



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Dated via electronic signature

Melanie Loyzim, Acting Commissioner
Maine Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017

Dear Acting Commissioner Loyzim:

Please find attached the final State Review Framework (SRF) Round 4 Report for the Maine Department of Environmental Protection (ME DEP) for the review year of 2018. This report was finalized by the Region 1 Office of the U.S. Environmental Protection Agency, following a review by ME DEP program staff, and in consultation with EPA's Office of Enforcement and Compliance Assurance. Our key findings are provided in the Executive Summary.

We very much appreciate the coordination provided by Ronald Mongeon of your Office, as well as the full participation of many ME DEP staff throughout the review. The Final Report and its recommendations will be posted on EPA's national State Review Framework Website, which can be found at:

<http://www2.epa.gov/compliance/state-review-framework-compliance-and-enforcement-performance>.

Thank you for your continued cooperation on this important review of ME DEP's enforcement and compliance assurance programs.

Sincerely,

Karen McGuire, Director
Enforcement and Compliance Assurance Division

Cc: By E-mail

Dennis Deziel, Regional Administrator, EPA Region 1
Deborah Szaro, Deputy Regional Administrator, EPA Region 1
Chris Knopes, Director, Planning, Measures, and Oversight Division, EPA OECA
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STATE REVIEW FRAMEWORK

Maine

**Clean Water Act, Clean Air Act, and
Resource Conservation and Recovery Act
Implementation in Federal Fiscal Year 2018**

**U.S. Environmental Protection Agency
Region 1**

**FINAL Report
September 22, 2020**

I. Introduction

A. Overview of the State Review Framework

The State Review Framework (SRF) is a key mechanism for EPA oversight, providing a nationally consistent process for reviewing the performance of state delegated compliance and enforcement programs under three core federal statutes: Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act. Through SRF, EPA periodically reviews such programs using a standardized set of metrics to evaluate their performance against performance standards laid out in federal statute, EPA regulations, policy, and guidance. When states do not achieve standards, the EPA will work with them to improve performance.

Established in 2004, the review was developed jointly by EPA and Environmental Council of the States (ECOS) in response to calls both inside and outside the agency for improved, more consistent oversight of state delegated programs. The goals of the review that were agreed upon at its formation remain relevant and unchanged today:

1. Ensure delegated and EPA-run programs meet federal policy and baseline performance standards
2. Promote fair and consistent enforcement necessary to protect human health and the environment
3. Promote equitable treatment and level interstate playing field for business
4. Provide transparency with publicly available data and reports

B. The Review Process

The review is conducted on a rolling five-year cycle such that all programs are reviewed approximately once every five years. The EPA evaluates programs on a one-year period of performance, typically the one-year prior to review, using a standard set of metrics to make findings on performance in five areas (elements) around which the report is organized: data, inspections, violations, enforcement, and penalties. Wherever program performance is found to deviate significantly from federal policy or standards, the EPA will issue recommendations for corrective action which are monitored by EPA until completed and program performance improves.

The SRF is currently in its 4th Round (FY2018-2022) of reviews, preceded by Round 3 (FY2012-2017), Round 2 (2008-2011), and Round 1 (FY2004-2007). Additional information and final reports can be found at the EPA website under [State Review Framework](#).

II. Navigating the Report

The final report contains the results and relevant information from the review including EPA and program contact information, metric values, performance findings and explanations, program responses, and EPA recommendations for corrective action where any significant deficiencies in performance were found.

A. Metrics

There are two general types of metrics used to assess program performance. The first are **data metrics**, which reflect verified inspection and enforcement data from the national data systems of each media, or statute. The second, and generally more significant, are **file metrics**, which are derived from the review of individual facility files in order to determine if the program is performing their compliance and enforcement responsibilities adequately.

Other information considered by EPA to make performance findings in addition to the metrics includes results from previous SRF reviews, data metrics from the years in-between reviews, multi-year metric trends.

B. Performance Findings

The EPA makes findings on performance in five program areas:

- **Data** - completeness, accuracy, and timeliness of data entry into national data systems
- **Inspections** - meeting inspection and coverage commitments, inspection report quality, and report timeliness
- **Violations** - identification of violations, accuracy of compliance determinations, and determination of significant noncompliance (SNC) or high priority violators (HPV)
- **Enforcement** - timeliness and appropriateness of enforcement, returning facilities to compliance
- **Penalties** - calculation including gravity and economic benefit components, assessment, and collection

Though performance generally varies across a spectrum, for the purposes of conducting a standardized review, SRF categorizes performance into three findings levels:

Meets or Exceeds: No issues are found. Base standards of performance are met or exceeded.

Area for Attention: Minor issues are found. One or more metrics indicates performance issues related to quality, process, or policy. The implementing agency is considered able to correct the issue without additional EPA oversight.

Area for Improvement: Significant issues are found. One or more metrics indicates routine and/or widespread performance issues related to quality, process, or policy. A recommendation for corrective action is issued which contains specific actions and schedule for completion. The EPA monitors implementation until completion.

C. Recommendations for Corrective Action

Whenever the EPA makes a finding on performance of Area for Improvement, the EPA will include a recommendation for corrective action, or recommendation, in the report. The purpose of recommendations is to address significant performance issues and bring program performance back in line with federal policy and standards. All recommendations should include specific actions and a schedule for completion, and their implementation is monitored by the EPA until completion.

III. Review Process Information

Clean Water Act (CWA)

Kickoff Meeting for Maine DEP Round 4 Review: May 3, 2019.

Maine Department of Environmental Protection CWA Contacts: Brian Kavanah (207) 287-7700; Sterling Pierce (207) 287-4868; Pamela Parker (207) 485-3038; Rhonda Poirier (207) 592-6233.

EPA CWA Regional Reviewers: Alex Rosenberg (617) 918-1709; Solanch Pastrana-Delvalle (617) 918-1746.

Clean Air Act (CAA)

Kickoff Meeting for Maine DEP Round 4 Review: May 3, 2019.

Maine Department of Environmental Protection CAA Contacts: Tracy Kelly (207) 480-0143 and Eric Kennedy (207) 287-5412.

EPA CAA Regional Reviewer: Tom McCusker (617) 918-1862.

Resource Conservation and Recovery Act (RCRA)

Kickoff Meeting for Maine DEP Round 4 Review: May 3, 2019.

Maine Department of Environmental Protection RCRA Contact: Michael Hudson (207) 287-7884.

EPA RCRA Regional Reviewers: Donald MacLeod (retired); Linda Gray Brolin (617) 918-1876; Lisa Papetti (617) 918-1756.

State Review Framework (SRF) Contacts

Ronald Mongeon, ME DEP, (207) 287-7740

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Executive Summary

Introduction

Clean Water Act (CWA)

EPA Region 1 enforcement staff conducted a State Review Framework (SRF) enforcement program oversight review of the Maine Department of Environmental Protection (MEDEP). EPA bases SRF findings on numerous data and file review metrics, summaries of which are included in this report, as well as conversations with program management and staff.

For purposes of this report, EPA has highlighted the most important metrics that demonstrate MEDEP's program performance. The EPA will track recommended actions from the review in the SRF Manager database and will publish final reports and recommendations on EPA's ECHO

Clean Air Act (CAA)

EPA as a whole, and the Air Program regarding the Clean Air Act (CAA) specifically, conducted a State Review Framework (SRF) review of the Maine Department of Environmental Protection (MEDEP) pertaining primarily to activities conducted by MEDEP in Federal Fiscal Year (FFY) 2018; however, in order to review a representative sampling of high priority violators (HPVs) and enforcement case files, the review also extended into FFYs 2014, 2015, and 2017. The review entailed analyzing both data metrics and file metrics in order to evaluate MEDEP's strengths and areas for improvement in carrying out its responsibilities under the CAA. The report will provide findings under these five major headings: Data, Inspections, Violations, Enforcement, and Penalties. Under each heading, EPA will evaluate whether MEDEP is meeting or exceeding expectations or, as necessary, point out areas where EPA will seek improvement by MEDEP. In some cases, where there is only a minor concern EPA will merely point out the issue. Where any major issues are found, EPA will provide recommendations for MEDEP to implement in order to resolve any issues.

In conducting the file review portion of this SRF, EPA looked at 30 case files from all four of MEDEP's Regional Offices. At least 5 files from each Regional Office were reviewed. Of the 30 files reviewed, 16 files were for Mega-site/Title V major sources, 12 files were for synthetic minor 80 percent (SM80) sources where air emissions are capped at, or above, 80 percent of the major source threshold for a given air pollutant, and 2 case files were for synthetic minor sources with air emissions capped below 80 percent of the major source threshold for all applicable air pollutants.

Resource Conservation and Recovery Act (RCRA)

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EPA bases SRF findings on numerous data and file review metrics, summaries of which are included in this report, as well as conversations with program management and staff.

For purposes of this report, EPA has highlighted the most important metrics that demonstrate MEDEP's program performance. The EPA will track recommended actions from the review in the SRF Manager database and will publish final reports and recommendations on EPA's ECHO web site.

Areas of Strong Performance

The following are aspects of the programs that, according to the review, are being implemented at a high level:

Clean Water Act (CWA)

- Maine DEP exceeds the national goal for DMR and Permit Limit data entry in ICIS.
- The MEDEP does an excellent job at making a compliance determination and identifying violations as Significant Non-Compliance at permitted facilities classified as major. A monthly non-compliance review meeting implemented by the Division of Water Quality Management within the MEDEP aids greatly in assuring this high level of consistent compliance determination.

Clean Air Act (CAA)

- The following are aspects of the Clean Air Act (CAA) program that, according to the review, are being implemented at a high level:
 - In most cases, MEDEP inspectors use an inspection checklist template that includes all applicable requirements for each air emission source found at a facility. This provides for more comprehensive inspection reports with a streamlined procedure for inspectors to use to evaluate compliance and to document compliance determinations made at facilities.
 - MEDEP does an excellent job of documenting violations and making accurate compliance and HPV determinations.
 - MEDEP does an excellent job of providing early warning notice to facilities with violations to expedite their return to compliance.

- MEDEP does an excellent job of calculating and documenting penalties that it assesses, according to its Penalty Policy. MEDEP also does an excellent job of documenting the rationale for any penalty reductions made after the initial penalty is assessed and of documenting that penalties have been collected.

Resource Conservation and Recovery Act (RCRA)

- MEDEP does an excellent job maintaining accurate data and reporting it in a timely manner into the national database. During the time periods reviewed, inspection counts, documentation of violations and enforcement actions were accurate.

- MEDEP's enforcement actions are generally brought in a timely manner and return facilities to compliance in a timely manner.

- MEDEP prepares inspection reports that document compliance status and determine violations and document the observed violations in their inspection records and enforcement responses. Each of the 23 files reviewed that identified violations had accurate and complete descriptions of the violations observed during the inspection and had adequate documentation to support MEDEP's compliance determinations.

- MEDEP completed all of its Treatment, Storage and Disposal Facilities (TSDF) inspections in FFY2018 and exceeded both the National Goal and the National Average for Large Quantity Generator (LQG) inspections at 23.9%. MEDEP also provided inspection targets as requested to the EPA, some of which included LQGs. MEDEP also inspects generator categories other than LQGs. Twenty-one of the twenty-four FFY2018 files reviewed included inspections in 2018. In each instance, the files for these inspections included sufficient information to document the compliance status of the facilities.

Priority Issues to Address

The following are aspects of the programs that, according to the review, are not meeting federal standards and should be prioritized for management attention:

Clean Water Act (CWA)

- Recurring issue: The review indicates that MEDEP has not completed the migration of required inspection and enforcement data elements into the national data system (ICIS). The State began the migration process in 2012. Since the review of the FFY2013 (round three SRF), the state has begun to migrate stormwater permit related facility and inspection data. Data elements that have yet to be migrated include formal and informal enforcement data and Single Event Violations. The state has already created and is testing its node for SEV and formal enforcement data migration.
- Recurring issue: As part of an economic benefit penalty calculation, MEDEP staff did not demonstrate consistency in following either the EPA national penalty policy guidance or internal MEDEP standard operating procedures. Since this same issue was raised in the Round Three State Review Framework (SRF) review, the State's Water enforcement manager has begun to utilize the appropriate methodology stated in their department's standard operating procedures (BEN model). However, other enforcement officers within the department did not implement the practice.

