2006 MISSISSIPPI
DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE REVIEW FRAMEWORK REPORT

I. Executive Summary

Introduction

The Environmental Protection Agency's (EPA's) Office of Enforcement and Compliance Assurance (OECA), all ten EPA Regions, the Environmental Council of States (ECOS) Compliance Committee and other state representatives have jointly developed a method to assess state performance in the enforcement and compliance assurance program. This report reflects the review by Region 4 of the Mississippi Department of Environmental Quality (MDEQ) compliance and enforcement program utilizing the State Review Framework. This review has been a collaborative effort between the Region and State and captures both successes of the State's program as well as any identified areas that need improvement. As this is the first review of this type for MDEQ, this report will serve as a baseline review. Future reviews will look at performance as a comparison to the level documented in this review.

The purpose of the State Review Framework assessment is to provide consistency in the level of core enforcement activity and performance in environmental protection across the country. It provides a consistent tool for EPA Regions to use in overseeing state enforcement program performance as well as to provide the basis for a consistent mechanism for EPA Regions to provide flexibility to states which can demonstrate an adequate core enforcement program.

The review consists of 12 critical elements which compare actual compliance and enforcement practices in the Clean Air Act (CAA) Stationary Sources Program, the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) program, and the Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste program with EPA policies and guidance. The 12 evaluation areas posed by this Framework are consistent with evaluation areas delineated in the 1986 EPA guidance memorandum signed by Jim Barnes entitled *"Revised Policy Framework for State /EPA Enforcement Agreements."* Additionally the Framework utilizes existing program guidance, such as national enforcement response policies, compliance monitoring policies, and civil penalty policies or similar state policies (where in use and consistent with national policy) to evaluate state performance and to help guide definitions of an acceptable level of performance. There is also an optional 13th element. EPA and ECOS encourage the use of the 13th element to ensure the review takes a measure of the full range of program activities and results. The component can add meaningful input into a state's overall performance and program. Examples of topics could include compliance assistance, pollution prevention, innovation, incentive or self-disclosure programs, outcome measures or environmental indicators that go beyond the core program activities covered in Elements 1–12.

Process Followed in the Review

Region 4's evaluation of the MDEQ's core enforcement program was conducted by staff from the Region's enforcement programs using Elements 1-12 of the Framework,

described above. The State chose to submit information for the optional Element 13. The MDEQ SRF process was started with an on-site kickoff meeting that detailed the approach the Region was going employ, established key timelines and milestones for completing SRF activities, identified key EPA and State contacts and provided an opportunity for the Region and the State to discuss possible concerns and questions. Each media technical authority (TA) from OEA and staff from the program worked with their counterparts at the State to review and assess the State data metrics and to define the number of files to be reviewed. The number of files to be reviewed was determined based on the protocol in the Implementation Guidance, and was based on the number of facilities in the statewide universe, the number of inspections performed and the level of enforcement activity in each program. For each program, files were selected at random within a representation of types or program areas within each program. The scope of review generally evaluated the State against the 2005 Fiscal Year (FY) agreements and outputs. For those instances where two years of data was required, FY2004 and FY2005 information was used. At the conclusion of the on-site file review MDEQ was offered the opportunity to discuss preliminary significant findings for each media reviewed. The report contains findings of the review for each program, and areas of concern with an explanation of these concerns along with recommendations for resolution.

The MDEQ Environmental Compliance and Enforcement Division (ECED) consists' of nine multimedia enforcement branches: Timber & Wood Products; Service & Miscellaneous Industries; Chemical, Construction & Agriculture; Metals & Metal Manufacturing; Energy & Transportation; Municipal & Private Facilities; Solid Waste Management & Mining; and Management Support.

MDEQ conducts inspections on a multi-media basis with each including applicable RCRA, CAA and CWA regulations. Issues discovered that are criminal in nature are referred to the Environmental Crimes Task Force. For each regulated facility, there is a single environmental enforcement and compliance contact for all media. There are approximately forty-four ECED positions that are devoted to compliance and enforcement. This includes four clerical, thirty enforcement and compliance personnel, nine Branch Chiefs and one Division Chief. MDEQ has four attorneys that support not only enforcement and compliance, but also the entire department. The legal support that ECED receives depends on current priorities and case loads.

Overall Summary

This report documents the findings and recommendations of EPA's review of the MDEQ compliance and enforcement program for FY2005. The report examines 12 elements covering inspection implementation, enforcement activity, commitments in annual agreements and data integrity.

The report includes recommendations for improvement in four overarching elements, i.e., overarching is defined as all three media program reviews having one or more similar recommendations for improvement for the element reviewed, and six significant elements, i.e., significant is defined as two out of the three media program reviews having

one or more similar recommendations for improvement for the element reviewed.

Overarching Recommendations

1. MDEQ should develop and implement a plan that will ensure that all required source/facility inspections and the elements of an inspection are consistently completed, and adequately documented.
2. MDEQ should examine their present practices of identifying High Priority Violators (HPVs)/ significant noncompliance (SNC) and institute a plan that will ensure conformance with the processing requirements.
3. MDEQ should develop and implement a plan for ensuring that identified HPVs/SNCs are routinely addressed with an appropriate response to the violation(s) and processed in a manner that is consistent with EPA guidance.

Significant Recommendations

1. MDEQ should propose and implement a plan that will ensure the implementation and fulfillment of its inspection commitments. (Air and RCRA)
2. MDEQ should propose and implement a plan that will ensure an appropriate/timely/escalating enforcement response for identified violations. (NPDES and RCRA)
3. MDEQ should consider options to consistently document the calculation for all penalties assessed, including consideration for economic benefit or potential economic benefit. (Air and RCRA)
4. MDEQ should develop a plan to ensure that their penalty worksheet is consistently used, placed in the source files and encoded into the data base. MDEQ should assess penalties appropriate to the violations, and only mitigate the penalty where allowed by policy. Also, in order to maintain consistency in enforcement proceedings and penalty calculations, MDEQ should consider options to maintain all initial and final penalty documentation, including economic benefit and gravity-based calculations. (Air and RCRA)
5. MDEQ should propose and implement a plan that institutes procedures that assure all data is entered into the appropriate national database in a timely manner. (Air and NPDES)
6. MDEQ should examine why there are data inaccuracies and institute a plan that will ensure the data accuracy. (Air and NPDES)
7. MDEQ should examine the overall integrity of their data and develop a plan to rectify any found timeliness, accuracy and completeness issues. (Air and NPDES)

Inspection Implementation

CAA – MDEQ conducted Full Compliance Evaluations (FCEs) at 83% of Compliance Monitoring Strategy (CMS) identified major sources for FY 2004-2005. This surpasses the national average of 78.4% but it is below the 100% commitment in MDEQ's CMS plan. With respect to the same analysis for synthetic minor (SM) sources from FY 2002 – 2005, 64.4% SM 80 sources have received a FCE, national average is 77.2%. Seventy-

one percent of Title V annual compliance certifications were received and reviewed in FY 2005, below the national goal of 100% and below the national average of 78.6%. Sixty percent of MDEQ's files reviewed had incomplete FCE documentation for one or more elements and 40% of the files were missing inspection reports.

NPDES – The MDEQ had a 96.6% major inspection coverage rate exceeding the national average of 63.3%. They met the commitment for number and type of facilities to be inspected one or more times during the 2005 inspection year (IY) period. In some areas MDEQ met and exceeded their inspection commitment; for example the number of majors inspected is nearly double that of the inspection commitment and the number of individual minors inspected is over four times the commitment. The MDEQ's inspection activity suggests strong presence in the field implementing one of the key elements of the compliance program.

Sampling conducted during compliance monitoring inspections (CMIs) generally did not address the full list of parameters in the respective permit and there was seldom any evaluation of the self monitoring program.

Ninety four percent of the inspection reports reviewed were completed and issued to the permittee in a timely manner. The inspection reports in general provided an accurate description of observations that readily identify violations. On occasion, violations were not cited as such, no enforcement action was taken, or if action was taken, it was not appropriate considering the nature of the violations.

RCRA - MDEQ evaluated 100% of the Treatment, Storage, and Disposal Facilities (TSDs) in their state in the two-year time period of FY2004 to FY2005. From FY2003-FY2005, 56% of the land disposal facilities (LDFs) received a Comprehensive Groundwater Monitoring Evaluation (CME) and/or an Operation & Maintenance (OAM) evaluation. This is below the recommended inspection coverage of 100% over a three year period. MDEQ has inspected 22% of the Large Quantity Generators (LQGs) universe in their state in FY2005; however, from FY2001-FY2005, MDEQ inspected only 74 % of the LQG universe, which is below the recommended inspection coverage of 100% every five years.

Fifty-five percent of the reports were found to contain either minimal or no information regarding facility operations and hazardous waste management activities observed during the time of the inspection. These reports generally consisted of two to three sentences stating the facility status (TSD, LQG, etc.), and that no problems/violations were observed at the time of the inspection. Other reports contained brief description of the company's manufacturing process, but little information about the hazardous waste management activities. None of the inspection reports contained photographs or inspection checklists.

Enforcement Activity

CAA – MDEQ's HPV discovery rate in FY2005 was 4.2% with the national average at

10.1%. In addition, the HPV discovery rate based upon operating major sources was only 1.2% with the national average at 4.6%.

Seventy-one percent of MDEQ's HPVs remain unaddressed passed 270 days with the national average at 55.6%, the average timeframe for MDEQ resolving a violation being approximately 520 days.

Forty percent of the files reviewed were subject to a state order with penalties. MDEQ uses a penalty calculation worksheet that contains a gravity and economic benefit component. Thirty-eight percent of the files contained this worksheet; however, upon examining these penalty worksheets, it could not be determined how MDEQ considered economic benefit as it was determined to be not applicable without an explanation provided.

