

**U.S. Environmental Protection Agency
State Review Framework: Round 1 (Fiscal Years 2003 – 2007)
Recommendation Status**

Maine Department of Environmental Protection (MEDEP)

19 Recommendations

Clean Air Act Recommendations

Recommendation Title: Complete entering MDRs in AFS

Element: E1 Insp Universe

Finding: MDR Data entry

Status: Completed

Expected Completion Date: 12/31/2007

Responsible Agency: State Action

Recommendation Narrative: E1-2) By September 30, 2007, MEDEP should complete the following actions to address data concerns. MEDEP should demonstrate to EPA that all of its minimum data reporting (MDR) activities performed in FFY '06 are accurately reflected in AFS and implement a procedure to ensure that such data is reported in AFS on an ongoing and timely manner. MEDEP shall also demonstrate to EPA that it has made all other appropriate revisions needed to AFS regarding compliance status, facility size classifications and permanently closed facilities to ensure that accurate compliance results are reflected in AFS and that the universe of active Title V major sources, SM80s, and other synthetic minor sources is accurately portrayed in AFS. MEDEP should notify EPA of any changes pertaining to size classifications and permanently closed facilities so EPA can revise the CMS codes for these facilities in AFS.

Recommendation Title: FY07 Commitments

Element: E1 Insp Universe

Finding: Complete Commitments for FCEs for FY07

Status: Completed

Expected Completion Date: 12/31/2007

Responsible Agency: State Action

Recommendation Narrative: 1) By September 30, 2007, MEDEP should demonstrate to EPA that it has conducted FCEs at the remaining SM80s that have not received an FCE within the allowed CMS timeframe and currently are in unknown compliance status. If the MEDEP should determine that the universe of SM80s is different than that found in OTIS, it will also ensure that any other SM80s identified but not inspected in the past five years are done so by September 30, 2007.

Recommendation Title: Improve Penalty Calculation Documentation

Element: E7 Penalty Calculations

Finding: Penalty Calculation Documentation

Status: Completed

Expected Completion Date: 03/31/2009

Responsible Agency: State Action

Recommendation Narrative: E7-1) By (Due date to be determined.) MEDEP will demonstrate to EPA that its penalty calculation memos include the following: detailed information that allows reviewers to understand how the penalties were derived from the MEDEP penalty policy guidelines, a statement where no economic benefit is being assessed that MEDEP looked into whether any economic benefit was realized and determined that it was an insignificant amount, and a general statement describing the rationale for penalty reduction (e.g., good faith efforts, going beyond compliance, litigation risk, and retraction of penalty counts.)

Recommendation Title: Develop Workplan for FY08

Element: E9 Grant Commitments

Finding: Develop Workplan for FY08

Status: Working

Expected Completion Date: 01/01/2010

Responsible Agency: State Action

Recommendation Narrative: E9-1) By September 30, 2007, MEDEP should provide EPA with a complete and thorough PPA Compliance Strategy/Workplan for the Bureau of Air Quality that outlines MEDEP air compliance, enforcement, and licensing goals for FY08.

Recommendation Title: Data Improvements

Element: E10 Data Timely

Finding: Data Improvements

Status: Completed

Expected Completion Date: 12/31/2007

Responsible Agency: State Action

Recommendation Narrative: E10-1) By September 30, 2007, MEDEP will demonstrate to EPA that it has resolved the data issues it is experiencing with its extraction program used to upload information from the MEDEP database into the universal interface or begin, as of this date, providing Region 1 with quarterly progress reports until the issue is resolved. E10-2) By September 30, 2007, MEDEP will inform EPA whether it plans to enter HPV information into AFS directly, through the universal interface, or revert back to submitting timely HPV data entry forms to EPA so that EPA can enter MEDEP HPV information into AFS. E10-3) By September 30, 2007, MEDEP will demonstrate to EPA that it has updated its own state database to ensure that it includes all necessary fields needed to enter HPV information, such as violation type.