Clean Air Act (CAA)

- The following are aspects of the CAA program that, according to the review, are not meeting federal standards and should be prioritized for management attention:
- Both the file review metrics and the data metrics indicate that MEDEP has had issues regarding the timely entry of minimum data requirements (MDRs) into ICIS, especially with regards to stack test data.
- A review of the file review metrics and the data metrics (Data Metric Analysis and Data Verification) indicate that MEDEP had issues regarding the completeness of data entered into ICIS, including, in a couple instances, the creation of federally-reportable violator (FRV) case files.
- The file review metrics indicate that for full compliance evaluations (FCEs) conducted by MEDEP, in almost two-thirds of the files reviewed, the compliance monitoring reports (CMRs) did not provide documentation that compliance determinations were being made for all applicable regulations, especially with regards to federal standards such as the National Emission Standards for Hazardous Air Pollutants and the New Source Performance Standards. In other instances, the compliance determinations were too broad in nature to accurately evaluate and document compliance with specific requirements within these federal standards.

Resource Conservation and Recovery Act (RCRA)

- A review of the selected case files and the DMA indicates that MEDEP did not make any determinations of Significant Non-Compliance (SNC, SNY) in FFY2018.
- There were no penalties issued by MEDEP RCRA program in FFY2018.

State Response to Priority Issues to be Addressed for CWA:

First, as described in the sections below, the issue relating to collections is one of documentation within the program, not actual collection of penalties. Upon review, the Department has found that all penalties were collected and SEPs completed for the cases reviewed.

Second, every state and EPA's own enforcement programs include enforcement and prosecutorial discretion that can lead to a penalty being either reduced 100% or the case being dismissed entirely based on the evidence and circumstances that arise during the enforcement process. This alone should not be a priority issue to be addressed and should be considered in conjunction with assessment of environmental impact and appropriate application of discretion. As for SEPs, Maine law does not allow for SEPs to be used to mitigate economic benefit or financial gain penalties.

Additionally, under Maine law, SEPs cannot primarily benefit the violator. SEPs in Maine are mitigated on a dollar for dollar amount, so that while the violator may not be paying a penalty directly to the State, the violator is still paying the penalty amount in either funds or resources for the SEP.

State Response to Priority Issues to be Addressed for RCRA:

The Priority Issues to be Addressed for RCRA includes two points that are both factually accurate but MEDEP disputes that this requires corrective action. The points are more specifically responded to by MEDEP in their relevant sections.

ME DEP Round 3 Area for Improvement Recommendations				Status in Round 4
CAA	Data	Finding 1-1	Both the file review metrics and the data metrics indicate that MEDEP has had some issues regarding the accuracy and completeness of data entered into AFS.	Area for Attention
CAA	Data	Finding 1-2	Both the file review metrics and the data metrics indicate that MEDEP has had some issues regarding the timely entry of MDRs into AFS.	Recommendation for Improvement
CAA	Inspections	Finding 2-1	For the most part, MEDEP inspectors write well-documented, comprehensive inspection reports with accurate compliance determinations. Many inspection reports did not include compliance determinations.	Recommendation for Improvement
CWA	Data	Finding 1-1	Maine DEP fails to completely and accurately display enforcement data, Single Event Violations (SEVs) and stormwater permit facility/inspection/enforcement data in the national data systems.	Recommendation for Improvement
CWA	Violations	Finding 3-2	Single Event Violations are not accurately identified as significant noncompliance; non-DMR data SEVs are not tracked; and no consistent methodology for SEV SNC determination is being followed.	Area for Attention
CWA	Penalties	Finding 5-1	This review indicates that the State does not follow national or State protocol for calculating economic benefit as part of an enforcement penalty.	Recommendation for Improvement
RCRA	Violations	Finding 3-2	A review of the selected case files and the DMA indicates that MEDEP did not make an appropriate SNC determination in 3 of the 23 enforcement cases reviewed	Recommendation for Improvement
ME DEP Round 4 Area for Improvement Recommendations				Status in Round 3
CWA	Inspections	Finding 2-3	This review identifies that State does not meet their compliance monitoring strategy inspection goal for inspection coverage of Clean Water Act permittees at Significant Industrial Users.	Meets, per Metric 4a Table
CWA	Inspections	Finding 2-4	This review identifies that State does not meet their compliance monitoring strategy inspection goal for inspection coverage of Clean Water Act permittee at municipal separate stormwater sewer systems (MS4).	Area for Attention
RCRA	Penalties	Finding 5-1	There were no penalties issued by MEDEP in FFY2018.	Area for Attention

Clean Water Act Findings

CWA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Summary:

Maine DEP exceeds the national goal for DMR and Permit Limit data entry in ICIS.

Explanation:

See data metric analyses results 1b5 and 1b6.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
1b2 DMR data entry rate for major facilities [GOAL]	95%		75		75
1b5 Completeness of data entry on major and non-major permit limits. [GOAL]	95%	90.6%	176	178	98.9%
1b6 Completeness of data entry on major and non-major discharge monitoring reports. [GOAL]	95%	93.3%	3214	3219	99.8%

State Response:

MEDEP concurs with EPA's finding.

CWA Element 1 - Data

Finding 1-2

Area for Improvement

Summary:

Maine DEP fails to completely and accurately display informal enforcement data, as well as construction stormwater general permit data, e.g., (facility/inspection/enforcement) in the national data systems.

Explanation:

As required by the December 28, 2007 ICIS Addendum to the Appendix of the 1985 Permit Compliance System (PCS) Statement, ME DEP needed to report the following to ICIS-NPDES: facility and permit elements for non-majors, inspections, formal and informal enforcement actions, and penalty amounts collected. States were expected to begin sharing their compliance monitoring (e.g., inspection), violation determination, and enforcement action data electronically by December 21, 2016 according to Phase I of the September 24, 2015 e-reporting rule.

As noted below, metric 5b2 of the DMA pulled only 11 non-major general permit facility inspections from ICIS when in reality 287 were conducted; and no SEV data was found in ICIS (DMA metric 7j1), demonstrating the failure of ME DEP in completely and accurately displaying enforcement and permit data in the national data systems.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2b Files reviewed where data are accurately reflected in the national data system [GOAL]	100%		11	32	34.4%
5b2 Inspections coverage of NPDES non-majors with general permits [GOAL]	100% CMS commitment%	5.6%	11	1236	.9%
7j1 Number of major and non-major facilities with single-event violations reported in the review year			0	0	0

State Response:

Single event violations (SEV) have been a problem for MEDEP to flow. MEDEP made changes to its own EFIS database to incorporate the SEV to be part of the flow to the EPA ICIS database, but EPA then made changes to their ICIS database that required MEDEP to make further changes to fulfill the EPA requirement. MEDEP had to wait for the technical resources to be made available to make the necessary changes to be able to flow the data.

In February of 2020, the changes were completed and SEV's began to flow from the Department's system to the ICIS database. Since February of 2020, MEDEP has been able to flow the informal enforcement action data as part of its normal data flows from EFIS to ICIS as well.

MEDEP will review the implementation plan in regards to the stormwater general permit reports.

Recommendation:

Rec #	Due Date	Recommendation
1	2/9/2021	By February 9, 2021, revise the Maine e-rule implementation plan (dated December 20, 2016) to include schedules for entering the lacking data elements (all Construction General Permit data elements, General Permit Reports, and MS4 Program Reports – see below) into ICIS, with a final goal of complying with the 2023 implementation deadline of the Final 2015 NPDES Electronic Reporting rule (“final rule”) that requires flowing from EFIS to ICIS the data elements identified in Appendix A to 40 CFR part 127. Data elements are part of the following NPDES Data Groups: • Core NPDES Permitting, Compliance, and Enforcement Data (SEVs, informal and formal actions); • General Permit Reports [Notices of Intent to discharge (NOIs); Notices of Termination (NOTs); No Exposure Certifications (NOEs); Low Erosivity Waivers and Other Waivers from Stormwater Controls (LEWs)] [40 CFR 122.26(b)(15), 122.28 and 124.5]; and • MS4 Program Reports [40 CFR 122.34(d)(3) and 122.42(c)].

CWA Element 2 - Inspections

Finding 2-1

Area for Attention

Summary:

State inspectors have room for improvement in clearly communicating compliance determinations within their inspection reports and finalizing their reports in a timely manner.

Explanation:

EPA's regulations require authorized NPDES programs to have "inspection and surveillance procedures to determine, independent of information supplied by regulated persons, compliance or noncompliance with applicable program requirements." See 40 CFR 123.26(b). Inspectors do not always align inspection findings and observations with specific permit conditions.

Compliance status is therefore difficult to understand. 9 out of 45 reports were either incomplete or contained insufficient information to be able to determine compliance at the facility. Only 70% (31/44) of reports were completed within 30 days of the inspection. Report timeliness can be an important factor in writing clear, concise, and complete inspection reports. It is recommended that the state: (1) work towards writing more timely inspection reports, and (2) familiarize itself with the final 2015 E-reporting rule requirements and data elements to assist with adopting the prescribed documentation and compliance status nomenclature into existing inspection protocols and templates. A mock-up of how data elements might be collected in ICIS is provided in Attachment 3 of the implementation guidance technical paper number 9:

<https://www.epa.gov/sites/production/files/2018-10/documents/npdesereporting-implementationtechnicalpaper9.pdf>.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
6a Inspection reports complete and sufficient to determine compliance at the facility. [GOAL]	100%		36	45	80%
6b Timeliness of inspection report completion [GOAL]	100%		31	44	70.5%

State Response:

In general, MEDEP wastewater staff have historically been very good at hitting our goal of a 30-day timeline, and the inspection write-ups that were delayed may have been due to the situations encountered during the inspection. MEDEP wastewater compliance manager will commit to revisit the goal of completing all inspection write-ups and sending the inspection reports out to the licensees within the 30-day goal. MEDEP wastewater compliance staff will commit to referring to the specific permit requirement whenever they document a deficiency during any inspection in

the inspection write up to ensure that the licensee understands where the requirement is in their MEPDES permit.

MEPDES stormwater inspectors cite permit sections in their inspection reports for each instance of non-compliance. One inspection industrial stormwater report was not sent to the facility owner within 30 days. Staff have been reminded to complete inspection reports in the required timeframe whenever possible.

CWA Element 2 – Inspections

Finding 2-2

Meets or Exceeds Expectations

Summary:

This review identifies that State meets or exceeds their compliance monitoring strategy inspection goals for inspection coverage of Clean Water Act permittees with the exception of sampling inspections at Significant Industrial Users (see Finding 2-3 metric 4a2).

Explanation:

National compliance monitoring goals were met as compared to the State's FY2018 state compliance monitoring strategy (CMS) -- see inspection data summary table - Metric 4a. The goal for inspection coverage at traditional non-major facilities discharging to either impaired or non-impaired waters (Metric 5b1), is to inspect the universe at least once every five years, and to conduct a comprehensive inspection for at least 5% of universe annually. The state therefore plans to inspect 20% of this universe each year. In the review year, FY2018, the State completed 53 inspections of the 329 facilities (80% of the goal of the 66-inspection goal) and achieved 100% of the comprehensive inspection goal. The State conducted 80% of the goal in FY2018 due to the loss of an employee, but the goal is a multi-year coverage rate and in FY2019 (by refilling the vacant position) has compensated for the FY2018 inspection coverage by conducting 127% coverage (84 inspections of the 66-inspection goal).

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
4a1 Number of pretreatment compliance inspections and audits at approved local pretreatment programs. [GOAL]	100% of commitments%		8	6	133.3%
4a10 Number of comprehensive inspections of large and medium concentrated animal feeding operations (CAFOs) [GOAL]	100% of commitments%		5	2	250%
4a11 Number of sludge/biosolids inspections at each major POTW. [GOAL]	100% of commitments%		0	0	0
4a4 Number of CSO inspections. [GOAL]	100% of commitments%		31	8	387.5%
4a5 Number of SSO inspections. [GOAL]	100% of commitments%		13	7	185.7%
4a8 Number of industrial stormwater inspections. [GOAL]	100% of commitments%		197	55	358.2%
4a9 Number of Phase I and Phase II construction stormwater inspections. [GOAL]	100% of commitments%		28	8	350%
5a1 Inspection coverage of NPDES majors. [GOAL]	100%	52.8%	53	38	139.5%
5b Inspections coverage of NPDES non-majors (individual and general permits) [GOAL]	100%		53	66	80.3%

State Response:

MEDEP concurs with EPA's finding.

CWA Element 2 - Inspections

Finding 2-3

Area for Improvement

Summary:

This review identifies that State does not meet their compliance monitoring strategy inspection goal for inspection coverage of Clean Water Act permittee at Significant Industrial Users.