NPDES - Discharge monitoring reports (DMRs) were spot checked during the on site files review activity and were compared to the values reported into Permit Compliance System (PCS). Every parameter measurement reported on the DMRs reviewed matched with the measurements entered and recorded in PCS.

The MDEQ's Enforcement Management System (EMS) prescribes that a violation recognition report "bi-weekly violation report (Attachment B)" is generated every two weeks in accordance with the section on the DMR handling process. All major facility files reviewed neither contained a copy of the bi-weekly violation report(s) nor a copy of the six (6) month DMR summary form.

The MDEQ addressed noncompliance through two basic levels of administrative enforcement responses namely Letter of Violation (LOV)/Notice of Violations (NOV) and Administrative Consent Orders (CO). In some cases where the NOV(s) proved to be inadequate in returning the facility back into compliance, the MDEQ chose to issue additional NOVs instead of escalating enforcement by pursuing appropriate administrative actions such as a CO or a Unilateral Order (UO) or by pursuing a civil judicial action.

The SNC rate, the enforcement process and escalation as described in the EMS, and the number and/or percent of facilities without timely action as reported in the CWA SRF Metrics Data Pull is indicative of significant need to improve formal enforcement response time against permittees in SNC status and the need for EMS revision.

RCRA – During FY2005, MDEQ did not identify any SNC facilities. In the FY2005 RCRA Annual Evaluation Report (dated June 7, 2006) MDEQ indicated the reason for the lack of SNC identification as that the state targets inspections at facilities that will count toward grant commitments, rather than targeting potential non-compliance. Since MDEQ inspections are multimedia, facilities are targeted that will address multiple grant commitments.

There was one inspection where violations were identified in the inspection report and

the facility was issued an NOV, but it was not entered into RCRAInfo. There was no information in the files or in RCRAInfo to indicate that the facility had complied with the RCRA violations identified in the NOV.

In FY2005, the program concluded two consent orders with SNC facilities, while negotiating a third order which concluded in FY2006. Of the three consent orders, two actions or 66% of the cases exceeded the 360 day time line for entering into a final order.

It is MDEQ's policy not to include penalty calculations in the enforcement files. MDEQ maintains that the gravity of the violations and economic benefit are considered in the penalty calculation, however no documentation of this is maintained in the files.

Commitments in 2005 Annual Agreements

CAA - MDEQ has met or exceeded all the enforcement requirements of their §105 grant workplan in FY2005.

NPDES - MDEQ has met or exceeded all the enforcement requirements of their §106 grant workplan in FY2005.

RCRA - MDEQ has met or exceeded all the enforcement requirements of their RCRA grant workplan in FY2005.

Data Integrity

CAA – Minimum Data Reporting (MDR) requires timely entry of HPV data into AIRS Facility Subsystem (AFS). The data metrics report for FY 2004 – 2005 on the percent HPVs entered greater than 60 days after designation and MDEQ's data shows 75% of HPVs are entered more than 60 days following the date of discovery. This is higher than the national average of 56.4%.
In FY 2005 there were only 56% of HPV sources being carried in AFS as in non compliance, i.e., 44% of HPV sources are carried in AFS as something other than non compliance with the national average of accurate coding being 97.4%. With respect to stack test data, the data metrics for MDEQ show that the stack test results for 285 tests performed in FY 2005 have their pass/fail results coded into AFS. This is commendable.

NPDES - During the file review, two enforcement actions were documented in the file but not entered into PCS, and three inspections and/or enforcement actions were noted in PCS but not found in the facility files.

RCRA – The RCRA Enforcement Response Policy states that data should be entered when compliance determinations are made, but no later than 150 days from day zero or the first day of the inspection. This provision is included so that no SNC entry is withheld until enforcement is completed, and therefore not tracked for timely enforcement response. Since there were no SNC identified by MDEQ in FY2005, this data requirement cannot be evaluated.

Summary

The Region will continue to work closely with the State of Mississippi to implement the recommendations made in this report. The Region will incorporate the recommendations in this report into the National SRF Tracker System along with agreed upon timelines, milestones, and any tracking agreements, such as an MOA, PPA, or PPG, as well as provide timely updates as to the progress made in the implementation of the recommendations.

II. Media Program Element Reviews

Program: CAA Stationary Source Enforcement Program

Introduction: The CAA portion of this report entailed a two day review of files and an analysis of data in MDEQ's main office. MS does not have local Air agencies and although MDEQ has district offices, these offices primarily respond to complaints, with any resultant enforcement and compliance activities being implemented by the main office of MDEQ. The file selection protocol from the SRF was used to select the 35 files reviewed: 27 major sources and 8 SM 80 sources (i.e., sources which emit or have the potential to emit at or above 80% of the major source threshold). The selected list of files was submitted to MDEQ for concurrence as to being representative of the air enforcement program. No comments were received; however, during the file review, it was discovered that two major sources had closed previous to the period of time used for this review (AFS carried them as operating sources) and thus only 33 files were used in this review. Ten of the 33 files reviewed were carried in the AFS as HPV sources at some point during FY 2004-2005.

The data analysis consisted of reviewing information generated by the SRF data metrics. The data metrics consists of a standard retrieval of data (for air its source of information is AFS) and it analyzes over 40 bits of data. The data metrics pull was done on 8/15/06 and it covered FY 2004-2005, the most recent period of complete data at the time the MDEQ SRF was begun.

The findings and recommendations that follow reflect the 12 elements of the SRF that were investigated. These 12 elements encompass four review areas: inspections, enforcement activity, annual state/EPA agreements and database integrity. Also, encompassed in this report are the results of the CMS evaluation that was done in conjunction with the SRF. The CMS report appears first followed by the SRF results.

MDEQ's FY 2006 CAA CMS Report

Organizational and management structure of the environmental compliance and enforcement programs.

MDEQ's Environmental Compliance & Enforcement Division is a multimedia program that focuses on Air, Water, Hazardous Waste, and Solid Waste Compliance & Enforcement matters. The program has a Division Chief who reports to the Director for the Office of Pollution Control who reports to the Executive Director for MDEQ. The Environmental Compliance & Enforcement Division is comprised of ten industrial sector Branches that handle Timber & Wood Products; Chemicals; Metals & Metal Manufacturing; Energy & Transportation; Solid Waste, Mining & Manufacturing; Construction & Building Materials; Agriculture; Services & Misc. Industries; and Management Support. The Environmental Compliance & Enforcement Division is comprised of thirty-nine funded positions, 20 of which are multi media inspectors. The managers for the aforementioned Branches are referred to as Chiefs. Applicants employed by MDEQ must meet the necessary qualifications outlined by the State's Personnel Board. The Division Chief and the Branch Chief, has the hiring authority for the Environmental Compliance and Enforcement Division. In addition to the Environmental Compliance and Enforcement Division, the Field Services Division of MDEQ investigates complaints and refers the findings from the investigation

to the inspectors in the Environmental Compliance & Enforcement Division for additional follow up and/or enforcement. The day-to-day activities of MDEQ are overseen by the Commission on Environmental Quality. The Commission is a diverse group of local business members and community members appointed by the governor. The Commission is empowered to formulate Department policy, enforce rules and regulations, receive funding, conduct studies for using the State's resources, and discharge duties, responsibilities and powers as necessary. This includes adopting regulations and conducting enforcement actions.

Roles and Responsibilities of various organizational units in assessing and promoting compliance

The vast majority of MDEQ's staff engineers and scientists gather information from their respective sources and report their findings to the Branch Chief (first line supervisor). The Branch Chief will, in most instances, decide on the next course of action. For more complex issues, the Branch Chief will make recommendations up the chain of command to the Chief, Environmental Compliance and Enforcement Division. The Executive Director signs all negotiated and agreed upon enforcement orders. The Chairman of the Commission signs all enforcement orders that require a commission hearing for decision. This authority may be delegated to the Executive Director for MDEQ by the chairman. The Executive Director of MDEQ meets with the Director of the Office of Pollution Control on a weekly basis. The Director of the Office of Pollution Control meets with the Environmental Compliance and Enforcement Division Chief along with the other six Division Chiefs on a weekly basis, and the Environmental Compliance & Enforcement Division Chief meets with all ten Branch Chiefs on a weekly basis. The weekly meeting between the Division Chief and the Branch Chiefs are considered multi-media enforcement meetings.

Communication and coordination among the organizational units, and with other pertinent state officers (e.g. public health, emergency response)

MDEQ's Emergency response is handled by the Field Services Division. The Field Services Division routinely coordinates with EPA and the Mississippi Emergency Management Agency.

Availability and use of resources (e.g., 105 grants, Title V permit fees, or state appropriations) to implement the air enforcement program

MDEQ believes that their environmental compliance and enforcement program is adequately funded to meet the necessary minimal requirements for air compliance and enforcement.

Infrastructure to recruit and retain qualified staff, and ensure adequate training on industry processes, regulations, compliance policies, and evaluation techniques

MDEQ participates in career fairs at colleges and universities throughout the State of Mississippi. Recently, MDEQ has held recruitment fairs at historically black colleges and universities outside of the State of Mississippi. New employees undergo a series of training such as APTI (Air Pollution Training Institute) courses; specialized training for different industry sectors; training courses provided through EPA; SESARM-Metro 4; viewing of in-house videos; and attend locally advertised courses. MDEQ's Environmental Compliance and Enforcement Division is in the

process of re-evaluating its training program for necessary enhancements.

Out of a staff of thirty-seven (37) existing employees and two funded vacancies, seventy percent (70%) have approximately ≥10 years of experience in their specialty area. Approximately six (6) employees have ≤ 5 years of experience.

Alternative compliance monitoring targeting approaches (e.g., risk-based strategies)

MDEQ does not have any alternative compliance monitoring targeting approaches ongoing at this time. MDEQ primarily stays focused on enforcing the state and federal regulations. MDEQ also focuses on nuisance issues related to odors, noise, and/or particulate/dust disturbances when they are made known.

