

Region 1 Review of the New Hampshire CWA NPDES Program

New Hampshire is not authorized for the Clean Water Act NPDES program. However, the New Hampshire Department of Environmental Protection (NHDEP) has state authority over surface water discharges that parallel the Federal authorities and performs enforcement activities. EPA Region 1 and NHDEP consult with each other on the implementation of the enforcement work for this program. During round 1 of the State Review Framework, Region 1 conducted a review of the NHDEP NPDES enforcement program in order to acknowledge the state's work in that area. The following is Region 1's report of that review.

**Review of the New Hampshire Department of
Environmental Services' FY 2004 State
Enforcement and Compliance Programs**

U.S. EPA Region 1 New England

September 25, 2006

EXECUTIVE SUMMARY

Overall Picture

The New Hampshire Department of Environmental Services (DES) meets federal standards for implementing its federally delegated Clean Air Act (CAA) Stationary Source and Resource Conservation and Recovery Act Sub-title C enforcement programs. The review indicated that DES staff has a thorough understanding of these programs.

DES does not have delegation of the Clean Water Act (CWA) NPDES Enforcement Program. However, DES implements a state authorized water enforcement program that is similar to the CWA NPDES enforcement program. EPA Region 1: New England (Region 1) reviewed this program. The Water review noted that DES has implemented many of the recommendations made as a result of the last program review in 1999.

Following the 1999 Review, DES developed its "Compliance Assurance Response Policy" dated September 27, 2000 ("CARP") for use as guidance when evaluating how to respond to violations of environmental laws. The CARP is a comprehensive document which identifies the range of formal and informal actions available to DES, and provides clear guidance for the enforcement staff to assess appropriate penalties in formal enforcement actions. It also developed a policy on supplemental environmental projects ("SEPs") which is included in the CARP. DES has made substantial improvements in identifying and documenting violations and calculating and documenting penalties.

Several recommendations in this report address documentation issues, including documentation of inspection reports and penalty calculations. EPA New England recognizes that these issues are continuing challenges for government programs, and they do not reflect any underlying weakness in DES understanding or commitment to environmental enforcement.

Sources of Information Included in Review

EPA New England developed these findings from a review of DES operations in Federal Fiscal Year 2004 (FY04, October 1, 2003-September 30, 2004). EPA reviewers examined FY04 DES/EPA agreements, information in EPA and DES databases, and 71 DES inspection and enforcement case files (30 Air files, 15 Water files and 26 RCRA files). EPA reviewers discussed all this information with DES program managers and staff.

Inspection Implementation

One of the strengths of the DES programs in FY04 was that DES met or exceeded its inspection commitments in each of the programs. Region 1 is recommending improvements in documentation in the RCRA programs. EPA notes that DES has developed automated, standardized inspection checklist tools to improve the efficiency of its inspectors. DES should take care to insure that while improving efficiency in

inspection reports, it should document inspection findings in sufficient detail to support enforcement and have a way to capture unique factors that are present at facilities. DES completes its inspection reports quickly.

Enforcement Activity

Enforcement response is good in all programs. Generally, DES correctly identifies significant violations and implements an appropriate enforcement response. EPA is recommending improvements in how DES Air, Water and RCRA enforcement programs either calculate the economic benefit component of penalties or document the absence of economic benefit.

In the Air program, EPA recommends changes to insure that DES reports high priority violations to EPA more quickly. In RCRA, the review determined that DES has not incorporated updated EPA enforcement policies and recommends steps Region 1 and DES can take to insure policies are up-to-date.

Commitments in Annual Agreements

DES met its commitments in its FY04 PPA agreement.

Data Integrity

Region 1 is making several recommendations to improve data accuracy in RCRA and Air.

Element 13

DES submitted two innovative RCRA programs for review under Element 13.

The DES Full Quantity Generator (FQG)¹ Hazardous Waste Coordinator Certification (FQG-HWCC) Program provides a sustainable forum for educating and certifying significant generators of hazardous waste in the complex regulatory area of hazardous waste management. The FQG-HWCC Program is a new and creative approach to environmental compliance monitoring because it reaches out to educate and annually certify the regulated FQG universe and thereby supplements the traditional inspection and enforcement approach.

The Small Quantity Generator Self-Certification (SQG-SC)² program provides a means to check the compliance status of hazardous waste generators that produce less than 220 pounds of hazardous waste in every month. This is a creative approach for monitoring the compliance status of a large number (greater than 3,000) of state SQGs. These facilities are usually low priority targets for traditional inspection, given the realities of a limited number of state inspectors.

¹ NH FQGs are equivalent to federal LQGs and SQGs.

² NH SQGs are equivalent to federal CESQGs.

Next Steps

The recommendations in this report do not contain specific details about the steps DES and Region 1 will take to implement them. When Region 1 issues the “final” version of this report, it will ask that DES, within 60 days, provide Region 1 with a plan to address the recommendations in the final report. The plan should show how DES will address each recommendation and include milestones, interim steps, completion dates and the DES person responsible. If Region 1 can assist in addressing recommendations (e.g., provide training or other assistance), please discuss this with Steven Rapp, our Office of Environmental Stewardship liaison for DES. Region anticipates that this plan will become part of the DES PPA.

Clean Air Act Stationary Source Enforcement Program

Information Sources Included in the Review

The CAA portion of the DES evaluation included the review of 30 inspection and/or enforcement files. All files selected for review had some action in federal fiscal year 2004 (FY04). Where there was DES CAA action at a source in FY04, inspections or actions that preceded and/or followed-up on the FY04 action were also reviewed even if they occurred in a different fiscal year. Table 1 lists the facilities for which files were reviewed. Table 2 explains the manner in which the files were selected for review.

Throughout the file review process, EPA was impressed by the DES CAA filing system and the meticulous manner in which it was uniformly observed. All the information (inspection, enforcement, stack testing, periodic reports, emissions inventory, etc.) for each facility is in its own color-coded folder within the same file. Facility files are complete and easily locatable. The color coded system is consistently applied to all case files.

The CAA evaluation also involved the review of data from AFS (primarily for FY04), supplied by EPA headquarters, which compared DES performance on certain metrics to national policy goals, DES' commitments to Region 1, and the national average of state performance. Consistent with a November 2005 memo from Lisa Lund (Deputy Director, Office of Compliance, OECA), the DES Air review served as both the state review framework and the compliance monitoring strategy (CMS) review. The CMS report will be supplemented by a memo, under separate cover, to OECA

TABLE 1 - Region 1 reviewed the following DES air compliance and enforcement files.

ID Number	Facility Name	Review Category
3300100011	L W PACKARD & COMPANY INC	new HPV
3300500016	TROY MILLS INCORPORATED	new HPV
3300500043	SMITHS MEDICAL ASD INC	maj / SM NOVs
3300900001	L W PACKARD & COMPANY INC	new HPV & major FCE
3300900038	DARTMOUTH PRINTING COMPANY	synthetic minor FCE
3300900040	NEW HAMPSHIRE INDUSTRIES INC	existing HPV
3300900118	KENDAL AT HANOVER	minor NOV
3300990275	COMMONWEALTH BETHLEHEM ENERGY, LLC	minor FCE