Explanation:

The national compliance monitoring goal for metric 4a2 requires the State to conduct inspection and sampling at 100% of Significant Industrial Users (SIUs) discharging to POTWs without an approved pretreatment program. The universe of these facilities was 11 in FY2018. The state conducted five sampling inspections (45% of goal; see inspection data summary table - Metric 4a) due to the loss of 0.75 FTE and some large pretreatment projects implemented at SIUs that required oversight from the state's pretreatment coordinator. These resource constraints led to the negotiation and approval of an alternative compliance monitoring strategy (CMS) for metric 4a2 (CMS goal 1.C.3.) by EPA Region 1 and EPA's Office of Compliance Assurance in FY2019. However, the state failed again in FY2019 to meet their commitment (conducted zero on-site sampling inspections) due to the serious illness of one inspector and retirement planning of a second inspector. While the state failed to meet this requirement in FY2019, the state recognizes this deficiency and *included* a writeup in their alternative FY2019 CMS plan outlining the strategic use of their available resources to ensure compliance, and we support them continuing this practice of documenting their efforts.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
4a2 Number of inspections at EPA or state Significant Industrial Users that are discharging to non-authorized POTWs. [GOAL]	100% of commitments%		5	11	45.5%

State Response:

MEDEP Division of Water Quality Management has had serious resource issues in the central regional office that have directly affected the inspector resources available to conduct all the inspections that MEDEP committed to in its CMS plan. This was an unavoidable situation that Maine had to deal with as its regulatory staff is aging and retiring. MEDEP has filled both inspector positions that were vacated by retirees in the central regional office. MEDEP will need to properly train these two individuals and get them field experience in order to regain its efficiencies as a compliance unit. That effort is currently being impacted by the coronavirus pandemic because compliance staff have been unable to work together in either an office or field

setting. Since this pandemic is far from over, the negative effect the pandemic is having on its training of these two new individuals is likely to be experienced in the current FFY20 as well as possibly into FFY21. We agree with EPA's recommendation below. As noted, the inspector position has already been hired.

Recommendation:

Rec #	Due Date	Recommendation
1	02/10/2021	The State's pretreatment inspection coordinator/lead is currently also: 1) the lead provider of technical assistance for the Phase II e-reporting rule; and 2) holds the responsibilities for CAFO compliance assurance (metric 4a10), and municipal and industrial NPDES facility inspections within the MEDEP's Central District. Considering the Central District's resources will be further constrained during FY2020 by the retirement of one of its inspectors, by February 10, 2021, MEDEP shall hire a new NPDES inspector, and also submit a plan for how all the Pretreatment coordinator's assigned tasks will be accomplished in the following 12-month period ending in February 10, 2022.

CWA Element 2 – Inspections

Finding 2-4

Area for Improvement

Summary:

This review identifies that State does not meet their compliance monitoring strategy inspection goal for inspection coverage of Clean Water Act permittee at municipal separate stormwater sewer systems (MS4).

Explanation:

The national compliance monitoring goal for metric 4a7 requires the State to conduct one audit, MS4 inspection or off-site desk audit of entire universe at least every five years, with onsite audit or inspection at least every seven years. The state has 40 permittees in this universe and conducted 4 audits in FY2018 (50% of goal; see inspection data summary table - Metric 4a) and 2 audits in FY2019 due to the following reasons: (a) absent a stormwater manager in 2017, (b) new stormwater manager in 2018, stormwater inspector change over and vacancies, (c) workload for technical assistance and permit reissuance preparation. Stormwater inspectors do however conduct annual desk-top compliance reviews of all the permittee's annual reports.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
4a7 Number of Phase I and II MS4 audits or inspections. [GOAL]	100% of commitments%		4	8	50%

State Response:

An MS4 field audit was not able to be conducted because the Unit was understaffed during FFY18. While no onsite audits were conducted during FFY18, 100% of the MS4 permittees filed their annual report on time, all reports were comprehensively reviewed by staff, all permittees were sent a response letter, and all staff review letters were reviewed by the stormwater program manager.

Staffing levels within this unit have since increased, however one stormwater inspector position remains vacant due to funding issues. This position is funded with stormwater license fees. Despite a 40% fee increase that was approved by the Maine legislature in 2020, revenue projections are not sufficient to fill this vacancy. Given the severe economic impacts and state budget reductions that are expected due to the COVID-19 pandemic the MEDEP cannot commit to filling this vacancy. The MEDEP does commit to the other corrective actions requested below.

Recommendation:

Rec #	Due Date	Recommendation
1	02/10/2021	By February 10, 2021, the state shall submit a plan (e.g., alternative CMS plan) and schedule for: (a) defining desktop compliance investigation activities for this universe (e.g., annual report reviews), and (b) conducting a sufficient number of audits and inspections to comply with national inspection goals.

CWA Element 3 - Violations**Finding 3-1**

Meets or Exceeds Expectations

Summary:

MEDEP makes accurate compliance determinations during post inspection case development. Single Event Violations (SEVs) are identified as either Significant Non-Compliance (SNC) or non-SNC in a timely manner at NPDES major facilities.

Explanation:

It is a current best practice for a state wastewater inspector to document their findings made during an inspection and note any ‘deficiencies.’ Typically, their manager will review these ‘deficiencies’ at monthly noncompliance meetings to decide if any of them warrant identification as violations. The wastewater unit (in charge of all majors) follows an internal nationally-consistent policy for identifying whether DMR data SEVs are either SNC or non-SNC by tracking the values on an Excel database.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7e Accuracy of compliance determinations [GOAL]	100%		38	43	88.4%

State Response:

MEDEP concurs with EPA’s finding.

CWA Element 3 - Violations

Finding 3-2

Area for Attention

Summary:

Non-DMR data SEVs are not being consistently identified by either the wastewater or stormwater units.

Explanation:

MEDEP continues to develop protocols to ensure that wet-weather SNC violations (and their respective SEVs) are defined and addressed in a timely and appropriate manner. Industrial and municipal stormwater inspection and reporting deficiencies are discussed at monthly stormwater noncompliance review (NCR) meetings based on stormwater specific Compliance Guidance Policies. The wastewater and stormwater policies (both dated January 2016) are used to determine a level of violation and correlated Compliance Response/Tools. According to state stormwater management, these policies need updating. Although the data metric analysis demonstrated better results than the national average for metrics 7k1 and 8a3, this may be due to inconsistent definition of SNC, or data entry issues (see Finding 1-2). By June 30, 2020, it is recommended that the State shall update their Compliance Guidance Policies for non-DMR violation determination and SEV tracking.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7k1 Major and non-major facilities in noncompliance.		18.7%	187	1653	11.3%
8a3 Percentage of major facilities in SNC and non-major facilities Category I noncompliance during the reporting year.		9%	31	1653	1.9%

State Response:

MEDEP works very hard to ensure that all the necessary DMR data and other required reports are submitted to the MEDEP in a timely fashion. During monthly MEPDES Non-Compliance Review meetings MEDEP not only assesses DMR violations, it also assesses SSO violations, reporting violations, and CSO progress. MEDEP has built its own system to analyze the DMR data to determine if a facility is heading towards SNC criteria so that its compliance and technical assistance staff can work with facilities to head off additional violations, thus leading to low non-compliance rates. MEDEP's compliance policy considers the severity of the violation, repeatability of the violation, environmental harm caused by the violation, and the subsequent actions of the utility involved. This is a very patterned approach that is used to evaluate facilities

in advance of them being in SNC, and if they do get into SNC, having an appropriate measured response given the circumstances of the violation. MEDEP's SEV policy is a mirror image of how EPA Region 1 handles the assignment of SEV's. MEDEP took the time to communicate with Region 1 supervisor of compliance staff to make sure that its policies would be correct and consistent with their approach. To that end, since February 2020, representative SEVs for all formal enforcement actions are recorded and tracked in EFIS/ICIS. Prior to that time MEDEP database communication difficulties prevented entering the appropriate SEV's into the MEDEP EFIS database and flow those codes to the EPA ICIS database. That information was not flowed to the ICIS database during the audit year and MEDEP agrees with EPA's suggestion to update the Compliance Guidance Policies for non-DMR violation determination and SEV tracking.

CWA Element 4 - Enforcement

Finding 4-1

Area for Attention

Summary:

Over 80% of enforcement responses brought violators back into compliance in an appropriate manner.

Explanation:

In 2018 the state had not yet begun to enter informal enforcement actions into ICIS for either major or non-major sources. The Data Metric Analysis (DMA) frozen data metric 10a1, 'major facilities with timely actions', value of 15.4% does not reflect reality due to the fact that the state often chooses to address violations at both major and non-major facilities with timely informal enforcement actions (the file review demonstrated that 83% of enforcement cases brought permittees back into compliance in an appropriate manner - metrics 9a and 10b). In 2013 the state had produced an SOP to flow all informal enforcement data into ICIS, but it has not yet been implemented.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10b Enforcement responses reviewed that address violations in an appropriate manner [GOAL]	100%		25	30	83.3%
9a Percentage of enforcement responses that returned, or will return, a source in violation to compliance [GOAL]	100%		25	30	83.3%

State Response:

Since February 2020, MEDEP has succeeded in entering informal enforcement actions for FFY19 and later into EFIS/ICIS and has verified that the data is being reflected in ECHO. Informal actions entered include Notices of Violations.

CWA Element 5 - Penalties

Finding 5-1

Area for Improvement

Summary:

This review, similar to past SRF reviews, indicates that the State does not follow national or State protocol for calculating economic benefit as part of an enforcement penalty, nor are gravity portions of a penalty calculation sufficiently explained. Additionally, the majority of penalty cases reviewed lack documentation justifying a decrease in penalty amount from the initial calculated penalty to the settled amount.

Explanation:

Both the national Enforcement Management System (EMS) guidance as well as State MEDEP internal protocols for calculating penalties indicate that every reasonable effort shall be made to calculate and recover the economic benefit of noncompliance, and that EPA's software, 'BEN,' shall be used to calculate the dollar amount of said economic benefit. The State either did not calculate and/or document an economic benefit or gravity dollar amount in 5 out of 7 cases reviewed. Additionally, where applicable, all five settlements reviewed failed to give justification for a decrease in the initial calculated penalty. The state explained that their MEDEP attorneys and/or counsel from the Maine Attorney General's Office has final discretion regarding the decrease and/or waiver of penalties. Two enforcement officer positions have recently been vacated, and one of those positions has been backfilled. The enforcement manager plans to conduct training the new hire to ensure policies are consistently adhered to.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
11a Penalty calculations reviewed that document and include gravity and economic benefit [GOAL]	100%		2	7	28.6%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		0	5	0%

State Response:

The MEDEP has not consistently and exhaustively applied financial gain/economic benefit analysis in all penalties. Since attending additional training in 2019, MEDEP has been incorporating financial gain/economic benefit analysis into all penalty calculations. In those instances where we do not find financial gain, it has not been well documented as to how the MEDEP came to that conclusion, MEDEP will ensure that the justification for all final penalties are well documented including the financial gain/economic benefit.

The MEDEP includes a gravity analysis in all penalty calculations and that is reflected and documented in the penalty spreadsheets. An explanation of how staff reached the values reflected in the spreadsheet is not well documented.

MEDEP agrees with EPA's three recommendations below. MEDEP has already initiated a review of the Water Penalty Policy and a revision of the Guidance to provide more clarity and transparency, and the revisions, consistent with EPA's recommendation below, will be completed in calendar year 2020.

Recommendations:

Rec #	Due Date	Recommendation
1	03/10/2021	Considering the MEDEP's department-wide penalty policy asks that all internal penalty policies be reviewed every five years, EPA also recommends that the Water Division's penalty policy, dated December 21, 2010, be reviewed and updated to include instructions, a template and/or a form for recording economic benefit calculations and a protocol for documenting the collection of all penalties.

Rec #	Due Date	Recommendation
2	07/12/2021	By July 12, 2021, the MEDEP should have all Division of Water Quality Management enforcement staff, whose jobs require the calculation of NPDES penalties, undergo training on State penalty policies and economic benefit calculation guidance to ensure a consistent methodology for calculating and documenting economic benefit and gravity portions of all penalties, as well as the need to document any disparity between an initial penalty calculation and the final negotiated penalty amount.

Rec #	Due Date	Recommendation
3	08/11/2021	By August 11, 2021, MEDEP should send an email/memo to EPA confirming that the training has been completed and including a copy of all updated policy(ies) and associated documents.

CWA Element 5 - Penalties

Finding 5-2

Area for Attention

Summary:

This review indicates that the State collects a majority of the penalties that it negotiates.

Explanation:

Department records indicated that 5 out of 7 enforcement orders that included penalties had their penalties collected. MEDEP should include in their updated penalty policy (see finding 5-1) a protocol for documenting the collection of all penalties.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
12b Penalties collected [GOAL]	100%		5	7	71.4%

State Response:

The MEDEP will update the penalty policy and guidance to ensure that receipt of the penalty is documented. The MEDEP has verified that all penalties were collected and SEPs completed.

