing Projects, ongoing Echo and Watch List Reviews, and quality checks performed during our investigations and enforcement actions, we are also assured that the compliance data is accurate.

- **Timely and Appropriate Enforcement Action** by the states is ensured through review and discussion of the quarterly Watch List (Quarter Non-Compliance Report). During these discussions with the states, the underlying data in the system is verified to ensure that it is accurate, the compliance history of the source is discussed, and consensus is reached on the appropriate enforcement response. Region III continually monitors progress in implementing the agreed upon enforcement response and assists the state in accomplishing the goal of compliance if necessary.
- **Federal Inspections** are one of the most critical and useful tools in conducting meaningful state oversight. Inspections are targeted to address regional and national environmental and programmatic priorities. While a goal of these inspections is to detect non-compliance, they are also used to conduct an ongoing evaluation of the state permit and compliance program. Issues examined include program implementation, data quality, inspection quality, and permit quality. When a pattern of concern is identified, actions are taken to address concerns.
- **Direct Federal Enforcement** is also one of the most critical elements in state oversight. While we prefer that states take the lead or work with us as partners in formal enforcement, EPA has regularly initiated direct enforcement in delegated programs. Reason for direct enforcement include: when a state requests EPA action; EPA is better positioned to address jurisdictional, legal, or technical issues; issues of national precedence are involved; and/or lack of timely or appropriate action by the state. Consultations conducted with the delegated states in advance of formal enforcement provide an opportunity for EPA to clarify expectations and polices that they can incorporate in their program.
- **The Consultative Process** is a cornerstone of our compliance oversight program. During Quarterly Conferences and ongoing discussions with the state, a full range of issues are explored and documented. These include not only SNC, but progress in implementing agreed upon strategies and work plans, the status of ongoing cases, and progress in addressing citizen complaints. These discussions provide a holistic picture of the health and capability of the state program.
- **Program Evaluations** are another aspect of our evaluation process. In the past year alone, we have completed a number of programmatic reviews which are highlighted later.

III. NPDES National Leadership

Major Points:

- *Region III has led the way nationally in measures of NPDES program effectiveness. It also uses innovative tools for state oversight which are national models and constructively engages the states in meeting national and regional priorities.*
- *Region III's program is outcome centered and has delivered a number of notable achievements.*

As discussed above, by adapting to a changing program and implementing our philosophy of a continuous evaluation and improvement using an array of tools, Region III and its states are implementing an NPDES program that is driven by the national and regional strategic plan. Our shared program has resulted in numerous notable accomplishments that include in part:

- **Lowest National Major Permit Backlogs** - Timely issued and effective permits are the cornerstone of an environmentally driven NPDES program. Region III has worked with its states to ensure that our backlog rate for majors is the lowest in the nation at 7.2%. The national goal is 10% and other Regions range from 10.9% to 34.7%. For minor permits, Region III performance is also notable with 13.8%. Only Region IV performs better at 11.9%. The remaining Regions have minor backlogs between 15% and 48%.
- **Standardized Permit Checklists** - Region III developed a permit checklist for state use in order to effectively oversee the quality of state issued permits. This has been held up as a national model adopted by other Regions that helps maintain consistency in permit issuance.
- **Low Significant Non-Compliance Rate** - Region III continues to have one of the lowest Significant Noncompliance (SNC) Rates in the country at 13% in comparison to the national average of 15%. This is an indication of the effectiveness of Region III and the states to identify and resolve violations at the traditional major sources.
- **Cases of National Significance** - Region III has completed three of the top Clean Water Act judicial actions in the country (Smithfield, Allegheny Ludlum, and Dean Dairy). These significant penalty cases were the result of our oversight activity of the states. These cases sent a clear message to the states and the regulated community concerning our compliance expectations.
- **Joint Federal/State Cases** - Region III has settled or is in the process of settling some of the largest most complicated municipal cases in the country. These cases have built state capacity, have had or will have significant environmental results,

and have educated the state regarding federal compliance expectations and policies. These cases include, in part, Baltimore City (settled), WASA CSO (complaint filed and negotiations ongoing), Baltimore County, WSSC, ALCOSAN, and Reading. Region III, PaDEP, and Allegheny County have also worked together to implement an initiative in Allegheny County to ensure that 83 communities enter in compliance orders with the state and county to address sewer overflows.