3301100018	GL&V PULP GROUP, INC	minor FCE
3301100019	HAMPSHIRE CHEMICAL CORPORATION	major FCE
3301100040	ENERGY NORTH INC – MANCHESTER	minor FCE
3301100061	HILLSBOROUGH COUNTY COMPLEX	minor NOV
3301100064	HITCHINER MANUFACTURING COMPANY INC	maj / SM admin action & new HPV
3301100072	NASHUA CORPORATION	major FCE
3301100101	MANCHESTER AIRPORT, CITY OF	minor NOV
3301100110	PILGRIM FOODS INC	maj / SM admin action
3301300063	HHP INC	synthetic minor FCE
3301390014	BLUE SEAL FEEDS INC	minor FCE
3301500012	PSNH - SCHILLER STATION	major FCE
3301500046	HUTCHINSON SEALING SYSTEMS	minor admin action
3301500063	NORTHLAND FOREST PRODUCTS	minor FCE
3301590259	ALCUMET INC	existing HPV
3301590778	NOVEL IRON WORKS	major FCE
3301590782	AES GRANITE RIDGE LLC	new HPV
3301700003	TURNKEY RECYCLING & ENVIRONMENTAL ENTERP	major FCE, referral to AGO
3301790151	TRELLEBORG SEALING SOLUTIONS US INC	existing HPV
3301900001	APC PAPER COMPANY INC	major FCE
3301900025	STURM RUGER & COMPANY INC	synthetic minor FCE
3301900030	DURGIN & CROWELL LUMBER COMPANY INC	existing HPV
3301900031	HEMPHILL POWER & LIGHT COMPANY	maj / SM NOVs & new HPV

Table 2 – File Selection Process

Category	universe size (i.e. how many exist)	how many to be reviewed	*Picked starting with the Xth source...	...and then choosing every Yth source**
New HPVs	6	6	N/A	N/A
Existing HPVs	9	4	5	2
major FCEs	26	7	10	4
synthetic minor FCEs	13	3	6	4
minor FCEs	83	5	10	17
major + SM NOVs	4	2	1	2
minor NOVs	10	3	2	3
major + SM admin action	3	2	3	2
minor admin action	2	1	2	N/A
Total to be reviewed (if no overlap)		33		
Total overlap that resulted		3		
Total files to be reviewed		30		

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Section 1: Review of Inspection Program Implementation

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

The EPA compliance monitoring strategy (CMS) creates a baseline requirement that states conduct a full compliance evaluation (FCE) at each of their major Title V sources at least one every 2 years, and at each of their synthetic minor sources permitted at above 80% of the major source threshold (SM80s) at least once every 5 years. However, these timeframes may be modified, if the state receives approval from the EPA Regional office. Several acceptable reasons for modified FCE schedules are suggested in the CMS.

EPA Region 1 has approved a reduced frequency for a handful of DES sources each of which either 1) has an excellent compliance history over the past 10+ years or 2) has not

operated in over 2 years or has never operated. Furthermore, DES has requested, and Region 1 has provided, some assistance in completing FCEs at all of the Title V major sources. In practice, this means that EPA does 2-4 major source FCEs in NH each year. In “exchange,” DES commits to conducting at least 40 FCEs at “other” (minor) sources. As a matter of internal policy, DES strives to inspect each state-permitted source (a universe which includes many minor sources) at least once every 5 years. Furthermore, DES was finding great utility in its minor source inspections – discovering sources that should have applied for a Title V permit and been classified as major. These sources were added to the high priority violator list, and DES pursued enforcement cases.

Despite its commitment to inspect a large number of minor sources each year, DES conducted FCEs at 83.3% of its major Title V sources in the two fiscal years ending with FY04. This is above the national average of 75.7% of all 50 states over the same time period. Furthermore, when considering Region 1 and DES efforts together, 96.3% (i.e., all but one) of the major Title V facilities in NH received FCEs in the two fiscal years ending with FY04. Similarly, NH is likewise above the national average for its FCE coverage of SM80s and minor sources.

DES reviewed 93.2% of the Title V compliance certifications received in FY04, which is well above the national average of 73.5%.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

CAA Stationary Source Compliance Monitoring Strategy, April 25, 2001

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

None

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

In general, DES’ inspection reports are excellent and extremely thorough. All inspection reports include tables detailing the reports reviewed before and after the onsite inspection, the results of the report reviews, the emission units at the source, the applicable emission limits, and the regulatory citations for the requirements. Each report has a detailed recommendations and follow-up section listing violations identified and next-steps.

A handful of reports lacked reference to past enforcement history (e.g., Hutchinson Sealing Systems, Durgin & Crowell Lumber Co, LW Packard & Co, Hampshire Chemical Corp, Dartmouth Printing Co).

One report – PSNH Schiller (FCE 9/27/04, report 10/6/04) was incomplete, in the following ways:

- P.2 “opacity was less than ___%”
- P.3 “as of 1/1/03....” despite the fact that the report was written 22 months after 1/1/03;
- In the table of quarterly reports reviewed, the 1st and 2nd quarters of 2004 were skipped.

However, this report is not indicative of the average DES FCE report. On average, the reports were very complete and of high quality.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

CAA Stationary Source Compliance Monitoring Strategy, April 25, 2001

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

Ensure that all inspection reports include a “past enforcement history” section that details any past air enforcement at the source or states “none” if there has been no such enforcement. This could be done by requiring all inspectors to use a standard inspection report template that includes a “past enforcement history” section, by having a manager review and ensure that all sections are included before he/she signs off on all reports, or by some other method proposed by DES.

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

Although there is no strict deadline for inspection report completion, many states and regional offices generally agree that inspection reports should be completed within 2-6 weeks of the on-site visit. The majority of NH’s reports are completed in a timely manner. However, a handful of CAA DES reports reviewed were finalized several months after the inspection. Those reports found to be especially late are listed below:

Table 3

Source Name	AFS Number	FCE Date	Final Report Date
Kendal at Hanover	3300900118	10/23/03	5/19/04
Novel Iron Works	3301590778	7/29/04	4/5/05
Nashua Corp	3301100072	9/29/04	never
Manchester Airport	3301100101	5/15/03 & 5/19/03	8/7/03
Hutchinson Sealing Systems	3301500046	10/10/00	2/1/01

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

None

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

Ensure that inspection reports are completed and finalized in a timely manner

Section 2: Review of State Enforcement Activity

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

DES identified six new high priority violators (HPVs) in FY04. NH is above the national average for 1) major source HPVs identified per major source FCEs and 2) major source HPVs identified per total number of facilities in major source universe. EPA Region 1 routinely discusses major source enforcement cases – both those that are identified as HPVs and those that are not identified as HPVs – with DES and believes that DES understands the HPV-listing criteria and correctly applies them.

At 50%, NH is above the national average³ for total major non-HPV-listed sources with a formal enforcement action correctly reported to AFS (2) per total major source formal enforcement actions correctly reported to AFS (4).⁴

This data metric implicitly assumes that if a major source is receiving a formal enforcement action, it should be an HPV. However, that is not always the case.

In NH in FY04 there were two formal enforcement actions at major sources. One was at AES Granite Ridge which is major for CO and exceeded its 365-day rolling CO cap. AES was listed as an HPV. The other was at a source (which is not being named because enforcement is ongoing) which is major for CO. This source complied with its CO limit, but violated SO₂, VOC, NSPS, and state air toxics limits. Because the HPV policy applies to violations of limits and requirements on pollutants for which the source is major, DES was not required to list this second source as an HPV. Thus, upon examination of the data, the fact that NH is above the national average is not of concern. DES has not always been timely in identifying HPVs to EPA. EPA Region 1 shares part of the blame, because it had allowed new HPV reporting to occur only at quarterly face-to-face meetings. However, some HPVs were reported to EPA more than 3 months later than they should have been – even after the next EPA / DES quarterly meeting. See Table

³ For most of the metrics in the State Review Framework, the higher the number or percentage, the better. However, for this metric, a lower percentage is considered better.

⁴ Note that some of NH's FY04 formal enforcement actions were reported to AFS incorrectly and therefore were not included in the calculations for this metric. There were 3 formal enforcement actions at major HPV sources that were incorrectly reported in AFS. (See metric 8 for more information). If this information is included, then NH's value for this metric is 28.6%, which is just slightly above the national average of 21.8%.

6 for a listing of HPVs identified or still active in FY04. Table 4 includes the dates that the HPVs were reported to EPA. DES recently experienced some CAA enforcement staff shortages which partially explain the delays in HPV identification and reporting. The vacant positions have recently been filled.