Clean Air Act Findings

CAA Element 1 - Data

Finding 1-1

Area for Improvement

Summary:

Both the file review metrics and the data metrics indicate that MEDEP has had some issues regarding the timely entry of minimum data requirements (MDRs) into ICIS.

Explanation:

A review of Metric 3a2 of the Data Metric Analysis (DMA) indicates that MEDEP had no newly-identified HPVs in FFY 2018. This is accurate. To review a representative sampling of HPVs, 4 HPV case files from other years were reviewed (one for each of FFYs 2013, 2015, and two for FFY 2017). Based on this review, 1 out of 3 HPVs (33.3%) were entered into ICIS by MEDEP in an untimely manner (after 60 days of being identified as an HPV). The remaining HPV from 2013 would have been EPA's responsibility to report in ICIS/AFS. The 1 untimely HPV was entered as an HPV into ICIS more than three months late. A review of Metric 3b1 of the DMA indicates that 9 out of 97 compliance monitoring activities (9.3%) were entered into ICIS in an untimely manner (after 60 days of the activity). According to MEDEP, this is accurate. A review of Metric 3b2 of the DMA indicates that 61 out of 128 stack tests (47.7%) were reported into ICIS in an untimely manner (after 60 days of the activity). Normally, MEDEP conducts stack test observations and/or reviews final test reports for 40 to 50 sources annually. The entry of data into ICIS for 128 sources was a concentrated effort by MEDEP to reduce its backlog of missing stack test data in ICIS. Much of the stack test data reported in ICIS for the 128 sources was stack test information from past federal fiscal years. Although this is a very concerning issue, MEDEP was aware of it and took proactive steps to resolve it by creating a Stack Test Program supervisory position in May 2017, to oversee the prompt entry of stack test data into ICIS. Since there was quite a backlog, it has taken some time for MEDEP to enter the past missing stack test data into ICIS. The creation of this supervisory position is likely the type of recommendation EPA would have made to MEDEP to resolve the stack test data timeliness issue. A review of Metric 3b3 of the DMA indicates that 1 enforcement-related MDR was entered into ICIS in a timely manner; however, based on the file review, it appears 1 Notice of Violation and 1 Letter of Warning (both informal enforcement actions issued by MEDEP in FFY 2018) were not entered into ICIS. Therefore, 2 out of 3 enforcement-related MDRs (66.67%) were not reported into ICIS. MEDEP's Bureau of Air Quality Enforcement Chief, who was responsible for entering enforcement-related MDRs into ICIS left MEDEP in February 2018, prior to one of the informal enforcement actions being taken. This position remained vacant for a time and may be a reason why 1 of the 2 informal enforcement actions was not entered into ICIS. Since there were only a few non-stack-test-related MDR timeliness issues, the EPA recommendation will focus on resolving the timeliness issues with the stack test data (See the "Explanation Section" of Data Element Finding 1-2 for more on stack test data completeness).

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
3a2 Timely reporting of HPV determinations [GOAL]	100%	44.9%	2	3	66.7%
3b1 Timely reporting of compliance monitoring MDRs [GOAL]	100%	85.2%	88	97	90.7%
3b2 Timely reporting of stack test dates and results [GOAL]	100%	65.1%	67	128	52.3%
3b3 Timely reporting of enforcement MDRs [GOAL]	100%	71.8%	1	3	33.3%

State Response:

MEDEP recognizes the untimely entry of data into ICIS. MEDEP has taken steps to address this issue and ensure timely entry going forward. MEDEP has assigned a supervisory position to more closely oversee the stack testing program and associated data entry and has also developed a stack testing tracking tool to ensure both past and future stack tests and the associated data review and entry are updated in a timely manner.

Additionally, a vacant Compliance and Enforcement Manager position was filled in November 2018. The new manager is becoming familiar with the minimum data requirements for entering enforcement-related information into ICIS. Some of the responsibility of data entry for informal enforcement actions (Letters of Warning) has been assigned to inspectors to ensure timely entries going forward.

Recommendation:

Rec #	Due Date	Recommendation
1	11/10/2022	MEDEP has already addressed the main issue, untimely stack test data entry into ICIS, with the creation of a supervisory position to oversee the stack test program. As a way of measuring the effectiveness of the steps already taken by MEDEP, EPA, on a quarterly basis, for at least four quarters (longer if the issue continues), will review stack test data entered in ICIS and discuss the entries with MEDEP to determine whether all stack test information for a given quarter has been entered in a timely manner, as well as accurately and completely.

CAA Element 1 - Data

Finding 1-2

Area for Attention

Summary:

The file review metric, the DMA, and the data verification metrics indicate that MEDEP has had issues regarding the completeness of data entered into ICIS.

Explanation:

A comparison of Metric 1h1 of the Data Verification Metrics (Total Amount of Assessed Penalties) for FFY 2016 (this was the review period for one of the HPV case files reviewed) with the MEDEP information for this metric for FFY 2016 reveals an inconsistency. Metric 1h1 of the Data Verification Metrics reports that no penalty was assessed by MEDEP in this timeframe while the MEDEP files for the same timeframe indicate that a penalty in the amount of \$21,060 was assessed and collected. Upon further investigation, it was noted that MEDEP did enter the \$21,060 penalty into ICIS; however, it was reported in the wrong field. Specifically, MEDEP reported the missing penalty in the case file's "collected penalty" field rather than the required "assessed penalty" field. As such, the penalty was not appearing. MEDEP has since entered this penalty figure into the proper "assessed penalty" field of ICIS. A review of Metric 5e of the DMA (Reviews of Title V Annual Compliance Certifications Completed) indicates that MEDEP conducted reviews at 38 out of 48 sources (79.2%) where Title V annual compliance certifications were due in FFY 2018. MEDEP reports that its inspectors conducted timely reviews of all 48 annual compliance certifications (100%). Upon further review of the ICIS data, MEDEP correctly entered that the 10 missing annual compliance certifications were received but did not populate other required data fields. ICIS-Air minimum data requirements (MDRs) for Title V annual compliance certification reviews require that proper entries include the name of the reviewing agency, the receipt date, the review date, and if the source reported any deviations. Because the review dates and any reported deviations were not entered into ICIS, these certifications were considered incomplete, and therefore, not counted as reviewed in the DMA. MEDEP have since entered the missing annual compliance certification information into ICIS. A review of Metric 7a1 (FRV Discovery Rate Based on Evaluations of Active CMS Sources) for both FFY 2017 (1 case file with formal enforcement in FFY 2017 required a review of Metric 7a1 for FFY 2017) and FFY 2018 indicate that MEDEP did not create a federally-reportable violator (FRV) case file, as required by EPA policy, for one facility in each of these two fiscal years for a total of 2 missing FRV case files. MEDEP's Bureau of Air Quality Enforcement Section Chief left the MEDEP prior to the FFY 2018 FRV being identified and the position was left vacant for a while resulting in the FRV case file not being created. It appears the FFY 2017 FRV case file creation was just overlooked. In total, 2 out of 7 FRVs (28.6%) did not have a case file created (for the 5 FRVs where case files were created, 4 were for HPVs and 1 was for a non-HPV). A review of Metric 8a of the DMA (Discovery Rate of HPVs at Major Sources) indicates that for FFY 2018 MEDEP did not identify HPVs at any of its currently identified 51 mega-site/major sources (53 are listed in the DMA, but of those 53, two are coded as synthetic minor sources). EPA's review of 16 Mega-Site/Title V major source files did not identify any HPVs either indicating that this was not an issue. The HPV Policy has been revised such that

identification of HPVs has been reduced in recent years based on changes to the HPV criteria.

Based on the file review, it was noted that stack test results for 1 file reviewed had a results code of “pending” for three separate stack tests done in May 2016, May 2017, and May 2018. The results code for these three stack tests need to be updated from “pending” to either “pass” or “fail”. MEDEP has since reported entering the proper result codes in ICIS for these 3 stack tests. The file review also indicated for another file reviewed that stack test data for 2 separate stack tests, done in FFY 2017, were not reported in ICIS. MEDEP has since reported entering the proper information for these 2 stack tests into ICIS. The file review also revealed that 2 informal enforcement actions issued in FFY 2018, a Notice of Violation and a Letter of Warning, for two separate files reviewed, were not reported in ICIS. MEDEP has since entered these 2 informal enforcement actions into ICIS. Lastly, the file review indicated that the operating status for 1 facility file reviewed may need to be updated from “operating” to either “temporarily” shut down or “permanently shut down”. The facility in question had a fire in 2012 that destroyed much of the equipment and the facility has operated infrequently since that time. MEDEP reported that they will contact the facility to determine the proper operating status for the facility and update the status in ICIS, if necessary. A total of 9 out of the 30 files reviewed had some missing MDRs. Because the volume of MDRs required to be entered by MEDEP was significant compared to the number of MDRs that were either entered in the wrong field of ICIS regarding penalty data, incomplete regarding the annual compliance certifications, or missing from ICIS altogether, the finding of “Area for State Attention” is the most appropriate to use; however, MEDEP should pay closer attention to the MDRs required to be reported in ICIS. To further confirm this finding, MEDEP, in May 2017, created a supervisory position to oversee the stack test program to ensure stack test data, including results codes, are reported into ICIS accurately and in a timely manner. EPA believes this will resolve the completeness issue regarding stack test data. This issue relates to the stack test data timeliness issue described in Data Element Finding 1-1, for which a recommendation has already been provided, so the recommendation will not be repeated here.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2b Files reviewed where data are accurately reflected in the national data system [GOAL]	100%		21	30	70%

State Response:

A vacant Compliance and Enforcement Manager position was filled in November 2018. The new manager is becoming familiar with the minimum data requirements for entering enforcement-related information into ICIS, as well as the FRV and HPV reporting policies. The manager has also retrained staff to consult an internal MDR guidance document when entering compliance information into ICIS. Elements of the policies are also being applied to enforcement cases going forward.

CAA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Summary:

MEDEP met all its CMS Plan FCE commitments. This included Mega-site/Title V major sources and SM-80 sources, indicating that MEDEP is committed to meeting its FCE commitments. As suggested by EPA in prior SRF Reviews, MEDEP inspectors, in most cases, use an inspection checklist template as part of their compliance monitoring report (CMR), that includes all applicable requirements for each air emission source found at a facility. This provides for more comprehensive inspection reports with a streamlined procedure for inspectors to use to evaluate compliance and to document compliance determinations made at facilities.

Explanation:

A review of Metric 5a of the Data Metric Analysis (DMA) (FCE Coverage at Majors and Mega-Sites) indicates that MEDEP conducted FCEs at 15 out of 15 Mega-site/Title V major sources required to be inspected with an FCE in FFY 2018. This is accurate. A review of Metric 5b of the DMA (FCE Coverage at SM-80s) indicates that MEDEP conducted required FCEs at 8 out of 8 SM-80 sources required to be inspected with an FCE in FFY 2018. This is accurate. A review of Metric 5e of the DMA (Reviews of Title V Annual Compliance Certifications Completed) indicates that MEDEP conducted reviews at 38 out of 48 sources where Title V annual compliance certifications were due in FFY 2018. A review of Metric 1j1 of the Data Verification Results for FFY 2018 (Number of Facilities with a TVACC) reports that Title V annual compliance certifications were reviewed for 40 sources in FFY 2018. Metric 1j2 of the Data Verification Results (Number of Facilities with a TVACC Due) reports that 48 sources were due a Title V annual compliance certification review in FFY 2018. As mentioned in Data Element Finding 1-1, MEDEP correctly entered that the 10 missing annual compliance certifications were received but did not go back into ICIS and populate the other required data fields regarding the review date and whether deviations were reported for any of these 10 certifications. Because the review dates and deviation information were not entered into ICIS, these certifications were considered incomplete, and therefore, not counted as reviewed in the DMA. MEDEP staff have since entered the missing annual compliance certification information in ICIS. MEDEP inspectors did conduct timely reviews of the 10 missing annual compliance certifications (this was a data issue only) so a "Finding Level" of "Meets or Exceeds Expectations" is appropriate. Based on the file review, MEDEP utilized an inspection checklist template that was incorporated into most of their CMR reports (a total of 21 out of 27 files reviewed with FCE CMRs included these inspection checklists or 77.8%). MEDEP is currently utilizing these inspection checklists for many of its Title V and SM80 sources and, in the future, expects to continue this process with the remainder of its facilities. The use of these inspection checklists makes for a more comprehensive CMR report and helps the inspectors identify all applicable emission units and applicable regulations that apply in a more streamlined way that enhances the inspectors' ability to evaluate compliance and to document compliance determinations made at facilities.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
5a FCE coverage: majors and mega-sites [GOAL]	100%	88.1%	15	15	100%
5b FCE coverage: SM-80s [GOAL]	100%	93.7%	8	8	100%
5c FCE coverage: minors and synthetic minors (non-SM 80s) that are part of CMS plan or alternative CMS Plan [GOAL]	100%	70.1%	0	0	0
5d FCE coverage: minor facilities that are part of CMS plan. [GOAL]			0	0	0
5e Reviews of Title V annual compliance certifications completed [GOAL]	100%	82.5%	48	48	100%

State Response:

MEDEP concurs with EPA’s finding.