- **Program Improvement Initiatives** - Based upon observed program deficiencies or identified obstacles to achieving national goals, the Region's NPDES program has initiated a number of efforts to improve the state and Federal program. Work in these areas include:
 - **Integrated CSO Team** - A division-wide team was formed to determine better means to accomplish national and regional CSO goals through effective state/EPA interaction. This group has prepared a strategy and evaluated aspects of the state/Federal permitting and compliance programs. They have put into place and are putting into place activities to enhance compliance through training, state/Federal conferences, inspection, case development, permit review, etc. Areas include: Statistically Valid Non-Compliance Rate Study for Nine Minimum Controls, Implementation Status Analysis, Phase II Permitting Analysis, and Watershed targeting.
 - **Divisional Stormwater Strategy** - The division is updating its strategy in response to high non-compliance rates and resource shortfalls at the state level. Key areas of effort include: encouragement of low impact development, permit improvement, targeting specific sectors for inspection and enforcement work; joint state/Federal targeting and enforcement in priority watersheds. A key element has been encouraging states to reinvest inspection resources from major sources where there are no compliance concerns to stormwater sources.
 - **Program Evaluations** - The Region has conducted and completed the following NPDES program evaluations in FY 2004 - In-depth State Program Profiles for Maryland, Virginia, West Virginia, Delaware, and Pennsylvania. Areas of program enhancement were identified and a management plan endorsed by the state and Region III were developed and are being implemented. A study on Maryland Inspection effectiveness was conducted utilizing joint oversight inspections at three facilities. An ongoing multi-media compliance and enforcement evaluation is occurring for major MDE compliance programs. This is scheduled to be completed by the end of the calendar year.

VI. Comments on “Review of EPA Region 3’s Oversight of State National Pollutant Discharge Elimination System Permit Programs”

Our specific comments on the draft review are presented below. We will address each section with general comments and make recommendations on how the review might better capture the state oversight program that Region III is implementing.

Section “At A Glance”

General Comments:

The review does not capture the full universe of sources that the states and Region III are responsible for implementing. The review also focuses on small elements of the Region III oversight program. This leads to an incomplete understanding of the program and how it is implemented in the Region.

Specific Recommendations:

1. **Question 2** - The response to Question 2 should identify that there are almost 24,000 permitted sources in Region III. Of those sources 750 are major, 6749 are minor, and over 16,000 are under General Permits.
2. **Question 3** - The number of inspections and enforcement actions identified in this response is only a subset of those that the state and EPA take. The response should identify the total number of inspections, including compliance inspections, and the total number of enforcement actions. During the time period in question - over 17,700 inspections were conducted of which 13,500 were reconnaissance inspections. More than 4,400 enforcement actions were taken.
3. **Question 4** - The following language is recommended: It is the Project Officer’s responsibility to coordinate technical reviews of work products under grants and document the receipt and acceptance of major reports in grant files. The Technical Contact is responsible for maintaining the submitted reports.
4. **Question 5** - The response Question 5 should state that the Region employs a comprehensive state oversight program that is not limited to monitoring Grant work plans or actions taken against major sources.

Section 1 *What are the statutory and regulatory requirements that EPA must follow for conducting oversight of State NPDES programs?*

General Comments:

State oversight is discussed in policy and guidance, and key program measures are incorporated into the Agency Strategic Plan. The discussion in regulation is primarily for program authorization which discusses what types of procedures and programs a state needs to have in place to be authorized to operate an NPDES program.

Specific Recommendations:

None

Section 2 How many major and minor NPDES permitted sources are in Region 3 States?

General Comments:

The text presents a very limited view of the program. Wet Weather Sources are a leading cause of impairment and are a national and regional priority. This has been the major area of emphasis for the compliance program during the last five years. We would recommend that you consider incorporating our discussion and updated statistics on the “Changing NPDES Program”. Additionally, the definition of major source is incorrect.

Specific Recommendations:

1. The following chart should replace the one in this section:

Table 1. NPDES Permitted Universe							
Type of Source	DC	DE	MD	PA	VA	WV	Total
Majors*	4	21	94	384	149	98	750
Minors*	11	35	488	4146	1156	913	6749
General Permittees	0	0	1611	1979	18	2094	5702
Industrial Storm water Permittees	9	0	146	2155	63	39	2412
MS4 Permittees*	0	3	60	923	60	40	1086
Estimated Ongoing Construction Sites	n/a	1190	2000	2500	n/a	1000	6690
Total	24	1249	4399	12087	1446	4184	23389

