

Mr. David P. Littell, Commissioner
Maine Department of Environmental Protection
17 State House Station
Augusta, ME 04333-0017

Dear Commissioner Littell:

Enclosed is the Review of the Maine Department of Environmental Protection FY 2006 Enforcement and Compliance Programs prepared by the Region 1: New England Office of the

U.S. Environmental Protection Agency. The final report contains Region 1's findings and recommendations. Our key findings are provided in the Executive Summary. We very much appreciate the assistance provided by Pete Carney and many MEDEP managers and field staff throughout the review.

We ask that MEDEP, within 60 days, provide Region 1 with a plan to address the recommendations in the final report. The plan should show how MEDEP will address each recommendation and include milestones, interim steps, completion dates and the MEDEP person responsible. If Region 1 can assist in addressing recommendations (e.g., provide training or other assistance) please discuss this with Susan Studlien, our Office of Environmental Stewardship liaison for MEDEP.

Thank you for your continued cooperation on this project.

Sincerely,

Robert W. Varney
Regional Administrator

Enclosure

cc: Pete Carney, MEDEP
Lisa Lund, Deputy Director, Office of Compliance, OECA, EPA HQ

**Review of the Maine Department of Environmental
Protection FY 2006 State Enforcement and
Compliance Programs**

U.S. EPA Region 1 New England

August 30, 2007

EXECUTIVE SUMMARY

Overall Picture

The Maine Department of Environmental Protection (MEDEP) meets federal standards for implementing its federally delegated Clean Air Act (CAA) Stationary Source, Clean Water Act (CWA) NPDES and Resource Conservation and Recovery Act Subtitle C enforcement programs.

This means MEDEP is meeting federal program expectations.

Sources of Information Included in Review

EPA New England developed these findings from a review of MEDEP operations in Federal Fiscal Year 2006 (FY2006, October 1, 2005-September 30, 2006). EPA reviewers examined FY2006 MEDEP/EPA agreements, information in EPA and MEDEP databases, and 81 MEDEP files (18 Air files, 32 Water files and 31 RCRA files). EPA reviewers discussed all this information with MEDEP program managers and staff.

Inspection Implementation

One of the strengths of the MEDEP programs in FY06 was that it met or exceeded its inspection commitments in each of the programs. Region 1 is recommending improvements in documentation in each of its programs. EPA notes that MEDEP makes extensive use of standardized inspection checklist tools to improve the efficiency of its inspectors. Air and RCRA complete their inspection reports quickly.

Enforcement Activity

Enforcement response is strong in all programs. MEDEP's air, water and waste programs are identifying significant violators at a rate higher than the national average. MEDEP successfully returns violators to compliance. When MEDEP identifies significant violations it addresses them with an appropriate enforcement response. EPA is recommending improvements in the way that the Air, Water and RCRA enforcement programs either calculate the economic benefit component of penalties or document the absence of economic benefit.

Commitments in Annual Agreements

MEDEP's PPA describes its compliance and enforcement commitments.

Data Integrity

Data issues continue to be a challenge in the Air and Water programs. EPA is working with MEDEP to develop plans to improve air and water data quality.

Element 13

MEDEP did not provide information to EPA under Element 13.

Implementing the Review

MEDEP hosted a kick-off meeting to begin the review on November 17, 2006 at its Headquarters in Augusta. The MEDEP Commissioner and managers and senior staff from Region 1 and MEDEP participated in the meeting. After the kick-off meeting, state and federal staff worked out their own schedules for data examinations, file reviews and meetings. MEDEP has regional offices in Portland, Bangor and Presque Isle. For this review, MEDEP delivered appropriate files to Augusta and all file reviews took place there. File reviews began immediately after the kick-off meeting.

MEDEP Clean Air Act Stationary Source Enforcement Program

OVERVIEW

The Clean Air Act (CAA) portion of the Maine Department of Environmental Protection (MEDEP) State Review Framework (SRF) evaluation included the review of nine enforcement case files (including a review of both inspection reports and pertinent enforcement documents issued by the MEDEP) and 9 inspection-only files, where no follow-up enforcement was deemed necessary by the MEDEP. All 18 files were randomly selected, and for the most part the files pertained to MEDEP activity occurring in federal fiscal year 2006 (FFY '06). In order to gather a representative sampling from each of MEDEP's four regional offices, it was necessary to look at some inspection and enforcement files where the MEDEP activity occurred either in the latter part of FFY '05 or the beginning part of FFY '07. The files reviewed were based on MEDEP inspection and/or enforcement activities reported in the federal database for air compliance information – Air Facility System (AFS). For the most recent inspection reports reviewed by EPA in each file, the reports were based on full compliance evaluations (FCEs) at 16 out of the 18 facilities and partial compliance evaluations (PCEs) at 2 of the 18 facilities. For the nine enforcement case files reviewed by EPA, the MEDEP reported that it had issued some type of enforcement action to each of the nine facilities.

The MEDEP 4 regional offices are located in Presque Isle, Bangor, Augusta, and Portland. In general, all compliance and enforcement files reside in the central Augusta office with the exception of various quarterly reports that reside only in the regional offices, unless they are needed to support an enforcement action, in which case the central Augusta office will also have a copy of the pertinent quarterly reports. The compliance files that include inspection reports are also maintained at the regional offices. The Augusta office is the central office and all MEDEP lead contacts for the SRF, as well as all files reviewed, reside at this location. Region 1 evaluated 2 or 3 air inspection-only files and 2 or 3 air enforcement files in each MEDEP regional office. (See Attachment 1 for a list of the air inspection and enforcement files that Region 1 reviewed along with other pertinent information.) While conducting the file review portion of the MEDEP SRF in Augusta, EPA attended a meeting of the MEDEP's Non Compliance Review Committee made up of inspectors from Maine's four regional offices, as well as enforcement and licensing staff from the central Augusta office. This afforded EPA the opportunity to discuss SRF-related issues with staff from all four regional offices.

Of the 9 inspection-only files reviewed, 6 were major sources and 3 were synthetic minor sources. Of the 9 enforcement case files reviewed, 6 were major sources, 1 was a synthetic minor source, and 2 were true minor sources. In addition, 7 of the 9 enforcement actions were for high priority violators (HPVs).

The CAA evaluation also involved the review of data from AFS (primarily for FFY '06), supplied by EPA Headquarters, which compared MEDEP's performance on certain metrics to national policy goals. Region 1's comparison of various data metrics involving MEDEP inspections found in EPA's On-line Tracking Information System (OTIS) SRF Results with inspection activities reported in MEDEP's own database revealed discrepancies in the number of inspections reported in each database. (See Attachment 2: OTIS SRF Results printout from

January 31, 2007.) In discussing the discrepancy issue with the MEDEP, it became clear that MEDEP had difficulty translating data from its own data system to EPA's data system. The MEDEP believes that there may be a bug in the extraction program that uploads data from the MEDEP database into the universal interface before being downloaded into AFS. Currently, the MEDEP is working to correct this data problem. The inspection numbers reported in OTIS and reported in MEDEP's own database will both be reported in the appropriate elements below to reflect an accurate picture of MEDEP inspection activities for FFY '06.

In addition, MEDEP has informed EPA that it has had problems entering HPVs into AFS and linking appropriate MEDEP activities to HPVs, using the universal interface. MEDEP has contacted the AFS hotline for support in resolving these issues and has been provided with suggestions on how to correct the problems. Currently, MEDEP is working to resolve the problems implementing EPA Headquarters' suggestions.

Consistent with the November 2005 memorandum from Lisa Lund (Deputy Director, Office of Compliance, OECA), the review process served as both the state review framework and the compliance monitoring strategy (CMS) review. EPA Region I will supplement this report with a memo to OECA, under separate cover, discussing areas where the CMS review does not overlap the SRF.

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MEDEP Contacts: Louis Fontaine (Compliance Monitoring) 207-287-7010
Kurt Tidd (Enforcement) 207-287-9064

Section 1: Review of Inspection Program Implementation

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

EPA's Compliance Monitoring Strategy (CMS) of April 2001 creates a baseline requirement that states conduct a full compliance evaluation (FCE) at each of their major Title V sources at least once every 2 years, and at each of their synthetic minor sources permitted at or above 80% of the major source threshold (SM80s) at least once every 5 years. However, these timeframes may be modified, if the state receives approval from the EPA Regional office. The CMS suggests several acceptable reasons for modified FCE schedules.

The MEDEP's annual inspection commitments to EPA concerning Title V major sources and SM80s adhere to the EPA CMS policy and include a modified schedule for ten Title V major sources that are considered mega sites or sources. In FFY '06, ten pulp and paper mills operated in the State of Maine. Due to the size and complexity of these ten sources, Region 1 and the MEDEP agreed that these ten sources should be considered mega sources that require an FCE

once every three years

Metric 1A – Major Sources

The OTIS SRF Results, dated January 31, 2007, report the universe of major sources in the State of Maine to be 75. The MEDEP informed EPA that the total number of major sources located in the State of Maine in FFY '06 was 70. The OTIS SRF Results also reported that FCEs had not been conducted within the required CMS timeframe by EPA or the MEDEP at a total of 17 Title V major sources. EPA discussed this matter with the MEDEP and was informed that the majority of these 17 major sources did receive FCEs by the MEDEP within the required CMS timeframe. Specifically, the MEDEP reports that FCEs were conducted at all but 3 of the 17 major sources within the appropriate CMS timeframe.

Of the 17 major sources reported in OTIS as not having had FCEs, one source (Holtrachem Mfg.) has been permanently shut down for several years and 4 sources are mega sources (Verso Paper, Lincoln Paper and Tissue, Red Shield Environmental, and Domtar) where FCEs were conducted in FFY '04, and therefore, they were inspected within the three-year cycle provided in the CMS for mega sources. One other source, Juniper Ridge, is a landfill that was part of the larger Red Shield Environmental pulp and paper mill complex that the MEDEP conducted an FCE at on January 13, 2004. The landfill was sold to the State of Maine in the middle of FFY '06 and licensed as a separate Title V facility on July 13, 2006; therefore, an FCE was not yet required of this facility.

Eight of the remaining 17 major sources identified in OTIS as not having received FCEs within the appropriate CMS timeframe were inspected in either FFY '05 or FFY '06 and are included in the MEDEP's state database but not in OTIS. The following is a list of the 8 sources along with the date last inspected with an FCE:

Company Name	Date Last Inspected (FCE)
Irving Forestry Products	August 24, 2006
Huber Engineered Wood	May 4, 2005
Boralex – Fort Fairfield	August 30, 2006
Penobscot Energy Recovery	September 18, 2006
Irving Tanning	January 4, 2006
Dragon Products	May 17, 2006
Morin Brick – Gorham	July 26, 2005
Moose River	September 27, 2005

The MEDEP has reported to EPA that they have been experiencing problems uploading inspection information from their database to the universal interface that downloads the state data into AFS. OTIS pulls its CAA information from AFS. Specifically, the MEDEP believes that there is a bug located within their extraction program that is responsible for uploading inspection information from the state database to the universal interface.

The MEDEP informed EPA that FCEs were not conducted within the appropriate CMS timeframe at 3 of the 17 major sources included in the OTIS SRF Results. The following is a list of the 3 sources not inspected within the appropriate CMS timeframe with the date last inspected

with an FCE:

Company Name	Date Last Inspected
Bath Iron Works	October 11, 2006 and September 7, 2004
SD Warren –Skowhegan	November 15, 2006 and June 25, 2003
New England Waste Services	July 12, 2004

Based on the most recent FCE data in the MEDEP database, there is only 1 major source from the OTIS SRF Results that is still overdue for an FCE based on the CMS policy (New England Waste Services). In FFY '06, the MEDEP was down one inspector for six months and one inspector was on extended sick leave for two months. This reduction in MEDEP inspector resources for a total of eight months in FFY '06 is the reason that the MEDEP was unable to conduct all required FCEs within the allowed CMS timeframe.

Based on the most accurate information provided to Region 1 by the MEDEP, EPA and/or the MEDEP conducted FCEs at a total of 67 out of 70 major sources located in the State of Maine within the CMS allowed timeframe. (Note that EPA conducted an FCE at Hinckley Company in July, 2006.) Therefore, FCE coverage of major sources in Maine for the CMS timeframe ending on September 30, 2006 is 95.7%, combined. For MEDEP alone, the major source FCE coverage was 66 out of 70, resulting in 94.3% coverage, which is well above the national average of 81.1%.