Recommendation Title: Improve MDR Data Quality

Element: E12 Data Complete

Finding: Improve MDR Data Quality

Status: Completed

Expected Completion Date: 12/31/2007

Responsible Agency: State Action

Recommendation Narrative: E12-1) By September 30, 2007, MEDEP should develop a plan outlining how it will improve data quality to meet all MDRs. This plan will include a commitment that MEDEP will provide EPA with complete, accurate and timely data consistent with agency policy and the ICR (which contains all MDRs). By December 31, 2007, MEDEP should report on progress implementing the MDR data quality plan.

Clean Water Act Recommendations

Recommendation Title: Inspection Follow-up

Element: E2 Violations ID'ed Appropriately

Finding: Inspection Follow-up

Status: Completed

Expected Completion Date: 11/30/2007

Responsible Agency: State Action

Recommendation Narrative: E2-1) EPA recommends that the inspectors refrain from using statements in their inspection reports that suggest full compliance at the facility. E2-2) By November 30, 2007, the ME DEP should discuss with all its inspectors the need to incorporate completion dates in their inspection reports when recommending corrective actions.

Recommendation Title: Improve Inspection Report Timeliness

Element: E3 Violations ID'ed Timely

Finding: Improve Inspection Report Timeliness

Status: Completed

Expected Completion Date: 11/30/2007

Responsible Agency: State Action

Recommendation Narrative: E3-1) By November 30, 2007, the MEDEP will inform EPA of the steps it is taking to improve inspection report timeliness

Recommendation Title: Obtain Administrative Penalty Authority

Element: E6 Timely & Appropriate Actions

Finding: Obtain Administrative Penalty Authority

Status: Long Term Resolution

Expected Completion Date: 09/30/2010

Responsible Agency: State Action

Recommendation Narrative: E6-1) Region 1 recommends that the MEDEP explore further coordination with the Attorney Generals Office, including involvement in settlement negotiations prior to formal referrals, to improve MEDEP's timeliness in the resolution of enforcement actions. E6-2) Region 1 recommends that MEDEP continue to seek administrative penalty authority.

Recommendation Title: Document Economic Benefit Decisions

Element: E7 Penalty Calculations, E11 Data Accurate

Finding: Document Economic Benefit Decisions

Status: Completed

Expected Completion Date: 09/30/2008

Responsible Agency: State Action

Recommendation Narrative: E7-1) In the future if economic benefit is not going to be a component of the penalty, a written explanation to that effect should be included in the penalty memo.

Recommendation Title: Improve Data Entry

Element: E10 Data Timely

Finding: Improve Data Entry

Status: Working

Expected Completion Date: 12/31/2007

Responsible Agency: State Action

Recommendation Narrative: E10-1) By September 30, 2007 MEDEP should have all of their inspection data entered into PCS. By December 31, 2007 MEDEP should have all of their 2006 enforcement data entered into PCS and their DMR non-receipt issues corrected in PCS. E10-2) By December 31, 2007, EPA and the MEDEP shall meet to discuss PCS/ICIS transition issues and to schedule future follow-up discussions and training. E10-3) Within 4 months of the finalization of the ICIS-NPDES Policy Statement, the MEDEP shall submit a plan for complying with the policy.

Recommendation Title: Improve Data Quality

Element: E11 Data Accurate

Finding: Improve Data Quality

Status: Completed

Expected Completion Date: 12/31/2007

Responsible Agency: State Action

Recommendation Narrative: E11-1) Following the completion of data entry by the MEDEP as outlined in the corrective action item for Element # 10, the EPA will pull data from PCS to check that the data MEDEP entered is actually in the PCS system. If the region still finds significant problems, Region 1 and MEDEP will meet to develop an appropriate corrective action plan.

Resource Conservation and Recovery Act Recommendations

Recommendation Title: Inspect 5 yr. Un-inspected LQGs

Element: E1 Insp Universe

Finding: Inspect 5 yr. Un-inspected LQGs

Status: Completed

Expected Completion Date: 09/30/2008

Responsible Agency: State Action

Recommendation Narrative: E1-1) Submit a plan that MEDEP will follow to ensure that the universe of active LQGs in RCRAInfo is accurate. On a continuing basis, declassify in RCRAInfo those LQGs that MEDEP determines are no longer active. E1-2) Provide a plan showing how MEHWEP will reduce the number of LQGs never inspected

and not inspected in five years in FY07, and allocating inspection resources that will reduce the number of these facilities.