2. Additionally, the definition of major should be rewritten to conform to the following:

A major **municipal** facility is defined by flow. All municipal wastewater treatment plants with effluent flows greater than 1 MGD should be classified as major municipal NPDES permittees. A major **industrial** facility is defined through a ranking scheme based on several factors: These factors include toxic pollutant potential, discharge flow

volume, receiving stream flow volume, conventional pollutant loadings, potential public health impact (e.g., proximity to downstream drinking water intakes), water quality factors, and proximity to near coastal waters. Generally, if a facility receives a ranking greater than 80 points it is designated a major industrial NPDES permittee. Certain classes of permittees are automatically designated as majors. They include nuclear power plants and municipal separate storm sewer systems serving populations greater than 100,000 individuals.

Section 3 *How many inspections and enforcement actions were taken?*

General Comments:

The numbers reflected in the draft report charts reflect traditional NPDES program activity only. The current text presents a very limited view of the program. However, as discussed, Wet Weather Sources are a leading cause of impairment and are a national and regional priority. For the last five years, our efforts have been directed by the Strategic Plan and national and regional priorities. It is therefore important to capture this universe.

With respect to the inspection chart in the text, only certain classes of inspections have been used, even though an effective program uses a full range of inspection types to accomplish its goal of improved compliance. In responding to citizen complaints, gathering information on whether facilities should be the target of detailed investigation, maintaining a regular compliance presence, and just assessing conditions at facilities, many states use reconnaissance inspections. This allows them to target future investigations for a greater return on the investment. This information should be used.

With respect to enforcement actions, it appears that only information in PCS was used. We have assembled a more complete picture of actual activity by examining detailed reports submitted to us by the states.

Specific Recommendations:

1. The following two charts should replace those currently in the report -

Table 2: Inspections Conducted in Fiscal Years 2003-2004								
Type of Source	Inspection type	EPA	DE	MD²	PA^{3,4}	VA	WV⁴	Total
	Compliance ¹	180	40	416	256	314	96	1302

Majors*

	Reconnaissance		459		947	43	75	1524
Minors/GP	Compliance	356	24	793	30	1115	292	2610
	Reconnaissance		334		5143	350	6478	12305
Total		536	857	1209	6376	1822	6941	17741

- 1 Compliance = CSIs, CEIs, SSO, CSO, storm water etc. (i.e, all types of inspections specific to determining compliance with NPDES program requirements.
- 2 MD reconnaissance inspection numbers are not available.
3. Data from 10/01/02-3/31/04
- 4 PA & WV data augmented by hard copy data.

Table 3: Enforcement Actions Taken in Fiscal Years 2003 - 2004 PCS and Hard Copy Data							
Type of Source	EPA¹	DE¹	MD¹	PA	VA	WV	Total
Majors*	48	3	13	147	294	12	517
Minors/GP*	99	0	47	1122	1499	1165	3932
Total	147	3	60	1269	1793	1177	4449

- 1 Totals do not contain informal actions (Notices of Violation, etc.), only formal action counted.

Section 4 *What procedures does Region 3 use to ensure that States comply with grant work plans⁶?*

General Comments:

Region III acknowledges the need for continual improvement for the standardization of file documentation with regard to commitments made by states under grants. A special Region III Workgroup has been formed to address Grant File structures and documentation. The Division has also initiated a major effort over the past two years to improve its central filing systems and records management. With respect to making decisions without relying on submitted reports, there is an implication that the Region does not base its decisions on

information. This is not accurate. Some of the required submissions under grants are for the purpose of documenting that the work has been accomplished by the state, while others may contain more technical information that is necessary to manage the program. When decisions are

⁶EPA uses grants to fund State NPDES programs.

made, the Region relies not only on grant reports, but also on information from many sources including periodic conference calls, Watch List reports, PCS, inspection reports, etc.

With respect to review and documentation of work plan commitments, a statement is made that it was unclear who has the responsibility for maintaining the reports the states were required to submit, the Project Officer or the Technical Contact. It is the Project Officer's responsibility to coordinate the technical review of work products, document their receipt and acceptance in the grant files. It is the Technical Contact's responsibility to maintain the reports. The Region will take steps to remind those involved of their responsibilities.