Region 1 has discussed with the MEDEP the need to correct AFS flags in order to accurately portray the actual number of Title V major sources currently existing in the State of Maine. For example, Holtrachem Mfg. should have a code indicating that it is permanently shutdown. Region 1 also requested that the MEDEP prioritize an FCE at New England Waste Services since it is the one remaining major source that has not received a timely FCE per the CMS policy.

Metric 1B – SM80 Sources

The OTIS SRF Results, dated January 31, 2007, report the universe of SM80s in the State of Maine to be 36. The MEDEP informed EPA that the total number of SM80s currently located in Maine is 59. The OTIS SRF Results also reported that FCEs had not been conducted within the required CMS five-year timeframe by the EPA or the MEDEP at a total of 10 SM80 sources. EPA discussed this matter with the MEDEP and was informed that two of the facilities on the OTIS list have been permanently shutdown (Saunders Brothers shut down in July, 2005 and Electronic Mfg. Systems shutdown in April, 2005.) In addition, MEDEP informed EPA that an FCE was conducted at one facility on the list (Gulf Oil) on May 2, 2003. MEDEP also indicated that National Semiconductor, which is double counted in the OTIS report, is only one source and that the proper AFS number to use for this facility should be 2300500053. MEDEP will be updating AFS to ensure that operating status codes are accurate and to ensure that inspections conducted get uploaded from their database to AFS. Using the more accurate information supplied by MEDEP, the number of SM80s not inspected in the last five years is 6. MEDEP licensing and compliance staffs plan to meet soon to reconcile the actual number of SM80s located in Maine (36 versus 59.) Using the OTIS supplied number of 36 and subtracting out the two facilities permanently shutdown and the one double-counted facility leaves a total of 33

SM80s. MEDEP has inspected 27 out of the required 33 SM80 facilities within the last five years, which gives inspection coverage of 81.8%, which is slightly below the national average of 84.9%. It should be noted that PCEs, including some stack tests, were performed at two of the SM80s where FCEs have not been conducted in the past 5 years (Sprague Energy and Pratt & Whitney.)

It is worth noting again that in FFY '06 the state was down one inspector for six months and had one inspector on extended sick leave for 2 months. Nevertheless, Region 1 believes that the MEDEP needs more inspector resources in order to strike a balance between meeting its CMS commitments to EPA and completing its own state inspection priorities.

Metric 1C and 1D – Synthetic Minor Sources and Minor Sources

MEDEP has been very active in its work to inspect synthetic minor sources (non-SM80s) and minor sources over the past five years. In FFY '06 alone, the MEDEP reported to Region 1 that it had conducted FCEs at a total of 54 synthetic minor sources and 116 FCEs at true minor sources and conducted a total of 142 PCEs. The OTIS SRF Results indicate that there are 184 synthetic minor sources and 677 true minor sources located in Maine. The MEDEP informed EPA that there are currently 190 synthetic minor sources located in Maine.

The OTIS SRF Results report that over the past five years the MEDEP has conducted FCEs and PCEs at 145 synthetic minor sources and 302 FCEs and PCEs at true minor sources.

Metric 1F – Review of Self-Certifications

The OTIS SRF Results report that Title V annual compliance certifications were due from 62 Maine sources in FFY '06 and that MEDEP reviewed 58 out of the 62 annual certifications or 93.5%, which is well above the national average of 80.8%. The MEDEP informed EPA that they reviewed all 62 annual compliance certifications from the OTIS SRF Results for 100% coverage. They believe two of the facilities listed in OTIS as not being reviewed may not have shown up in OTIS because the state reviews of these two annual certifications were not tied to all of the appropriate Air Program codes in AFS. Specifically, MEDEP informed EPA that the reviews for FMC Corp. and Irving Tanning were tied to Air Program Code "0" for SIP and not tied to Air Program Code "V" for Title V. Because the annual certification review actions for these two facilities were entered into AFS and not tied to the Title V Air Program code, "V", the actions were not properly linked to allow proper reporting in AFS/OTIS. The two other facilities, Bath Iron Works and New England Waste Services, were entered and tied to the proper Air Program Code of "V." The state believes the reason that these two facilities did not show up in AFS/OTIS is due to the problems it is experiencing with its extraction program used to upload data to AFS via the universal interface.

Metric 1G – Unknown Compliance

Based on the OTIS SRF Results, MEDEP has 6 sources that are in unknown compliance status. Since FCEs were completed at 5 out of the 6 unknown sources within the FFY '05 through the first quarter of FFY '07 timeframe (Irving Forestry inspected August 24, 2006; Huber Engineered Wood inspected on May 4, 2005; Penobscot Energy Recovery inspected on September 18, 2006; Irving Tanning inspected on January 4, 2006; and, SD Warren – Skowhegan inspected on November 15, 2006), there should currently be only 1 source with an

unknown compliance status code (New England Waste Services). MEDEP has made inspecting this source a top priority for FY2007 and will ensure that proper compliance codes are reflected in AFS for the 5 remaining sources with an unknown compliance status where FCEs were conducted within the past two years.

CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:

CAA Stationary Source Compliance Monitoring Strategy, April 25, 2001

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

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.

2) By December 31, 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.

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

A total of 9 inspection-only files and 9 inspection and enforcement files were reviewed as part of the Maine SRF. The most recent inspection report in each file was reviewed and in many cases preceding inspection reports were reviewed by EPA as well. A total of 16 out of the 18 most recent inspection reports reviewed from the inspection files were for MEDEP-conducted FCEs. The Bickford Transportation inspection/enforcement case file only contained a PCE pertaining to tank tight testing. The Worcester Energy inspection/enforcement case file review entailed reviewing 4 PCEs spanning over a year in time. Two inspection reports reviewed did not indicate whether the inspection was an FCE, PCE, or investigation (Eastern Maine Medical Center and Jackson Laboratories), but OTIS indicated that the inspections the reports were based on were in fact FCEs. The inspection reports, overall, revealed that the MEDEP inspectors are very knowledgeable about the sources they inspect, that the inspectors are more than capable of accurately identifying violations, and that, in most instances; the inspectors do a good job of

describing regulated units and processes. However, for each inspection file reviewed, with the exception of the Bickford Transportation PCE report for tank tight testing, there were instances where the inspector either did not include in the inspection report any description of an emission unit that existed at a particular source or did not provide a compliance determination for each license condition pertaining to a given facility, or both. The types of equipment overlooked primarily were small emission units such as parts washers, auxiliary boilers, and emergency generators. The license conditions that were primarily overlooked dealt with fuel usage reports, hours of operation for emergency generators, and opacity from stacks.

To determine inspection report deficiencies, EPA reviewed licenses that corresponded to the inspection reports reviewed in order to gain a better and more accurate perspective on the overall inspection report content. The inspection report deficiencies identified by EPA were a result of a review of inspection reports from each of the four MEDEP regional offices as a way to show that this is a widespread occurrence and not limited to one regional office or to one inspector. EPA has discussed this issue with the MEDEP and suggested that they develop a template for each Title V major source that provides all license conditions that apply to a given source and provides space so that a compliance determination and brief comment can be made for each license condition. Using this template, an inspector would be less likely to overlook an emission unit or a license condition.

None of the inspection reports reviewed included a designation indicating whether the inspected facility was a Title V, SM80, or other synthetic minor source; however, each report did contain the facility's license number that could be used to determine whether the facility in question was a Title V major source. In addition, none of the inspection reports provided information on enforcement history; however, the enforcement files maintained by MEDEP include a copy of the inspection report and all applicable enforcement documents.

All of the inspection reports reviewed included findings and, where applicable, recommendations for follow-up.

Although Region 1 did identify inspection report deficiencies, Region 1 is confident, based on discussions with MEDEP, that no significant noncompliance was overlooked.

CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:

CAA Stationary Source Compliance Monitoring Strategy, April 25, 2001

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

1) By December 31, 2007, MEDEP should report progress on the specific steps taken to improve the quality of inspection reports, including but not limited to, any additional training for inspectors, the development of new MEDEP procedures, and the development of templates/checklists/model reports to assist inspectors. Future inspection reports will need to include:

- A reference that the inspector reviewed the file for past enforcement history and, if applicable, reference that the enforcement documents are kept in the enforcement case file. If there has been no past enforcement, the inspector will need to note this in the report.
- All applicable requirements and/or a reference to the appropriate permit(s).
- An indication of whether the inspection was an FCE or a PCE.
- An indication of whether the inspected facility was a Title V, SM80, other synthetic minor, or true minor source.
- A description of all emission units that have regulatory requirements.

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

In general, many states and EPA regional offices agree that inspection reports should be completed within 2-6 weeks of an on-site visit. The MEDEP's Bureau of Air Quality Compliance and Enforcement Policy (MEDEP C/E Policy) sets a rigorous timeframe for completing inspection reports. This policy dictates that an inspector complete an inspection report within two weeks of conducting a field inspection. Of the 18 inspection reports reviewed, 12 were completed within two weeks, 4 were completed within one month, and two were completed within 2 months. With respect to identifying violations in inspection reports, EPA concluded that MEDEP identifies problems at facilities and includes appropriate recommendations for follow-up actions. In fact, the MEDEP has formed a Non Compliance Review Committee (NCRC) made up of inspectors, enforcement staff, and licensing staff that typically meets every other month to discuss various issues such as violations found by inspectors, the severity of violations, the need for formal enforcement, and license language and enforceability. MEDEP's C/E Policy stipulates that all violations found during inspections and investigations will result in a Letter of Warning (LOW) within two weeks after completing the inspection or investigation. This acts as the MEDEP's early warning notice and expedites a violator's return to compliance. The LOW does not in any way negate the issuance of a follow-up enforcement action where the nature of the violation warrants such action. For the reasons described above, EPA considers the establishment of the NCRC and the use of LOWs as an early warning notice to expedite compliance as "best practices."

The MEDEP's compliance monitoring staff should be commended for the work it does in completing inspection reports in such a timely manner and for the LOW system it has in place that provides an early warning notice to violators of violations found in hopes of expediting the violator's return to compliance. The MEDEP enforcement staff informed EPA that in most cases where a Notice of Violation (NOV) is issued or further formal enforcement is taken, a violator has already returned to compliance prior to issuance of these actions, due to the LOW system instituted by MEDEP.

CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:

CAA Stationary Source Compliance Monitoring Strategy, April 25, 2001
MEDEP Bureau of Air Quality Compliance and Enforcement Policy, August 22, 2000

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

None

Section 2: Review of State Enforcement Activity

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

Metric 4a – HPV Discovery Rate - per Major FCE Coverage

The national average for HPV discovery rate per major source FCE coverage is 9.2%. MEDEP has a discovery rate of 17.8%, which is almost twice the national average.

Metric 4b – HPV Discovery Rate - per Major Source

The national average for HPV discovery rate per major source is 4.3%. MEDEP has a discovery rate of 7.7% which again is close to twice the national average.

The above two paragraphs (Metric 4a and Metric 4b) indicate that the MEDEP compliance monitoring staff is very capable of identifying violations and reporting them to EPA. MEDEP compliance monitoring staff should be commended for its work in this area.

Metric 4d – Percent of Enforcement Actions with Prior HPVs

The national average for this metric is 77.8% and the goal is for each state to be above half the national average (38.9 %.) The MEDEP average is 100%, which well exceeds expectations.

MEDEP has implemented effective procedures to identify and track HPVs in a timely manner that are consistent with the HPV policy.

CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:

Timely and Appropriate Enforcement Response to High Priority Violators (“the HPV policy”),
July 1999

MEDEP Bureau of Air Quality Compliance and Enforcement Policy, August 22, 2000

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

None

5) Degree to which state enforcement actions include required injunctive relief, such as

corrective or complying actions, that will return facilities to compliance in specified time frame.

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

All of the 9 enforcement case files reviewed by EPA as part of the SRF had appropriate injunctive relief and compliance schedules that returned facilities to compliance in a timely manner. In most cases, a facility is returned to compliance before the MEDEP enforcement staff even issues an NOV. As highlighted earlier in this report under Element #3, the MEDEP issues LOWs typically within two weeks of discovering a violation. This serves as an early warning notice to a violator and provides information on what the violator needs to do to return to compliance. MEDEP should be commended for the work it does to ensure that violating facilities are returned to compliance expeditiously.

CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:

Timely and Appropriate Enforcement Response to High Priority Violators (“the HPV policy”)
July 1999
MEDEP Bureau of Air Quality Compliance and Enforcement Policy, August 22, 2000

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

None

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

Metric 6a – Percent of HPVs that are Unaddressed for More Than 270 days

Three out of a total of 13 HPVs (23.1%) were unaddressed for more than 270 days in FY06. The national average as reported in the OTIS SRF Results is 44.2%, which indicates that MEDEP is doing very well in addressing HPVs in a timely manner. Furthermore, the 3 HPVs unaddressed for more than 270 days (Boralex-Ashland, Boralex-Livermore Falls, and Boralex-Stratton) were all part of a complex multimedia and multi-facility enforcement action involving the MEDEP Air Program and Solid Waste Program. In fact, the reason the case was unaddressed for more than 270 days was due to issues that Boralex had with the MEDEP Solid Waste Program’s proposed penalty. In addition, this action included 3 separate supplemental environmental projects (SEPs) that needed to be coordinated between MEDEP, Boralex, and third parties.

EPA has concluded that MEDEP has a strong, well-developed enforcement program and commends MEDEP’s enforcement staff for the work that it does in taking timely enforcement

actions.

CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:

Timely and Appropriate Enforcement Response to High Priority Violators (“the HPV policy”),
July 1999
MEDEP Bureau of Air Quality Compliance and Enforcement Policy, August 22, 2000

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

None

7) Degree to which the State includes both gravity and economic benefit calculations in penalty assessments.

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

Of the 9 enforcement files that EPA reviewed as part of the SRF, all included a penalty calculation and timely and appropriate enforcement actions were taken in all but one case. (One enforcement file reviewed, Boralex-Ashland, was part of the multimedia and multi-facility case described in Element #6 above where enforcement wasn't timely due to the complex nature of the case.) All 9 enforcement files reviewed included actions where penalties were sought and obtained. All 9 enforcement actions assessed penalties for gravity, but none assessed economic benefit because the nature of the violations was such that the MEDEP determined that there was no significant economic benefit gained from the violations. Most of the violations were for things such as late submittal of Title V annual compliance certifications, sporadic CEM pollutant exceedances, CEM monitor downtime, and the use of fuel oil with sulfur contents slightly higher than licensed limits where there were no discernible price differences between compliant and non-compliant fuel oils. (Examples of 2 cases follow: McCain Foods - licensed sulfur limit = 0.5% by weight and actual sulfur content between 0.5% and 0.6%, by weight; Jackson Laboratories – licensed sulfur limit = 0.25% by weight and actual sulfur content = 0.278 %.) EPA agrees with MEDEP's determination that there was insignificant economic benefit gained from each of the nine enforcement case files reviewed.

For some of the penalty calculations reviewed by EPA, it was unclear how MEDEP staff used its Bureau of Air Quality Monetary Penalty Calculation Guideline (penalty policy) to arrive at a specific penalty amount. MEDEP enforcement staff was able to easily explain how the penalty was calculated when asked to provide clarification. As in the last state review conducted by EPA in 2002 in Maine, the MEDEP informed EPA that it is hesitant to put too much detail in its penalty calculations because the MEDEP does not have the authority to protect such information from the public under existing state “Freedom of Information” laws. EPA suggested that MEDEP explore whether this information can be protected as “privileged information” under attorney/client privilege where MEDEP is the client of the Maine Attorney General's Office. MEDEP explained that Maine has a very narrow attorney/client privilege in the government attorney arena, much narrower than traditional definition. In any event, the proposed penalty

should follow the MEDEP penalty policy and be consistent from one company to the next. The only time confidentiality should become an issue is when MEDEP mitigates a penalty downward for various reasons such as good faith efforts on the violator's part, going beyond compliance, and litigation risk. At the very least, where the proposed penalty and final penalty are different, the final penalty calculation memo should provide some indication of why the penalty amount changed. For example, the MEDEP could include in the penalty memo that "the penalty was reduced because of good faith efforts on the part of the violator."

EPA discussed these issues with MEDEP and they agreed that for an initial proposed penalty calculation memo, where MEDEP uses its penalty policy guidelines to derive the penalty, the memo should include more information and clarity so a reviewer can determine how the penalty calculation was derived from the penalty policy. The MEDEP also agreed to provide a general statement, where applicable, in future final penalty calculation memos, as to why the penalty figure changed from the initial proposed penalty.

A comparison of EPA's penalty policy with the MEDEP's penalty policy indicates that the two policies are consistent. The only apparent difference is in the penalty amounts, where EPA has statutory authority to collect higher penalties.

CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:

Clean Air Act Stationary Source Civil Penalty Policy, October 25, 1991
MEDEP Bureau of Air Quality Monetary Penalty Calculation Guideline, Amended 1/31/03

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

- 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.
 - A general statement describing the rationale for penalty reduction (e.g., good faith efforts, going beyond compliance, litigation risk, and retraction of penalty counts.)

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

MEDEP does a good job assessing and collecting penalties. In FFY '06, MEDEP assessed penalties in the amount of \$111,799. Of the 9 enforcement case files that were reviewed as part of this SRF, penalties have been collected for all 9 cases. Copies of the penalty checks were

found in all 9 enforcement case files. Of the 9 enforcement case files reviewed by EPA, all established initial penalties that were consistent with the MEDEP's penalty policy. In a few cases, the assessed penalty was modestly less than the initial penalty. The difference between the assessed penalty and the final penalty was the result of negotiations between MEDEP and the violators.

Metric 8a – Actions with Penalties

Of the 5 formal enforcement actions (Consent Agreements) reported in OTIS that MEDEP settled in FFY '06 and the 2 formal enforcement actions (Consent Decrees) reported in OTIS that the Maine Attorney General's Office settled in FFY '06, all included the assessment and collection of a penalty.

Metric 8b – Percent of Actions at HPVs with Penalties

The national average of formal enforcement actions at HPVs that included a penalty was 76.7% for FFY '06 and the goal is for each state to include a penalty in at least 80% of the formal enforcement actions it issues to HPVs. For FFY '06, the MEDEP included penalties in 4 out of a total of 4 formal enforcement actions it issued to HPVs (100%). This more than satisfies the national goal of 80% and the MEDEP compliance monitoring, and enforcement staff should be commended for identifying violations and taking appropriate enforcement response.

CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:

Clean Air Act Stationary Source Civil Penalty Policy, October 25, 1991
MEDEP Bureau of Air Quality Compliance and Enforcement Policy, August 22, 2000

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

None

Section 3: Review of Performance Partnership Agreement

9) Degree to which enforcement commitments in the PPA are met and any products or projects are completed.

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

For FFY '06, Region 1 received only a half-page compliance strategy regarding the Performance Partnership Agreement (PPA). In this strategy, the MEDEP committed to implementing the CMS policy and committed to conducting FCEs at 40 Title V facilities and 100 synthetic minor and true minor sources. In the compliance strategy, the MEDEP also committed to: 1. conducting 30 Stage II test observations, 2. inspecting 6 dry cleaners, and 3. establishing regulatory oversight of outdoor wood boiler emissions. On the enforcement side, MEDEP committed to continuing to address violators consistent with EPA's HPV policy and Maine's enforcement response policies.

For FFY '06, OTIS indicates that MEDEP conducted 46 FCEs at Title V major sources. MEDEP's database indicates that it conducted 48 FCEs at Title V major sources in FFY '06. In addition, OTIS indicates that MEDEP conducted FCEs at a total of 180 SM80, other synthetic minor, and true minor sources. MEDEP's database indicates that MEDEP conducted FCEs at 228 SM80, other synthetic minor, and true minor sources. The MEDEP reported to EPA that it conducted 24 Stage II test observations in FFY '06 (MEDEP failed to meet its PPA commitment in this area (at least 30 Stage II test observations) because its Stage I/II inspector position was vacant from September 2005 to April 2006.) The MEDEP has spent an enormous amount of time working on the outdoor wood boiler issue. This work involved coordinating with other states, the Northeast States for Cooperative Air Use Management (NESCAUM), and with ASTM to develop testing protocols in order to determine emissions from outdoor wood boilers and set regulatory emission limits. This work is currently ongoing. For FFY '06, MEDEP met its enforcement commitment to address violations consistent with EPA's HPV policy and MEDEP's own enforcement response policies.

CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:

MEDEP PPA Compliance Strategy/Workplan for FFY '06, June 2006

Timely and Appropriate Enforcement Response to High Priority Violators ("the HPV policy"), July 1999

MEDEP Bureau of Air Quality Compliance and Enforcement Policy, August 22, 2000

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

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.

Section 4: Review of Data Integrity

10) Degree to which the Minimum Data Requirements (MDRs) are entered into AFS in a timely manner.

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

At the start of FFY '06, MEDEP took the initiative to add HPV information into AFS itself through the universal interface. Prior to FFY '06, MEDEP would complete HPV data entry forms and submit them to EPA for entry into AFS. MEDEP took on this extra burden, but has had several problems inputting new HPVs into AFS and once inputted has had problems linking various actions to the applicable Day 0 of a given HPV. Very recently, MEDEP contacted the AFS hotline and was given suggestions on how to overcome the data issues it has been experiencing while trying to provide information to AFS through the universal interface. EPA Headquarters also gave MEDEP authority to access AFS directly so the universal interface could be circumvented entirely. Before deciding on whether to continue providing data to AFS through the universal interface or to enter data directly into AFS, MEDEP will implement EPA Headquarters' suggestions regarding the universal interface and, if needed, have a discussion

with EPA Headquarters to determine if EPA Headquarters can provide contractor support to MEDEP for universal interface issues.

Data issues involve not only HPV information, but entry of compliance monitoring activities such as inspections and Title V annual certification reviews. As discussed in Element #1 above, MEDEP believes a separate problem exists here regarding the transfer of compliance monitoring activities from the MEDEP database, through the universal interface, and ultimately to AFS. MEDEP believes there is a bug in their extraction program that allows information from their database to be uploaded to the universal interface before being downloaded into AFS. MEDEP needs to dedicate resources to research this matter more fully in order to resolve the problem.

Metric 10a – Percent of HPVs Entered More Than 60 Days after Day Zero

90.9% of MEDEP's HPVs were entered more than 60 days after Day 0 occurred. The national average for this metric for FFY '06 was 57.6%.

MEDEP will continue to work to resolve the data issues it has been experiencing in regard to both the universal interface and the extraction program it uses to upload information into the universal interface from its database.

CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:

Timely and Appropriate Enforcement Response to High Priority Violators (“the HPV policy”)
July 1999
Compliance and State Action Reporting for Stationary Sources of Air Pollution, Information Collection Request (66 Fed. Reg. 8588)

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

- 1) By December 31, 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.
- 2) By December 31, 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.
- 3) By December 31, 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.

11) Degree to which the MDRs are accurate.

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

There were five MDRs for which AFS data did not appear to be accurately reflecting MEDEP's performance due to data quality and translation issues, namely, CMS classification, operating status, compliance status, Title V annual compliance certification review, and inspections conducted.

OTIS SRF Results, dated January 31, 2007, indicate that MEDEP has 75 Title V major sources, 36 SM80 sources, and 184 other synthetic minor sources. MEDEP reported to Region 1 that it currently has 70 Title V major source, 59 SM80 sources, and 190 other synthetic minor sources. MEDEP compliance monitoring staff and licensing staff plan to meet to discuss the CMS classification issue to ensure that the universe of Title V major, SM80 and other synthetic minor sources is accurately represented in AFS.

As part of the SRF, EPA has worked with the MEDEP to determine whether the number of activities reflected in OTIS SRF Results was accurate and, where they were not accurate, Region 1 worked with MEDEP to reconcile the differences. In performing this exercise EPA and MEDEP found that there was 1 major source (Holtrachem Mfg. Co.) and 2 SM80 sources (Saunders Brothers and Electronic Mfg. Systems) that were showing up in OTIS as needing an inspection in order to adhere to the CMS policy. In fact, Holtrachem Mfg. Co. has been permanently shutdown for several years and Saunders Brothers and Electronic Mfg. Systems have been permanently shutdown since July, 2005 and April, 2005, respectively. MEDEP has agreed to update the operating status of permanently closed facilities to ensure the universe of operating major and synthetic minor sources is reflected accurately in AFS.

OTIS SRF Results indicated that MEDEP had 6 facilities in unknown compliance status in FFY '06. Again, EPA and MEDEP had a discussion to determine whether OTIS SRF Results represented an accurate picture for the number of sources with an unknown compliance status. MEDEP indicated that FCEs were conducted at 4 out of the 6 facilities, listed in OTIS with an unknown compliance status, within the allowed CMS timeframe, and one was inspected in the first quarter of FFY '07. The 4 facilities inspected within the allowed CMS timeframe, as reported in Element #1 above, were Irving Forestry Products, Huber Engineered Wood, Penobscot Energy Recovery, and Irving Tanning. The FCE conducted in the first quarter of FFY '07 was SD Warren – Skowhegan. It is not surprising that these 5 facilities are reflected in OTIS as having an unknown compliance status since none of the 5 FCEs are reflected in AFS/OTIS either. As previously discussed in Element #1 and Element #10 above, this relates to a suspected bug in the extraction program MEDEP uses to upload information from its database into the universal interface before being downloaded into AFS/OTIS.