Recommendation Title: Improve Inspection Documentation

Element: E2 Violations ID'ed Appropriately

Finding: Improve Inspection Documentation

Status: Completed

Expected Completion Date: 09/30/2008

Responsible Agency: State Action

Recommendation Narrative: E2-1) To better document the case preparation timeline, the program should clarify that the date of the report is the date when the report is completed. (Due date to be determined) E2-2) MEDEP should supplement the inspection checklist with a table or other means to document specific manifests and bills of lading reviewed, and hazardous waste profiles maintained by the facility. This addition does not need to document every manifest or bill of lading reviewed during the inspection, but can serve to ensure that a representative sampling of manifests are reviewed, and serves as documentation to check against hazardous waste profiles. (Due date to be determined) E2-3) MEDEP should supplement the existing checklist with the names of employees with hazardous waste management duties and supplement the narrative trip report to include a section that documents what employees at the facility are subject to hazardous waste training requirements. (Due date to be determined) E2-4) MEDEP should implement a standard procedure for documenting the conversations between the inspected-facility staff and inspectors regarding areas of concern and potential violations. (Due date to be determined)

Recommendation Title: Improve Inspection Documentation

Element: E3 Violations ID'ed Timely

Finding: Improve Inspection Documentation

Status: Completed

Expected Completion Date: 09/30/2008

Responsible Agency: State Action

Recommendation Narrative: E3-1) If violations are observed and documented in the completed narrative trip report, but not addressed in MEHWEP's final enforcement response, the program should explain why a violation was not taken. This type of documentation would be appropriate in MEHWEP's Enforcement Summary Report or could be documented in an enforcement confidential addendum to the completed narrative trip report. (Due date to be determined)

Recommendation Title: Improve SNC Accuracy

Element: E4 SNC Accuracy

Finding: Improve SNC Accuracy

Status: Completed

Expected Completion Date: 09/30/2008

Responsible Agency: State Action

Recommendation Narrative: E4-1) MEHWEP should ensure that the criteria for "Violator or Case Classifications" (i.e., SNC, Secondary Violator/Medium Priority,

Secondary Violator/Low Priority) are clearly designated and that only one designation is applied to each case to avoid any confusion of the case status. (Due date to be determined)

Recommendation Title: Penalty Calculation and Documentation

Element: E7 Penalty Calculations

Finding: Enhance Penalty Calculation and Documentation

Status: Completed

Expected Completion Date: 09/30/2008

Responsible Agency: State Action

Recommendation Narrative: E7-1) MEHWEP should consider supplementing the HWPPG with more specific guidance on how to evaluate multiple/multi-day violations in an effort to ensure that proportionally larger penalties are sought for these types of violations. (Due date to be determined) E7-2) MEHWEP should consider supplementing the existing penalty documentation with a brief narrative or other means to explain how the penalty calculation was developed, specifically, what criteria were evaluated in choosing a specific penalty matrix cell and the number chosen within the cell. (Due date to be determined) E7-3) Somewhere in MEHWEP's penalty documentation there should be a notation describing for each violation that economic benefit was evaluated. If a violation does not warrant economic benefit, the case team should note that the violation was evaluated, and it was determined that economic benefit was minimal, and therefore not added to the proposed penalty amount. (Due date to be determined)

Recommendation Title: Document Litigation Risk and Penalty Collection

Element: E8 Penalties Collected

Finding: Document Litigation Risk and Penalty Collection

Status: Completed

Expected Completion Date: 09/30/2008

Responsible Agency: State Action

Recommendation Narrative: E8-1) MEHWEP documents the changes from the initially proposed penalty, but does not include any documentation or discussion about litigation risk. Therefore, based on the lack of documentation, it is not clear whether these considerations are factored in the penalty adjustments or if the adjustment is made on factual information learned during negotiations. This could be improved by adding narrative or other documentation discussing any perceived litigative risk and how it is factored into the penalty sought by the program. (Due date to be determined) E8-2) MEHWEP should institute a consistent method to ensure that the files reflect the payment status of issued final penalties. (Due date to be determined)

Definition of Terms

Round 1 Elements:

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

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

Element 3: Degree to which Compliance Monitoring Reports are completed in a timely manner, including timely identification of violations.