Impact of state-directed evaluations (e.g., complaints, special state initiatives)

There are no special state initiatives. MDEQ is in the process of developing a state Performance Track Program. EPA-Region 4 staff is currently working with MDEQ on the developments of this program. The implementation date of MDEQ's Performance Track program is yet to be determined.

SRF Report

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

Findings:
FCEs at Title V major sources: Under MDEQ's January 21, 2004 CAA CMS Schedule for FY 2004-2005, MDEQ planned to follow the prescribed EPA frequencies of FCEs once every two years for Title V majors and once every five years for SM sources (MDEQ presumes that all their SM sources are SM 80 sources).

According to the data metrics, 243 FCEs were performed out of 293 (83%) CMS identified major sources for FY 2004-2005. Though this surpasses the national average of 78.4%, it is below the 100% commitment in MDEQ's CMS plan. Note that MDEQ's CMS plan carried names of 317 Title V major sources versus the 293 shown in the data metrics. This data discrepancy will be addressed later in this report.

FCEs at SM 80 sources: With respect to the same analysis for SM sources (again MDEQ presumes that all their SM sources are SM 80 sources), the data metrics show that from FY 2002 - 2005 (the data metrics were only able to generate a four year vs. five year period) 181 FCEs were performed out of 281 (64.4%) SM 80 sources. The national average is 77.2%. Thus MDEQ needed to perform 100 FCEs in FY 2006 in order to meet their CMS plan of performing FCEs at 100% of all SM sources over 5 years.

Subsequent to the visit, the data metrics was accessed to determine the FCE performance at

SM sources for the 5 year period ending in FY06. The data showed 237 of 280 (85%) SM sources with a completed FCE.

Title V Annual Compliance Certifications received and reviewed: According to the data metrics for MDEQ, 209 out of 271 Title V annual compliance certifications were received and reviewed in FY 2005 (71%). This is below the national goal of 100% and below the national average of 78.6%.

Sources with Unknown Compliance Status Designations: The data metrics show 24 sources with an unknown compliance status. An unknown compliance status is usually associated with a source going longer than two succeeding years without a FCE being recorded in AFS. Given the earlier stats about major source FCEs not getting done within 2 years, this number of unknowns would not be uncommon.

Citation of information used for this element

- MDEQ's FY 2004-2005 CMS biennial plan
- Data metrics (source of data is AFS)

Recommendation(s): MDEQ should:

- Propose a plan that will ensure the implementation and fulfillment of your biennial CMS Schedule commitments. Recognizing the dynamic nature of source changes (i.e., sources close, change categories, etc.), ensure that the CMS flags in AFS are updated so CMS accuracy is maintained.
- Propose and implement a plan that will ensure the receipt and review of all Title V certifications in the year they are due.
- Propose and implement a plan that will address the 24 sources carried as unknown and steps to minimize this in future.

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

Findings: Thirty-three of MDEQ's files were reviewed to see how MDEQ documents a completed FCE. The 27 major source files reviewed (the other 6 were SM sources) represents 11% of the 243 major source FCE's completed in FY 2004-2005. All elements of a FCE and compliance monitoring report (CMR) were examined: general and facility information about the source; a description or listing of all applicable requirements for the source; an inventory and description of regulated units and processes; information on previous enforcement actions; compliance monitoring activities; reviews of all required reports such as continuous emission monitoring system (CEMS), malfunction reports, the annual compliance certification and semi-annual monitoring reports; assessments of control device and process operating conditions, process parameters and control equipment performance parameters; reviews of facility records, operating logs and visible emissions observations; reviews of stack test reports and findings/recommendations relayed to the source during the compliance evaluation (see EPA's April 25, 2001 CMS guidance for a description of these terms).

States/locals may document these elements as they deem appropriate. MDEQ does this through a combination of a source inspection report, the Title V or synthetic minor permit and their *Air Compliance Evaluation Report (ACER)*. The ACER documents the receipt and evaluation of the various reports a permit or rule requires to be submitted. The ACER is also used to verify when a FCE is done as it shows the FCE completion date and a summary of the reports evaluated. The state is commended for the development of the ACER though, as noted below, its use needs to be consistent.

The review of 33 source files showed 13 having complete documentation of all FCE/CMR elements. However, 20 source files had one or more elements not documented. Examples of items missing from the files were inspection reports (13 incidents), permits (9 incidents) and the ACER (9 incidents).

Citation of information used for this element

- MDEQ's source files
- EPA's 4/25/01 CMS guidance

Recommendation: MDEQ should develop and implement a plan that will ensure that all elements of a CMR and FCE are consistently completed and documented for all source files.

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

Findings: Based on the 20 inspection reports found in the files reviewed (note 13 of the files reviewed were missing their inspection reports), 14 were written within 150 days of the inspection (6 under 60 days) and 6 greater than 150 days. If a violation discovery date is the same as the on-site inspection date the inspection report should be prepared in a timely manner to ensure that the violation is adequately documented prior to issuing the NOV. The HPV policy states that when a violation is discovered (i.e., through an inspection) the violation should be compared to the HPV criteria and, if the violation is determined to be a HPV, that timely and appropriate action be taken. Timely and appropriate action requires a NOV to be issued no later than 60 days from day zero. Day zero can be up to 45 days from the date the violation was discovered if no additional information is required to confirm the violation. If additional information is required to confirm the violation, then an additional 45 maybe taken to establish day zero. Thus no more than 150 days can pass between the date of discovery for the violation (i.e., date of inspection if violation was discovered on the date of inspection) and the issuance of the NOV. It is assumed that an inspection report would be written well within this time frame.

Citation of information used for this element

- MDEQ's source files

Recommendation(s): MDEQ should propose and implement a plan for ensuring timely issuance of inspection reports. The process should consider the timely and appropriate

aspects of EPA's December 22, 1998 HPV policy.

4. Degree to which HPVs are reported to EPA in a timely and accurate manner.

Findings: The low HPV discovery rate is a significant deficiency in MDEQ's air enforcement program. According to the data metrics, MDEQ's HPV discovery rate was 4.2% with the national average at 10.1%, based on FCEs completed in FY 2005. Discovery rate means HPVs identified by the state in the fiscal year divided by the number of sources with state FCEs performed in the fiscal year. In addition, the HPV discovery rate based upon operating major sources was 1.2% with the national average at 4.6%. Discovery rate means HPVs identified by the state in the fiscal year divided by the number of operating major sources. In addition, uncovered potential unreported HPVs at two sources during the file review. In one instance, the file indicated that the source exceeded its synthetic minor permit limits and the file was silent on any follow up. These HPV discovery rates are low despite the monthly Region 4/State call to review, discuss and oversee the identification, reporting into AFS and resolution of HPVs. This pattern continues into FY2006 and FY 2007.

Notwithstanding their low HPV discovery rate, the state feels they are identifying their HPVs as they arise through inspections, stack tests, reports, etc.

Citation of information used for this element

- Data metrics
- Monthly HPV calls

Recommendation(s): MDEQ should examine their present practices of identifying HPVs including timely identification to EPA and propose and implement a plan that will ensure conformance with the processing requirements of the HPV policy.

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

Findings: Of the 33 MDEQ files reviewed, 13 contained state orders with penalties. Examples of violations cited in these orders include failure to conduct required stack tests, failure to submit stack test reports, no pre test notice, failure to submit annual compliance certification and semiannual monitoring reports, failure to comply with permit limits among other violations. The state orders examined did not require compliance schedules or some form of corrective action as the cause of violation was corrected.

Citation of information used for this element

- MDEQ's source files

Recommendation: None

6. Degree to which a state takes timely and appropriate enforcement actions, in

accordance with policy related to specific media.

Findings: MDEQ's processing time for enforcement cases is significantly over the EPA guideline for timeliness. According to the data metrics, 71%, 12 of MDEQ's 17 HPVs, remained unaddressed passed 270 days, with the average timeframe for MDEQ resolving a violation being approximately 520 days. EPA's policy is that HPVs be addressed within 270 days with the national average being 55.6%.

Citation of information used for this element

- Data metrics
- Source files
- FY 2005 Manager's Watch List Report

Recommendation(s): MDEQ should examine their present practices of identifying HPVs and institute a plan that will ensure conformance with the processing requirements, entry into the national AFS data system, and reporting HPVs to EPA in a timely manner.

7. Degree to which the State has a penalty policy that includes both gravity and economic benefit calculations.

Findings: MDEQ does not have a penalty policy but the region understands that the state uses EPA's penalty policy as a guide when developing their penalties. MDEQ does use a penalty calculation worksheet that contains a gravity component (designed to reflect the seriousness of the violation) and economic benefit component (designed to calculate the economic advantage of noncompliance).

Citation of information used for this element

- Source files
- Penalty calculation worksheet

Recommendation(s): None.

8. Degree to which state documents both gravity and economic benefit in accordance with any applicable penalty policy.

Findings: Of the 33 MDEQ files reviewed**,** 13 were subject to a state order with penalties. MDEQ uses a penalty calculation worksheet that contains a gravity and economic benefit component. These worksheets are kept in separate files not available to the public. The review team asked for the penalty calculation worksheet each time a file implied one existed. Of the 13 situations where we asked for the worksheet, only five penalty worksheets were shared. Upon examining the five penalty worksheets shared, it could not be determined how MDEQ applies the economic benefit component as it was determined to be not applicable in the five penalty worksheets reviewed.

Citation of information used for this element
Source files

Penalty calculation worksheet

Recommendation: MDEQ should develop and implement a plan to ensure that their penalty worksheet is consistently used and placed in the appropriate source file. MDEQ should also include in the monthly state/region enforcement call a discussion on penalties assessed and how economic benefit and gravity components were addressed.