Table 4: A sampling of files reviewed that were HPVs identified or still active in FY04

Facility Name	AFS #	Violation ID Date	HPV Determination Date	Date HPV Reported to EPA	Addressing Action Date
AES Granite Ridge	3301590782	4/15/04	4/15/04	5/6/04	6/9/04
Troy Mills	3300500016	4/15/04	4/15/04	8/5/04 *	10/7/05
Trelleborg	3301790151	2/6/02	2/6/02	5/31/02	11/6/03
Hemphill Power & Light	3301900031	4/15/04	4/15/04	8/5/04	5/27/04
Hitchiner Manufacturing	3301100064	10/31/03	10/31/03	8/11/03	7/8/04
Durgin & Crowell Lumber Co	3301900030	12/27/02	5/9/03	6/23/03	6/6/06
NH Industries Inc	3300900040	6/30/00	7/30/02	5/23/03	9/20/05
LW Packard & Co	3300100011 3300900001	4/29/04 4/29/04	6/14/04 6/14/04	8/5/04 8/5/04	10/12/04 10/12/04

* DES told EPA that this source had failed to submit its annual TV certification on 8/5/04. The source was not added as an HPV to AFS until 2/3/05 because the exact entity to be charged with the violation was unknown in 2004. The company had gone out of business and the building was in the process of being taken by the municipal development authority because the company had not paid its taxes.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

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

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

Once a violation has been found (often by the inspector) a prompt referral should be made to the enforcement group. The enforcement group should promptly make a determination as to whether the facility is an HPV. Deadlines for internal hand-offs within DES are up to DES. However, the HPV day zero (which is the day DES determined that the violation makes the source an HPV) must be within 45 days of the

realization that there was some violation. Often this realization occurs at an inspection, which would mean that the HPV determination would have to be made within 45 days of the inspection.⁵ If the next EPA quarterly meeting is more than one month away, DES should e-mail or call its EPA Region 1 liaison to report the HPV.

5) Degree to which state enforcement actions include required injunctive relief, such as corrective or complying actions, that will return facilities to compliance in specified time frame.

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

DES prioritizes getting a source back into compliance quickly. As a practical matter, compliance is often achieved more quickly by meeting with the source, visiting the source, having phone conferences with the source, and issuing informal enforcement documents. The formal enforcement that follows, after compliance has been achieved, often consists solely of penalties and or emission reduction credit (ERC) retirements.

For example, the Novel Iron Works facility has been an HPV for a long time. The violation was operating a major source without a Title V permit. The potential single-HAP emissions were approximately 12 tons per year, but actual emissions were always less than 5 tons per year and never exceeded major source thresholds. An application for a Title V or synthetic minor permit was to have been submitted on 7/1/96. DES met with the source on 11/08/01, and sent a letter to the company on 11/30/01. The application was submitted on 12/19/01, bringing the source back into compliance. A Title V permit was issued December of 2003. An Administrative Fine by Consent was signed on 3/8/06, and a \$20,514 penalty was paid. The HPV is now resolved

Seven formal and seven informal enforcement actions were reviewed. Four of the seven formal enforcement actions included injunctive relief and/or compliance schedules. The other three formal enforcement actions were Administrative Fines by Consent (AFC) and were signed by both parties after compliance had already been achieved. Of the seven informal enforcement actions reviewed, two resulted in the source returning to compliance. Two of the remaining five actions were issued to sources that had already returned to compliance.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

None

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

⁵ If after DES discovers a violation, additional information is needed (e.g. from the source via an information request letter) to determine if the violation is an HPV, the HPV Policy allows the day zero to be as much as 90 days after the violation discovery. If the violation was self-reported to DES by the facility, the determination as to whether it is an HPV must be made within 30 days of the self-disclosure.

None

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

DES is slightly slower than the national average of other states when it comes to issuing a formal enforcement action within 270 days of a high priority violator (HPV) day zero.⁶ For example, 53.3% of NH HPV sources went unaddressed by a formal enforcement action longer than 270 days, compared to the national average for state-lead HPVs of 41.4%. See Table 6 for details on the delays between HPV identification (i.e., day zero) and issuance of an addressing action for select facilities. The DES air program lost its entire enforcement staff in FY05, but filled all of those positions by the end of calendar year 2005. Therefore, timeliness should improve in FY06.

As mentioned in the discussion of metric 5, above, DES often returns a source to physical compliance quickly through informal means. Many of the facilities that received “delayed” formal enforcement actions are penalty-only actions. In other words, the delay rarely results in prolonged physical non-compliance.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

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

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

Where practical, while still bringing sources into compliance with emission limits and testing/monitoring requirements as quickly as possible, focus on completing HPV formal enforcement actions within 270 days of the day zero.

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

DES has a penalty matrix within its state Air Pollution Control Statute (RSA 125-C) that it must use for the gravity penalty component in administrative cases. DES uses the EPA CAA Stationary Source Penalty Policy (without inflation adjustment) as a guide to help

⁶ Day zero is the date that the violation at that facility was determined to be a high priority violation based on the HPV policy criteria.

calculate the gravity component of penalty cases referred to the state attorney general's (AG) office.

For this evaluation, ten penalty calculation files -- corresponding to formal enforcement actions and/or AG's office referrals -- were reviewed. Seven of the ten files showed that DES addressed economic benefit in some way, by 1) using EPA's BEN computer model to calculate economic benefit, 2) using another method to calculate economic benefit (and explaining the calculations), 3) including an economic benefit component in the penalty but without indicating (in the file) how it was calculated, or 4) indicating that there was no economic benefit associated with the violations.

The remaining three files did not document that DES had considered economic benefit. After reviewing these three files, EPA discussed the absence of economic benefit penalties with DES staff. For two of the three files, DES staff convincingly explained to the EPA reviewer how and why DES determined that there was no economic benefit associated with the violations. For the third, DES did collect significant non-compliance penalties, but did not calculate or collect economic benefit penalties where there was clear economic benefit -- for the late installation of a VOC-control catalytic oxidizer.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

- Clean Air Act Stationary Source Civil Penalty Policy, October 25, 1991
- BEN Version 2.0, used to calculate the economic benefit associated with delayed compliance expenditures, developed by EPA's Office of Enforcement and Compliance Assurance

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

Incorporate consideration and calculation of economic benefit into the standard operating procedures for penalty calculations. Where there is no economic benefit to collect, clearly document this determination in the file.

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

DES calculates administrative penalties in accordance with the DES Compliance Assurance Response Policy (CARP). In referrals to the NH DOJ, DES uses EPA's Stationary Source Penalty Policy, without the inflation adjustment, as a guide in calculating penalties. EPA Region 1 meets regularly with DES enforcement managers to discuss HPVs and to ensure that EPA generally agrees with the enforcement approach taken on HPVs (including the size of the penalty).

DES collected \$240,797 in penalties from nine stationary sources in FY04.⁷ All but \$3100 of that total was from HPVs. Only \$114,750 of that total (which is from two of the nine sources) is accurately reflected in the EPA HQ-pulled state framework data metrics.⁸

Table 5: Federal Fiscal Year 2004 DES CAA Stationary Source Penalty Actions

Facility Name	Penalty Amount	HPV	Accurately reflected in AFS
Pilgrim Foods	\$10,000	Yes	Yes
Hitchner	\$104,750 ⁹	Yes	Yes
Forshed Palmer	\$38,944	Yes	No
Mectrol	\$36,475	Yes	No
Pinetree Power Tamworth*	\$900	Yes	No
Northern Elastomeric	\$44,628	Yes	No
Pike Industries	\$3100	No	No
LW Packard Ashland*	\$1000	Yes	No
LW Packard New Hampton*	\$1000	Yes	No

* This is a major source

The HQ-pulled state framework data identifies two HPVs for which the formal action did not include a penalty. Therefore, the EPA HQ-data shows that only 50% (2 of 4) HPV formal enforcement actions included a penalty. However, counting all the incorrectly coded formal enforcement actions, in reality 80% (8 of 10) HPV formal enforcement actions included a penalty.¹⁰

One of those actions that did not include a monetary penalty did include a requirement that the source purchase and retire 21 tons worth of discrete emission reduction credits (DERs), at an approximate cost of \$20,000, to compensate the environment for past excess emissions. In fact, two of the formal actions with cash penalties also included a DER retirement requirement (each DER has a value of one ton of pollution). In total, DES enforcement actions resulted in the retirement of 128 DERs in FY04. If one considers the credit retirement-only action as though it were a penalty action,¹¹ 90% (9 of 10) of all HPV formal actions in FY04 included a penalty. The review of closed enforcement files demonstrated that DES carefully tracks receipt of penalty payments and proof of DER purchase and retirement.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

⁷ DES also collected penalties from several stage I and stage II violators, but those are not recorded in AFS and not discussed here.