OTIS SRF Results indicate that 4 out of 62 Title V annual certification reviews were not completed by MEDEP. The 4 facilities listed as not having annual certifications reviewed by MEDEP in FFY '06 are FMC Corporation, Bath Iron Works, Irving Tanning, and New England Waste Service. MEDEP informed EPA that it had conducted annual compliance certification reviews at all 62 facilities, including the 4 in OTIS reported as not having been reviewed. MEDEP believes that the cause for 2 of the annual certification reviews not showing up in AFS/OTIS is due to the fact that the reviews were not tied to all the appropriate Air Program codes. The reviews for FMC Corp. and Irving Tanning were tied only to the Air Program code

of “0” for SIP, but not tied to the Air Program code of “V” for Title V. MEDEP informed EPA that the other 2 facilities reported in OTIS as not having been reviewed were tied to the appropriate Air Program codes and believe the problems they are experiencing with their extraction program may be the reason that they were not properly reflected in AFS/OTIS.

OTIS SRF Results indicate that there were 17 Title V major sources overdue for an FCE and 10 SM80 sources overdue for an FCE at the close of FFY '06. As discussed in Element #1, above, the MEDEP reports that there were only 3 FCEs overdue for Title V major sources and 6 FCEs overdue for SM80 sources. This clearly shows that there is a data quality or translation issue in reporting inspection activities into AFS/OTIS. Some of the deficiencies are due to inaccurate CMS codes and inaccurate AFS operating codes, but MEDEP informed EPA that the state database indicates that 8 out of the 17 Title V major sources and 1 out of the 10 SM80 sources listed in OTIS as having not been inspected within the allowed CMS timeframe ending September 30, 2006 were completed within the appropriate timeframe.

Metric 11a –HPVs Compared to Non-Complying Sources

The national average of the number of HPVs per number of non-complying sources for FFY '06 is 96.4%. The goal is for states to be at or below 100%. This data metric indicates that the MEDEP has an average of 433.3%. This high percentage is probably a result of HPV data fields being updated once HPVs are identified without reflecting the violation status in the compliance status fields. Region 1 informed MEDEP that, in this type of situation, AFS does not automatically change the compliance status of a source to be “in violation” and that MEDEP will need to manually make the changes for all sources. As a result, MEDEP will implement a procedure for regular review and update.

Metric 11b – Stack Test Results with Pass/Fail Code

The national average of stack tests conducted at federally-reportable sources without pass/fail results for FFY '06 was 16.2%. The goal is for each state to have 0% stack tests without a pass/fail result. For FFY '06, MEDEP included stack test results for 71 out of 71 stack tests conducted and therefore the percentage of stack tests conducted in Maine in FFY '06 without a pass/fail result is 0%.

CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:

Timely and Appropriate Enforcement Response to High Priority Violators (“the HPV policy”)
July 1999
Compliance and State Action Reporting for Stationary Sources of Air Pollution, Information
Collection Request (66 Fed. Reg. 8588)

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

- 1) Refer to the first bulleted recommendation of Element #10.
- 2) Refer to the second bulleted recommendation of Element #1.

12) Degree to which the MDRs are complete, unless otherwise negotiated by the Region and State or prescribed by a national initiative.

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

This report highlights areas where data reporting is deficient and MEDEP is currently working to resolve the data issues it is experiencing due to problems with its extraction program used to upload information from the MEDEP state database to the universal interface and problems entering HPV data through the universal interface. To ensure that MEDEP can meet all MDRs in the future, MEDEP should follow the recommendations of this report and develop a plan outlining how the state will improve data quality.

Metric 12A through J

- OTIS reports in Metric 12A that MEDEP has 73 Title V sources, and 71 have Title V Air Program codes. MEDEP reports that the actual number of Title V sources in Maine is currently 70.
- OTIS reports in Metric 12B that MEDEP has 179 synthetic minor sources. However, OTIS also reports the universe of SM80s and other synthetic minor sources in Maine to be 36 (Metric 1B) and 184 (Metric 1C), respectively. MEDEP reports that the actual number of SM80s and other synthetic minor sources currently operating in Maine is 59 and 190, respectively.
- No remarks for Metric 12C, which is informational only.
- OTIS reports in Metric 12D that the total number of FCEs conducted in FFY '06 by MEDEP was 100. MEDEP reports that a total of 276 FCEs were conducted in FFY '06 by MEDEP staff (48 FCEs at Title V major sources, 15 at SM80 sources, and 213 at other synthetic minor and true minor sources.)
- Metric 12E relates to combined numbers for EPA and the MEDEP and therefore does not provide a clear picture of state-only activity.
- OTIS reports in Metric 12F that 43 NOVs were issued in FFY '06 by the MEDEP. MEDEP reports having issued an additional 8 NOVs (2 for stationary sources: Boralex-Livermore Falls issued on 9/12/06 and Regional Waste Systems issued on 8/24/06 and 6 for Stage II or mobile source violations: Rowe Ford issued on 8/29/06; Blouin Motors issued on 5/4/06; 7-Eleven issued on 2/23/06; Hartley Chrysler Dodge issued on 3/2/06; Varney Pontiac issued on 2/27/06; and Bessey Motor sales issued on 2/27/06.)
- OTIS Reports in Metric 12G that the number of new HPV pathways and new HPV sources in Maine for FFY '06 was 9 and 8, respectively. This is accurate.
- OTIS reports in Metric 12H that a total of 7 formal enforcement actions were issued in FFY '06. MEDEP reports that the number of formal enforcement actions issued should be 8 (OTIS is missing a Consent Agreement issued by the MEDEP to Mead Oxford (currently "New Page") on 7/6/06.
- OTIS reports in Metric 12I that MEDEP assessed penalties in FFY '06 in the amount of \$41,770.00. This amount is inaccurate. The MEDEP reports that it assessed penalties in the amount of \$111,799 in FFY '06. This includes penalties assessed against a number of smaller, unlicensed facilities, as well as, a penalty assessed against Mead Oxford in the amount of \$19,512.00 that has not been reported as an action in AFS/OTIS.
- OTIS reports in Metric 12J that the MEDEP has 6 active major sources where the CMS

source category (CMSC) field was left blank and needed updating. MEDEP informed EPA that 2 out of the 6 sources were permanently shutdown (Holtrachem Mfg. Co. and Osram Sylvania.) MEDEP informed Region 1 that CMSC codes were needed for the remaining 4 facilities (Dragon Products, Morin Brick Co. – Gorham, Waste Management Crossroads, and Juniper Ridge.) EPA will enter the proper CMSC code for these 4 facilities.

The data discussed in this metric, as well as the data discussed in other data-oriented metrics of this report, indicate that there are many data discrepancies between the MEDEP's database and AFS/OTIS. Region 1 and MEDEP believe that AFS has become too cumbersome to use and stress the need for AFS modernization in order to manage data more effectively and efficiently.

CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:

Timely and Appropriate Enforcement Response to High Priority Violators (“the HPV policy”) July 1999
Compliance and State Action Reporting for Stationary Sources of Air Pollution, Information Collection Request (66 Fed. Reg. 8588)

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

1) By December 31, 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.

ATTACHMENT 1

9 Inspection-only Files Reviewed:

Company Name	Source Size	Regional Office	FCE/PCE
1. Westbrook Energy	Title V Major	Portland Office	FCE
2. GPX International Tire	SM80	Portland Office	FCE
3. Cianbro Paint	SM80	Augusta Office	FCE
4. Mid Maine Waste Action	Title V Major	Augusta Office	FCE
5. Madison Paper	Title V Major	Augusta Office	FCE
6. Eastern Maine Medical Center	SM80	Bangor Office	FCE
7. Katahdin Paper	Title V Major	Bangor Office	FCE
8. Fraser Paper	Title V Major	Presque Isle Office	FCE
9. Wheelabrator Sherman	Title V Major	Presque Isle Office	FCE

9 Enforcement and Inspection Files Reviewed:

Company Name	Source Size	Regional Office	FCE/PCE
1. Boralex-Ashland	Title V Major	Presque Isle Office	FCE
2. McCain Foods	Title V Major	Presque Isle Office	FCE
3. Huber Engineered Wood	Title V Major	Presque Isle Office	FCE
4. Worcester Energy	Title V Major	Bangor Office	PCE
5. Jackson Laboratories	SM80	Bangor Office	FCE
6. FMC Corp	Title V Major	Augusta Office	FCE
7. Dragon Products	Title V Major	Augusta Office	FCE
8. Portland Sand & Gravel	True Minor	Portland Office	FCE
9. Bickford Transportation	True Minor	Portland Office	PCE

Maine DEP Clean Water Act NPDES Enforcement Program

EPA delegated the NPDES program to the State of Maine in January 2001. Since that time the Maine Department of Environmental Protection (MEDEP) has been issuing Maine Pollutant Discharge Elimination System (MEPDES) permits and conducting enforcement actions. Douglas Koopman of Region 1 evaluated the MEDEP's surface water discharge inspection and enforcement program. The MEDEP central office located in Augusta, ME employs inspectors, permit writers, enforcement staff, and the data management staff. The MEDEP also has regional field offices in Portland, Bangor and Presque Isle.

Information Sources Included in the Review

Region I reviewed 19 inspection reports and 3 Notices of Violation and 9 enforcement actions that were taken in fiscal year 2006. The review used the EPA Headquarters data pulls to provide national average and state specific information. The information from the file reviews and data pulls was used to answer specific questions covering 12 topic or element areas. The review also included examination of the MEDEP Performance Partnership Agreement and a review of the database integrity.

To obtain a representative picture of how the MEDEP operates its program, industrial and municipal facilities from each regional office were included in the file review. The files selected for review were ones that had either an inspection or enforcement action taken against the facility in fiscal year 2006.

Inspection Reports reviewed

Augusta

Northport Village Corp ME0100901 – minor - municipal
S.D. Warren (formerly SAPPI) ME0021521 – major – industrial (2 inspections)
Town of Lisbon ME0100307 – major – municipal
Farmington ME0101245 – major –municipal
Squirrel Island Village Corp ME0100650 - minor – municipal

Bangor

Katahdin Paper Co. East facility ME0000175 - major – industrial
Katahdin Paper Co. West facility ME0000167 - major – industrial
Georgia Pacific (Fort James) ME002020 – major – industrial
Bar Harbor ME0101214- major- municipal

Presque Isle

Fort Fairfield Utilities Dist ME0100226 – major – municipal
Fraser Papers Limited ME0000159 – major – industrial
Presque Isle Sewer District ME0100561 – major – municipal
Presque Isle Landfill MEU508088 – minor – municipal

Portland

Dyer Septic MEU508124 – minor – industrial

Sunday River ME0023361 – minor- industrial
Kennebunk ME0100935 – major – municipal
Old Orchard Beach ME0101524 – major – municipal
Peaks Island (Portland Water Dist) ME0102237 – minor - municipal

Notices of Violation reviewed

Auto Wash ME minor- industrial
North Haven Waste Water Treatment Plant ME - major – municipal
Nankervis Trucking ME - minor - industrial
Bar Harbor ME0101214- major- municipal

Enforcement actions reviewed

Bar Harbor ME0101214- major- municipal
Squirrel Island Village Corp ME0100650 - minor – municipal
Dragon Products - violation for discharge without a license, no license number
Heritage Salmon - ME0110086 - minor – industrial
K, K&W Water District - violation for discharge without a license, no license number
ME Coastal Memorial Hospital - violation for discharge without a license, no license number
J&D McCrum - violation for discharge without a license, no license number
Presque Isle Sanitary District - ME0100561 - major- municipal
Calais - ME0100129 - major- municipal

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Section 1: Review of Inspection Program Implementation

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

FINDINGS – (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)

According to MEDEP’s latest data, from January, 2007, the state has 79 major facilities including 60 POTWs and 19 industrial facilities. Maine’s data for the inspection year covering 7/1/05 to 6/30/06 shows the MEDEP conducting 75 compliance evaluation inspections (CEIs) at 63 major sources and 35 CEIs at 33 minor sources. MEDEP conducted compliance evaluation

inspections at 63 out of 79 major facilities resulting in 79.7 % coverage of the major sources. Maine was well above the national average of 59.9 % of majors inspected annually. OECA has traditionally given credit for compliance evaluation inspections of minor facilities on a 2:1 basis, i.e., two minor inspections can be counted as one major inspection. If this is taken into consideration MEDEP conducted an additional 16 major inspections, which increased its coverage to 100 %.