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

Findings: MDEQ has an annual Air Planning Agreement (APA) with EPA Region 4. The APA applies to non major sources and asbestos demolition/renovation projects and is funded through the CAA Section 105 grant dollars. Activities related to major sources (i.e., Title V sources) are not part of the APA and are funded through industry

With respect to the compliance and enforcement program, MDEQ's FY 2005 APA committed to the following:

- Submit a narrative summary of compliance assistance activities for non-major sources
- Encourage self disclosure of violations by non major sources
- Utilize compliance incentives for non major sources as appropriate
- Develop and implement compliance incentive activities for non major sources
- Ensure that AFS contains accurate and timely data on the minimum data elements for synthetic minor sources by direct entry and comply with the direct access procedures or through batch updating process (computer uploading)
- Resolve violations of any rule for which EPA has delegated authority to the state for non major MACT sources and synthetic minor sources
- Utilize the pollution prevention database to enhance PP outreach activities during compliance inspections
- Inspect 25% of all NESHAP asbestos demolition/renovation projects
- Observe asbestos work practices in progress whenever possible to assess compliance
- Utilize ACTS/NARS. Report to EPA at least 45 days after each quarter. Note that in the FY 2006 APA, ACTS/NARS database is no longer available and asbestos NESHAPS program items are to be reported to EPA.
- Maintain a state health and safety plan for asbestos demolition/renovation inspectors
- Recommend (where appropriate) cases and provide support to the EPA Criminal Enforcement Program
- Implement the CAA section 112 (r) program. Develop a workplan including risk management program audits and facility inspections.

In MDEQ's FY 2006 APA, another commitment was added addressing the new Air Facility Subsystem (AFS) requirements under the Information Collection Request. This language states: *Ensure complete, accurate and timely data consistent with the Compliance*

Monitoring Strategy, High Priority Violations Policy, and the AIRS Facility Subsystem (AFS) requirements under the Information Collection Request. This commitment closes the loop in requiring that information on major sources be put in AFS.

MDEQ has met their FY 2005 APA deliverables based upon the overview the region does on a semi-annual basis using the regions grant tracking system.

Citation of information used for this element

- MDEQ's FY 2005 APA
- Regional APA tracking form

Recommendation(s): None

10. Degree to which MDRs are timely (focus on integrity of HPV data).

Findings: MDRs represent the minimum amount of data that EPA believes nationally is necessary to oversee the national stationary source compliance monitoring and enforcement program. Examples of the 26 elements that comprise the MDRs are recording of FCEs, HPVs, stack test results, compliance status and Title V annual compliance certification reviews. One specific item that the SRF requests to be analyzed is the HPV MDRs. These MDRs require timely entry of HPV data into AFS. The data metrics reports for FY 2004 – 2005 on the percent HPVs entered greater than 60 days after designation. MDEQ's data shows 6 of 8 (75%) HPVs are entered more than 60 days following the date of discovery. This is higher than the national average of 56.4%.

Citation of information used for this element

- EPA's minimum data requirements
- Data metrics

Recommendation(s): MDEQ should examine why their HPV data entry practice routinely takes greater than 60 days after designation and develop and implement a plan that will ensure conformance with the HPV data entry requirements of AFS.

11. Degree to which MDRs are accurate (focus on plant compliance status).

Findings: This metric analyzes sources carried as HPVs compared to their AFS plant compliance status. HPVs should be shown in AFS as in non-compliance. The data metrics show that in FY 2005 there were only 9 of 16 (56%) HPV sources being carried in AFS as in non compliance, i.e., 7 HPV sources are carried in AFS as something other than non compliance. The goal should be for 100% of all HPV sources to be coded in AFS as in non compliance (national average of accurate coding is 97.4%).

With respect to stack test data, the data metrics for MDEQ show that the stack test results for 285 tests performed in FY 2005 have their pass/fail results coded into AFS. This is commendable.

Citation of information used for this element

- Data metrics

Recommendation(s): MDEQ should examine why their HPV sources are not carried in AFS as in non compliance and institute a plan that will ensure the accuracy of AFS compliance status for HPV sources.

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: The goal of this metric was to ensure agreement between the states/locals and Region 4 on the completeness of the MDRs being reported into AFS and where discrepancies exist, to develop an action plan for making appropriate corrections. Specific MDR elements examined included: Title V universe; source count of major, synthetic minor and NESHAP minor sources; universe of new source performance standard (NSPS), NESHAP and MACT sources; completeness of FCEs and partial compliance evaluations (PCEs) being reported; historical non compliance counts; completeness of sources receiving NOVs; completeness of HPV reporting; completeness of enforcement actions being reported; completeness of penalty dollars assessed by state and number of major sources missing CMS applicability. As noted in Element 1 findings on discrepancies with the CMS identifier and elsewhere throughout the findings in this report, MDEQ's database could be improved.

Citation of information used for this element

- AFS

Recommendation(s): MDEQ should examine the overall integrity of the data in AFS and develop and implement a plan to rectify any found timeliness, accuracy and completeness issues.

Program: CWA NPDES

Introduction: The NPDES program is administered through the MDEQ. The MDEQ identifies and addresses all violations using EPA criteria outlined in program delegation documents, the memorandum of agreement, and/or Mississippi EMS. The MDEQ implementation of the compliance program meets the standard required pursuant to the CWA and its implementing regulation at 40 CFR §123.26. The MDEQ conducts inspections to include, but not limited to, compliance evaluation inspection (CEI), compliance sampling inspection (CSI), compliance monitoring inspection (CMI), and reconnaissance inspection (RI), to independently assess the compliance status of a given facility with or without a NPDES permit. The MDEQ also reviews DMRs submitted by permittees to assess their compliance status, and enters such information in the PCS in accordance with the Water National Enforcement Database protocol and the CWA annual section 106 workplan. The MDEQ generally addresses complaints received directly from the public or through other sources including EPA in a timely and appropriate manner. The MDEQ uses enforcement actions to address environmental problems and to bring businesses, individuals and government entities into compliance with environmental laws and regulations. The most common enforcement tool used is the LOV/NOV, an informal enforcement action followed by compliance meeting, and consent order. The MDEQ's EMS describes and contains its protocol for enforcement response to noncompliance determined independently either through inspections or complaints or the analysis of self reported noncompliance either through DMR, noncompliance notice requirement of a NPDES permit, or under self disclosure /self audit policy.

The SRF overview requires compliance and enforcement program files to be reviewed. The file selection protocol dictates selecting between 25 and 40 facilities for file review when the universe of NPDES facilities equals or exceeds 700. The said protocol also requires diversification where possible and maintaining a relatively even mix of inspection coverage and enforcement action during a given review period. The fiscal year 2005 (FY2005, October 1, 2004 through September 30, 2005) is the designated SRF audit review period. Thirty (30) facilities were randomly selected for file review in part based on the Standard Industrial Classification (SIC) code breakdown of the universe of facility records in PCS for facilities located in Mississippi with a NPDES permit issued by MDEQ to achieve diversification. However, permits with the first three characters of the permit number of either MSU or MSP were not included in the universe because they represent un-permitted facilities or pretreatment program permits respectively. To this end, facilities from fifteen (15) different SIC codes were randomly selected while insuring the majority of the selected facilities had either inspection coverage during the inspection year 2005 (IY05, July 1, 2004 through June 30, 2005) or enforcement action issued against them during the FY2005. Furthermore, no specific attempt was made to identify the type of inspection and/or enforcement action taken against any of the facilities nor was any effort made to account for compliance status of the facilities to minimize any biases in selecting the 30 facilities.

The resulting facility mix included five (5) out of 30 or 16.67% municipal majors; two (2) or 6.67% non-municipal (i.e. industrial) majors which cumulatively amounts to 7.95% of the (88)

universe of majors in Mississippi or in other words seven (7) out of 30, i.e. 23.33%, of facilities selected were majors; three (3) or 10.00% individual minors that were primarily domestic wastewater system (SIC = 4952); three (3) or 10.00% industrial generals; 17 or 56.66% non-municipal minors from eleven (11) different sectors or SIC codes.

The file list was submitted to the MDEQ in advance of the EPA on site visit. The MDEQ had the files available for EPA review and ensured a staff member was available to provide any assistance needed by the EPA staff/reviewer. The files were well organized and were maintained in accordance with the filing protocol established by the MDEQ. The files routinely contained correspondence including inspection reports, NOV(s), Discharge monitoring reports (DMRs), communications from the facility, and current permit/current permit status.

Cumulatively, for the files reviewed, there were 32 inspections that could be credited as conducted during the IY05 and there were 37 informal enforcement actions in the form of NOV issued during the FY2005. There were no formal enforcement actions issued during FY2005 against any of the permittees whose files were reviewed as part of the SRF audit. For the NPDES program as whole, a total of 373 informal enforcement actions and a total of 11 formal enforcement actions were issued during FY2005.

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

Findings: The MDEQ conducts inspections in accordance with the CWA Section 106 workplan, annual inspection commitment. The MDEQ uses checklists/inspection forms in their inspection/evaluations. The checklists/inspection forms provide for a level of consistency in the areas reviewed and assure thorough inspections are performed.

The MDEQ exceeded the national average of 63.3% for NPDES major inspection coverage as reported in OTIS at 96.6% (85 out of 88). The MDEQ also conducted inspections of 23.9% of non-major NPDES facilities (371 out of 1552). The date of the OTIS query was August 17, 2006, and the data illustrated on the query was updated on July 31, 2006.

For the IY05, the MDEQ committed to conduct inspections other than reconnaissance inspection at 45 majors, 90 individual minors, one (1) facility to receive a Bio-Monitoring inspection; a total of 205 facilities (Industrial, Construction, Municipal Separate Storm Sewer System (MS4), and individual storm water permitted facility) to receive a storm water inspection; and inspect 100% of swine concentrated animal feeding operations facilities (CAFOs).