⁸ This is because the DES had been using an outdated action type for some of its Administrative Fine actions. This problem was corrected in early FY05.

⁹ Monthly payments on the penalty stretched into FY05, but “credit” for all payments was taken in FY04. Due to a math error, this figure was originally entered into AFS as \$112,250 and was recently corrected.

¹⁰ The national average is 84.4%

¹¹ DES argues that credit retirement-only actions are essentially penalty actions.

New Hampshire Department of Environmental Services Compliance Assurance Response Policy, September 2000.

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

None

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

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

DES has an internal data system called the Measures Tracking and Reporting System (MTRS or “measures”) that is used to track PPA commitments and internal DES goals across media and offices. DES managers enter their accomplishments into MTRS, and status reports are periodically printed out for EPA review. DES has met its inspection, Title V certification review, and other compliance report review PPA commitments. The EPA reviewer did not read any MTRS print-outs in direct connection with this framework evaluation. However, she did (in FY04) and continues to regularly review the printouts per the PPA schedule.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

None

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

None

Section 4: Review of Data Integrity

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

DES batch uploads data from its state database to AFS approximately once per month. A vast majority of the MDR information is provided within the mandated timeframe (which was 90 days during FY04 and is now 60 days).

However, HPV data is not always entered in a timely manner. 1) With respect to data metric 10b: DES lost its entire Air enforcement staff at one point in FY05 (as a result, identification of HPVs based on referrals from the inspectors, along with all other enforcement work, was significantly delayed. 2) With respect to data metric 10a: DES does not enter its own “day zeros” and link subsequent actions to the HPV pathway Region 1 has retained that responsibility. See Table 6 for information on the length of delays in identifying HPVs and entering HPV day zeros into AFS. The enforcement group staffing problem has been resolved.

Region 1 and DES have face-to-face meetings at least once per quarter. At these meetings, DES provides Region 1 with information (including day zero) regarding all the new HPVs discovered in the past quarter, and any updates on actions taken at existing HPVs. Region 1 personnel then enter the HPV information into AFS at their convenience, usually within a few weeks of the meeting. Region 1 had not previously encouraged DES to provide day zero or other HPV update information to EPA by phone or email (vs. waiting until the next in-person meeting) so as to expedite its entry into AFS. Therefore, if an HPV were discovered by DES shortly after one EPA quarterly meeting, another 60-90 days would pass before it was entered into AFS.

Non-HPV MDRs are generally reported to AFS before the 60 day deadline. However, DES has gone through some problems with the AFS universal interface (UI), which has occasionally delayed data uploads from the DES data system to AFS. (Response to OECA comments) Given the dozens of MDRs and hundreds of facilities in NH, Region 1 does not expect absolute perfection in data entry from DES. Occasionally there are errors or omissions. Sometimes, usually due to data system problems, data is uploaded to AFS a little late. On the whole, DES does a good job of reporting accurate MDRs to AFS in a timely manner.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

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

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

- Ensure that inspection reports, especially those indicative of violations, are completed in a timely manner (within 30 days of the inspection is recommended), and forwarded to the enforcement group for prompt analysis and HPV determination. HPV day zero date should not be more than 45 days after the inspection or other violation-identifying activity (e.g., file review).

-If no meeting with EPA is scheduled to occur within 30 days of HPV identification (i.e., within 30 days of day zero), email the HPV data information sheet to the EPA Region 1 air enforcement liaison for DES so that the HPV data may be entered into AFS in a timely manner. As part of the PPA process, EPA has recommended that the 3 sections of the NH PPA that relate to HPV identification, addressing actions, and resolution should be amended to add: “DES will [identify / address / resolve] HPVs in accordance with EPA’s Timely and Appropriate Enforcement Response to High Priority Violators (“the HPV policy”), July 1999. DES will inform the EPA Region 1 liaison in person, by phone, or by email within 45 days of [identifying / addressing / resolving] an HPV.”

11) Degree to which the MDRs are accurate.

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

DES sends its EPA Region 1 liaison a copy of each air enforcement action issued. At the end of each fiscal year, the EPA liaison compares the AFS data to the list of enforcement actions issued. Also at the end of each FY, EPA and DES staffs jointly review all the DES actions listed in AFS for that FY and ensure that AFS correctly reflects DES’ activities. Any discrepancies discovered via either comparison are corrected promptly, usually before the end-of-year data deadline. NH’s data manager is diligent about quality control in the database. EPA and DES coordinate regularly about the maintenance of the CMS universe. Data metric 11.b. (showing that 100% of NH’s FY04 stack tests have appropriate results codes entered in AFS) demonstrates the high level of data quality maintained by NH.

Data metric 11.a. shows that DES HPVs are frequently not designated in AFS as being in violation. When questioned on this, DES indicated that it had been under the (mistaken) impression that designating a source as an HPV in AFS somehow automatically changed the compliance status to “in violation.” Now that DES understands that this is not the case, it has pledged to be sure to change the compliance status of HPV sources in AFS.

In reviewing the inspection reports, the EPA reviewer identified one facility (3301100040) for which the name needs to be updated in AFS, and one facility (3301300063) for which the address needs to be updated in AFS. Otherwise, all information appeared to be accurate.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

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

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

When DES notifies EPA of a new HPV, DES should simultaneously change the compliance status of that facility in AFS to “in violation.” When DES notifies EPA that an existing HPV pathway has been resolved, DES should simultaneously change the compliance status of that facility in AFS to “in compliance.”

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

Other than the discrepancy identified in the discussion of metric #8 (using an out-of-date action type for some of its AFCs which has already been corrected) the data that DES enters into AFS satisfies the MDRs and is an accurate reflection of DES’ activities and source universe. DES is in the process of adding MACT, NSPS, and NESHAP subpart information to its own state database. When the universal interface update (connecting AFS to NH’s state database) is functional in NH, those MACT, NSPS, and NESHAP subparts will be uploaded to AFS. There is already a significant amount of subpart data in AFS for NH sources.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

Compliance and State Action Reporting for Stationary Sources of Air Pollution, Information Collection Request (66 Fed. Reg. 8588).

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

None

TABLE 6: Discrepancies in OECA Reported Data

Metric number	Discrepancy Description	Correct number according to state	Source of state data	Action items to correct discrepancy
8a	There were 4 HPV penalty actions totaling \$197,669 (instead of 2 totaling \$122,250 in the OECA data)	\$197,669	enforcement action files	see metric 12h
8b	There were 4 HPV penalty actions and two HPV non-penalty formal actions. Therefore 2/3 of HPV formal actions had a penalty (instead of 1/2 in the OECA data)	80%	enforcement action files	see metric 12h
12d1	It is assumed by DES and EPA Region 1 that "total FCEs" includes only RECAP sources. DES completed well over 40 FCEs, many at non-NESHAP minors.			
12d2	It is assumed by DES and EPA Region 1 that "total FCEs" includes only RECAP sources. DES completed well over 40 FCEs, many at non-NESHAP minors.			
12h1	In early FY05, it was discovered that DES was using an old action type for some of its administrative fines by consent (AFC). This was corrected in early FY05.	8 total formal actions (instead of 6 in OECA data)	actual document issued & AFS shows the actions, but under different action type codes	For FY05 and beyond, the new and correct action type is being used
12h2				
12i	Penalties totaled \$197,669 (instead of 2 totaling \$122,250 in the OECA data)	see metrics 12h and 8a and 8b		

Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) Enforcement Program

Background

EPA maintains the primary responsibility for the NPDES Program in New Hampshire. As the permitting authority, EPA develops and issues individual permits to publicly-, privately-, and federally-owned facilities located in New Hampshire that discharge to surface waters as well as general permits to multiple facilities in a specific category (e.g., storm water discharges, non-contact cooling water discharges, groundwater remediation discharges, etc.). The New Hampshire Department of Environmental Services (DES or state) certifies that the effluent limitations, monitoring and reporting requirements, and other conditions of the permit will, if met, ensure that the discharges will comply with state laws and regulations. EPA also maintains the primary responsibility for the Permit Compliance System (PCS) database which includes coding NPDES permits requirements, entering discharge monitoring reports (DMR) data, preparing quarterly non-compliance reports (QNCRs), and coding and tracking enforcement actions. EPA and DES are jointly responsible for evaluating NPDES permit compliance, initiating timely and appropriate enforcement, and reviewing and commenting on enforcement action deliverables.