CAA Element 2 - Inspections

Finding 2-2

Area for Improvement

Summary:

In most cases, MEDEP inspectors were either not conducting FCEs or were not properly documenting their findings in their CMR reports as described in Chapter IX of the CMS Policy. Although the inspectors, in most cases were utilizing inspection checklists, most CMR reports did not document that the inspectors had evaluated compliance and made proper compliance determinations for all applicable requirements, especially with regards to federal standards (i.e., National Emission Standards for Hazardous Air Pollutants (NESHAPs) and New Source Performance Standards (NSPS)).

Explanation:

Of the 30 files reviewed, 27 contained CMR reports indicating that the associated inspections were FCEs. In 3 instances, files contained informal and/or formal enforcement actions that were based on stack test results where there was no associated CMR. In 17 out of the 27 files reviewed where an FCE was reported as being done, the CMR reports lacked documentation indicating that the inspectors had evaluated compliance and made compliance determinations for each applicable regulation that applied at a facility, or the compliance determination was too broad in scope to verify the compliance determination made (for instance for engines subject to either the applicable federal NESHAP or NSPS standard, in many cases a compliance determination of “in compliance”

was made without referencing that the inspector had reviewed the proper inspection and maintenance logs and/or operating logs). In other cases, the inspectors would simply provide a compliance determination of “unsure” and explain that he or she had not fully explored or investigated the appropriate federal standards to evaluate compliance and make a compliance determination. In another case, where the inspection checklist was used, the checklist was missing the applicable requirement regarding a federal NSPS standard. And lastly, in one instance, the last page of the checklist that included three compliance requirements was simply overlooked. A review of MEDEP’s enforcement activities over the last few years indicates that there has been a decrease in enforcement and HPV identification. Some of this is to be expected due to the revisions made to EPA’s HPV policy that have resulted in changes to the HPV criteria such that less HPVs would be identified. In addition, in MEDEP’s case, the shutdown of several of its mega-sites, e.g., pulp and paper mills, would result in less violations; however, if MEDEP was sufficiently evaluating federal NESHAP and NSPS standards, it is possible more violations would be discovered, and more informal and/or formal enforcement actions would be taken by MEDEP. The file review also revealed that the inspectors are not documenting in the CMR reports that they relayed their observations and recommendations to the facility; however, MEDEP does provide the facilities inspected with a copy of their inspection reports once they have been finalized so the information is being relayed to the facility in that manner. EPA has a general policy that inspection reports should be completed within 60 days of conducting an FCE or PCE (partial compliance evaluation), but in no case later than 90 days. EPA Region I’s Air Compliance Section has had a 30-day policy in effect for several years. With the exception of two inspection reports, all reports were completed in a timely manner.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
6a Documentation of FCE elements [GOAL]	100%		10	27	37%
6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility [GOAL]	100%		13	30	43.3%

State Response:

The MEDEP has a small number of staff covering a large geographic area. The time required by inspectors to research and determine if federal rules are applicable has been limited. Furthermore, past practice in the drafting of air emission licenses had included more general references to applicable federal regulations, such as “Facility X is subject to 40 C.F.R. Part 60, Subpart Db and shall comply with all applicable requirements.” Such language can still be found in some currently active air emission licenses.

However, in recent years, this practice has been improved. Now, for new licenses and as existing licenses are renewed or amended, applicable standards and requirements of federal rules,

including NSPS and NESHAP regulations, are specified in appropriate detail specific to each unit or facility. This will assist inspectors in making appropriate compliance determinations. This issue has also been discussed with the inspectors. They have been made aware that additional investigation may be necessary in order to determine compliance with the CAA programs listed above.

Recommendation:

Rec #	Due Date	Recommendation
1	11/10/2022	The ME DEP Compliance Unit Section Manager will begin reviewing all CMR reports regarding FCEs from all inspectors from all four Regional Offices to ensure that all FCE reports include the appropriate documentation and provide compliance determinations for each applicable regulation that applies to a given facility, especially with regards to federal NESHAP and NSPS standards. On a quarterly basis, for four quarters, EPA will discuss this issue with the MEDEP Compliance Unit Section Manager to ensure the issue is being resolved.

CAA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Summary:

MEDEP does an excellent job of documenting violations and making accurate compliance and HPV determinations.

Explanation:

In 7 out of the 30 files reviewed, there were some actionable violations noted (in 9 of the remaining files, there were minor deviations such as occasional opacity exceedances of short duration and improper recordkeeping where facilities were not maintaining the required 12-month rolling records for fuels and/or air pollutant emissions, but monthly and annual records of this information were being kept that could easily be used to calculate the 12-month rolling totals – in these instances, MEDEP decided not to pursue any enforcement). EPA agrees that where there are only very minor deviations such as those described above, using enforcement discretion in order to employ resources where they are most needed is more important. In all 7 files with actionable violations, and the remaining 9 files where minor deviations were found, MEDEP made accurate compliance and HPV determinations, based on inspections, stack test report reviews, and various other types of report reviews. HPV determinations are a collaborative effort between MEDEP and EPA. On an ongoing basis, at a minimum of once per quarter, MEDEP and EPA discuss the enforcement actions (informal and formal) taken by MEDEP to determine whether any of the violations meet the HPV criteria. The ultimate HPV determination is mutually agreed by both MEDEP and EPA. In the 14 files reviewed without violations, the compliance determinations made appeared accurate based on the CMR reports, where applicable, or other information found in the file.

A review of support Metric 7a1 related to the discovery rate of federally-reportable violators (FRVs) based on inspections at active CMS sources as well as support Metric 8a related to the high priority violator (HPV) discovery rate at major sources indicates that MEDEP is below the national average for both of these metrics. This does not appear to be an issue with regards to making accurate compliance determinations; however, it is likely that more FRVs and possibly more HPVs would be identified if MEDEP inspectors looked more carefully at applicable federal standards that they have enforcement authority for during their inspections where an FCE is conducted.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
13 Timeliness of HPV Identification [GOAL]	100%	89.5%	4	4	100%
7a Accurate compliance determinations [GOAL]	100%		30	30	100%
7a1 FRV 'discovery rate' based on inspections at active CMS sources		7.8%	2	109	1.8%
8a HPV discovery rate at majors		2.5%	0	0	0
8c Accuracy of HPV determinations [GOAL]	100%		7	7	100%

State Response:

MEDEP concurs with EPA's finding.

CAA Element 4 - Enforcement**Finding 4-1**

Meets or Exceeds Expectations

Summary:

MEDEP does a very good job of taking appropriate enforcement; however, in some instances, MEDEP has been unable to take timely enforcement action. MEDEP does an excellent job of providing "early warning notice" to facilities with violations to expedite their return to compliance.

Explanation:

MEDEP took informal and/or formal enforcement actions against 7 out of the 30 facilities in the files reviewed (3 of which were for FFY 2018). A total of 9 informal and 4 formal enforcement actions were taken against these 7 facilities. For the 7 facilities with violations, 5 facilities had returned to compliance prior to the informal enforcement actions being taken and 1 facility returned to compliance before formal enforcement action was taken. One facility (a federal facility) with complex compliance issues remains in violation while MEDEP and the facility explore means of achieving compliance (perhaps through license amendments). MEDEP should be commended for its continued use of an early warning notice to violators to help expedite their return to compliance. This has been considered a Good Practice in earlier SRF Reviews. For the 4 HPV case files reviewed, MEDEP addressed two of the HPVs prior to the need for a case management plan. One HPV was addressed in 149 days of "Day Zero" and one HPV was addressed in 193 days of "Day Zero". If an HPV is not addressed within 180 days, the HPV Policy dictates

that a case management plan be developed by Day 225. Since one HPV was addressed in 193 days of "Day Zero", no formal case management plan was yet required to be submitted to EPA. For the remaining 2 HPVs, case management plans were in place and submitted to EPA in a timely manner before Day 225 of "Day Zero". A total of 1 out of 4 HPV cases (25%) were addressed in a timely manner (within 180 days of "Day Zero"). One unaddressed HPV is for a federal facility with complex compliance issues. EPA has been aware of this situation and commends MEDEP for utilizing resources in hopes of resolving the compliance issues at this federal facility. One unaddressed HPV involves the State of Maine's past Administration seeking a supplemental environmental project (SEP) as part of the settlement. Although the facility has provided SEP ideas to MEDEP, it has not provided a firm proposal to MEDEP for consideration and approval. This issue has been lingering for well over a year. EPA has requested that MEDEP give the facility one month to submit a formal SEP proposal or else go forward with a penalty-only formal enforcement action to settle the case. In both cases with unaddressed HPVs, MEDEP plans to take formal enforcement and seek appropriate penalties. Due to the extenuating circumstances involved in the two unaddressed HPVs and the fact that case management plans, approved by EPA, were in place prior to Day 225 of "Day Zero", a finding of "Area of State Attention" is appropriate. None of the 4 HPVs were identified in FFY 2018. Two HPVs were identified in FFY 2017. One HPV was identified in FFY 2015. One HPV was identified in FFY 2013. The 4 HPVs identified outside of FFY 2018 were reviewed so that a representative number of HPV case files could be reviewed for this SRF. Due to changes in the national HPV Policy, the number of violations meeting the HPV criteria has decreased.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10a Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place	100%		4	4	100%
10a1 Rate of Addressing HPVs within 180 days		59.6%	1	4	25%
10b Percent of HPVs that have been addressed or removed consistent with the HPV Policy [GOAL]	100%		2	2	100%
10b1 Rate of managing HPVs without formal enforcement action		7%	0	2	0%
14 HPV case development and resolution timeline in place when required that contains required policy elements [GOAL]	100%		2	2	100%
9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified time frame or the facility fixed the problem without a compliance schedule [GOAL]	100%		4	4	100%

State Response:

MEDEP concurs with EPA's finding.

CAA Element 5 - Penalties

Finding 5-1

Meets or Exceeds Expectations

Summary:

MEDEP does an excellent job of calculating the gravity portion of its penalties and, for all applicable files reviewed, does evaluate whether there is any economic benefit. In addition, MEDEP does an excellent job of documenting the difference between initial and final penalty amounts and documenting that penalties have been collected.

Explanation:

A total of 4 out of the 30 files reviewed included penalties (2 for HPV case files reviewed and 2 for non-HPV case files reviewed). MEDEP calculated and documented the gravity component of the penalty in each case, and for the two HPVs, determined whether there was an economic benefit component (for the 2 HPV files reviewed, it was determined that economic benefit was insignificant and not assessed – both cases involved failed stack tests that were conducted in a timely manner and the retests demonstrating compliance in both cases, and which occurred approximately one month after the failed tests). EPA agreed with these determinations. In 3 of the 4 penalty cases, the initial proposed penalty was the final assessed penalty. In one penalty case, the initial penalty amount was reduced, and a penalty justification memo was found in the file documenting the rationale for the lower penalty. In all 4 penalty cases, documentation was found that the penalties had been paid.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
11a Penalty calculations reviewed that document gravity and economic benefit [GOAL]	100%		4	4	100%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		1	1	100%
12b Penalties collected [GOAL]	100%		4	4	100%

State Response:

MEDEP concurs with EPA's finding.

Resource Conservation and Recovery Act Findings

RCRA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Summary:

MEDEP does an excellent job maintaining accurate data and reporting it in a timely manner into the national database. During the time periods reviewed, inspection counts, documentation of violations and enforcement actions were accurate.

Explanation:

Thirty-two files were selected for review. Twenty-four files were selected for either inspections or enforcement actions that occurred during the review year (FFY2018.) Since there were no SNC determinations or formal actions in the review year, an additional eight files representing inspections and/or enforcement actions that occurred prior to FFY2018 were selected. Three of the eight pre-2018 files were part of the FFY13 review. For purposes of the review, the eight pre-FFY2018 inspections files will not be used in the file metrics but will be used in discussion in RCRA Elements 3, 4 and 5. All of the 24 selected files were accurately represented in the national database.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2b Accurate entry of mandatory data [GOAL]	100%		24	24	100%

State Response:

MEDEP concurs with EPA's finding.