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

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

Element 6: Degree to which a state takes timely and appropriate enforcement actions in accordance with policy relating to specific media.

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

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

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

Element 10: Degree to which the Minimum Date Requirements are timely.

Element 11: Degree to which the Minimum Date Requirements are accurate.

Element 12: Degree to which the Minimum Date Requirements are complete.

Element 13: Optional evaluation element could include program areas such as compliance assistance, pollution prevention, innovation, incentive or self-disclosure programs, outcome

measures, environmental indicators, relationships with Attorney General or other legal offices, etc.

Finding: An observation of activities, processes, or policies that the metrics and/or the file reviews show are being implemented by the state that have significant problems that need to be addressed and that require follow-up EPA oversight.

Status:

Working: The recommendation is in progress, it is expected to be completed, and it is on schedule to meet agreed upon completion date

Completed: The terms of recommendation have been implemented, the corrections have been agreed upon, and the work attributed to the recommendation was completed

Being Negotiated: The region and the state still have to determine the timeline and the procedures for implementing the recommendation, the timeline of recommendation cannot be determined by the completion of the final report

Long Term Resolution: The recommendation cannot be completed without legislative fix, policy change, or institutional arrangement that would have to go on to the future

Responsible Agency: The agency that administers the program. Mostly States, but is EPA where EPA directly implements the program.

List of Acronyms

A

ACS – Annual Commitment System
ASHERA – Asbestos Hazard and Emergency Response Act
AFS – Air Facilities System
AFS ICR - Air Facilities System – Information Collection Request
AST – Above Ground Storage Tank
ASDWA – Association of State Drinking Water Administrators

B

BIA – Bureau of Indian Affairs
BMP – Best Management Practices
BoP – Bureau of Prisons

C

CA – Compliance Assistance
CAA – Clean Air Act
CAC – Compliance Assistance Coordinator
CACDS – Compliance Assistance Conclusion Data Sheet
CAFO – Concentrated Animal Feeding Operations
CBP – Bureau of Customs and border Protection
CBI – Confidential Business Information
CCDS – Case Conclusion Data Sheet
CEC – Commission for Environmental Cooperation
CEI – Compliance Evaluation Inspection
CERCLA – Comprehensive Environmental Response, Compensation and Liability Act
CESQG – Conditionally-exempt Small Quantity Generator
CID – Criminal Investigation Division
CIPs – Compliance Incentive Programs
CMS - Compliance Monitoring Strategy
CSOs – Combined Sewer Overflows
CSS – Combined Sewer Systems
CWA – Clean Water Act
CFC – Chlorofluorocarbon

D

DMR – Discharge Monitoring Report

E

EA – Environmental Assessment
EIS – Environmental Impact Statement
EJ – Environmental Justice
EJAC – Environmental Justice Areas of Concern

EJSEAT – Environmental Justice Strategic Enforcement Assessment Tool
EMP – Environmental Management Practices
EMR – Environmental Management Reviews
EMS – Environmental Management System
EPA – Environmental Protection Agency
EPCRA – Emergency Planning and Community Right to Know Act
ERPs – Enforcement Response Policies
ERP – Environmental Results Program
ESD – Explanations of Significant Differences

F

FCE – Full Compliance Evaluation
FEMA – Federal Emergency Management Agency
FFEO – Federal Facilities Enforcement Office
FIFRA – Federal Insecticide Fungicide and Rodenticide Act
FRP – Facility Response Plan
FTE – Full Time Equivalent

G

GAO – Government Accounting Office
GME – Groundwater Monitoring Evaluation
GPRA – Government Performance and Results Act

H

HAP – Hazardous Air Pollutant
HPV – High Priority Violators
HQ - Headquarters
HUD – Housing and Urban Development

I

IAC – Innovative Action Council
ICDS – Inspection Conclusion Data Sheet
ICIS – Integrated Compliance Information System
ICIS – NPDES Integrated Compliance Information System – National Pollutant Discharge Elimination System
IG – Inspector General
INECE – International Network for Environmental Compliance and Enforcement
IU – Industrial users (non-domestic)
IPOD – ICIS Policy on Demand