DES conducts the majority of the facility inspections and complaint investigations in New Hampshire each year, giving equal attention to major and minor facilities based on prior performance. Within 30 days of completing each inspection, DES sends EPA a completed federal inspection 3560 form for PCS data entry together with a copy of the correspondence sent to the Permittee. DES also actively reviews NPDES discharge data and maintains a permit violations (and inspections findings) database called Track 2000 and a DMR issues spreadsheet. The state inspectors review each DMR submitted by major and minor facilities, contact Permittees when reporting errors are discovered, require data report correction and resubmittal, and document the problem in the DMR issues spreadsheet. When permit violations are reported by a facility, DES updates Track 2000 database to include information concerning the cause of the violation and remedial actions planned/taken as reported by the facility.

Additionally, DES initiates and tracks formal and informal enforcement actions together with EPA. A copy of each state-initiated enforcement document is provided to EPA for its records and for PCS coding. DES reviews and provides comments on all deliverables submitted in response to state enforcement actions, and reviews and provides written comments on significant deliverables (e.g., long-term combined sewer overflow abatement plans, facility designs and specifications, etc.) submitted by facilities under EPA-initiated actions.

In SFY 2004, the state initiated a two-year program (running from July 1, 2003 to June 30, 2005) to target 37 facilities for a more thorough NPDES compliance review. Under this program, DES conducted a careful review of six months of laboratory records and discharge data reports from each targeted facility. DES sent letters to each facility that detailed its findings and requested that the facility respond in writing as to how it was

going to address the identified deficiencies. All of the facilities have responded and have adequately addressed the deficiencies noted in the letters. This was an effective approach taken by DES to review NPDES monitoring and reporting in an effort to improve and ensure data quality and recordkeeping.

Since the Last Review of New Hampshire's Enforcement Programs by EPA

EPA's last review of New Hampshire's enforcement programs, assistance programs, pollution prevention programs and the civil judicial enforcement program in the Attorney General's office was done in 1997. The Final Review Report dated March 1999 was comprehensive and contained a summary of the review findings, including program strengths and recommendations for improvements. Since review completion in 1999, DES has addressed EPA's recommendations in a number of ways. The State has:

1. Developed and maintains the Track 2000 Database which tracks facility compliance status, DES inspections findings and follow-up, reported sanitary sewer overflows and bypasses, and issues identified by NPDES inspectors during DMR data review.
2. Developed a system for tracking State and Federal formal and informal enforcement actions and NPDES permit design and construction milestones using Excel spreadsheet.
3. Developed and maintains a NPDES facility monthly operating report ("MOR") discharge database with plotting capability.
4. Provided input and feedback on the PCS database overhaul as promised.
5. Restructured the NPDES Compliance Section to add an inspectors' supervisor who is responsible for NPDES inspections targeting, coordination and tracking, inspection reports and correspondence review, complaints investigations, and identifying issues (e.g., repeat deficiencies identified through inspection; unauthorized discharges; etc.) for the compliance supervisor. The compliance supervisor is responsible for coordinating with EPA and for initiating and tracking State enforcement actions. The inspectors' supervisor and each inspector track inspection follow-up including responses to deficiencies letters and proposed corrective actions and corrective action plans. DES has implemented the 1999 review recommendations in this area.
6. Revised the NPDES inspection checklist and developed procedures for follow-up of multi-media referrals from one program to another.
7. Revised the coverage inspection targeting strategy and increased the number of compliance sampling inspections performed.
8. Conducts unannounced NPDES compliance inspections wherever possible, as was recommended by the 1999 review. If the timing of the unannounced

inspection is truly inconvenient (e.g., a vendor is scheduled to meet with the facility that day which creates a scheduling conflict for facility personnel), the inspector will collect a grab sample of the effluent for laboratory analysis, will complete a facility walk-through, and will schedule a return inspection. The 1999 review indicated that at the time of the review fewer than 25% of the State's NPDES inspections were unannounced.

9. Accompanied EPA on NPDES inspections for training purposes from November 2001 through April 2002.
10. Prepares all NPDES inspection reports within 30 days, with most reports being completed and mailed within two weeks of the facility inspection, as recommended by the 1999 review. The 1999 review indicated that the inspection report preparation time had been seven to 104 calendar days, with an average preparation period of 38 days, during the period of review.
11. Improved internal communication and coordination by holding quarterly multi-media enforcement meetings with the NH Attorney General's Office and DES' Legal Unit.
12. Improved communication and coordination with EPA concerning NPDES program inspections targeting, inspections findings and follow-up, and planned enforcement.
13. Issued formal and informal enforcement actions to address NPDES program violations in response to complaint investigations, inspections and data review.
14. Developed the comprehensive NPDES Compliance Monitoring Program Quality Assurance Program Plan (QAPP) in 2003. The inspection and laboratory protocols of the QAPP have been used by the State's NPDES inspectors and laboratory personnel since FY04. The document outlines the inspector's responsibilities; wastewater sampling and laboratory analytical procedures; documentation, data management and recordkeeping requirements; instrument/equipment calibration schedules; and DES' self audit schedule; and includes the NPDES inspection checklist, NPDES worksheets, sample chain-of-custody forms, NPDES Compliance Sampling SOPs, Track 2000 inspection tracking database data entry screens; and EPA's 3560 form. The QAPP is reviewed annually and was revised by DES in November 2004 with the self-assessment completed on December 10, 2004.
15. Updated the DES website (<http://www.des.state.nh.us/legal/>) to include, among other things, a link to the CARP, the QAPP, and to State-initiated enforcement documents.

Information Sources Included in the Review

The CWA portion of the enforcement program review entailed reviewing 15 randomly-selected inspection/enforcement case files for activities performed during the period covered by this review. The Region relied on EPA Headquarters' data pulls to provide national average, state-specific and state/EPA combined data metrics. The data was pulled on August 3, 2005, and so includes information on sources that may not have been active during the review period and does not include information on sources that were active during the review period but became inactive prior to the data pull. Information from the file reviews, Region 1's records, and the data pulls, as well as DES' compliance with the commitments contained in the 2004 Performance Partnership Agreement (PPA) and a separate NPDES inspections agreement, also were assessed.

EPA Region 1 specifically reviewed inspection/enforcement files for the following eight Major and six Minor facilities and one unpermitted facility:

1. Antrim (NH0100561)-Minor
2. Hillsborough (NH0100111)-Minor
3. Lancaster-Grange (NH0101249)-Minor
4. Whitefield (NH0100510)-Minor
5. Hanover (NH0100765)-Major
6. Lebanon (NH0100366)-Major
7. Milford (NH0100471)-Major
8. Seabrook (NH0101303)-Major
9. Newmarket (NH0100196)-Major
10. Keene (NH0100790)-Major
11. Stratford Village (NH0100536)-Minor
12. Stratford-Mill House (NH0101214)-Minor
13. Wolfboro-Unpermitted Discharges Complaint Investigation
14. Atlantic Paper Mills (NH0001180)-Major
15. Newington Power (NH0023361)-Major

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Section I. Review Area: Inspections.