The report states that information that Region III required states to submit as specified in the work plan varies from state to state. While this is true, the National Program Guidance is the core document used by the national program and Regions to advise states of their reporting requirements, not grant agreements. Grant work plans vary because states have the responsibility to prepare requests to the Agency for funding in line with National Program Guidance. Since federal funding only partially supports state programs, and the needs and priority interests vary state to state, they have the discretion to apply for elements of their program not the entire work effort. EPA in its role provides grant guidance and oversees state grants to ensure the annual work plans are fulfilled. The primary purpose of the grant reports is to provide the information necessary for EPA to determine that the work plan has been completed, to justify final payments, and closure of grants.

The report also discusses State Authorization Memorandum of Agreement/ Understanding (MOA/MOU). The report implies again that the varying requirements in these agreements is somehow a deficiency. It is important to understand that these are Authorization Agreements and not annual work plans. They essentially lay out how the state and EPA are going to fulfill the requirement specified in the authorization regulations. So while each is different because there are many ways available to satisfy the same requirement, the underlying requirements remain the same in each of the agreements. Also, as different forms of supplying the required information have developed (e.g., national databases), the Region has accepted those in lieu of the existing MOA requirements. Region III agrees that the delegation agreements could benefit from updating. However, in our view these have not been impediments to securing the necessary information or commitments from states under the program, and updates would require a substantial level of effort on behalf of the states and EPA. Even during such an updating process, the resultant agreements would likely be different due to the different state needs, organizations, and means of completing work.

Specific Recommendations:

The sections should be edited to reflect the discussion above.

Section 5. *What procedures does Region 3 use to ensure that States are monitoring permits and taking timely enforcement actions?*

General Comments:

This section captures only a small portion of the Region III oversight program. Region III maintains an aggressive oversight program that incorporates extensive reviews of permit quality and timeliness as well as compliance and enforcement. Region III does not rely on a singular tool for oversight but instead takes a systematic approach that involves continual evaluation and action based upon a series of tools. The major tools of the oversight program have included: **National Program Guidance/Regional and National/Regional Strategic Plan; 106 Grants and Workplans; Permit Reviews and Checklists; The Permit Compliance System; Timely and Appropriate Enforcement Action; Federal Inspections; Federal Enforcement; The Consultative Process; and Special Program Evaluations such as the Permitting for Results Project.** Thus, it is incorrect to say that the State Coordinators rely primarily on state-submitted data in PCS to determine if the states are properly running the NPDES program. They rely on all information that has been made available through our oversight process. Additionally, it is also not accurate to state that the Region has focused most of its efforts on major sources. This is demonstrated in the report’s Appendix D, detailing NPDES Branch FTE usage, and in our previous discussion on the national and regional Wet Weather priority.

Specific Recommendations:

The sections should be edited to reflect the discussion above.

Section Appendix A

No Comment

Section Appendix B

No Comment

Section Appendix C

General Comments:

This Appendix should be edited to incorporate the revised inspection and enforcement action data that captures the full universe of NPDES sources and compliance activities.

Specific Comments

1. The existing table 4 should be replaced by the following:

Table 4: Inspections Conducted by Region III October 1, 2002 - August 30, 2004							
Type of Source	DC	DE¹	MD¹	PA	VA	WV	Total
Majors*	8	6	78	70	8	10	180
Minors/GP*	14	11	54	127	146	4	356
Total	22	17	132	197	154	14	536

1. Totals do not contain informal actions (Notices of Violation, etc.), only formal action counted.
2. The Region does not use as a targeting criteria those sources that the state does not inspect. The Region employees different targeting approaches depending on the purpose of the effort, for example:
 - Oversight Inspections - Targeting is directed to sources that have been recently inspected in order to identify the effectiveness of the state compliance program.
 - Rule Penetration/Effectiveness - Targeting is accomplished by a random/representative selection of facilities in the sector of concern. The purpose of this effort is to identify program implementation and compliance issues that need addressing.
 - Environmentally Driven - The purpose of these efforts are to identify and address sources of water impairment. Targeting criteria in this case will be based upon the nature of the impairment and the discharge characteristics of the target sources.
 - Compliance Driven - The purpose of these efforts are to address identified compliance problems that have been revealed through data review, citizen complaints, and state oversight. In this case, the primary criteria is the compliance history.
 - National Priorities - These are inspections that are used to support national priorities. Generally, the Region attempts to overlay all the above criteria in identifying targets for inspection.
3. Table 5 and subsequent text should be replace by the following:

Table 5: Inspections Conducted by States							
Type of Source	Inspection type	DE	MD²	PA^{3,4}	VA	WV⁴	Total
Majors*	Compliance ¹	40	416	256	314	96	1122
	Reconnaissance	459		947	43	75	1524
Minors/GP	Compliance	24	793	30	1115	292	2254
	Reconnaissance	334		5143	350	6478	12305
Total		857	1209	6376	1822	6941	17205

- 1 Compliance = CSIs, CEIs, SSO, CSO, storm water etc. (i.e, all types of detailed inspections specific to determining compliance with NPDES program requirements.
- 2 MD reconnaissance inspection numbers are not available
- 3 Data between 10/01/02-3/31/04.
- 4 PA & WV data augmented by hard copy data.