In addition to the 110 compliance evaluation inspections, the state conducted an additional 111 inspections at major sources and an additional 296 inspections at minor sources which are not reflected in the State Review Framework data. The tables below show these inspections.

Non-CEI Inspections of Majors

Inspection Type	# of inspections
Routine	81
Sampling	6
Licensing	5
Diagnostic	3
Tech Assistance	10
Enf Support	1
Toxic	4
Pretreatment compliance	1
Total	111

Non-CEI Inspections of Minors

Inspection Type	# of inspections
Routine	275
Sampling	3
Licensing	6
Diagnostic	4
Tech Assistance	7
Enf Support	1
Total	296

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

Inspection reports
 State Review Framework Data
 Discussions with state staff

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

None

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

FINDINGS – (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)

Nineteen inspection reports were reviewed - 14 CEI reports (6 industrial and 8 municipal) and 5 routine inspections (2 municipal and 3 other). The reports were well-written and very thorough. For most CEI inspections a 3560 form was filled out along with a written report. Some inspections were conducted using the extensive checklists that the MEDEP has developed. If problems or concerns were identified during the inspection, the inspector included these in the body of the report. At the end of the report, the inspector identified the problems that needed to be corrected and made recommendations to help improve the facility's compliance.

Effluent data from the facilities is reviewed every month by the regional inspectors, so most effluent violations are identified through this monthly review, and appropriate actions are discussed at the monthly Non-Compliance Review (NCR) meetings. These violations are not discovered during inspections.

Almost every inspection report reviewed provided recommendations for the facility to take some type of corrective action. However, the reports don't specify a deadline for completion. It would be helpful for the inspector to provide the facility with a deadline. This would put the facility on notice and it will provide MEDEP with solid documentation of when the problem(s) were first directed to be fixed.

Also, several of the inspection reports contained statements like "the facility is meeting its license requirements" or "the facility is in compliance." Statements like these can be damaging if in the future, violations are found at the facility that were occurring during the time of the inspection and the inspection report documents that the facility was in compliance at that time.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

NPDES Compliance Inspection Manual, September, 1994
Inspection Reports

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

- 1) EPA recommends that the inspectors refrain from using statements in their inspection reports that suggest full compliance at the facility.
- 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.

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

FINDINGS – (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)

The majority of the reports were written within 30 days. Of the 19 reports, 3 were written outside of 30 days and 2 reports were not dated. The state does use extensive checklists for some of their inspections, and those are filled out at the time of inspection. Problems/violations at the facility are identified in the reports. As well as identifying problems/violations in the reports, the inspectors and enforcement engineers meet monthly to discuss facilities with violations and how to proceed.

The NPDES Compliance Inspection Manual and the MEDEP inspectors' performance agreements both require inspection reports to be written within 30 days of completing the inspection. The data shows that $(5/19) \times 100 = 26\%$ of the inspection reports were not written or it could not be determined if they were written within 30 days of the inspection.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

MEDEP inspection reports
NPDES Compliance Inspection Manual

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

1) By November 30, 2007, the MEDEP will inform EPA of the steps it is taking to improve inspection report timeliness.

Section 2: Review of State Enforcement Activity

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

FINDINGS – (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)

MEDEP's enforcement process begins in internal meetings and proceeds to regular discussions with Region 1. The MEDEP conducts a monthly "Non-Compliance Review" meeting with the enforcement staff, licensing staff and the regional inspectors. During the meeting, facilities with new violations are discussed and the group decides what course of action will be taken in accordance with MEDEP's Compliance Policy. Outcomes include: monitoring actions the facility has taken or is taking, providing technical assistance, a letter of warning, a Notice of Violation, or referring the case to the enforcement group for more formal action like an Administrative Consent Agreement. Also at these meetings, the group discusses progress of ongoing enforcement cases. EPA meets with the MEDEP once a quarter to discuss facilities which are in significant non-compliance and facilities which are on the watch list. During these meetings, MEDEP and EPA decide which agency will conduct enforcement actions to get the facilities back in compliance or correct data problems to get the facilities off the watch list.

A review of Metric 4B showed 58 facilities, or 66.7%, in SNC for FY2006. This is higher than the national average of 19.2%. However 37 of these facilities first appear as SNC in the 4th quarter of 2006. This reflects data issues during the transition to ICIS-NPDES (see Elements 6 & 10). Excluding these facilities, the MEDEP SNC rate would have been 24.1%, just above the

national average. Of these, 7 facilities were in SNC for effluent violations, 6 facilities were in SNC for effluent and DMR violations, 1 facility for a schedule violation and the remaining 7 facilities were in SNC for DMR non-receipt prior to the 4th quarter of FY2006.

Regarding Metric 4A, MEDEP does not enter single event violations into PCS. They do maintain their own data base to track SSO and CSO events.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

40 C.F.R. Part, 123, PCS Policy Statement

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

None

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

FINDINGS – (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)

Of MEDEP's 16 formal actions in FY 06, 15 included a compliance schedule or specific actions needed to bring the facility back into compliance. The Heritage Salmon Consent Agreement did not have a compliance schedule because at the time of the Consent Agreement the facility had been sold and was no longer owned by the violating company. The company was fined and did conduct an SEP which was related to restoration of wild salmon habitat.

In FY 06 the MEDEP issued 19 Notices of Violation to 19 different facilities. For seven facilities that received NOV's, the final outcome was an administrative consent agreement issued in FY 2006.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

Enforcement files

Inspection files.

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

None

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

FINDINGS – (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)

Metric 6A shows that 20 facilities, or 23%, did not receive enforcement action in a timely

manner. The national goal is less than 2% and the national average is 7.9%. Of the 20 facilities listed, 12 were listed for DMR non-receipt. MEDEP has had issues in the past as well as recently with getting the DMR data into the PCS system (see Element 10). Excluding these facilities, 8 or 9.2% of facilities did not receive enforcement action in a timely manner.

Of these remaining eight facilities, they can be placed into three categories:

- 1) Consent Agreements that have taken a long time to negotiate: The MEDEP drafted and issued an Administrative Consent Agreement to Calais around September, 2003. The Administrative Consent Agreement with Calais was signed in September, 2006. The MEDEP drafted and issued an Administrative Consent Agreement to Presque Isle around September, 2004. The Administrative Consent Agreement with Presque Isle was signed in March, 2006. The MEDEP drafted and issued an Administrative Consent Agreement to Paris Utility District around September, 2005. The MEDEP is currently negotiating this Administrative Consent agreement with the Town of Paris. These long negotiation periods occur because MEDEP does not have administrative penalty authority.
- 2) Data Entry problems: Limestone Water and Sewer had its permit limits improperly coded into PCS which resulted in violations of effluent limits. The City of South Portland was in SNC for a compliance schedule violation. The MEDEP was missing an end of construction report for S. Portland. The work required by the enforcement action had been completed but additional work was ongoing. It took the MEDEP over a year to get this discrepancy taken care of and the report data entered into PCS.
- 3) Facilities under consent agreements recently completing upgrades: The Lewiston Auburn WWTF and the East End WWTF have both recently completed treatment plant upgrades and, as expected, they experienced some exceedences during start up. These events are anticipated and not considered high priorities for enforcement.

The MEDEP uses their Compliance Policy (7/11/2001) when tracking the progress of enforcement actions. The policy states that progress will be reviewed every 30 days at the Non-Compliance Review meetings. Upon initiating an enforcement response, satisfactory progress should be seen within 60 days for letters of warning and Notices of Violation and within 90 days for Administrative Compliance Agreements. If cases exceed these timeframes, MEDEP should consider whether it may be appropriate to refer them to EPA for administrative compliance.

MEDEP has not been delegated full authority to negotiate administrative consent agreements with the violating party. Because of this situation, the MEDEP has to negotiate with the violating party as well as the Attorney General's office in order to reach a settlement in a case. Once a settlement is reached, the violating party signs the consent agreement, which is followed by a public notice period. The Board of Environmental Protection reviews and signs the document followed by the Attorney General's office. Until the MEDEP is delegated full authority to negotiate its own penalty actions, this will continue to be a long process. Region 1 recognizes that MEDEP must receive administrative penalty authority to resolve this timeliness issue and that it has sought this authority on several occasions in the past.

Except for the DMR non-receipt issues and lack of administrative penalty authority, the MEDEP is completing its enforcement actions in a timely manner.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

40 C.F.R. Part 123.45, the QNCR Guidance Manual, MEDEP Compliance Policy, 7/11/2001

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

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.

2) Region 1 recommends that MEDEP continue to seek administrative penalty authority.

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

FINDINGS – (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)

In FY 2006 the MEDEP issued 16 Administrative Consent Agreements. All 16 enforcement actions assessed a penalty to the violator. In one case against ME Central Railroad, the penalty did not get assessed by the water program but was assessed by the hazardous waste program.

Based on the cases reviewed for this audit, the MEDEP assessed penalties using the policies that they have or had in place. Economic benefit was considered and or calculated in all but two cases. In the two cases where economic benefit was not calculated, the penalties assessed were \$500 and \$1000 each.

MEDEP does a good job of documenting how it calculates the economic benefit and gravity portions of the penalty.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

Enforcement Files

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

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.

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

FINDINGS – (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)

The MEDEP collects the penalties in their Administrative Consent Agreements upon signing the document with the violating party. Administrative Consent Agreements contain the following

language: “Pay to the treasurer, State of Maine, the sum of XX dollars due immediately upon signing this Agreement.” On occasion the MEDEP will enter into an Administrative Consent Agreement that contains a schedule for payment of the fine but this is not a normal occurrence.

The penalty payments come into the MEDEP offices for processing and payment verification.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

Inspection Files
Enforcement Files

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

None

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

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

FINDINGS – (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)

Section E, “Regulated Activity Oversight” of the Land and Water Quality section of the 2006 – 2008 PPA required MEDEP to: inspect at a minimum 30 major facilities and 30 significant minor facilities each year. Based on the information outlined in question 1, the MEDEP has clearly met and exceeded this PPA commitment.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

State of Maine 2006-2008 PPA.

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

None

Section 4: Review of Database Integrity

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

FINDINGS – (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)

MEDEP has had problems with data entry for several reasons, especially when it comes to

getting DMR information entered in a timely manner.

The vast majority of the DMR non-receipt problems occurred when MEDEP began using the state's Environmental Facility Information System (EFIS) and the Electronic Discharge Monitoring Reporting (eDMR) software to enter and store Maine's compliance, inspection and enforcement data in August, 2006. Traditionally, MEDEP would download DMR data to PCS directly as DMRs were received and inspection and enforcement data was loaded into the PCS system every 30 days. In August the MEDEP moved all the data for active facilities in PCS from a mirror of the PCS database into EFIS. At that time, MEDEP staff began entering DMR data for months prior to and including June, 2006 directly into EFIS. EFIS then created card image format record of those data which were sent to PCS through the batch interface. After July, 2006 DMR data was entered into the MEDEP eDMR system, forwarded to EFIS and then sent to PCS through the batch interface. The implementation of the eDMR system was delayed due to some technical problems, and the first DMR records were sent from eDMR to EFIS in early October. From mid-August through the first week in October, no DMR data was entered into PCS. It was during this period in August and September that a large group of DMRs showed up as not entered into PCS. When MEDEP checked their data base, the DMRs data in question appeared to have been entered, however, due to technical problems in the EFIS to PCS data extraction routine, many of the DMR data records were not extracted and sent to PCS. Around April, 2007 while performing another task utilizing the PCS data, MEDEP noticed again that the DMR data in question was not in PCS. The MEDEP staff has identified all the data missing from PCS.

The most recent problems with DMR non-receipt can be linked to the issues of switching to a new database. However, in the past, DMR non-receipt has also been a problem. MEDEP does have some legitimate non-receipt issues, but the vast majority of the non-receipt issues tend to be tied to data entry. The MEDEP has made changes as to how they handle entering DMR data and that has helped some, but they still need to be vigilant when it comes to entering their DMR data as DMR non-receipt issues push their SNC rates up.

MEDEP is also behind in entering their inspection and enforcement action information into PCS.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

Watchlist data, QNCR reports, Data metric data.