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

Note regarding period covered by the review: For the time period covered by this review, DES inspection commitments are based on a state fiscal year (SFY) of July 1 through June 30. Compliance issues and enforcement actions are tracked in PCS by EPA on a federal fiscal year (FFY) of October 1 through September 30. The data pull for the inspection coverage data metrics (elements 1.a., 1.b., and 1.c.) was done based on SFY 2004. All other data metrics are based on FFY04 (FY04).

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

Metric a-Inspection Coverage-NPDES Majors

NPDES coverage inspections are a joint EPA/DES commitment. According to the EPA HQ Clean Water Act Metrics Results, in SFY 2004, DES performed inspections at 32 of the 58 Major facilities. The Data Metrics were based on facilities that were active when the data was pulled and did not include inspections of facilities that were active in SFY 2004 but were inactive as of the date the data was pulled. For example, the Hampshire Chemical Corporation, an active Major facility in 2004, was inspected by DES on May 20, 2004, then closed and was fully dismantled and later inactivated in PCS on March 17, 2005. Also, inspections of two additional Major facilities (i.e., Peterborough NH0100650 and Pittsfield NH0100986) were performed and reported in a timely fashion by DES but were only recently coded into PCS and so were not included in the Data Metrics Results. In summary, during SFY 2004, DES actually performed inspections at 35 of the 59 Major facilities.

Data Metric Results indicate that there were a combined (EPA/DES) total of 44 inspections of the 58 Major facilities or 75.9% coverage in SFY 2004. One Region 1 inspection was not coded into PCS until recently (Pease Development Authority NH900000) and was not included in the inspections totals and Data Metrics. Revised Data Metrics Results would show that EPA/DES actually conducted inspections at 48 (includes inactive facilities as well as inspections that were not timely entered into PCS) of the 59 Major facilities in SFY 2004. This combined coverage represents 81.4% of the Majors universe, which is greater than the 67.8% national average, but less than the national goal of 100% coverage. The Data Metrics also indicate that DES performs the majority of coverage inspections in any given year.

Metric b- Inspection Coverage-NPDES Minors

The Data Metric Results for Minors indicates that DES performed inspections at 32 of 82 Minor facilities in SFY 2004. As with the Major facilities, these data metrics

did not include state inspections for the following Minor facilities that were active in SFY 2004 but were not active when the data was pulled:

- Nashua National Fish Hatchery NH0000639,
- Fletcher Granite NH0020524,
- Cannon Mountain Railway NH0021261,
- Kearsarge Regional H.S. NH0100820,
- Bailey Corp. NH0001503,
- Catamount Pellet Fuel NH0021199,
- New Hampton NH0100358,
- Timco Inc. NH0021547, and
- Troy Mills NH0000523.

Accordingly, during SFY 2004, DES performed inspections at 41 of the 91 minor facilities.

Data Metric Results indicate that there were a combined (EPA/State) total of 40 inspections of the 82 Minor facilities in SFY 2004. Including the facilities that were inspected but inactivated during or after SFY 2004, EPA and DES inspected 49 of the 91 facilities that comprise New Hampshire's NPDES minors universe or 53.8%, which is significantly higher than the 23.3% national average. Using the trade-off of two minor facility inspections for one major facility inspection, DES, in conjunction with Region 1, actually exceeded the 100% Majors inspection coverage goal for SFY 2004.

Metric c-Other Inspections Performed (beyond the Major and Minor facilities coverage)

The NPDES Data Metrics reported above also did not include SFY 2004 inspections by DES at 9 facilities holding general permits. These included:

- Kingsbury Corp. NHG250147,
- New England Wire NHG250325,
- Scotia Technology NHG250350,
- Nashua Corp. NHG250376,
- Northern Elastomerics NHG250503,
- Gorham NHG640002,
- Goffstown NHG640005,
- Greenville NHG640009, and
- Lebanon NHG640012;

as well as the following five facilities inspected by EPA:

- Chemtan Co. NHG250121,
- General Electric NHG250317,
- JCI Jones Chemicals NHG250465,
- Newmarket NHG640007, and

- Sprague Energy NHG05A602.

The NPDES Data Metrics also did not include inspections by EPA of 11 stormwater facilities (at 7 unpermitted and 4 permitted facilities), or the inspection by EPA of one combined sewer overflow community (Berlin NH0100013). This is a total of 26 inspections. However, according to EPA HQ CWA Metrics Results, in SFY 2004, there were 11 inspections of unpermitted or storm water facilities, which is well below the actual count of 26 inspections beyond the Major and Minor facilities coverage inspections. Additionally, DES conducted 15 pretreatment compliance inspections and 9 industrial pretreatment inspections, along with 42 complaint investigations. Further, the agencies conducted 2 pretreatment audit inspections.

Metric r:

Yearly Commitments or Multi-Year Plans: Annually, EPA and DES negotiate the inspection plan targets list before the start of the fiscal year. The inspection plans are formalized in the PPA negotiated between the State and the EPA's Regional offices. Although EPA's national goal is 100% annual inspection coverage at NPDES major facilities, the PPA includes a NPDES Majors coverage commitment of 80% NPDES Majors. The remaining resources have been redirected to conduct NPDES Minor inspections, storm water and general permits inspections, complaint investigations, and pretreatment inspections and audits. The EPA/DES-negotiated NPDES inspection plan also ensures that a compliance sampling or a compliance evaluation inspection is conducted at every Major and Minor NPDES facility at least once every two years, with facilities with known or suspected compliance issues being inspected each year.

In SFY 2004, 118 major and minor municipal and industrial NPDES facilities in New Hampshire were initially targeted for inspection by EPA and DES, and the commitment was met by the agencies. Additionally, DES conducted 15 pretreatment compliance inspections and 9 industrial pretreatment inspections, along with 42 complaint investigations. Further, the agencies conducted 2 pretreatment audit inspections.

DES also initiated more extensive bench sheets reviews (evaluating 6 months of records) at approximately 30 facilities in SFY 2004 to improve accuracy of recordkeeping and reporting at NPDES facilities.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

FY04 DES Performance Partnership Agreement, FY04 NPDES Inspections Agreement; Data Metrics; completed 3560 inspection report forms, Permit Compliance System (PCS) database, inspection reports.

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED

None - DES and EPA are collectively meeting the negotiated NPDES inspection commitments.

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

Metric a (Percentage of inspection reports that are adequately documented.):

The inspection reports for Major and Minor facilities were comprehensive and complete with particular focus on sampling, laboratory QA/QC, test methods, recordkeeping and reporting. The State inspector completes a checklist that covers all aspects of the facility's operation during each inspection. However, in most cases, the State's inspection checklists contained limited information regarding discharge data. For example, the October 20, 2003, Keene inspection checklist indicated that the City had reported sanitary sewer overflows (SSOs), but no list of SSO occurrences or explanations of the causes was included on the checklist.

Additionally, the Keene inspection checklist did not mention that the wastewater treatment facility discharges consistently exceeded its NPDES permit effluent limitations for copper. These and other violations were formally addressed when EPA issued an Administrative Order (AO) to Keene on September 27, 2004.

Based on observations made by EPA during audit file review, EPA recommended that the DES, where appropriate, should provide more facts and observations concerning NPDES discharge data and effluent limits compliance status in the inspections checklist, and should refrain from including discussions of compliance status or enforcement consequences.

DES has indicated that prior to visiting a facility, the inspectors run a report from DES' Track 2000 database that details the facility's overflows and violations since the last inspection. This report is discussed during the inspection and is left with the operator. DES revised its checklist in January 2006 to include space for the inspectors to indicate that they have reviewed the facility's performance record with facility personnel and that a copy of the report has been given to the facility. DES also indicates that it will mention this review in the letter sent to the facility after the inspection is completed.