RCRA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Summary:

MEDEP completed all of its Treatment, Storage and Disposal Facilities (TSDF) inspections in FFY2018 and exceeded both the National Goal and the National Average for Large Quantity Generator (LQG) inspections at 23.9%. MEDEP also provided inspection targets as requested to the EPA, some of which included LQGs. MEDEP also inspects generator categories other than LQGs. Twenty-one of the twenty-four FFY2018 files reviewed included inspections in 2018. In each instance, the files for these inspections included sufficient information to document the compliance status of the facilities.

Explanation:

Each of the twenty-one inspections files reviewed included facility information, a description of RCRA-regulated activities, photographs when appropriate, and supporting information including maps, facility-diagrams, manifest history summaries, and descriptions of processes. In all files, the violations that were cited were supported in the trip report and inspection checklists. MEDEP's inspection procedures ensure that inspectors are completely evaluating each RCRA program element. Of the twenty-one inspection reports reviewed, MEDEP had a final trip report completed within a very timely average of 59 days. One file had a report that was completed in 199 days, yet the overall average for report completion is excellent. A review of Metrics 5a and 5b of the DMA and relevant RCRAInfo data shows that MEDEP met or exceeded the national GOAL and AVERAGE in each metric. MEDEP also inspects non-notifiers, follows up on citizen-complaints, and conducts inspections at Very Small Quantity Generators (VSQG) and Small Quantity Generators (SQG). A review of the RCRAInfo database shows that MEDEP conducted inspections at 41 VSQGs and 67 inspections at SQGs in the last 5 years.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
5a Two-year inspection coverage of operating TSDFs [GOAL]	100%	85%	2	2	100%
5b Annual inspection of LQGs using BR universe [GOAL]	20%	15.6%	21	88	23.9%
6a Inspection reports complete and sufficient to determine compliance [GOAL]	100%		21	21	100%
6b Timeliness of inspection report completion [GOAL]	100%		20	21	95.2%

State Response:

MEDEP concurs with EPA's finding.

RCRA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Summary:

MEDEP prepares inspection reports that document compliance status and determine violations, and document the observed violations in their inspection records and enforcement responses.

Explanation:

Each of the 23 files reviewed that identified violations had accurate and complete descriptions of the violations observed during the inspection and had adequate documentation to support MEDEP's compliance determinations. MEDEP finds violations regularly during their inspections. One file accurately identified no violations. One of pre-FFY2018 files included violations that were cited, a NOV including reference to a penalty and a Consent Order was drafted, but no further actions was taken. MEDEP instead provided technical assistance to the regulated entity. The FFY13 SRF Round 3 review raised this issue with a different regulated entity.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7a Accurate compliance determinations [GOAL]	100%		24	24	100%

State Response:

MEDEP concurs with EPA's finding.

RCRA Element 3 - Violations

Finding 3-2

Area for Improvement

Summary:

A review of the selected case files and the DMA indicates that MEDEP did not make any determinations of Significant Non-Compliance (SNC, SNY) in FFY2018.

Explanation:

24 of 24 files reviewed for FFY 2018 had appropriate violation determinations made. MEDEP did not make any SNC determinations in FFY2018. The review of RCRAInfo information from FFY2014 to FFY2018 shows that there were six SNY determinations of significant non-compliance made by MEDEP. The most recently identified SNC was 10/15/16. There have been no SNC determinations made by MEDEP since that time. For the files reviewed prior to FFY2018, three had been reviewed in the FFY13 SRF. Two pre-FFY2018 file that had not been reviewed in the FFY13 SRF included SNC determinations. Only one of those cases resulted in a formal action. A second case file included violations that were cited, a Notice of Violation (NOV) including reference to a penalty and a Consent Order drafted, but no further actions was taken. MEDEP instead provided technical assistance to the regulated entity. The FFY13 SRF Round 3 Review raised this issue with a different regulated entity. The FFY2013 SRF (Round 3 Final Report dated 11/10/15) for MEDEP raised concerns about the designation of SNCs. At that time, the concern related to the proper application of SNCs in particular cases. In this instance EPA is concerned that no SNCs have been identified at all since 2016. As part of the last SRF review, EPA recommended that MEDEP submit for EPA review and comment, a description of the process used to identify SNCs.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
8a SNC identification rate at sites with CEI and FCI		1.6%	0	0	0
8b Timeliness of SNC determinations [GOAL]	100%	76.5%	0	0	0

State Response:

ME DEP: MEDEP does not concur with EPA's findings. While the MEDEP did not make any determinations of Significant Non-Compliance in FFY2018, this was due to the fact that MEDEP is not aware of cases handled in FFY2018 that should have included SNC determinations. As was stated in the EPA's Explanation section above, "24 of 24 files reviewed for FFY 2018 had appropriate violation determinations made." In recognition of EPA's comment regarding SNCs,

MEDEP agrees to implement the recommendation for quarterly meetings or conference calls to discuss enforcement matters.

EPA Region 1: EPA acknowledges the comments offered by MEDEP. Although there were no issues of concern with the randomly selected files, MEDEP had not identified any SNCs for two years prior to the review, which is inconsistent with Regional and National data. Given that this is the second consecutive State Review Framework Report that identifies issues with the MEDEP's RCRA Program's assessment of significant non-compliance, enforcement addressing significant non-compliance and penalties -- EPA stands by its finding and looks forward to working with ME DEP to improve this performance issue.

Recommendation:

Rec #	Due Date	Recommendation
1	05/12/2022	Beginning May 12, 2021, and continuing at least through May 12, 2022, MEDEP and EPA RCRA enforcement staff will hold quarterly meetings or conference calls to review SNC determinations; potential enforcement actions; proposed enforcement response(s); in addition to appropriate penalty, gravity and economic benefit considerations.

RCRA Element 4 - Enforcement

Finding 4-1

Area for Attention

Summary:

MEDEP's enforcement actions are generally brought in a timely manner and return facilities to compliance in a timely manner.

Explanation:

As documented in the FFY13 Round 3 SRF review, MEDEP's overall average length of time for issuing a formal action from day zero was 148 days, well before the 360-days standard. Also, MEDEP's practice of issuing Notices of Violation (NOV), in advance of formal enforcement, helps to achieve timely compliance to the violations cited, often before the formal enforcement is issued. The metrics below reflect that there were no formal actions in FFY18. In a review of the RCRAInfo database from FFY2014 to FFY2018, MEDEP conducted 204 inspections and issued three formal enforcement actions. In the same time period, EPA Region 1 conducted 19 inspections in Maine and issued the three formal enforcement actions. See recommendation for Finding 3-2.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10a Timely enforcement taken to address SNC [GOAL]	100%	87.7%	0	0	0

State Response:

ME DEP: MEDEP does not concur with EPA's finding. As stated under finding 3-2, EPA's explanation stated, "24 of 24 files reviewed for FFY2018 had appropriate violation determinations made." EPA has agreed that in 24 of the 24 FFY2018 cases reviewed, MEDEP made the appropriate violation determinations. In each of those cases, MEDEP determined pursuant to its Enforcement Response Policy that a notice of violation, letter of warning, or hazardous waste inspection letter was the appropriate level of enforcement and that no formal enforcement action was necessary. As EPA did not find that these were inappropriate enforcement actions, the MEDEP does not agree that this is an Area for Attention.

EPA Region 1: EPA acknowledges the comments offered by MEDEP. Although there were no issues of concern with the randomly selected files, MEDEP had not identified any SNCs for two years prior to the review, which is inconsistent with Regional and National data. Given that this is the second consecutive State Review Framework Report that identifies issues with the MEDEP's RCRA Program's assessment of significant non-compliance, enforcement addressing significant non-compliance and penalties -- EPA stands by its finding and looks forward to working with ME DEP to improve this performance issue.

RCRA Element 4 - Enforcement

Finding 4-2

Meets or Exceeds Expectations

Summary:

Of the twenty-four files reviewed, twenty-three had some level of enforcement issued by MEDEP. The twenty-three files with enforcement all included non-formal enforcement of some sort, either a notice of violation, a letter of warning or a hazardous waste inspection letter. The remaining file was for a facility that had no violations at the time of the inspection. In one pre-2018 files (see Element 3-2,) the case file included violations that were cited, a NOV including reference to a penalty and a Consent Order drafted, but no further action was taken. MEDEP instead provided technical assistance to the regulated entity. The FFY13 SRF raised this issue with a different regulated entity.

Explanation:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10b Appropriate enforcement taken to address violations [GOAL]	100%		23	23	100%

State Response:

MEDEP concurs with EPA's finding.

RCRA Element 5 - Penalties

Finding 5-1

Area for Improvement

Summary:

There were no penalties issued by MEDEP in FFY2018.

Explanation:

MEDEP uses a penalty matrix approach to determine and document the potential for harm and extent of deviation of a violation, and brief narratives are included to explain the matrix selected. There was only one pre-FFY2018 file reviewed that had not been reviewed in the previous SRF that included a penalty action. In this case, there was an ability to pay issue that was substantiated through company financial information. See Recommendation 3-2.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
11a Gravity and economic benefit [GOAL]	100%		0	0	0
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		0	0	0
12b Penalty collection [GOAL]	100%		0	0	0

State Response:

ME DEP: MEDEP does not concur with EPA’s finding. As stated above in Finding 4-2, MEDEP meets or exceeds expectations relating to enforcement determinations and resolutions for FFY2018. The Department determined pursuant to its Enforcement Response Policy that it was appropriate to resolve each of the FFY2018 files with either a notice of violation, a letter of warning or a hazardous waste inspection letter. EPA did not find MEDEP’s enforcement action for any of those files to be an inappropriate level of enforcement given the type and number of violations found. Pursuant to the Department’s Enforcement Response Policy, formal enforcement action with a penalty was not the appropriate level of enforcement and penalties were not issued for FFY2018. Therefore, the Department does not agree that this is an “Area for Improvement.”

EPA Region 1: EPA acknowledges the comments offered by MEDEP. Although there were no issues of concern with the randomly selected files, MEDEP had not identified any SNCs for two years prior to the review, which is inconsistent with Regional and National data. Given that this is the second consecutive State Review Framework Report that identifies issues with the MEDEP’s RCRA Program’s assessment of significant non-compliance, enforcement addressing

significant non-compliance and penalties -- EPA stands by its finding and looks forward to working with ME DEP to improve this performance issue.

Recommendation:

Rec #	Due Date	Recommendation
1	05/12/2022	See Recommendation 3-2.

Appendix A

Background Information on Maine State Program and Review Process

NOTE: *The background information provided below was provided by the Maine Department of Environmental Protection. EPA included this information in this report without any programmatic edits.*

I. General Overview of Maine DEP Compliance and Enforcement Programs

The Maine Department of Environmental Protection (“MEDEP” or “Department”) maintains a central office in Augusta and three regional offices which are located in Portland (Southern Maine), Bangor (Eastern Maine), and Presque Isle (Northern Maine). The Department is comprised of the Bureau of Air Quality (“BAQ”), Bureau of Land Resources (“BLR”), Bureau of Water Quality (“BWQ”), Bureau of Remediation and Waste Management (“BRWM”), Office of the Commissioner (“OC”), and Board of Environmental Protection (“BEP”). The compliance and enforcement programs which are subject to review by the U.S. Environmental Protection Agency (“EPA”) reside in the bureaus as well as OC, *e.g.*, Air Quality is part of the BAQ; Wastewater Discharge is part of BWQ; Hazardous Waste Management is part of BRWM; and the Office of Innovation & Assistance (“OI&A”) resides in the OC.

The MEDEP Enforcement Specialist (“Enforcement Specialist”) exists within the OC. This individual engages in general oversight of all compliance and enforcement programs within MEDEP but is not functionally responsible for activity management of bureau staff. The day-to-day oversight provided by the Enforcement Specialist involves case evaluation, procedure evaluation, settlement facilitation, strategic planning, liaison with the Department of the Attorney General (“AG”), and general assistance with any licensing, compliance, or enforcement program issue. The MEDEP Director of the OI&A also exists within the OC. This individual engages in general oversight and management of all technical assistance and innovative compliance initiatives within MEDEP.

A. *Bureau of Air Quality*

In the Bureau of Air Quality, the Division of Licensing and Compliance is responsible for all Bureau of Air Quality compliance and enforcement related activities. The Division of Licensing and Compliance is comprised of four sections; the Licensing Section, the Compliance Section, the Emissions Inventory Section, and the Mobile Sources Section. The Division of Licensing and Compliance consists of a Division Director located in the Augusta Office, a supervisor leading each of the four sections all located in the Augusta Office, and 20 Full Time Employee (“FTE”) positions, sixteen of which are located in the Augusta Office.