L

LBP – Lead-based Paint
LDAR - Leak Detection and Repair
LEA – Local Education Authority
LGEAN – Local Government Environmental Assistance Network
LQG – Large Quantity Generator

M

MACT – Maximum Achievable Control Technology
MEHWEP – Maine Hazardous Waste Enforcement Program
MDR – Minimum Data Requirements
MOA – Memorandum of Agreement
MS4 – Municipal Separate Storm Sewer System

N

NAAQS – National Ambient Air Quality Standards
NEIC – National Enforcement Investigations Center
NEJAC – National Environmental Justice Advisory Council
NEPA – National Environmental Policy Act
NESHAP – National Emissions Standards for hazardous Air Pollutants
NETI – National Enforcement Training Institute
NOV – Notice of Violation
NO_x – Nitrogen Oxide
NPDES – National Pollutant Discharge Elimination System
NPL – National Priorities List
NPM – National Program Manager
NRC – National Response Center
NSPS – New Source Performance Standards
NSR – New Source Review
NTP – National Training Plan

O

OAM – Operation and Maintenance
OAP – Office of Administration and Policy
OC – Office of Compliance
OCE – Office of Civil Enforcement
OCEFT – Office of Criminal Enforcement, Forensics and Training
OCFO – Office of Chief Financial Officer
OCIR – Office of Congressional and Intergovernmental Relations
ODS – Ozone Depleting Substances
OECA- Office of Compliance and Assurance
OEJ – Office of Environmental Justice
OGD – Office of Grants and Disbarment
OIG – Office of the Inspector General
OMB – Office of Management and Budget
OPP – Office of Pesticide Programs
OPPTS – Office of Prevention, Pesticides, and Toxic Substances
OSWER – Office of Solid Waste and Emergency Response
OTIS – Online Tracking Information System

P

PBT – Persistent Bio-accumulative Toxics

PCB – Polychlorinated Biphenyls
PCE – Partial Compliance Evaluation
PCS – Permit Compliance System
PEI – Production Establishment Inspections
PFA – Preliminary Financial Assessments
PM10 – Particulate Matter
POTW – Publically Operated Treatment Works
PPA – Performance Partnership Agreement
PPG – Performance Partnership Grants
PRP – Potentially Responsible Party
PSD – Prevention of Significant Deterioration
PWS – Public Water System
PWSS – Public Water System Supervision

R

RCRA – Resource Conservation Recovery Act
RCRAInfo – Resource Conservation and Recovery Act Information
RECAP – Regional Enforcement and Compliance Assurance Program
RMP – Risk Management Plan
ROD – Record of Decision
RR+P – Renovation, Repair and Painting

S

SAAP – Special Appropriations Act Projects
SAC – Special Agent-in-Charge
SCAP – Superfund Comprehensive Accomplishment Planning
SDWA – Safe Drinking Water Act
SDWIS/ODS – Safe Drinking Water Information System/ Operational Data System
SEC – Securities and Exchange Commission
SEE – Senior Environmental Employment
SEP – Supplemental Environmental Project
SGTM – State Grant Template Measures
SITS – Strategy Implementation Teams
SLPD – Special Litigation and Projects Division
SNCs – Significant Noncompliance
SOC – Significant Operational Compliance
SO2 – Sulfur Dioxide
SPCC – Spill Prevention Control and Countermeasures
SQG – Small Quantity Generator
SRF – State Review Framework
SSO – Sanitary Sewer Overflows
STAG - -State and Tribal Assistance Grant
SWPPP – Stormwater Pollution Prevention Plan

T

TSCA – Toxic Substance Control Act

TSD - Treatment, Storage and Disposal
TSDf – Treatment, Storage and Disposal Facility
TSS – Total Suspended Solids
TVA – Tennessee Valley Authority

U

UIC – Underground Injection Control
UNICOR – trade name of Federal Prison Industries
UST – Underground Storage Tank

V

VOC – Volatile Organic Compounds

W

WW – Wet Weather