Inspection reports should only contain facts and not discuss compliance status or enforcement consequences. For example, the January 20, 2004, Stratford Village inspection checklist noted that an "Administrative Order by Consent (AOC) is being drafted but has not been sent to the town." This statement was not appropriate for an inspection report. Relative to discussions of compliance status in inspection reports, DES has indicated that it will be more careful with its answers.

DES took appropriate corrective action to address EPA's recommendations before the State Review Framework Report was issued.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

EPA NPDES Compliance Inspection Manual, September, 1994; DES inspection reports; completed DES inspection checklists.

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED

None

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

The inspection reports that were reviewed were all completed within two weeks of the inspection, which is well within the required 30-day time period. DES inspectors routinely complete inspection report 3560 forms, receive inspection sampling results, and issue an inspection follow-up letter listing any deficiencies within the two-week period. When DES issues an inspection letter/letter of deficiency (LOD), the letter includes a formal deadline for addressing noted deficiencies. Once deficiencies are addressed, the DES sends a Letter of Compliance (LOC) to the facility to close the action.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

DES inspection reports completed 3560 inspection forms, inspection sample analytical data, LOD and LOC, QAPP.

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED

None

Section II. Review Area: Enforcement Activity

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

EPA and DES meet or confer quarterly, at a minimum, to: review NPDES discharge monitoring data, NPDES permit compliance, inspection findings, complaint investigations information, and unauthorized discharge reports (e.g., sanitary sewer overflows (SSOs), dry-weather discharges from combined sewer overflow outfalls (CSOs), etc.); review the quarterly non-compliance report (QNCR); report on enforcement action compliance tracking; identify facilities in significant noncompliance; and make enforcement response decisions including which agency will take the enforcement lead. The lead agency provides a copy of the formal enforcement action to the other agency, and EPA codes the formal enforcement actions into PCS. Staff from the Water program and the DES Legal Unit also meets quarterly with the New Hampshire Attorney General's Office (AGO) to discuss anticipated and pending enforcement actions in this program.

Metric a (Single-event violations reported to the national system):

No single-event violations (i.e., violations not arising from routine inspections and compliance monitoring) at Major or Minor facilities were reported and tracked by PCS in FY04 according to the Data Metric Results. Based on PCS reporting and tracking, this is well below the national average of 280 single-event violations at Major facilities and 2550 single-event violations at Minor facilities. However, EPA Region 1 and DES maintain separate, user-friendly databases for tracking SSOs, dry-weather discharges from CSOs, and other single-event violations and reports. EPA's database, for instance, notes that approximately 650 single-event violations have been reported by NH facilities since 2001, which is consistent with national statistics. DES uses its Track 2000 database to track overflow events. The databases are updated frequently to keep the information current. When enforcement actions addressing single-event violations are issued, the PCS database is used for both EPA and DES formal enforcement action compliance tracking. DES also uses a spreadsheet for enforcement action status tracking.

Metric b (Frequency of SNC):

The DMRs that are submitted by the Major and Minor NPDES permittees are entered into the PCS database by EPA Region 1 in a timely manner. SNC lists are generated quarterly with EPA's preparation of the Major facilities QNCR. The QNCR is prepared in a timely manner pursuant to the schedule in 40 CFR 123.45(d), and the SNC lists are automatically generated by the PCS database which tracks compliance with permit limits, monitoring and reporting requirements, interim effluent limits and schedules of compliance. The Data Metrics identified 22.4% (or 13) of the Major facilities were in SNC during FY04, which is above the national average of 17.9%. However, of the 13 facilities listed in SNC in FY04, Pittsfield was not actually in SNC in FY04. The facility was erroneously flagged in PCS for total chlorine residual violations in the third quarter. The coding error was corrected; however, the facility SNC flag was not corrected in PCS. Keene also reported Lead concentrations in its WWTF discharges at levels below test detection, but above the compliance limit. Accounting for these revisions, the Revised Data Metrics would show that 11 Major facilities out of 59 were in SNC (or 18.6%) in FY04, which is only slightly higher than 17.9%, the national average.

Metric c (Wet weather SNC placeholder):

DES and EPA continue to track the federal enforcement actions to address CSO discharges violations. Under these enforcement actions, municipalities are implementing their Phase I CSO abatement projects under their Long-Term CSO Abatement Plans. This review is often time-consuming and is not accounted for in measuring the response to SNC violations in FY04.

Metric d (Percentage of SNC determinations that are accurately reported):

SNC determinations (permit limits violations, compliance schedule milestones violations, violations of enforcement orders, or failure to provide a compliance schedule report for final compliance of a DMR within 30 days) are automatically flagged by the PCS database. EPA is responsible for entering information into, and maintaining the PCS database. The accuracy of the automated SNC determination depends on the accuracy of the data input by EPA. As noted in the response to question 4.Metric b. above, Keene and Pittsfield should not have been flagged in SNC, and EPA has since corrected the data entry errors.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

Data Metrics; 40 C.F.R. 123.45; PCS database; DES Track 2000 database; Discharge Monitoring Report (DMR) forms.

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED

None - EPA is responsible for maintaining the PCS database and for generating and checking the QNCR for accuracy, and for distributing the QNCR.

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

Metric a (Percentage of formal state enforcement actions that contain a compliance schedule of required actions or activities designed to return the source to compliance. This can be in the form of injunctive relief or other complying actions.):

FY04 State-initiated enforcement actions (formal enforcement actions are designated by an asterisk) include the following:

- AOC #04-007, issued to the Town of Stratford covering both the Stratford Village and Stratford Mill House facilities (NH0100536 and NH0101214, respectively) on April 15, 2004;

- AOC #WD 03-029, issued to Northumberland (NH0101206) and Groveton (NH0100226) on February 20, 2004;
- AOC #03-023, issued to the Nashua Corporation (NHG250376) on November 5, 2003;
- AFC #03-038, issued to Wolfeboro on November 12, 2003;
- AFC #03-041, issued to Southern New Hampshire University on December 9, 2003;
- AFC #04-009, issued to Lamarre and Sons on April 23, 2004;
- Consent Decree 02-E-0394 (DES v. Warner Village NH01000498), entered in court on May 17, 2004;
- Notice of Findings (NOF) issued to Forest Park Estates on May 11, 2004; and
- NOFs issued to New London on May 17 and July 20, 2004.

Four of seven of the formal state enforcement actions initiated by DES in FY04 contained a compliance schedule of required actions that would return the facilities to compliance in a specific time frame. The remaining three Administrative Fine by Consent cases were issued for single-event violations (Wolfeboro, Lamarre and Sons, and Southern NH University) for which corrective action was either not needed or had already been completed; these actions thus appropriately did not include injunctive relief.

Metric b (Percentage of actions or responses other than formal enforcement that return the source to compliance.):

Of the 15 inspections reviewed, 12 facilities received LODs to resolve minor deficiencies. DES issues an LOD that includes a formal deadline for submitting a corrective action plan (CAP) to address the deficiencies identified during an inspection. Once the noted deficiencies are corrected (as evidenced by documentation from the facility), DES closes the file by sending a “letter of compliance” (LOC) to the facility.

In most cases, the source returns to compliance in response to the LOD, but in cases where significant violations are identified or where the CAP is not implemented, formal enforcement is also taken. For example, DES issued an LOD to the Town of Stratford on January 20, 2004 based on issues noted in a January 6, 2004 inspection of the Stratford Mill House facility. DES then entered into an AOC with the Town of Stratford for both the Stratford Village and Stratford Mill House facilities on April 15, 2004, to address the more significant (repeat) deficiencies identified during inspections and permit violations. DES issued an LOC for the Mill House LOD on June 8, 2004, having concluded that the Town had resolved the issues noted in the LOD in a manner consistent with Water Division regulations and NPDES permit requirements. LOCs contain language to advise recipients that the letter does not provide relief against any existing or future violations, so as to minimize the potential for confusion if other actions/violations are pending or on-going. This is an example of the state’s use of both informal and formal enforcement actions at the same facility during the same time frame. In this case, DES believed that informal enforcement

was not appropriate for the more serious violations, but used its usual procedures to resolve the less serious deficiencies.