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

- 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.
- 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.
- 3) Within 4 months of the finalization of the ICIS-NPDES Policy Statement, the MEDEP shall

submit a plan for complying with the policy.

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

FINDINGS – (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)

With so much data missing from the PCS system for the period of this audit, it is not possible to make a finding on its accuracy. As stated in Metric #10 the MEDEP is on a schedule to get the data entered into the system, and at that time they will check to verify its accuracy.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

OTIS state review framework data metrics

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

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.

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

FINDINGS – (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)

See Response for Item #11.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION: (ex: CAA Stationary Source Compliance Monitoring Strategy, April 25, 2001)

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

See Item # 10

MEDEP Resource Conservation and Recovery Act (RCRA) Enforcement Review

File Review Selection Process:

On January 22-23, 2007, Drew Meyer and Richard Piligan, EPA RCRA, EPCRA, and Federal Programs Unit (the audit team), with the assistance of Mike Hudson, Supervisor, Maine Department of Environmental Protection (MEDEP) Hazardous Waste Enforcement Program (MEHWEP), conducted a file review at MEDEP's Central Office, located in Augusta, Maine. The Region randomly selected eighteen (18) files and reviewed each file for its inspection and enforcement activity (Table 1).

MEDEP's hazardous waste enforcement program operates out of three regional offices located in Central, Southern, and Eastern Maine. The Central office is located in Augusta (Central). The Southern office is located in Portland (SMRO). The Eastern office is located in Bangor (EMRO). Files were provided to the audit team by Mike Hudson, Supervisor of the MEHWEP. The MEHWEP is part of the Division of Oil and Hazardous Facilities Waste Regulation (DOHFWR), which, in turn, is part of MEDEP's Bureau of Remediation and Waste Management.

Table 1. FFY 2006 File Review Selections

FACILITY	Town/City	Region	EPA ID#	Inspection Classification		Enf Type
Johns Mansville International, Inc	Lewiston	SMRO	MED065044554	Generator	SQG+	LOW
Silvex, Inc.	Westbrook	SMRO	MED980910053	Generator	LQG	NOV/CA
Strategic Diagnostics, Inc	Windham	SMRO	none	Generator	Non-Notifier	NOV
ENPRO Services of Maine, Inc	S. Portland	SMRO	MED019069051	Generator	TSDF	NOV/CA
Rotary Dry Cleaners	Augusta	Central	none	Generator	Non-Notifier	NOV/CA
Fort James Operating Systems	Old Town	EMRO	MED980671796	Generator	LQG	NOV
Yankee Machine	Casco	SMRO	none	Generator	None	LOW
Kingfield Wood Products	Kingfield	Central	MED046218574	Generator	LQG	NOV/80K
Clean Harbors Environmental Services	Braintree, MA	na	MAD981215353	Transporter	n/a	LOW
Northeast Hide and Fur	Waterboro	SMRO	none	Generator	Non-Notifier	NOV
Bates College	Lewiston	SMRO	MED058951401	Generator	LQG	NOV
Oceanside Autobody	Portland	SMRO	none	Generator	SQG+	LOW
Augusta Tissue	Augusta	Central	MED985731272	Generator	SQG+	AG Referral
Pratt-Abbott Corporation	Portland	SMRO	MED980670616	Generator	LQG	NOV/CA
Atlantic Boat Company	Brooklin	EMRO	ME5000001214	Generator	LQG	NOV/CA
White Star Laundry	Biddeford	SMRO	MED018993139	Generator	SQG+	LOW
Windward Petroleum	Westbrook	SMRO	MED985731215	Generator	SQG	NOV
Maine Central Railroad	Gray	SMRO	none	Generator	None	NOV/CA

In choosing the files to review, the Region developed a matrix that would ensure that the chosen files were representative of the Maine universe. The matrix was based on region, generator size, enforcement type and type of inspection (e.g., generator or TSD). Most of the industry in Maine is located in the Southern Region, which explains why more files were chosen from that region than the other regions. The process used was the same process that the Region used for selecting files for the Rhode Island State Review Framework.

While enforcement unit staff may be located in a particular regional office, MEHWEP works as a team such that an inspector from one office or region may conduct inspections in another region. Additionally, the program typically conducts inspections in teams of two, which sometimes are comprised of staff from two different regions.

Data Metrics:

The data metrics used to evaluate DOHFWR were provided by EPA HQ in an Excel spreadsheet at the beginning of the evaluation process.

EPA Evaluators: Andrew G. Meyer, Environmental Scientist - (617) 918-1755
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U. S. EPA Region I Office of Environmental Stewardship
RCRA Technical Unit

State/ Program: MEDEP Division of Oil and Hazardous Facilities Waste Regulation
Hazardous Waste Enforcement Program (MEHWEP)

State Contact: Michael Hudson, Supervisor - (207) 287-2651
MEDEP Hazardous Waste Enforcement Program

Section 1: Review of Inspection Program Implementation

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

Based on anticipated staffing and funding, MEHWEP's PPA/PPG proposed to conduct at least sixty-nine on-site enforcement inspections in FFY 2006, comprised of nine different generator categories (Table 2). In each category of inspection, MEHWEP met or exceeded the number of inspections agreed to in the FFY2006 PPA/PPG.

Table 2

FY 2006 Inspection Commitments (Completed)									
TSDs	Univ Waste	LQG	SQG	Non-Notifier	Haz Matter Discharge	Land Disp Facility	Habitual Violator	H.W. Transporter	Complaint
1 (2)	0(2)	14 (17) ¹	10 (18)	10 (16)	0 (3)	1 (1)	2 (3)	1 (1)	30 (27)

During FFY 2006, MEHWEP's inspection tracking spreadsheet indicates that they completed a total of 86 inspections. RCRAInfo indicates that 57 inspections were conducted (rather than 86). The reason for this discrepancy is that MEDEP inspects many facilities that are the subject of tips and complaints, and many of these facilities are not required to obtain RCRA ID numbers. Therefore, they do not appear in RCRAInfo.

These inspections reflect the program's strategic targeting approach and are distributed among a number of regulated entities, including Large Quantity Generators (LQG), Non-notifiers, Federal Small Quantity Generators (SQG), Treatment and Storage Facilities, Hazardous Waste Transporters, Habitual Violators, and Land Disposal Facility Groundwater monitoring locations. Of these categories of entities, only the Treatment and Storage facilities and Large Quantity Generators have established National goals.

The national goal for inspection coverage of Treatment and Storage facilities is 100% coverage over a 2 fiscal year period. Maine has a total of 3 Treatment and Storage facilities subject to this goal. During FFY2006, MEHWEP committed to and completed 1 inspection at a Treatment and Storage facility. (Maine does not have any permitted hazardous waste disposal facilities). MEHWEP stated that for at least the past 10 years, Region 1 has approved of MEHWEP's PPA plans which have committed MEHWEP to conducting one Treatment and Storage inspection per year. The 100% coverage over the two-year FFY period was achieved in FY2005-06 because the USEPA conducted an inspection at the third TSD (Portsmouth Naval Shipyard) during the two-year period.

At Federal LQGs, MEHWEP committed to completing 14 inspections, but according to RCRAInfo, MEHWEP completed 17 LQG inspections during FFY 2006 (see footnote 1). It should be noted, that in MEDEP's FFY2006 PPA/PPG, there is no mention of percentage-based goals. So, although the national LQG inspection goal was established at 20% [assuming 100% LQG coverage in 5 years], MEHWEP has not explicitly committed to this goal even though it effectively committed to that goal during the PPA negotiation and planning meetings and by conducting at least 20% of the LQG universe during FY2006. (This practice was consistent with previous years' PPA negotiations, but will be changed.)

On May 10, 2005, at the time of the PPA/PPG negotiation, Region 1 provided MEHWEP with a RCRAREp Handler Printout, dated 5/10/2007, which identified 72 facilities as the ME LQGs

¹ The EPA RCRAInfo database listed 3 LQG facilities inspected in FFY2006 that were not included in the internal tracking provided to the audit team by MEHWEP, for a total of 17 completed LQG inspections. These additional facilities are Maine Yankee Atomic Power Corp, Safety-Kleen and Southern Maine Specialties.

(20%). This RCRARep Printout was the basis for MEHWEP's commitment to perform 14 LQG CEIs in FY2006. In addition, an Region 1 RCRA Compliance Unit document with an attached RCRA Discussion Paper - Region 1 State (side-by-side comparisons) indicates that the LQG Universe for Maine is 72, based on active handlers that had filed biennial reports for 2003 (BRS data) and based on RCRAInfo data, as of 5/10/2005. The Region 1 RCRA Compliance Unit document with an attached RCRA Discussion Paper - Region 1 State (side-by-side comparisons) also indicates that, based on RCRAInfo data as of May 10, 2005, there were 19 Maine LQGs "not inspected in the past 5 years" and 9 Maine LQGs "never inspected." As a result, during FY2006, 15 of the 17 LQG CEIs conducted by MEHWEP were conducted either at LQGs listed prior to FY2006 as "not inspected during the past five years" (8 LQG CEIs) or at LQGs listed prior to FY2006 as "never inspected" (7 LQG CEIs). MEHWEP has conducted a significant proportion of its LQG inspections at facilities which have not been inspected in the prior five-year period. A query of the RCRAInfo database conducted on 3/22/07 listed 48 LQGs in the database that have not been inspected in the past 5 years. However, 14 of these 48 LQGs are "new notifiers" that first notified of hazardous waste activity during the 5-year period of the data report query (i.e., notified after 1/1/2002). In addition, at least 3 of the LQGs identified in the data report query are inactive or no longer operating as hazardous waste generators, three (3) of the LQGs identified in the data report query are Superfund sites which have EPA #s only for the purposes of remedial activities rather than active generating facilities (i.e., are not priority inspection candidates), and another 3 of the LQGs identified in the data report query are bridge sites that the Maine Department of Transportation identified as LQGs but which generate as LQGs sporadically for only limited periods during extensive maintenance projects. As a result, 23 of the 48 LQGs identified in the data report query are low priority inspection candidates or no longer operate.

MEHWEP's most recent enforcement strategy discussed in the FFY2007 PPA/PPG explains that MEHWEP prioritizes those LQG facilities that have never been inspected, or that have not been inspected in the past 5 years, unless other information indicates that the likelihood of waste generation and a waste management problem is low (i.e., based on an inactive status, review of manifests and annual reports or facility knowledge from other programs). With this knowledge as indicated above, MEHWEP has evaluated many of these 48 facilities and determined facilities in other generator categories as better inspection targets.

MEHWEP has focused a substantial amount of their inspection resources on hazardous waste generators producing between 100-1000 kg of hazardous waste per month (SQGs). This has come at the cost of conducting inspections at LQGs, but MEHWEP believes it is a worthwhile investment since SQGs outnumber LQGs by a ratio of approximately 7:1. Given the nature of Maine's RCRA universe, Region 1 has determined that MEDEP's approach makes environmental sense. Furthermore, MEHWEP has recognized that SQGs generate the same types of hazardous waste as LQGs, which they believe can pose potentially greater risks to human health and the environment due to the larger number of handlers and associated locations, along with typically fewer resources and personnel dedicated toward compliance issues and programs. In FFY2006, MEHWEP committed to conducting 10 SQG inspections, but managed to complete 18 SQG inspections, 80% greater than the FFY 2006 PPA commitment.

CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:

RCRA National Program Guidance was used in reviewing this element. Also, EPA reviewed the EPA RCRA data metrics and the RCRAInfo Database and MEHWEP documents including the MEDEP FFY2006 PPA/PPG and MEHWEP's internal spreadsheet summarizing inspection activity during FFY2006.

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

- 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. (Due date to be determined)

- 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. (Due date to be determined)

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

Inspection reports were reviewed for all 18 files selected for review. MEHWEP has developed a systematic method to record inspection findings and prepare inspection reports, namely the use of checklists to record all inspection findings, supplemented by inspector note taking, and when deemed necessary, photographic evidence and analytical testing. MEDEP's checklist promotes consistent and extremely timely inspection report completion. The checklists consist of program specific modules addressing areas such as: identified hazardous wastes, management standards, security for hazardous waste storage areas, satellite accumulation areas, personnel training requirements, contingency plan requirements, small quantity generator requirements, records/manifest review, and license requirements. Upon returning to the office, staff transfers checklist information into a narrative trip report. During discussions with Mike Hudson, the audit team learned that the program attempts, as an informal goal, to complete inspection reports within 4 weeks of completing the inspection, in order to help ensure staff meet the program's Enforcement Response Policy (ERP) guidance for making decisions or obtaining approval of an appropriate enforcement response within 90 days of the date of the inspection.