The inspections listed in Table 5 include Compliance inspections and Reconnaissance inspections. Both types of inspections have an important role in an effective compliance program. Compliance inspections include Compliance Evaluation Inspections, Compliance Sampling Inspections, SSO, CSO and stormwater inspections. The purpose of these types of inspections is to make a facility compliance determination with respect to either the entire permit or with targeted aspects of the permit. Reconnaissance Inspections are less detailed evaluations. They are particularly useful in responding to citizen complaints, gathering information on whether facilities should be the target of detailed investigation, maintaining a regular compliance presence, and just assessing conditions at facilities. This allows the state to target future investigations for a greater return on the investment.

4. Tables 6 and 7 and subsequent text should be replace by the following

Table 6: Enforcement Actions Taken by Region III October 1, 2002 - August 30, 2004							
Type of Source	DC¹	DE¹	MD¹	PA	VA	WV	Total
Majors*	3	3	4	33	2	3	48
Minors/GP*	4	4	1	40	44	6	99
Total	7	7	5	73	46	9	147

- 1 Totals do not contain informal actions (Notices of Violation, etc.), only formal action counted.

Table 7: Enforcement Actions Taken by States PCS and Hard Copy Data						
Type of Source	DE¹	MD¹	PA	VA	WV	Total
Majors*	3	13	147	294	12	469
Minors/GP*	0	47	1122	1499	1165	3833
Total	3	60	1269	1793	1177	4302

1 Totals do not contain informal actions (Notices of Violation, etc.), only formal action counted.

Section Appendix D

General Comments:

This section should be brought into alignment with the preceding discussions. Generally, the description of Region III oversight activities has to be expanded to capture the full extent of our efforts in this area.

Specific Recommendations:

1. Region III performs numerous oversight activities designed to ensure that the states are implementing the NPDES program effectively and efficiently. These tools include: **National Program Guidance/Regional and National/Regional Strategic Plan; 106 Grants and Workplans; Permit Reviews and Checklists; The Permit Compliance System; Timely and Appropriate Enforcement Action; Federal Inspections; Federal Enforcement; The Consultative Process; and Special Program Evaluations such as the Permitting for Results Project.**
2. Region III relies on PCS as a part of its oversight process. While PCS is limited in its ability to support the new national Wet Weather priorities, it is a useful tool to conduct oversight. Region III reviews the data States enter into the Permit Compliance System for completeness. The states are responsible for ensuring data accuracy, however, nationally and Regionally, through the Sector Indexing Project, the Watch List, and ongoing inspection and enforcement activity, data accuracy is ensured.
3. The discussion on the Quarterly calls should be expanded to include the other oversight functions that occur. In addition to discussion of the Watch List, the calls are used for tracking progress in implementing agreed upon strategies and work plans, the status of ongoing cases, and progress in addressing citizen complaints, among other things. These discussions provide a holistic picture of the health and capability of the state program.

4. With respect to the review of the Maryland and Delaware state programs, the reports were completed and the results discussed with the states. They were not, however, finalized. This decision was based on the introduction of national program evaluation programs and guidelines being developed. Region III supports a consistent national program evaluation framework. Region III also suggests the section dealing with the state profiles for the Permitting for Environmental Results and the State Review Framework should be moved into this section. The Regions have a substantial role in implementing this program.
5. With respect to Regional Resources, Region III staffed the NPDES Enforcement Branch with approximately 16 full-time equivalent positions to execute its compliance and enforcement program. The purpose of Table 8 and Table 9 is to demonstrate how field and data resources are deployed across the various NPDES enforcement areas. These NPDES Branch enforcement FTE are supported by additional enforcement and permitting FTE within the Water Protection Division, such as the immediate Office of the Director and the Office of Watersheds.
6. State oversight is not only conducted by the state coordinator and data management staff, but by each of the enforcement and permitting staff through their implementation of national and regional priorities as discussed previously.