The MDEQ met the commitment of number and type of facilities to be inspected one or more times during the IY05 period. The MDEQ inspected 85 majors, 371 individual minors, 13 industrial generals, 1 municipal major received a Bio-monitoring inspection,

and conducted over 453 storm water inspections. The data also illustrates that in some areas the MDEQ not only met their inspection commitment but exceeded their commitment, for example the number of majors inspected is nearly double that of the inspection commitment and the number of individual minors inspected is over four times the commitment. The MDEQ's inspection activity suggests strong presence in the field implementing one of the key elements of the compliance program.

Citation of information reviewed for this criterion:

- CWA State Review Framework Metrics Data
- EPA/MS CWA§106 Program Workplan
- PCS Data Pull for IY05
- MS pacesetter records such as November 2, 2004 storm water report from MDEQ
- November 5, 2004 email from the MDEQ regarding storm water inspections.

Recommendation(s): None

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

Findings: A number of inspection reports reviewed were for Compliance Monitoring Inspection (CMI), which appeared to be a combination of part CEI, part CSI and part RI. The sampling conducted during a CMI generally did not address the full list of parameters in the respective permit and there was seldom any evaluation of the self monitoring program. Any issues discovered during the CMI were addressed in the cover letter or the NOV but the inspection report was generally very limited in specific observations. As such, the CMI does not qualify for either Compliance Sampling Inspection (CSI) or Compliance Evaluation Inspection (CEI) designation or credit towards the annual inspection commitments. The CMI is also not defined within the NPDES Inspection Manual. It was also noted that some of the CMIs were entered into PCS as CEI, CSI, and/or Reconnaissance Inspection (RI).

In at least one case, a facility received only one RI between 1994 and 2005 while its NPDES permit did not require submittal of the Discharge Monitoring Report(s). MDEQ's inspection activity suggest a robust compliance program, however, in this one case the lack of sufficient inspection coverage as well as no requirement to submit DMRs suggest there are perhaps some areas that may warrant closer scrutiny.

The CEI/CSI reports reviewed were generally comprehensive in addressing the areas of permit, records, site review, effluent/receiving stream, flow measurements, self monitoring program, laboratory, operation and maintenance, etc.

Lastly, none of the inspections reviewed generated formal enforcement actions; rather

noncompliance/deficiencies were addressed via NOV or cover letter requiring the facility to respond to the inspection report concerns identifying corrective actions taken.

Citation of information reviewed for this criterion:

- On-site file review
- PCS inspection information for IY05

Recommendation(s): The MDEQ should ensure that permitted facilities receive at least one CEI/CSI during a five year permit cycle to determine compliance with applicable permit requirements.

The MDEQ should assess the value of CMIs both in terms of the number of such inspections conducted versus the number of CEI or CSI performed and the specific insight yielded by the CMI concerning facility operations and compliance with its permit requirements.

DEQ should utilize all enforcement response options to address noncompliance/deficiencies noted during inspections, which includes the use of formal enforcement actions. The enforcement action should be appropriate to the violation(s) noted during the inspection as well as consider the history of the permittee.

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

Findings: 94% of the inspection reports reviewed (30/32) were timely completed and issued to the permittee. The files reviewed contained a copy of the inspection report(s) (all except for one inspection report identified in PCS but not found in the facility file), correspondence related to the inspection(s), DMRs, and violation notice(s) generated as a result of the inspection(s) or the review of DMRs. The files also contained a violation notice(s) submitted to the MDEQ by the permittees. In most cases, the violations were identified and responded to in a timely manner. There were some cases where the inspection report(s) was missing from the file(s). In one instance, an inspection report was not issued for over a year from the date of inspection.

In one case, the MDEQ inspector noted issues in the inspection report which if crosschecked against the NPDES permit requirements would render the permittee in noncompliance with its NPDES permit. However, the inspection report was void of any citation specifying failure to comply with the NPDES permit requirements. Furthermore, the inspection report cover letter stated that there were no deficiencies noted at the time of the inspection.

In another instance, during a CMI, violations were discovered concerning cBOD and Ammonia Nitrogen sampling which were being performed by grab sample instead of the

24 hours composite sampling requirement of the permit. No enforcement action, either informal or formal, was taken against these violations. At a minimum, a notice of violation should have been issued requiring the facility to take representative sample in accordance with permit. Ideally, such violations should be pursued with a formal enforcement action given the facility was reporting and representing the results obtained through grab sampling as though they were obtained through 24 hours composite sampling.

The above examples illustrate that the inspection reports in general provided accurate description of observations to readily identify violations. When violations were identified in a timely manner, on occasion, they were not cited as such, no enforcement action was taken, or if action was taken, it was not appropriate considering the nature of the violations.

Citation of information reviewed for this criterion:

- PCS data pull for IY05/FY2005
- On-site file review

Recommendation(s): Skills in recognizing the gravity of violation(s) or observation(s) needs improvement as it impacts staff recommendations to management and the enforcement response regarding pursuit of corrective action(s).

Identifying and citing violation(s) observed during an inspection should be emphasized in the inspector training and periodic refresher courses. Region 4 can provide inspector training and oversight inspections, upon request by the MDEQ, conditioned on resource availability. MDEQ may wish to consider developing and implementing a peer review process to add an additional layer of review and opportunity for enhancing inspector skills.

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

Findings: The MDEQ identifies and generally addresses all violation using the EPA criteria outlined in program delegation documents and the Memorandum of Agreement (MOA). The State maintains an EMS that was last revised or compiled in 1991. The MDEQ's EMS does require revision given changes in the rules/regulations such as those dealing with storm water, MS4, and concentrated animal feeding operation, and changes in SNC definitions. The EMS describes how and when the MDEQ will take action on violations. The EMS has a chapter/section devoted to inspection procedures and reports, Discharge Monitoring Reports (DMRs), enforcement that includes guidance on penalty calculations, attachment on violation review action criteria, etc. The EMS also briefly addresses the level of formal enforcement that should be taken and the enforcement escalation process.

The MDEQ enters major facilities' effluent data into PCS generally in a timely manner. The MDEQ is required to maintain a DMR and parameter data entry rate at or above 95% by the PCS policy statement and the annual CWA section 106 workplan commitment. For the FY2005, the MDEQ data entry rate averaged 93.5%, exceeding the national average by 4%, however, still 1.5% below national goal of greater than or equal to 95%.

PCS automatically identifies and designates significant noncompliance (SNC) based upon compliance schedules contained either in permits or enforcement actions, effluent violations contained in Discharge Monitoring Reports (DMRs), and other significant violations identified by the MDEQ such as single event violations (SEV) . MDEQ should consistently be entering violations arising from major compliance monitoring at major facilities. This includes single event violations (SEV) at majors. This is to assess whether violations determined by means other than automated discharge limits comparisons are being reported and tracked in PCS. Single event violations are currently required data entry for majors (per PCS Policy Statement), and plans are underway to also make SEV required for non-majors in ICIS-NPDES.

The percent of Mississippi's majors in SNC at the end of the first six months of compliance monitoring period during fiscal year 2006 was 27%, exceeding the national average of 22%. The SNC rate for Mississippi majors during the fiscal year 2005 was 22.7%, rounded to 23%. Since fiscal year 2004, the SNC rates for Mississippi majors remain higher than both the national and the Region 4 averages. Also, since FY2004, the Mississippi majors, EPA, Region 4, and national average SNC rates have increased year after year to date (first half of the FY2006).

DMRs were spot checked during the on site file review activity and were compared to the values reported into PCS. Every parameter measurement reported on the DMRs reviewed matched with the measurements entered and recorded in PCS. Therefore, the accuracy of the DMR data entered into PCS can be said to be excellent.

The MDEQ's EMS describes that a violation recognition report "bi-weekly violation report (Attachment B)" is generated every two weeks in accordance with the section on the DMR handling process. All major facility files reviewed neither contained a copy of the bi-weekly violation report(s) nor a copy of the six (6) month DMR summary form. Therefore, it is not clear whether such reports were being generated and if specific measures or steps were followed as a result of these reports as outlined in the MDEQ's EMS.

Citation of information reviewed for this criterion:

- EPA/MS MOA
- CWA SRF Data Pull
- OTIS Management Report

- EPA/MS CWA§106 Program Workplan
- MS EMS
- On-site file review

Recommendation(s): The MDEQ should evaluate its DMR handling process to determine the reason why the DMR and parameter data entry rate at or above 95% has not been achieved. Once the cause has been determined, the MDEQ should either modify the process or implement existing processes to assure that this goal is achieved and maintained as this rate can impact SNC and reportable non-compliance (RNC).

The Region recommends the MDEQ utilize monthly interim QNCR queries to effectively project and identify permittees that might become SNC before the official QNCR run and SNC determination. This data/report query should be in addition to the bi-weekly violation report queries and the six month DMR summary. This process would provide additional opportunities for formal enforcement action prior to the generation of the final QNCR. This would facilitate the timely addressing of additional SNCs .

Lastly, the MDEQ's EMS requires revision as indicated above. Specifically, the enforcement escalation requirement should be focused such that facilities that would become SNC or are in SNC will be fast tracked to a formal enforcement action instead of following the current process. The current process states where a NOV is issued, compliance is monitored, if violations persist, an additional NOV is issued and/or a compliance/show cause meeting is held before taking a formal enforcement action.

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

Findings: Of the 30 files reviewed, a total of 37 informal enforcement actions were noted involving 17 permittees/facilities during FY2005. Of the 17 permittees/facilities, none had a formal enforcement action issued in FY2005; one (1) of the 17 permittees had a formal enforcement action in place prior to FY2005 which was open and effective in FY2005. Six (6) of the 17 permittees had three (3) or more informal actions issued against them. The one facility with a formal enforcement action had at least two (2) informal actions issued against it while being under an active formal enforcement action.