The Compliance Section is responsible for inspecting both licensed and unlicensed sources and conducting complaint investigations. Unlicensed sources are required to be in compliance with air quality statutes and regulations. The Compliance Section also provides technical assistance, pollution prevention assistance and engages in education and outreach activities. The

Compliance Section is comprised of 5 FTE compliance inspector positions and a compliance manager. Two full-time inspectors are located in the Southern Maine Regional Office in Portland, with one full-time inspector positions located in each of the other three regional offices (Augusta, Bangor, and Presque Isle). The Compliance Manager is located in the Augusta Office.

The stack testing program is managed by a Senior Environmental Engineer located in the Augusta Office, who is part of the Emissions Inventory Section within the Division of Licensing and Compliance. The Compliance Section Manager oversees enforcement work, which is primarily completed by an Assistant Environmental Engineer located in the Augusta Office, who is also responsible for implementing the recently adopted aftermarket catalytic converter program as part of the Mobile Sources Section within the Division of Licensing and Compliance.

B. Bureau of Remediation and Waste Management, Hazardous Waste Management Program

The Hazardous Waste Management Program primarily resides within MEDEP's Division of Materials Management in the BRWM. Hazardous waste management program staff are responsible for conducting compliance inspections, complaint investigations, formal enforcement actions, short-term site investigation and remediation project oversight related to enforcement actions; licensing of hazardous waste facilities; education and regulatory assistance activities (*e.g.*, compliance assistance and advisory opinions, generator seminars and regulatory presentations, compliance guidance handbook and fact sheet development and review, environmental leadership program reviews, Small Business Technical Assistance Program reviews); data management activities (*e.g.*, manifest reviews, data quality control reviews, data administration, assistance and compilations of annual reports for generators and facilities, biennial report to the legislature); hazardous waste transporter inspection, enforcement, and administration activities (*e.g.*, transporter quarterly report reviews and fee audits); universal waste management inspection, enforcement, and administration activities (*e.g.*, universal waste quarterly report audits); and other regulatory support activities (*e.g.*, report assistance, policy development and implementation, hazardous waste and universal waste initiatives, rule-making reviews for related programs including hazardous matter and waste oil, strategic planning and federal grant administration).

Hazardous Waste Management Unit staffing includes a unit manager, two oil and hazardous material specialists (responsible for inspections, related enforcement activities and licensing projects) and four environmental specialists responsible for inspections and related enforcement activities, licensing projects, data management related administration including annual reports, biennial reports, transporter reports and audits. The unit manager, one oil and hazardous material specialist, and three environmental specialist positions are located in the Augusta Office. One oil and hazardous material specialist is located in the Southern Maine Regional Office in Portland. One environmental specialist position is located in the Eastern Maine Regional Office in Bangor. The unit reports to the division director located in Augusta.

C. Bureau of Water Quality, Wastewater and Stormwater

The Maine Pollutant Discharge Elimination System ("MEPDES") Wastewater Discharge program and the MEPDES Stormwater program is managed by the Division of Water Quality Management ("DWQM") in the BWQ. The program includes Wastewater Compliance/Technical Assistance ("CTA"), Stormwater, and Enforcement sections. The

compliance staff of the CTA Section (14 FTEs) conducts all facility inspections, renders preliminary technical assistance, and handles initial compliance contacts and most routine communications with treatment facilities on regulatory and performance issues. These contacts typically include informal efforts (*e.g.*, plant inspections, telephone contacts, troubleshooting) to address minor violations or conditions that may lead to violations if left unresolved. The compliance staff of the Stormwater unit (5 FTEs {with 1 long term vacancy due to lack of funding}) perform similar duties for all MEPDES stormwater facilities. The Enforcement Unit (2.5 FTEs {with 1 long term vacancy due to lack of funding}) addresses situations where enforcement actions are necessary to resolve violations and implement compliance schedules. The three sections also respond to citizen complaints received by the division and conduct focused investigations to identify and remove sanitary waste discharge sources, especially in waters where shell fishing or other high priority uses are impaired. Complaints arising from non-point source discharges, forestry activities, and other land use issues are addressed by the BLQ. The Wastewater Compliance, Stormwater, and Enforcement staff is assisted by the Technical Assistance staff of the CTA Section (2 FTEs). In addition to CTA, Stormwater, and Enforcement sections, there is also a MEPDES permitting section (7 FTEs {with 1 long term vacancy due to lack of funding}) and the State Revolving Fund group (8 FTEs) which distributes low interest or no interest loans to municipalities for upgrades/repairs to their wastewater treatment plant and/or collection systems. In addition to approximately 400 traditional MEPDES/point source discharges and approximately 900 MEPDES Stormwater facilities, the DWQM regulates approximately 800 Over Board Discharges (“OBDs”), consisting of treated sanitary wastes from residential and commercial sources.

II. Legal Authorities

MEDEP Inspection Authority. Employees and agents of MEDEP may enter any property at reasonable hours and enter any building with the consent of the property owner, occupant or agent, or pursuant to an administrative search warrant, in order to inspect the property or structure, take samples and conduct tests as appropriate to determine compliance with any laws administered by MEDEP or the terms and conditions of any order, regulation, license, permit, approval or decision of the commissioner or of the board. *See* 38 M.R.S. § 347-C.

MEDEP Enforcement Authority - General. MEDEP’s Commissioner may initiate an enforcement action when it appears that there is or has been a violation of environmental requirements. 38 M.R.S. § 347-A(1)(A). The statutorily authorized actions which may be initiated are: (1) negotiation of an administrative consent agreement; (2) referral to the Office of the Attorney General for civil or criminal prosecution; (3) scheduling and holding an administrative enforcement hearing; or (4) initiating a civil action in the Maine district court under Maine Rule of Civil Procedure 80K. *See generally* 38 M.R.S. § 347-A(1)(A). Parties to a Rule 80K prosecution may request mediation pursuant to 38 M.R.S. § 347-A(4)(E).

Before initiating any of these activities as a civil enforcement matter, the Commissioner is authorized and required to send the alleged violator a Notice of Violation (“NOV”). 38 M.R.S. § 347-A(1)(B). The Commissioner is not required to send an NOV prior to issuing an emergency order, referring an alleged violation to the AG for criminal prosecution, or in a matter requiring an immediate enforcement action. *Id.*

MEDEP Enforcement Hearing Authority. The Commissioner may conduct a hearing for the purpose of accepting documentary and testimonial evidence and determining the existence of alleged violations. After a hearing, or in the event the alleged violator fails to appear, the Commissioner makes findings of fact based on the record and, if a violation is found to exist, issues an order aimed at ending the violation. The person to whom an order is directed must immediately comply with the terms of that order. 38 M.R.S. § 347-A(2).

Commissioner's Emergency Order Authority. Whenever an investigation reveals a violation which is creating or is likely to create a substantial and immediate danger to public health or safety or to the environment, the Commissioner may order the person or persons causing or contributing to the hazard to immediately take such actions as are necessary to reduce or alleviate the danger. The person to whom the order is directed must immediately comply. The order may be appealed to the BEP for a hearing on the order, which must be held within seven working days after receipt of application. 38 M.R.S. § 347-A(3).

Restoration Authority. Maine courts may require restoration of an area affected by any action or inaction found to be in violation of environmental requirements to its condition prior to the violation, or as near thereto as possible, unless restoration activities will cause a threat or hazard to public health or safety; substantial environmental damage; or, a substantial injustice. 38 M.R.S. § 348(2).

AG Enforcement Authority - General. Violations of law and enforcement of licensing orders of the Commissioner or BEP may be enforced in Maine courts by the AG through injunctive proceedings, and civil or criminal actions. 38 M.R.S. §§ 347-A(5), 348(1).

Criminal Penalty Authority. Maine law establishes that the intentional, knowing, reckless, or criminally negligent violation of laws or orders administered by MEDEP, and the disposal of more than 500 pounds or 100 cubic feet of "litter," are Class E crimes punishable by fines not less than \$2,500 nor more than \$25,000 for each day the violation, except that the minimum penalty for knowing violations is \$5,000 for each day of violation. 38 M.R.S. § 349(1).

Falsification and Tampering. A person may not knowingly make false statements, representations or certifications in any application, record, report, plan or other document filed or required to be maintained by any provision of law administered by MEDEP, or by any order, rule, license, permit, approval or decision of MEDEP, or who tampers with or renders inaccurate any monitoring devices or method required by any provision of law, or any order, rule, license, permit, approval or decision of the board or commissioner or who fails to comply with any information submittal required by the commissioner pursuant to an groundwater oil discharge clean-up, or uncontrolled hazardous waste site clean-up. 38 M.R.S. § 349(3).

Civil Penalty Authority. Maine Law subjects violators to civil monetary penalties for violating environmental requirements of not less than \$100 nor more than \$10,000 for each day that violation exists or, if the violation relates to hazardous waste, of not more than \$25,000 for each day the violation exists. 38 M.R.S. § 349(2). Monetary penalties may be obtained through an administrative consent agreement or court action. MEDEP does not have unilateral penalty authority. The maximum civil penalty for non-hazardous violations may be increased to \$25,000 for each day a violation exists if it is shown that the same party violated the same law within the preceding five (5) years. 38 M.R.S. § 349(6). Also, if the daily economic benefits of non-compliance exceed per-day maximum penalties, a penalty may then be assessed which does not exceed twice the economic benefit resulting from the violation. 38 M.R.S. § 349(8). The

Commissioner may exempt from civil penalties certain reported air emissions or wastewater discharges in excess of license limitations if the emission or discharge occurs during start-up or shutdown or results exclusively from an unavoidable malfunction entirely beyond the control of the licensee and the licensee has taken all reasonable steps to minimize or prevent any discharge or emission and takes corrective action as soon as possible. 38 M.R.S. § 349(9). A party agreeing to a Supplemental Environmental Project (“SEP”) may mitigate the full gravity-based penalty, but may not mitigate the economic benefit or financial gain penalty by completing or funding an SEP. 38 M.R.S. § 349(2-A). SEPs are entirely voluntary and are offered at the sole discretion of the MEDEP. MEDEP does not allow SEPs that primarily benefit the party agreeing to the SEP nor are the funds used to complete the SEP tax deductible for that party. Additionally, the party agreeing to the SEP may not publicly advertise the SEP without also including language that explains that the SEP was completed as part of an enforcement action. 38 M.R.S. § 349(2-A).

III. Compliance and Enforcement Tools

MEDEP uses a variety of methods to evaluate compliance with Maine’s environmental laws, including on-site inspections, periodic self-monitoring and reporting, and record reviews. In all cases, these evaluations are used to monitor compliance and document findings in a way that supports any subsequent necessary action. MEDEP compliance staff must document all compliance evaluations. This documentation may be in the form of memoranda, facility-related compliance data, or as a trip report when on-site evaluations are performed. The discovery of non-compliance during an on-site inspection should be documented with additional means, for example facility records, sampling and analysis, photographs or video recordings, or a combination of all these. Inspections documenting situations that appear to require corrective action should typically have exit interviews conducted and written documentation of the findings left with or sent to a responsible official.

Education and Outreach. MEDEP offers education and outreach as a proactive means of helping the public understand, support, and comply with environmental laws, and to teach responsible environmental stewardship. Education and outreach are the responsibility of all MEDEP staff on a daily basis and is the cornerstone for minimizing adverse environmental impacts and preventing environmental violations. It ranges from holding seminars that provide wide segments of the population with general information to targeting particular facilities, locations, ecosystems, or business sectors. Education and outreach are effective tools for educating the public about new regulatory requirements or abating small, commonly observed violations. When a violation is discovered, education on how to comply and prevent recurrence is often an integral part of resolving that violation.

Voluntary Compliance. An underlying principle of environmental law assumes societal acceptance by the majority of citizens and therefore voluntary compliance. Likewise, MEDEP expects environmental requirements to be complied with voluntarily. Entities must be proactive in their compliance efforts by evaluating plans and operations to determine whether environmental requirements apply. The State has enacted an environmental audit program pursuant to 38 M.R.S. §§ 349-L to 349-R which provides incentives to regulated entities that voluntarily report violations to MEDEP in accordance with statutory requirements. In addition,

MEDEP has established a *Small Business Compliance Incentives Policy* to further encourage voluntary compliance and beyond compliance activities by providing incentives to entities that approach MEDEP seeking regulatory and technical assistance. MEDEP views an entity's voluntary compliance actions and overall environmental performance record when evaluating good-faith efforts to comply with environmental requirements.