In some inspections reviewed, the narrative trip report did not adequately detail the processes employed at the facility. For example, Silvex, Inc., an electroplating facility located in Westbrook did not adequately describe the processes employed at the facility other than a list of the type of plating operations. Since conducting the review, the audit team has learned that the inspector in this case had conducted prior inspections at the facility and relied upon past inspection reports which provide details of plating line process and tank diagrams. Therefore, in situations such as this, the audit team suggests making a reference to prior reports to provide sufficient detail.

A complete trip report should document the plating process sufficiently via either diagram or process flow in order to evaluate how each individual tank is being managed. Often this can be

achieved by requesting process flow-diagrams from the facility and using them as an attachment in the narrative trip report. Additionally, the narrative trip for Fort James Operating Systems, located in Old Town failed to describe the facility's production process.

To document the timeliness of inspection report writing, the program should clarify in the report when it is both started and completed. For example, inspection reports for large facilities often can take more than a single day to complete. All inspection reports reviewed during the audit were marked with a single date; therefore it is not always clear whether the date on the inspection report is the date that the report was first started, or if it is the date that the inspection report was completed. It should be noted, that in all files reviewed, the inspection reports were timely and dated generally within a week of completing the inspection. But, to make it clear, the audit team recommends ensuring that the completed trip report is dated with a "completion date" (rather than the date the report was started), thereby documenting when the trip report was completed.

Presently, the completed inspection checklists and narrative trip reports do not document what specific hazardous waste manifests have been reviewed during the inspection, beyond the questions in the hazardous waste checklist and summary in the completed narrative trip report. The existing checklist also does not have any questions that would direct the inspector to evaluate a generators hazardous waste profiles and shipping documents for non-regulated shipments (i.e., bills of lading). EPA finds manifest and bills of lading reviews, in conjunction with hazardous waste profiles reviews, to be important in evaluating the thoroughness of a facility's hazardous waste determination program.

Both the narrative trip report and inspection checklists do not document specific facility personnel that are subject to hazardous waste management requirements. As an example, in the trip report prepared for Atlantic Boat, Brooklin, there is no mention by the inspector of having reviewed any hazardous waste training documents, despite the enforcement including a citation for failing to conduct hazardous waste training. This may simply be because no training documents existed, but if that is the case, the trip report should document at least that the inspector asked the relevant hazardous waste training questions. Additionally, throughout the inspection and physical walk-through of the facility, inspectors should be asking facility personnel what hazardous waste management responsibilities they have, and if appropriate, checking to ensure that they are appropriately trained. These types of inquiries should be documented throughout the narrative trip report as documentation that the inspector is not relying solely on the information being provided by inspection "escorts" as to who has hazardous waste management responsibilities at the facility.

There is some inconsistency in how violations are summarized in narrative trip reports. The narrative trip report does not always clearly document what violations are identified during the inspection and what information is summarized to the facility contacts at the end of an inspection. For example, some of the narrative trip reports do not include a discussion about what issues were discussed with the facility at the end of the inspection. As an example, in the narrative trip reports for Silvex and ENPRO, there are no discussion about violations; rather the trip report simply states "see draft Notice of Violation." Therefore, although discussions may have occurred at the time of the inspection, they are not documented in either the inspection checklist or narrative trip report. This type of summary was provided to facility personnel at the end of the Pratt-Abbott inspection in South Portland and Johns Manville inspection in

Lewiston. In these narrative trip reports, there is a section that summarizes discussions about issues observed by the inspectors during the inspection. In other trip reports reviewed, for example, White Star Laundry, at the end of the narrative trip report there is a section that summarizes violations; but, because it is just a list, it is not clear whether these items were discussed with facility personnel, or just summarized after the inspection during preparation of the narrative trip report. If using such a list, the report should be supplemented with at least a brief statement clarifying that the items were discussed with facility contacts.

CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:

EPA used the RCRA Basic Inspector Manual in reviewing this element. Files were randomly selected for RCRA activities.

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

- 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)
- 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)
- 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)
- 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)

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

MEHWEP readily identifies all violations during or just after inspections. All of the inspection reports reviewed were completed in a timely manner, well within the ERP's proposed 90 day deadline. This timeliness is, in part, due to MEHWEP's systematic inspection process.

As stated in metric #2, it is sometimes difficult to determine in the inspection reports when violations are first identified. The date when violations are first identified is, however, documented when the MEHWEP completes their Enforcement Status Report (ESR), which includes a section summarizing violations and the case deadlines for timeliness. For each inspection and enforcement file reviewed, the ESR was dated and complete, and adequately describes violations in a timely manner.

In the Pratt-Abbott inspection report, the inspection report identified a failure to train the facility's manager; but, the facility was not cited for this failure.

CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:

File review information was used in assessing MEHWEP's performance in this area and the MEDEP Hazardous Waste Program's Enforcement Response Policy (ERP).

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

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)

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

According to EPA Headquarters' metrics, MEHWEP identified 6 new SNCs during FFY2006 (Table 3), 5 of which were selected for the audit team's file review and all of which were penalized by the program. EPA Headquarters' metrics for inspections during FFY 2006 identified 50 completed inspections which calculated to a SNC identification rate of 12%, well in excess of the national average of 3.1%. In fact, MEHWEP's SNC rate is even higher, since they identified 2 other facilities as SNCs, Maine Central Railroad, and Rotary Dry Cleaners. Because of unique characteristics of the cases (Maine Central Railroad was a wooden bridge structure dripping wood preservative into the Royal River and Rotary Dry Cleaners is a CESQG non-notifier, not in RCRAInfo), both are not reported into RCRAInfo as a generator. If these sites are considered in MEHWEP's SNC universe, the SNC identification rate is 16%. MEHWEP's high SNC rate is reflective of very effective targeting that considers factors beyond just the generator status of a facility.

Generally, MEHWEP has done an exceptional job identifying SNCs, as evidenced by their SNC detection rate. One of the files reviewed was for Atlantic Boat Company, which was initiated in FY2005 with the enforcement action concluding in FY2006. In MEHWEP's enforcement status report this facility was a SNC, as well as a secondary violator/medium priority, causing some confusion of its SNC status for the audit team. The audit team believes that this facility should have been characterized only as a SNC, to avoid any confusion of its SNC status. The SNC designation that MEHWEP applied to the facility in RCRARep and RCRAInfo on June 21, 2005 was appropriate, based on the number and extent of their violations, which included offering hazardous waste to a transporter and disposing of hazardous waste in an unlicensed disposal facility, storage for greater than 90 days, treatment without a license, failure to conduct training, and failure to conduct daily inspections. Atlantic Boat essentially had no hazardous

waste program. Furthermore, Atlantic Boat’s actions caused an actual release of hazardous waste, since hazardous waste was being disposed at a facility not designed or permitted to dispose of hazardous waste. While MEHWEP identified this facility as a SNC as well as a secondary violator/medium priority, it completed an enforcement action appropriate for a SNC with such violations, including a consent agreement and monetary penalty.

Table 3

SNCs Identified Facilities in FY2006	Generator Category	CEI Date	SNC Day 0 Date
ENPRO, South Portland MED019051069	Treatment/Storage	2/16/06	2/16/06
Kingfield Wood Products, Kingfield MED046218574	LQG	2/22/06	2/22/06
Silvex, Inc., Westbrook MED980910053	LQG	5/19/06	5/19/06
Augusta Tissue / Free Tree, Augusta MED985731272	SQG+	5/10/06	5/25/06
Pratt-Abbott Dry Cleaners, So. Portland MED980670616	LQG	5/11/06	5/11/06
Pine State Safety Lines, Inc. ME5000000174	SQG	2/3/06	4/21/06

Table 4 (below) also illustrated that MEHWEP generally uses Day 0 as the day the SNC determination is turned on.

CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:

RCRAInfo, EPA Headquarters’ metrics and file review information were used in reviewing MEHWEP’s. Additionally, MEHWEP’s internal spreadsheet summarizing inspection activity during FFY2006 referenced.

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

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)

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

Eight formal enforcement cases were reviewed by the audit team (Table 4). Two of these facilities are not in RCRAInfo (Maine Central Railroad, Rotary Cleaners) and one facility has an active enforcement action open (Augusta Tissue). Each of the remaining five closed cases contained adequate injunctive relief to return facilities to compliance. Most of these facilities returned to compliance within 240 days, regardless of generator size or violator status. The exception is Maine Central Railroad, which took almost two years to return to compliance. This case was very labor intensive and the delays were caused by very case-specific issues and not

by any degree of inaction by the state. The file clearly documents constant interactions and negotiations between the parties. Additionally, ENPRO took approximately 11 months to have the SNC determination turned off.

Table 4

SNCs Identified Facilities in FY2006	Generator Category	CEI Date	SNC Day 0 Date	SNN Date
ENPRO, South Portland MED019051069	Treatment/Storage	2/16/06	2/16/06	1/18/07
Kingfield Wood Products, Kingfield MED046218574	LQG	2/22/06	2/22/06	6/29/06 ²
Silvex, Inc., Westbrook MED980910053	LQG	5/19/06	5/19/06	11/29/06
Augusta Tissue / Free Tree, Augusta MED985731272	SQG+	5/10/06	5/25/06	open
Pratt-Abbott Dry Cleaners, So. Portland MED980670616	SQG	5/11/06	5/11/06	12/30/06
Maine Central Railroad ³		5/19/04	None ⁴	None
Atlantic Boat Company, Brooklin, ME5000001214	SQG ⁵	6/21/05	6/21/05	2/7/07
Rotary Dry Cleaners, Augusta	Non-notifier	2/9/06 & 2/23/06	None	None ⁶

The open case, August Tissue involves the removal of a substantial amount of abandoned chemicals, which EPA’s Emergency Removal Program supervised. Additionally, this case was delayed because the chemicals were in an abandoned mill that required access and other substantial logistical hurdles for their removal.

In all of the informal enforcement actions reviewed, corrective measures and/or schedules were sufficient to return minor violators to compliance. The audit team did not review any files in which they felt a penalty was not sought where it should have been.

CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:

RCRAInfo, EPA Headquarters’ metrics and file review information were used in reviewing MEHWEP’s performance in this area.

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

None

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

² This case is still unresolved due to non-payment of penalty.

³ This facility is not reported in RCRAInfo.

⁴ This case is not reported in RCRAInfo as a SNC, but was identified as a SNC in MEHWEP’s internal enforcement summary document.

⁵ Notified as an SQG, but based on inspectors’ observations at the time of the inspection, operated minimally as an SQG+.

⁶ Not in RCRAInfo, so unable to determine return to compliance date after file review.

MEHWEP follows an established Enforcement Response Policy (ERP), which used the EPA's 1987 ERP as guidance in classifying generator types. That document describes violations in terms of class, with Class I violations resulting in a hazardous waste release or other substantial failures, and Class II violations describing any violations that do not meet the definition of Class I violations. The ERP then categorizes the generator type as either a Significant Non-Complier (SNC) or Secondary Violator (SV), based on the number of Class I and Class II violations, and other case specific considerations.

MEHWEP uses a variety of enforcement options in promoting environmental compliance among its regulated community. A Letter of Warning (LOW) is issued to facilities with relatively minor issues, and when further civil enforcement actions are not anticipated. At facilities where significant violations exist, and the probability for future civil enforcement is substantial, MEHWEP issues a Notice of Violation (NOV). A NOV is always issued to a facility prior to initiating any civil enforcement action. The next level of enforcement used by MEHWEP is Administrative Consent Agreements. These agreements are used to reach voluntary agreements for corrective action and/or penalties, rather than pursuing legal action in court. Administrative Consent Agreements involve the Attorney General (AG), Maine Board of Environmental Protection, and MEHWEP to achieve final resolution of pending civil enforcement actions. Another enforcement tool employed by MEHWEP is the 80K action. These actions allow certified staff to pursue violations of environmental regulations in District Court under Maine Rule of Civil Procedure 80K. These actions are typically filed when administrative efforts have failed. Finally, when appropriate, the MEHWEP can refer a case to the AG, to act as the program's legal counsel. Criminal cases are automatically referred to the AG's Office.

The discussion of whether or not reviewed actions considered economic benefit and gravity is addressed in Elements 7 and 8. The question of whether MEHWEP actions are appropriate has already been answered to a large extent in Elements 4 and 5. Aside from the case specific situations discussed in Elements 4 and 5, EPA found that the majority of MEHWEP's actions are taken in a timely manner, prescribe corrective measures (injunctive relief), assess and collect penalties, and return facilities to compliance.

CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:

RCRAInfo, EPA Headquarters' metrics and file review information were used in reviewing MEHWEP's performance in this area.

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

See recommendations in Element 4.

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

MEHWEP's follows the Hazardous Waste Program Penalty Guidance (HWPPG) for calculating monetary penalties for enforcement actions that will be proposed as part of an administrative

resolution. Monetary penalties proposed as part of a judicial resolution are not required to follow the HWPPG, and generally result in substantially higher penalties. The HWPPG consists of a gravity component and an economic benefit component, if any is appropriate. Gravity is determined by referring to a penalty matrix that considers the potential and actual impacts of the violation, and the cause and deviation from the requirement. Penalties can range from \$100 - \$25,000. The HWPPG does not include a specific penalty matrix for multi-day violations. In determining which penalty matrix a violation falls under, the HWPPG defines violations as major, moderate, and minor. The HWPPG also discusses factors that can increase or decrease a proposed penalty. In terms of calculating economic benefit, the HWPPG does not specify any models or other means for this calculation; rather, the policy allows for the “best information available to a case manager at the time of the inspection.”

As part of the file review, the audit team reviewed the following eight cases with penalties (Table 5).

Table 5

Penalty Cases Reviewed	Proposed Penalty	Final penalty	Economic benefit
ENPRO, South Portland MED019051069	\$13,000	\$7500	None
Kingfield Wood Products, Kingfield MED046218574	\$27,125	\$12,000 ⁷	\$1,250
Silvex, Inc., Westbrook MED980910053	\$14,800	\$ 11,900	None
Augusta Tissue / Free Tree, Augusta MED985731272	Pending ⁸	Pending	See footnote 7
Pratt-Abbott Dry Cleaners, So. Portland MED980670616	\$15,825	\$11,350	\$1,300
Maine Central Railroad	\$ 30,400	\$19,000	Not documented
Atlantic Boat Company, Brooklin, ME5000001214	\$27,860	\$27,000	\$700
Rotary Dry Cleaners, Augusta	\$8,200	\$5,400	\$250

Of the eight penalty cases reviewed, none included a narrative or other means to explain how the penalty calculation was developed, specifically, what criteria were evaluated in choosing a specific penalty matrix cell. Each penalty action was documented in the case file with a copy of the chosen matrix cells and the value chosen within the cell. The HWPPG used to calculate the penalty broadly defines what considerations must be made in choosing the matrix cell, but in order to ensure fair and consistent penalty calculations, the penalty documentation should be supplemented with a better explanation on how the matrix cell and value within the cell is chosen. Additionally, the HWPPG does not specifically address how multiple/multi-day penalties should be assessed; rather, these considerations are combined in the considerations for calculating the potential or actual environmental impact (duration of violation).

The MEHWEP routinely calculates economic benefit in its cases. Of the eight penalty cases

⁷ At the time of the review, the company had not paid any portion of the final penalty.

⁸ This case involved the removal of large amounts of abandoned chemicals under Superfund, which at the time of the file review, had not been completed. No RCRA penalty calculation was in the RCRA file; rather, the penalty amounts in the civil action were focused on the costs incurred in the removal and cost benefits achieved by the company for failing to comply with its air and water compliance requirements. The referral to the ME Attorney General’s office stated that the penalty must at least recover any economic benefit.

reviewed, four included economic benefit calculations (Kingfield Wood Products, Pratt-Abbott Dry Cleaners, Atlantic Boat Company and Rotary Dry Cleaners). In the case of Kingfield Wood Products, although economic benefit was calculated, there was no explanation on how this calculation was made. In two of the other cases, documentation regarding economic benefit was missing from the case files (Augusta Tissue, Maine Central Railroad), so it was difficult to determine with certainty if economic benefit was considered and recouped. In two of the cases (ENPRO, Silvex), the preparer of the penalty calculation determined that no economic benefit was warranted. In the Pratt-Abbott case, the MEHWEP did not calculate economic benefit for a hazardous waste discharge count and for failing to train the facility's manager in hazardous waste management. If hazardous waste was discharged, the company avoided the cost of shipping the waste off-site as hazardous waste, and/or operated as a disposal facility without a permit. Additionally, training costs have a value that could be estimated and recovered.

Generally, the MEHWEP includes summary documentation regarding what considerations were made in re-calculation of proposed penalties, but in one case (Kingfield), this type of documentation was not in the file.

Of the 8 penalty actions reviewed, MEHWEP proposed \$139,309 in penalties in FFY2006 and collected \$94,150 in penalties.

CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:

RCRAInfo, EPA Headquarters' metrics and file review information were used in reviewing MEHWEP's performance in this area.

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

- 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)
- 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)
- 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)

8) Degree to which final enforcement actions (settlements or judicial results) collect appropriate (i.e., litigation risk, ability to pay, SEPs, injunctive relief) economic benefit

⁹ This case involved the removal of large amounts of abandoned chemicals under Superfund, which at the time of the file review, had not been completed. Presumably cost recovery for these expenses will be sought in the future, once complete. This case also includes substantial penalties under Air and Water Regulations.

and gravity portions of a penalty.

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

As discussed in Element 7, the Region found general compliance with MEHWEP's calculating gravity components of a penalty, but occasionally disagreed with the matrix cells selected. Additionally, as discussed in Element 7, the audit team believes that BEN was not always calculated when it should have been.

Only one of the reviewed penalty actions included an ability-to-pay calculation, presumably because no ability-to-pay claims were made in any of the other cases.

The EPA Headquarters matrix for this category included the percentage of formal actions with penalty and final formal actions with penalty. For the FFY2006, the national average is 44.5%, and 81.7%, respectively. Of the eight formal penalty actions reviewed, 100% of the MEHWEP's actions included a penalty, well in excess of the national average.

None of the formal actions reviewed files included any documentation or discussion about litigation risk, so it is difficult to evaluate whether no litigation risk was perceived, or if the risk was not documented.

The files reviewed indicated that documentation of penalties collected was inconsistent. Some files included a copy of the check sent by the respondent, others did not.

CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:

The MEHWEP's Enforcement Guidance Document, Administrative Consent Agreement Policy, MEHWEP's Compliance Policy, RCRA Civil Penalty Policy (October 1990), RCRAInfo, EPA Headquarters' metrics and file review information were used in reviewing MEHWEP's performance in this area.

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

See relevant recommendations Element 7 for determining economic benefit.

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)

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)

9) Degree to which enforcement commitments in the FFY2006 PPA/PPG/ categorical grants (written agreements to deliver a product/project at a specified time) are met and any products or projects are completed.

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

In FFY2006 MEHWEP had a PPA/PPG agreement and Work Plan with EPA that outlines RCRA enforcement and compliance related commitments. In all cases, the program met or exceeded their commitments. (See Element #1)

CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:

Information from RCRAInfo, EPA Headquarters' metrics, file review data and the FFY2004 Work Plan (updated through September 30, 2004 by HWCB) was used in reviewing MEHWEP's performance in this area.

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

None

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

Of the eighteen files reviewed during the audit, four did not have inspection, compliance and enforcement histories input into RCRAInfo (Table 6). Generally, MEHWEP is prompt at updating information into RCRAInfo at all facilities that are already in the system (because they have an EPA identification number). Of the four reviewed files that were not in RCRAInfo, three were non-notifiers (Yankee Machine, Northeast Hide and Fur, and Strategic Diagnostics), of which two (Yankee Machine, Northeast Hide and Fur) based on information in the case file, were facilities legitimately operating as CESQGs, and therefore are not required to have an EPA identification number. (Without an identification number, the facility can not be input into RCRAInfo). At the third facility, (Strategic Diagnostics) the inspectors conducting the CEI were not able to determine if the facility was operating as a SQG or if it was operating as a CESQG, so the facility was appropriately required to monitor its hazardous waste generation for 6 months to determine its appropriate generator category. At the end of the 6 months, if appropriate, the company will be required to obtain an EPA identification number.

Additionally, MEHWEP maintains an internal desktop computer program which is used to track and record inspections completed, actions taken, and other key information. This system includes all completed inspections, beyond what is required to be input into RCRAInfo.

Table 6

FACILITY	Town/City	Region	EPA ID#	Inspection Classification		Enf Type
Rotary Dry Cleaners	Augusta	Central	none	Generator	Non-Notifier	NOV/CA
Yankee Machine	Casco	SMRO	none	Generator	CESQG-	LOW
Northeast Hide and Fur	Waterboro	SMRO	none	Generator	Non-Notifier	NOV
Strategic Diagnostics, Inc	Windham	SMRO	none	Generator	Non-Notifier	NOV

The EPA Headquarters matrix for this category evaluates the number of SNC designations that were put into RCRAInfo more than 60 days after making the determination that they were

SNCs. According to the EPA metrics, two facilities (Atlantic Boat, Swans Island Electric) fell within this category. The Atlantic Boat inspection was completed in FY 2005, but since its enforcement was completed in FY 2006, the file was reviewed during the audit, and according to the EPA Headquarters matrix, its SNC determination occurred 233 days after the inspection. These examples are case-specific anomalies of a systematic approach that normally inputs the SNC determination date into RCRAInfo shortly after the inspection, once all of the facts are gathered and the Enforcement Status Report is prepared and reviewed by MEHWEP's management. With few exceptions, MEHWEP appropriately uses the date of inspection as the SNC date.

CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:

RCRAInfo, EPA Headquarters' metrics and file review information were used in reviewing MEHWEP's performance in this area.

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

None

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

Again, EPA's data metrics developed to address this question focus on the timeliness of SNC determinations as they relate to the issuance of a formal action. MEHWEP generally identifies the SNC date as the date of the inspection. But in one enforcement action (ENPRO), the SNC determination was the date that the enforcement action was taken.

MEHWEP's entry of data elements associated with compliance inspections, including associated violations, is accurately reflected in RCRAInfo. Furthermore, entry of informal enforcement actions is accurately reflected in RCRAInfo, with the exception of facilities that MEHWEP identifies as non-notifiers, which are not obviously operating in a category other than a CESQG. Of the non-formal inspection actions reviewed, with the exception of non-notifiers, enforcement actions in response to violations (formal and informal, proposed and settled) are clearly and accurately recorded in RCRAInfo.

Finally, one of EPA HQ's metrics looked at long-standing violations that have been in the system for three years, identifying 13 facilities, none of which were reviewed as part of the file review. Considering the size of Maine's hazardous waste generator universe and the number of total inspections completed every year by MEHWEP, these 13 long-standing violations is an indicator of a program that consistently follows up on its inspections to evaluate compliance to issued enforcement actions.

Time and priorities permitting, MEHWEP, should work to continue to follow-up on the 13 facilities with long-standing violations. Often these are incidences of historic non-compliance that may already be resolved or stale, such that they should be closed-out. Although not a large number, MEHWEP should continue to attempt to resolve these issues.

CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:

RCRAInfo, EPA Headquarters' metrics and file review information was used in reviewing MEHWEP's performance in this area.

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

None

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

MEHWEP is completing each of the minimum data elements as set out nationally. Differences exist between the OTIS Metrix and numbers active in RCRAInfo because of the dynamic nature of the regulated universe and the changing status of facilities characterized as SNCs as they come back into compliance.

Table 7.

Category	Number in OTIS Matrix	RCRAInfo (3/20/07)
Number of Operating TSDFs	3	3
Number of LQGs in RCRAInfo (1FY)	111	95
Number of active SQGs in RCRAInfo (1 FY)	714	709
Number of all other active sites in RCRAInfo (1FY)	373	318 (CESQGs)
Compliance monitoring: number of inspections (1FY)	54	57
Compliance monitoring: Sites inspected (1FY)	50	48
Number of sites with violations (1 FY)	66	46
NOV: Number of sites (1FY)	44	33 NOVs (120) 10 LOWs (111) 1 verbal (110)
SNC: Number of sites with new SNC (1FY)	6	6

SNC: Number of sites in SNC (FY)	13	110
Formal Action: Number of sites (FY)	8	8
Formal Action: Number Taken (1 FY)	8	8

CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:

RCRAInfo, EPA Headquarters' metrics and MEHWEP, and RCRAInfo compliance/enforcement database were used in reviewing MEHWEP's performance in this area.

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

None

10 During FFY06 MEHWEP identified 6 SNCs. At the time of the audit review, only one facility was still actively characterized in RCRAInfo as a SNC. The other 5 facilities were no longer active SNCs.