The MDEQ addressed noncompliance through two basic levels of administrative enforcement responses namely LOV/NOV and Administrative Consent Orders (CO). The NOV is an informal enforcement action and the CO is a formal enforcement action which generally contains injunctive relief (corrective measures to be taken), milestones schedules, date certain return to compliance, and may include administrative penalty assessment and/or stipulated penalties.

The majority of enforcement actions taken by MDEQ were NOVs. This generally has

proven to be adequate in returning the facility back to compliance. In some cases where the NOV(s) proved to be inadequate in returning the facility back into compliance, the MDEQ chose to issue additional NOVs instead of escalating enforcement by pursuing appropriate administrative actions such as a CO or a Unilateral Order (UO) or by pursuing a civil judicial action. One such case involved a major municipal facility that appeared to be in chronic noncompliance where administrative orders were issued or modified about every two to two and a half years and in the interim, NOV(s) were issued or no action was taken against violation(s) incurred. In this case, in July 2006, an administrative order was issued after six or more months of noncompliance while the facility was under a previously issued administrative order.

Lastly, a brief discussion with the MDEQ water enforcement management concerning timely and appropriate escalation of enforcement action resulted in the understanding that MDEQ routinely does not refer enforcement cases for civil judicial action. The MDEQ only refers permittee for civil judicial action if and when the permittee is in significant noncompliance with its administrative formal enforcement action such a CO or UO. Based on the above example of the major municipal facility, one can infer that the MDEQ avoided having to refer the permittee for a civil judicial action by issuing another administrative formal enforcement action before a permittee were to violate a major milestone or requirement of the original administrative order such as the return to compliance with the final permit limit by a certain date or the completion of a construction project by the schedule deadline.

Citation of information reviewed for this criterion:

- PCS data pull for FY2005
- CWA State Review Framework Metrics Data
- On-site file review
- MS EMS

Recommendation(s): The MDEQ should revise the existing EMS, dated 1991, to specifically update Attachment C under the Enforcement Section such that a more streamlined approach to formal enforcement for violation category II, IV, V, and VI is established. This approach would establish that formal enforcement action is initiated and/or executed within 60 days from the violation(s) being reported or becoming known whether through on site inspection, DMR submittal or other sources such as complaints received and/or follow up. If the facility is in SNC, the escalation to a formal enforcement action with or without prior NOV actions should be considered as the enforcement response. The EMS revision should also incorporate a process to refer cases or situations for criminal investigation/enforcement, and incorporate enforcement response criteria to address un-permitted facilities and/or un-permitted discharges which are not currently included in the EMS attachment C.

The MDEQ should escalate the enforcement response to civil judicial action, as

appropriate, more frequently than it has to date as well as the direct escalation to civil judicial action. The MDEQ should also limit the pursuit of repeated modification or superseding of existing formal administrative action such as CO or UO.

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: The MDEQ identifies and addresses all violations using the EPA criteria outlined in program authorization documents and the MOA. The State maintains a current EMS (dated 1991), which describes how and when the State will take action on violations. The EMS also addresses the level of formal enforcement that should be taken and includes consideration of several factors related to violations such as environment/health impacts, nature of violation, source classification as a major or minor facility, etc.

The SNC rate, the enforcement process and escalation as described in the EMS, and the number and/or percent of facilities without timely action as reported in the CWA State Review Framework Metrics Data Pull is indicative of significant need to improve formal enforcement response time against permittees in SNC status and the need for EMS revision.

As noted in Element 5 above, the timely and appropriate action issuance is required and desirable in order to assure expeditious return to compliance by the permittee or respondent. If an enforcement action does not achieve this result or move the permittee towards compliance, more appropriate escalated enforcement action(s) should be considered for timely issuance and execution.

The MDEQ management indicated that the agency was considering revising the EMS; however, no specific details were made available in terms of expected timelines for the draft revision, the specific areas that are targeted for revision, etc. Finally, the EMS does not address or describe process for criminal enforcement action.

Citation of information reviewed for this criterion:

- CWA SRF Metrics Data
- On-site file review
- MS EMS
- EPA/MS MOA

Recommendation(s): Timely formal enforcement action should be pursued when informal enforcement has not been successful in returning a facility back to compliance and/or when pursuing a formal enforcement action directly is determined to be more appropriate. Likewise, further enforcement escalation should be pursued in a timely

manner when existing formal enforcement action does not assure expeditious compliance.

For major facilities listed on the QNCR that are in SNC status, enforcement action should be initiated at a formal enforcement level within sixty days, the programmatic time line for timely action issuance. The MDEQ should revise the EMS with a focus on streamlining the escalation to formal enforcement action. The entire process of issuing formal enforcement action whether it is initiating an administrative formal enforcement action or civil judicial enforcement action should be evaluated for process improvements. The revision should also address the lack of criminal enforcement action guidance within the current EMS.

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

Findings: The EMS contains a section on economic benefit and penalty assessment which includes gravity. The MDEQ was requested to provide at least two examples of economic benefit and penalty assessment calculations for review since no formal enforcement actions were contained or taken in FY2005 in the selected facility files. The MDEQ provided two examples of economic benefit and penalty assessment calculations. Where applicable in the examples, the economic benefit was determined either through utilization of the BEN model or other methods as appropriate.

Citation of information reviewed for this criterion:

- MS EMS
- On-site file review
- Economic benefit and penalty assessment calculation examples (two examples)

Recommendation(s): For all penalties assessed, consideration for economic benefit or potential economic benefit should always be performed and documented. If such an assessment is not feasible, a notation in the file should be made to that effect along with any explanation. In addition, all supporting documentation illustrating how penalties and economic benefit were calculated should be included in the case file. If exceptions to the calculated penalties are made, then a detailed explanation should follow documenting the cause for such deviations (e.g. waiving penalties, inability to pay evaluation, etc.).

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: Since there were no formal or informal enforcement action with penalties or stipulated penalties documented within the 30 facilities' files that were reviewed, the extent to which the MDEQ pursues collection of penalties assessed could not be

determined.

The State Review Framework Metrics Data indicates that during the FY2005, a total of ten (10) facilities were addressed by eleven (11) formal enforcement actions. There were two (2) penalty enforcement actions with a total combined penalty in the sum of $63,300. Also, there were 373 NOVs issued to 238 facilities.

Citation of information reviewed for this criterion:

- On-site file review
- CWA State Review Framework Metrics Data
- EPA/MS CWA §106 Program Workplan

Recommendation(s): The MDEQ should ensure penalty assessment and collection information is properly and timely encoded into PCS as required pursuant to the CWA§106 workplan requirement. Proper documentation of penalties collected (payment acknowledgement letter, copy of payment checks, etc.) should also be retained in the facility files.

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

Findings: The MDEQ met or exceeded all significant requirements of their NPDES compliance and enforcement FY2005 CWA §106 workplan. Noted exceptions were MDEQ not meeting the 95% DMR entry rate and entering all penalty data into PCS. MDEQ reports that their current data entry rate is at 99%.

Citation of Information Reviewed for this Criterion:

- EPA/MS CWA §106 Program Workplan
- EPA MS Pacesetter

Recommendation(s): None

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

Findings: MDEQ uses the Permit Compliance System (PCS) as a secondary form of data tracking. Primary tracking of facility information, discharge information, and compliance and enforcement actions is done through an internal state database. The Section 106 workplan contains requirements and commitments for MDEQ to enter all inspection and enforcement actions for majors and minors. Currently, there is no automatic interface between MDEQ's internal tracking systems and PCS. All data are entered directly into both PCS and the state database.

The MDEQ DMR entry rate during the FY2005 was 93.5% as indicated by the State Review Framework Metrics Data. This is just below the national target of 95% entry. Mississippi is encouraged to continue their good work in the timely inputting of all required minimum data into PCS. MDEQ should strive to meet and maintain a 95% DMR entry rate.

Citation of Information Reviewed for this Criterion:

- On-site file review
- EPA/MS CWA §106 Program Workplan
- CWA SRF Metrics Data

Recommendation(s): The MDEQ should institute procedures that assure that all information that should be entered into PCS is routed to data entry staff for timely entry.

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

Findings: As described in Element 10 above, MDEQ does not have an automatic interface between the state data system and PCS, the data has to be manually entered into PCS. DMRs in the files were spot checked against the values in PCS. No discrepancies were noted, thus indicating the data quality with respect to DMR and parameter measurement coding into PCS as being accurate. However, improvement in the accuracy of the inspection type coding is needed when coding a CMI. CMIs are not defined at the national level but are defined as a reconnaissance inspection with sampling in the MDEQ EMS. All three types of inspection codes for CEI, CSI, RI have been used for the CMI in PCS. Given that the sampling conducted during the CMI in many cases did account for all of the parameters in a given permit, the CMI should be coded and credited as RI only.

MDEQ recognizes that CMIs are not creditable inspections and enters such inspections into PCS as RIs. However, there were a few cases where CMIs were coded incorrectly as CSIs or CEIs for individual minor facilities making this a data accuracy issue. The few occasions where CMIs were incorrectly coded into PCS as a CSI or CEI, would not impact MDEQ meeting any of their inspection commitments for majors; the §106 workplan calls for 90 inspections at individual minors, 371 individual minor inspections were actually performed, even with accounting for the data errors, MDEQ meets and exceeds their individual minors inspection commitments.

Citation of Information Reviewed for this Criterion:

- On-site file review
- CWA SRF Metrics Data
- EPA/MS CWA §106 Program Workplan
- PCS Data Pull for IY05/FY2005
- NPDES Inspection Manual
- MS EMS

Recommendation(s): The MDEQ should ensure that appropriate inspection type codes are used in PCS for CMIs. The inspection codes for CEIs or CSIs are not appropriate coding for CMIs in PCS. Correct inspection codes should be used to reflect respective inspection types conducted in PCS. MDEQ should periodically compare state data with PCS data to identify and correct differences.