Technical Assistance. Technical assistance is targeted education and outreach where the expertise of the MEDEP is used to help solve a particular environmental problem at a particular location. Technical assistance may be provided informally during an inspection or in a telephone call, or more formally through one of MEDEP's technical assistance programs and designated technical assistance staff. Regulatory assistance, *i.e.*, helping entities to understand regulatory requirements, is also a primary focus of MEDEP and available as part of MEDEP's daily activities. MEDEP staff providing technical assistance has no authority to "waive" violations and may not advocate actions inconsistent with applicable laws and standards.

Licensing. MEDEP issues individual licenses that ensure environmental protection by addressing the unique operations existing at a regulated entity's site and facility. License provisions are clearly and concisely written to promote compliance and expedite any future compliance efforts. The licensee is responsible for understanding all provisions contained in their license. In this regard, MEDEP provides draft licenses to applicants and expects potential licensees to determine the feasibility of conforming with all provisions contained in their license prior to accepting that license from the MEDEP. In addition, the licensee is responsible for ongoing compliance evaluations and immediately informing MEDEP of any compliance problems. MEDEP views immediate disclosure of compliance problems and immediate work to permanently resolve an issue as good-faith efforts that will be considered in determining an appropriate response. Failure to consistently evaluate compliance with license provisions and immediately disclose and correct license compliance problems increases the likelihood and severity of an enforcement response.

Enforcement. Regular inspections and enforcement of environmental requirements are key elements in gaining compliance. While a variety of tools exist for preventing and resolving compliance problems, MEDEP may pursue formal, written, and legally binding resolutions to environmental violations where corrective action and/or penalties are appropriate. MEDEP will select an appropriate course of action for enforcing Maine's environmental requirements based upon the facts of a case and MEDEP's *Non-Compliance Response Guidance*. As a result, MEDEP may use any one tool, or combination of tools, as appropriate to achieve compliance with environmental requirements. MEDEP's preference is to resolve civil enforcement actions as quickly as possible, while: remediating the environmental damage; restoring natural resources to appropriate conditions; imposing penalties that capture any economic benefit gained by a violator and deter similar actions in the future.

The tools employed to compel compliance include:

Letter of Warning. MEDEP typically corresponds in writing with entities upon discovering non-compliance with environmental requirements. A Letter of Warning ("LOW") is sent to provide regulated parties with information regarding an alleged violation where the matter is relatively minor and further civil enforcement action is not anticipated if the violation is promptly corrected. A LOW identifies the violation(s) and may contain a schedule for coming into compliance. Where a LOW has been sent, MEDEP views prompt correction and avoidance of

repeat violations as essential. A history of LOWs, or a LOW that is not followed with prompt corrective action, increases the likelihood that additional enforcement actions will be pursued.

Notice of Violation. MEDEP uses an NOV where a significant¹ violation exists, and the probability of future civil enforcement action is substantial. Maine law requires MEDEP to issue an NOV prior to initiating a civil action that will include enforceable compliance schedules and penalties. An NOV will, at a minimum: describe the alleged violation; cite to statutory, regulatory, permit, and license provisions alleged to have been violated; and provide a deadline for responding to the NOV and performing corrective actions. Performing the corrective actions identified in an NOV does not preclude additional civil enforcement actions nor additional remedial work. MEDEP views prompt corrective action where an NOV has been sent and avoidance of repeat violations as essential.

Administrative Consent Agreements. MEDEP pursues voluntary agreements for corrective actions and/or penalties to resolve environmental violations. MEDEP provides Administrative Consent Agreements (“ACAs”) to alleged violators in order to achieve administrative settlement rather than pursue an action in court. MEDEP negotiates, and the AG, BEP, and violators enter into ACAs to achieve final resolution of pending civil enforcement actions. An ACA is a legally binding contract between a violator and the State of Maine that prescribes appropriate penalties and corrective actions. An ACA offers resolution without the time and expense of a court action.

80K Actions. Maine Law authorizes certified MEDEP staff and attorneys within the MEDEP to pursue violations in District Court under Maine Rule of Civil Procedure 80K with the prior approval of the Office of the Attorney General. These court actions are typically filed on behalf of the MEDEP where administrative settlement efforts have failed. The goals of pursuing civil enforcement actions under Rule 80K are to efficiently and effectively resolve violations without the relatively significant expense and inefficiency of pursuing actions in Superior Court.

Mediation. Maine law authorizes parties to a Rule 80K prosecution to request mediation. 38 M.R.S. § 347-A(4)(E). To further the Department’s efforts in reaching consensual resolution of civil enforcement actions in the most efficient and effective manner, MEDEP requests mediation in 80K cases in each appropriate circumstance.

Supplemental Environmental Projects. Pursuant to authority provided by Maine statute, MEDEP and AG may consent to a violator performing an environmentally beneficial project, or so-called Supplemental Environmental Project (“SEP”), as part of resolving an enforcement action. 38 M.R.S. § 349(2-A). While Maine’s SEP statute is conceptually similar to EPA’s SEP policies, some of the requirements and considerations in the statute differ from the EPA policy. SEPs are not a tool for bringing a violator into compliance. Projects may be performed to mitigate the gravity-based penalty amount, but cannot be used to mitigate a financial gain or economic benefit nor can the SEP directly benefit the violator.

Emergency orders. Whenever an investigation reveals a violation which is creating or is likely to create a substantial and immediate danger to public health or safety or to the environment, the commissioner may order the person or persons causing or contributing to the hazard to immediately take such actions as are necessary to reduce or alleviate the danger. The person to whom the order is directed must immediately comply. The order may not be appealed to the

¹ The term “significant” is used here with in common understanding and is not intended as a reference to the term “significant non-complier” used by EPA.

Superior Court but the person may apply to the BEP for a hearing on the order which shall be held by the board within seven working days after receipt of application.

Enforcement Hearings. The Commissioner may conduct a hearing for the purpose of accepting documentary and testimonial evidence regarding alleged violations. After a hearing, or in the event the alleged violator fails to appear, the BEP or Commissioner makes findings of fact based on the record and, if a violation is found to exist, issues an order aimed at ending the violation. The person to whom an order is directed must immediately comply with the terms of that order.

Case Referral to the Office of the Attorney General. The Office of the Attorney General is constitutionally responsible for acting as MEDEP's legal counsel and is the chief law enforcement agency for the State of Maine. MEDEP refers civil enforcement actions to the AG when administrative settlement can't be reached and serious violations exist, immediate injunctive relief is sought, and/or significant legal issues are in dispute. Criminal enforcement actions are automatically referred to the AG for pursuit in an appropriate judicial forum.

Enforcement by Federal, State, and Local Entities. Independent authority to enforce certain environmental laws exists in federal, state, and local authorities, including the AG. MEDEP works closely with these entities and, where appropriate, pursues joint enforcement actions. Every effort is made to coordinate enforcement actions among federal, state, and local entities.

IV. Compliance and Enforcement Process

The first step in addressing circumstances demonstrating non-compliance is a full investigation of the matter by appropriate program staff (usually the inspector discovering non-compliance). This investigation involves, at a minimum, gathering background information on the violation, its causes, the impacts, and potential corrective actions from file reviews, discussions with other staff members, and direct communication with the regulated entity. Most programs conduct periodic meetings to discuss broadly discovered circumstances of non-compliance. MEDEP Enforcement Specialist often attends each program's periodic non-compliance review session, and always reviews meeting minutes, in order to provide Department-wide oversight of response decisions. In addition to considerations based on MEDEP policy, programs weigh competing priorities, precedent values, and other program responsibilities when decisions on specific activities are ultimately made.

All MEDEP programs follow the principles captured in the Department-wide *Non-Compliance Response Guidance*, as implemented in program-specific policies based on the same principles when evaluating further actions after discovering non-compliance. Programs also consider the principles contained in the BEP's 1990 *Enforcement Guidance Document: Administrative Consent Agreement Policy*. While the compliance tool, or combination of tools, that may be applied in response to a violation varies according to a number of factors, MEDEP's goals are always to gain compliance as quickly as possible, protect the environment, and treat each violator in an evenhanded manner.

In general, the Department's Compliance and Enforcement Process is designed to gain voluntary compliance through the lowest level of enforcement necessary to: ensure resolution of violations; remediation and/or restoration of environmental harms; ensure current and future compliance; and providing proper deterrence against similar violations by other similarly situated entities.

The following questions and analysis provide the general guidance MEDEP follows in determining an appropriate response to a violation. These considerations are cumulative and not applied in isolation.

What is the environmental impact/significance of the violation? When the area impacted by a violation is large or particularly sensitive, the likelihood of an enforcement response is high and the severity of that response increases. Likewise, where actual environmental damage exists or the violation has continued for an extended period of time, the likelihood of an enforcement response is high and the severity of that response increases. Technical paperwork violations, so-called "paper violations" (e.g., failure to submit and maintain required records, monitor downtime, or renew a license) are significant to the extent they affect the MEDEP's ability to determine whether a company has been in compliance, the level of non-compliance, or the extent and length of an adverse environmental impact resulting from non-compliance. Failure to comply with other requirements, such as training, will be evaluated on the potential effect the failure can have on a facility's ability to maintain compliance. Other factors related to environmental impacts and violation significance that will determine the nature of an enforcement response include: whether the activity which caused the violation was inherently dangerous or the pollutants involved are hazardous; how far beyond standards or license limits the activity was; the number of violations involved; and whether there were any potential public health risks or environmental risks posed by the violation.

Under what circumstances were the violations discovered? Where the MEDEP discovers non-compliance during an announced or unannounced compliance inspection or as a result of investigating complaints from the public, the likelihood of an enforcement response is significantly greater than where a party voluntarily requests compliance or technical assistance, or where the results of an internal or third party compliance assessment are voluntarily reported. The State, through its *Environmental Audit Program*, and the MEDEP through its *Small Business Compliance Incentives Policy*, protect entities that voluntarily approach MEDEP seeking regulatory and technical assistance from civil penalties. A demonstrated commitment to voluntary compliance and a strong overall environmental compliance record diminish the likelihood or severity of an enforcement response. MEDEP views immediate disclosure of compliance problems and immediate work to permanently resolve issues as good-faith efforts that will be considered in determining an appropriate compliance response. The failure to consistently evaluate compliance with regulatory provisions and immediately disclose and correct compliance problems increases the likelihood and severity of an enforcement response.

What were the causes and circumstances of the violations? While MEDEP intends to be proactive in providing education and outreach, the MEDEP expects regulated parties to know and comply with legal requirements. In this regard, violators that knew or should have known legal requirements or that a violation was reasonably foreseeable are more likely to face an enforcement response from the MEDEP. For example, if a person ignores relevant training or technical assistance, is in a business heavily and directly regulated by the MEDEP (e.g., contractors, large industrial facility operators, businesses involved with hazardous waste, landfill operators), has a history of similar compliance problems, or it is otherwise evident that they were in a position to avoid the violation, the likelihood of an enforcement response is high and the severity of that response increases, regardless of environmental impact. However, if a violation is inadvertent, involves a recently adopted regulatory requirement, is not part of a pattern or history of non-compliance, could not have been prevented, or is mitigated and reported

immediately upon discovery, then the likelihood of an enforcement response is reduced. A demonstrated commitment to voluntary compliance and a strong overall environmental compliance record also diminish the likelihood or severity of an enforcement response.

What action was taken once there was awareness of a violation? As with all laws, environmental laws rely heavily on voluntary compliance and self-reporting. If a violation is reported immediately, environmental damage is restored immediately, and corrective action is taken immediately, the likelihood or severity of an enforcement response diminishes. Likewise, the quality of those actions, whether they were taken before or after MEDEP involvement, whether or not they truly cured any immediate problem, and/or were designed to prevent future problems are all factors that determine a compliance response. A violator that permanently removes the potential for recurrence will be considered to have demonstrated a greater willingness to comply than a violator applying a temporary fix on a problem that resulted in non-compliance.

Is there a financial gain associated with the violation? MEDEP will examine whether there was any economic benefit (e.g., avoided disposal costs, cost of required pollution control equipment, license fees) that accrued to the violator as a result of the violation. In those instances where a significant economic benefit is associated with non-compliance, the likelihood that MEDEP will pursue an enforcement response to assess penalties that at least recover any economic benefit is high. Recovery of an economic benefit “levels the playing field” between those companies or individuals that are in compliance and those that are out of compliance.

What is the regulated party’s overall environmental record? MEDEP will consider a violator’s environmental record in determining the nature of a compliance or enforcement response. This consideration will include aggregate performance in all media programs as well as any trend toward or away from overall compliance.