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: During the file review, two enforcement actions were documented in the file but not entered into PCS, and three inspections and/or enforcement actions were noted in PCS but not found in the facility files.

MDEQ has an active facility universe of majors of 88 facilities. For FY2005, the data entry rate averaged 93.5%, which was 4% above the national average, but 1.5% below the national goal of 95%. This issue is one of completeness as well as timeliness.

Citation of information reviewed for this criterion:

- On-site file review
- CWA SRF Metrics Data
- EPA/MS CWA §106 Program Workplan
- PCS Data Pull for IY05/FY2005

Recommendation(s): The MDEQ should evaluate its DMR handling process to determine the reason why the DMR and parameter data entry rate at or above 95% has not been achieved. Once the cause has been determined, the MDEQ should either modify the process or implement existing processes to assure that this goal is achieved and maintained as this rate can impact SNC and reportable non-compliance (RNC).

Program: RCRA Hazardous Waste Enforcement Program

The review period covered by this report was the last full fiscal year, which was FY2005 (October 1, 2004 - September 30, 2005). The RCRA data metrics were provided to MDEQ on July 3, 2006, and the state was in agreement with the findings. The RCRA file review was conducted from August 22-24, 2006, at the state offices in Jackson, Mississippi.

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

Findings:

Inspections at TSDs: The Solid Waste Disposal Act §3007(e) requires that every operating TSD be inspected once every two years. Mississippi has eight operating TSDs in the state. The SRF Metrics indicate that MDEQ evaluated 100% of the TSDs in their state in the two-year time period of FY2004 to FY2005.

Inspections at Federal Facility TSDs: The Solid Waste Disposal Act §3007(c) requires that every TSD facility owned or operated by the federal government must be inspected every year to determine compliance with the hazardous waste regulations. There is one federally-owned TSD located in Mississippi, and in FY2005 the facility received a compliance inspection as required by federal statute. However, RCRAInfo indicates that during the five-year timeframe from FY2001-2005, the facility was only inspected twice, which does not meet the statutory requirements of annual inspections.

Inspections at State & Local TSDs: The Solid Waste Disposal Act §3007(d) requires that every TSD facility owned or operated by a state or local government must be inspected every year to determine compliance with the hazardous waste regulations. There is no state or local owned TSDs located in Mississippi.

Inspections at Land Disposal Facilities: The OECA FY2005-2007 National Program Mangers (NPM) Guidance specifies that every LDF should receive an inspection of their groundwater monitoring system once every three years. This could be a CME for new or newly regulated LDFs, or an OAM inspection at LDFs where the groundwater monitoring system has been adequately designed and installed (as determined by EPA and/or the state). More frequent CMEs should be conducted in situations involving complex compliance or corrective action requirements; inadequate ground water monitoring systems, significant changes to ground water monitoring systems, and actual or suspected changes in local ground water regimes. When hazardous waste is no longer being received, and the regulated unit has a ground water monitoring program in place, physical inspections can be replaced by record reviews of the sampling/analysis data and the quarterly/annual ground water monitoring reports generated from the detection monitoring activities.

In RCRAInfo, there are 25 land disposal facilities in the Mississippi post-closure universe that are subject to the RCRA Subpart F groundwater monitoring requirements. From FY2003-FY2005, only 14 facilities, or 56% of the universe, received a CME and/or OAM evaluation. This is far below requirement that 100% of the LDF universe should receive a groundwater monitoring evaluation at least once every three years, as outlined in the OECA FY2001-FY2004 and FY2005-2007 NPM Guidance.

Inspections at LQGs: The OECA data metrics indicate that MDEQ has 146 LQGs. The OECA FY2005-2007 NPM Guidance specifies that 20% of the LQG universe should be inspected every year, with a goal of achieving 100% inspection coverage every five years. The metrics indicate that MDEQ has inspected 22% of the LQG universe in their state in FY2005. However, the data metric also shows that from FY2001-FY2005, MDEQ inspected only 74 % of the LQG universe, which is below the recommended inspection coverage in the OECA NPM.

Other Inspections: The OECA data metrics indicate that MDEQ has 110 Small Quantity Generators (SQGs). Although the FY2005-2007 OECA NPM Guidance does not specify further inspection coverage requirements, it does recommend that the regions and states determine appropriate levels of inspection coverage for SQGs. According to the State Framework Metrics, MDEQ inspected an average of 97% of all SQGs over a five-year period (FY2001-FY2005).

Citation of information reviewed for this criterion:

- The Solid Waste Disposal Act,
- OECA FY2005-2007 NPM Guidance
- OECA RCRA State Review Framework Metrics, and
- RCRAInfo data.

Recommendation(s): From RCRAInfo data, it appears that MDEQ did not fulfill the required statutory inspections for federal TSDs for three of the last five years.
In addition, MDEQ did not meet the OECA NPM Guidance guidelines (dated June 2005) for compliance monitoring of the groundwater monitoring regulations at RCRA land disposal facilities. The recommendation is that at least one third, or approximately 33%, of the universe receive a CME and/or OAM every year, the goal being to reach 100% of the LDF universe once every three years. From FY2004-2005, only 56% of the universe received the required inspections. Although the OECA NPM guidance has changed this requirement since FY2005, this was the guidance requirement for the period covered by this State Review Framework. Lastly, MDEQ is not meeting the recommended inspection coverage for LQGs in the OECA NPM Guidance.

It is recommended that MDEQ reevaluate their inspection targeting to ensure that, at a minimum, the inspections required by statute and the applicable OECA NPM guidance

are conducted. If MDEQ cannot meet the inspection requirements, they should consult the EPA Region 4 RCRA Enforcement & Compliance Branch to discuss options for the required inspections.

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

Findings: The State Framework file selection protocol indicates that the number of files to be reviewed should be based upon the selected universe of files. For the RCRA State Framework Review, the universe of files is the number of facilities that received an inspection during the fiscal year subject State Framework Review, and/or were subject to formal enforcement during that time frame. According to the OECA State Review Framework Metrics, MDEQ conducted 164 inspections at 130 facilities in FY2005. In the protocol, this translated that between 15 and 30 files that should be reviewed where 50% were enforcement files and 50% were inspection files. Since there were only three facilities that were newly identified SNCs and/or in enforcement proceedings from the previous fiscal year, EPA selected a total of three enforcement files and 23 inspection files, for a total of 26 files to be reviewed. All files were located at MDEQ's office in Jackson, Mississippi, and were found to be in good order.

Of the 23 inspection files reviewed, 55% of the reports were found to contain either minimal or no information regarding facility operations and hazardous waste management activities observed during the time of the inspection. These reports generally consisted of two to three sentences stating the facility status (TSD, LQG, etc.), and that no problems/violations were observed at the time of the inspection. Other reports contained brief description of the company's manufacturing process, but little information about the hazardous waste management activities. None of the inspection reports contained photographs or inspection checklists.

In several of the facility files that were reviewed, inspection reports from previous years (2001 and earlier) contained detailed information about the facility operations, waste generation, and observations from the time of the inspection.

Citation of information reviewed for this criterion:

- MDEQ files.

Recommendation(s): Documentation of facility hazardous waste management activities are necessary components to inspection reports, as are photo documentation of violations. EPA Region 4 recommends that MDEQ establish a consistent protocol for thoroughly documenting RCRA compliance inspections, using the Revised RCRA Inspection Manual (November 1998) as guidance in this process. This protocol should be submitted to EPA R4 for review and comment prior to implementation. In addition, MDEQ should

forward copies of MDEQ inspection reports requested by the EPA R4 RCRA & OPA Enforcement and Compliance Branch within two weeks of request.

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

Findings: In the Memorandum between MDEQ and EPA (dated January 21, 1994), MDEQ should finalize all inspection reports within 45 days of the inspection. Of the inspection files reviewed, MDEQ RCRA Inspectors complete the inspection report on average 49 days from the date of the inspection. This average does not include one inspection, which took almost seventeen months to complete. During the file review, MDEQ explained that the issuance of the report was delayed while waiting for EPA Region 4 to finalize their inspection report. However, EPA completed the university inspection report more than 13 months before MDEQ finalized their report. If included, the average report completion rate would be 69 days.

Citation of information reviewed for this criterion:

- MDEQ RCRA Inspection files
- RCRAInfo data.

Recommendation(s): Inspections reports appear to be completed in a timely manner (with the exception of the cited report), close to the negotiated timeframe in the MDEQ/EPA RCRA MOA. EPA recommends that MDEQ monitor all inspection reports to ensure timely completion.

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

Findings: During FY2005, MDEQ did not identify any SNC facilities. In the FY2005 RCRA Annual Evaluation Report (dated June 7, 2006) MDEQ indicated the reason for the lack of SNC identification as "The state targets inspections at facilities that will count toward grant commitments, rather than targeting potential non-compliance." Since MDEQ inspections are multimedia, facilities are targeted that will multiple grant commitments

Citation of information reviewed for this criterion:

- OECA data metrics
- MDEQ inspection/enforcement files
- RCRAInfo data
- FY2005 Mississippi RCRA Annual Evaluation Report (June 7, 2006)

Recommendation(s): EPA Region 4 is concerned that MDEQ suggests it is not addressing noncompliance in their state using their current inspection targeting. The

strategic goal of all compliance and enforcement programs is to improve compliance among regulated facilities through compliance assurance activities and enforcement. MDEQ should work with the EPA Region 4 RCRA program in developing grant commitments each fiscal year to ensure compliance monitoring activities are being targeted in areas of potential noncompliance.

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

Findings: In FY2005, MDEQ finalized two consent orders:

- MDEQ signed a consent order with one facility +/- 450 days after the joint MDEQ/EPA inspection, which exceeds the ERP limit for timely enforcement response. The consent order did not include all the violations identified by MDEQ and/or EPA during the inspection, including hazardous waste tank violations and failure to conduct weekly inspections. In addition, the multimedia consent order did not include any RCRA injunctive relief. There was no documented/verified return to compliance by the facility in the MDEQ files.
- MDEQ signed a consent order within 180 days of the inspection. The facility certified a return to compliance within 60 days of the inspection, and four months prior to the signed consent order.

There was one inspection where violations were identified in the inspection report and the facility was issued an NOV, but it was not entered into RCRAInfo. There was no information in the files or in RCRAInfo to indicate that the facility had complied with the RCRA violations identified in the NOV.

Citation of information reviewed for this criterion:

- MDEQ enforcement files and RCRAInfo.

Recommendation(s): In one of the two consent orders reviewed, MDEQ enforcement did not require complying actions for violations identified. In one NOV, there is no evidence in RCRAInfo and in MDEQ files that the facility returned to compliance. As outlined in the RCRA ERP, appropriate enforcement response should achieve a timely return to compliance, and is considered an integral part of the RCRA enforcement and compliance assurance program. It is recommended that MDEQ review proposed enforcement actions during the bi-monthly conference calls with the EPA Region 4 RCRA enforcement program to review appropriate injunctive relief for return to compliance. MDEQ should also implement quality assurance procedures to ensure that all appropriate data is entered into RCRAInfo.

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:
Timely Enforcement: The RCRA Enforcement Response Policy (ERP) designates the following time lines for responding to significant noncompliers (SNCs):

- Day 150 - by this number of days after the first day of inspection, the state (implementing agency) should determine if formal enforcement action is required (identifying the violating facility as a SNC)
- Day 240 - by this number of days after the first day of inspection, the state should issue its unilateral or initial order, if appropriate
- Day 360 - by this number of days after the first day of inspection, the state should enter into a final order with the violator, or make a referral to the State's attorney General office.

The ERP recognizes circumstances that may dictate an exceedance of the standard response times, such as multimedia cases, national enforcement initiatives, additional sampling or information needs, etc. A ceiling of 20% of cases per year may exceed the above time lines.

In FY2005, the MDEQ RCRA program concluded two consent orders with SNC facilities, while negotiating a third order which concluded in FY2006. Of the three consent orders, two actions or 66% of the cases exceeded the 360 day time line for entering into a final order.

Appropriate Enforcement: The RCRA ERP was intended to provide a "level playing field" within the regulated community, where facilities with more serious violations were held to a more substantial formal enforcement response by the States or EPA. The facilities with minor violations were issued informal enforcement actions. The ERP is a framework for the States and EPA to follow to help prioritize enforcement efforts with respect to RCRA violations.

Citation of information reviewed for this criterion:
- Hazardous Waste Civil Enforcement Response Policy (December 2003)
- MDEQ facility files
- RCRAInfo data

Recommendation(s): EPA recommends that MDEQ closely review and follow the RCRA Enforcement Response Policy to determine the appropriate response to violations at RCRA facilities. Enforcement case timelines should be reviewed during the bi-monthly conference calls with the EPA Region 4 RCRA enforcement program.

7. Degree to which the State includes both gravity and economic benefit calculations

for all penalties.

Findings: It is MDEQ's policy not to include penalty calculations in the enforcement files. MDEQ maintains that the gravity of the violations and economic benefit are considered in the penalty calculation, however no documentation of this is maintained in the files.

Citation of information reviewed for this criterion:

- MDEQ RCRA enforcement files.

Recommendation(s): In order to maintain consistency in enforcement proceedings and penalty calculations, MDEQ should consider options and develop and implement a plan to document the calculations in the enforcement files.

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: It is MDEQ's policy not to include penalty calculations in the enforcement files. The final penalties were reflected in RCRAInfo, but the penalty calculations were not formally documented in the files.

Citation of information reviewed for this criterion:

- MDEQ enforcement files
- RCRAInfo data.

Recommendation(s): In accordance with the RCRA Civil Penalty Policy, MDEQ should assess penalties appropriate to the violations, and only mitigate the penalty where allowed by policy. Also, in order to maintain consistency in enforcement proceedings and penalty calculations, MDEQ should consider options and develop and implement a plan to maintain both initial and final penalty documentation, including economic benefit and gravity-based calculations.

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

Findings: On March 27-30, 2006, EPA Region 4 conducted a review of the MDEQ RCRA program, as required by 40 CFR §35.115, to assess progress toward meeting the FY2005 Grant Workplan commitments and discuss any potential obstacles to meeting FY2006 commitments. Following the review, a report to document the findings was developed. In the FY2005/FY2006 RCRA Review, the report found that MDEQ met enforcement and compliance grant workplan inspection commitments for FY2005.

MDEQ FY2005 Workplan Commitments	Target	Completed
TSD Inspections	17	100%
LQG Inspections	29	100%
SQG Inspections	24	100%
CEG Inspections	25	100%

Citation of Information Reviewed for this Criterion:

- MDEQ RCRA FY2005 Workplan
- FY2005 RCRA Annual Review Report (dated June 7, 2006).

Recommendation(s): The RCRA State Review process incorporates the requirements of the RCRA statute, the OECA National Program Managers Guidance, as well as grant workplan commitments. While MDEQ did met the FY2005 grant commitments, some key national statutory/guidance requirements were not met. It is recommended that MDEQ work with EPA Region 4 during the development of the fiscal year grant workplan to ensure the statutory inspections and OECA guidance requirements are included in the grant commitments.

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

Findings: The RCRA Enforcement Response Policy states that data should be entered when compliance determinations are made, but no later than 150 days from day zero or the first day of the inspection. This provision is included so that no SNC entry is withheld until enforcement is completed, and therefore not tracked for timely enforcement response. Since there were no SNC identified by MDEQ in FY2005, this data requirement cannot be evaluated.

Citation of Information Reviewed for this Criterion:

- MDEQ File Review and RCRAInfo data.

Recommendation(s): None.

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

Findings: The following discussion addresses the findings of the RCRA State Review Framework Metrics for data accuracy.

Metric 11(a)(1) - This metric measures the "closeness" between SNC determination and formal enforcement actions. The ERP states that the data should be entered when the determination is made, and SNC entry should not be withheld until the action is

completed. The metric indicates that during FY2005, there were no MDEQ RCRA SNC determinations made on the same day as formal enforcement actions.

Metric 11(a)(2) - This metric also measures the "closeness" between SNC determination and formal enforcement actions. The metric indicates that during FY2005, there were no MDEQ RCRA SNC determinations made within one week of formal enforcement actions.

Metric 11(b) - This metric measures the longstanding secondary violations that are not "returned to compliance" or redesignated as SNC. According to the data metric, in Mississippi there was no facility that was in violation for greater than three years.

Citation of Information Reviewed for this Criterion:

- RCRA State Review Framework Metrics.

Recommendation(s): 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: The State Review Framework Metrics were provided to MDEQ, and there is agreement from MDEQ with the data provided in the report under Metric 12.

Citation of information reviewed for this criterion:

- RCRA State Review Framework Metrics

Recommendation(s): None

Element 13 – MDEQ Compliance Assistance and Innovative Projects

- The MDEQ is exploring innovation in the development of new opportunities for Mississippi businesses and the regulated community to improve environmental performance on a voluntary basis. MDEQ has developed a draft framework of its Environmental Opportunity Initiative (EOI) program, aimed to encourage and recognize businesses that commit to proactively and transparently address environmental impacts. The Region and MDEQ have also finalized a Memorandum of Agreement to document both agencies intention to work in tandem to recognize and reward top environmental performers for the National Environmental Performance Track program and MDEQ's EOI.

- MDEQ started up an Electronic Discharge Monitoring Reports program. This program allows for facilities to securely submit electronic DMR data.

- Voluntary UST Compliance assistance Program provides for owner testing and checking of their tanks. MDEQ analyses data and provides a compliance summary, notifies owner when next cycle of testing needs to be performed, and provides a 12 month calendar of upcoming testing requirements to owners of five or more facilities.

- Adopt-A-Stream Mississippi is a unique and cooperative effort between the Mississippi Wildlife Federation, MDEQ, Mississippi State University Coastal Research and Extension Center, and Mississippi Department of Wildlife, Fisheries, and Parks that involves citizens in stream stewardship and water quality monitoring. Adopt-A-Stream programs increase public awareness of local water resources and build partnerships to protect water bodies. Volunteers adopt a section of a stream or river and then monitor water quality, conduct cleanups, and/or improve stream habitat.

- The Mississippi Urban Forest Council and MDEQ are unveiling a new community development program. The program will assist communities in implementing sound natural resource conservation practices such as water quality, community forestry, scenic projects, habitat development, flood control, hazard mitigation, recycling, watershed assessments and many other valuable practices.

  The Scenic Communities of Mississippi program is a listing of resources and programs in Mississippi that assist and provide funding/technical assistance to communities. Over 200 natural resource conservation projects will be included in the resource listing with contacts and agencies within the state that provide these services directly to communities. The listing will include all resources from state, federal, nonprofit and private entities, as well as funding sources for grants and technical experts available to advise your community.

Communities that voluntarily implement a number of these programs will be recognized regionally and statewide as a Scenic Community of Mississippi. The success stories from these designated communities will be shared statewide and regionally through a variety of media.

One hundred communities will be invited to participate the first year of the program and receive resource program assistance.

- How to Conduct a Storm Drain Marking Project-The storm drain marking project has three main components:
  - Recording debris found at a storm drain
  - Gluing a marker to selected storm drains
  - Distributing door hangers which inform citizens of their impact on water quality

  Kits are made available from the MDEQ with further information, sample documents, and supplies. MDEQ personnel may assist in getting projects underway.