As a result of EPA's review, DES no longer labels inspection closeout letters as letters of compliance. **(Deletion in response to DES comment)**

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

Enforcement files; inspection files.

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)

None

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

Metric a (Timely action to address SNC.):

There is no data indicating that DES failed to take timely action to address SNC. The one instance shown in the data metrics is a case where EPA had the enforcement lead.

Metric b (No activity indicator (actions).):

The Data Metrics Report indicated that the state issued two enforcement actions in FY04, one to the Town of Stratford and the other to Nashua Corporation. As previously noted, DES actually initiated seven enforcement actions against nine facilities and issued three Notice of Findings (NOF) letters in FY04.

Only two of the state's seven formal enforcement actions were coded by EPA into PCS. Of the remaining five (the three AFCs for unauthorized discharges, and an AOC and a CD for NPDES permit violations), EPA will ensure that these (as well as all future) state formal enforcement actions are properly coded into PCS. The three NOF letters issued by DES were not coded/tracked in PCS because they are not enforcement actions but rather a notice of potential violations and a request for information (with a schedule for providing the requested information).

Metric c (Percentage of SNCs addressed appropriately.):

Instances of SNC in the NPDES Program are most often identified using PCS. In FY04, 13 major facilities were identified by PCS and were listed on the QNCR as being in SNC. The 13 facilities were:

- Atlantic Paper Mills NH0001180,
- PSNH-Schiller Station NH0001473,

- Hanover NH0100099,
- Newmarket NH0100196,
- Portsmouth-Peirce Island NH0100234,
- Somersworth NH0100277,
- Milford NH0100471,
- Jaffrey NH0100595,
- Hampton NH0100625,
- Peterborough NH0100650,
- Lincoln NH0100706,
- Keene NH0100790, and
- Pittsfield NH0100986.

As noted in the response to question 4.Metric b. above, Keene and Pittsfield should not have been flagged in SNC. Of the 11 other facilities identified, one (9.1%) was a data issue that was corrected by EPA, two (18.2%) were addressed by the DES with one formal and one informal action, and six (54.5%) were addressed by EPA. A total of 81.8% of the SNC was addressed appropriately.

Single-event violation SNCs are identified by self-reporting or by inspection or complaint investigation and are not identified by PCS. In FY04, DES issued three AF actions, one Consent Decree and three NOFs for single-event violations. EPA issued an AO (with an APO that followed) to Keene to address single-event violations (e.g., SSOs) and other violations.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

40 C.F.R. Part 123.45, the QNCR Guidance Manual, DES Compliance Assurance Response Policy (CARP) dated September 27, 2000; data metrics reports; enforcement files; DMRs.

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED

None - EPA concluded that timely and appropriate enforcement actions were taken by DES. EPA will take additional measures to ensure that all state and federal enforcement actions and discharge data are correctly coded into PCS.

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

Based upon EPA’s review, it appears that the state did not calculate economic benefit using BEN or a similar model in FY04 NPDES cases. While it is recognized that the current CARP does not necessarily require the calculation and recovery of economic

benefit in administrative cases, it does require the recovery of BEN plus 10% of gravity in judicial cases. Although the Warner Village inspection/ enforcement file was not reviewed during the audit, it appears that the recovery of economic benefit was waived in the Warner Village case.

DES provided some detail on the Warner Village case with respect to recovery of economic benefit. DES follows the CARP whenever an enforcement case is taken. The CARP states that “the first step in any enforcement case is to assess the economic benefit that may have accrued to the Respondent. “Assess” in this context means to take a common-sense view of the case to see if it is likely that the economic benefit was “significant”. The “significance of the economic benefit must be determined with respect to the circumstances of the case; it cannot be an absolute number. Economic benefit usually will be found to be significant if the amount of the benefit was more than inconsequential to the Respondent, including whether the benefit conferred a competitive advantage. If the economic benefit that accrues was significant, then DES will seek to recoup it through a penalty action.” DES assessed the economic benefit to the Town of Warner and found it to be insignificant. The enforcement action was taken by the AGO to get the Town to replace its chief WWTF operator.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

DES Compliance Assurance Response Policy (CARP) dated September 27, 2000; enforcement files.

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED

The CARP should be followed and economic benefit calculated in each civil judicial case in order to ensure there is no economic benefit gained through non-compliance. Any deviation from the CARP should be fully documented in writing.

- 8. Degree to which final enforcement actions (settlements or judicial results) collect appropriate (i.e., litigation risk, ability to pay, SEPs, injunctive relief) economic benefit and gravity portions of a penalty.**

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

The CARP indicates that the economic benefit in a case is one of the factors used by the state to determine whether to seek an administrative fine or a civil penalty. For administrative cases, the total fine is based on the scheduled fines adopted as New Hampshire Code of Administrative Rules Part Env-C 603 (Fines Relating to Surface Water Quality and Pollution) or a calculation based on New Hampshire Code of Administrative Rules Part Env-C 610 (Calculation of Administrative Fines). Administrative Fine actions by consent (AFCs) were issued to three sources in FY04 for unauthorized discharges of pollutants to waterways. In each of these cases, the

fine imposed was based on the scheduled fines for violating surface water quality standards with fines at \$2,000 per violation for each parameter violated, or for discharges to surface waters without a permit at \$2,000 per 5,000 gallons discharged. Two of the AFCs also included a supplemental environmental project (SEP).

EPA reviewed the Wolfeboro files and in summary:

On November 12, 2003, the DES entered into a \$10,000 AFC with the Town of Wolfeboro, New Hampshire. The fine comprised \$8,000 for discharging 20,000 gallons of sludge-laden wastewater onto the ground and ultimately into a wetland area which drains to Back Bay of Lake Winnepesaukee and \$2,000 for causing a violation of the E. coli bacteria water quality standard of the surface waters. DES waived \$2,000 (20%) of the fine and collected a \$2,000 cash payment; the remainder was to fund an SEP to improve the sludge wasting procedure at the WWTF with the installation of engineering controls and electrically-operated valve actuators with alarm switch and timer within 60 days.

Immediately following the spill, a high tank alarm was installed at the Wolfeboro WWTF. The new float switches were wired to the WWTF's auto dialer alarm system. In the event of a potential future incident of a higher than normal tank level in either thickener, the alarm system will alert personnel of a problem before a spill occurs. The cost associated with this project was \$2,800.

For the SEP project accepted by DES, the Wolfeboro spent over \$7,500 in additional money to further automate the sludge wasting procedure by installing electrically-operated valve actuators to the 3-way valves that direct the sludge to either the thickeners or to the influent to the aeration tanks. DES believed that this work was not necessary to resolve the problem and as such was not legally-required. However, DES felt that the project offered additional protection to the environment against this type of incident occurring in the future and therefore was a worthwhile project. DES gave Wolfeboro \$6,000 credit for implementation of the \$7,500 SEP.

Although this SEP was a good project, EPA believes that this SEP project that would be better characterized as injunctive relief. The CARP specifically defines an SEP as "an environmentally-beneficial project that the Respondent is not otherwise legally obligated to perform and **that is not part of the Respondent's achieving compliance**" (emphasis added).

EPA reviewed AOCs and in summary:

AOCs with stipulated penalties were also issued by DES to four Minor municipalities and to one industry in FY04 to address ongoing monitoring, reporting, and effluent limitations violations that were not causing substantial harm to public health or the environment by permittees who were being cooperative in addressing the violations in a timely manner in accordance with a negotiated schedule. AOCs were issued to the Town of Stratford (for both the Stratford Village and Stratford Mill House facilities), Northumberland and Groveton (jointly), and the Nashua Corporation.

EPA reviewed the Stratford files and in summary:

EPA reviewed the Stratford Village and Stratford Mill House facilities inspection and case files as part of the audit. The AOC issued to the Town of Stratford on April 15, 2005 addressed flow measurement violations, sand filter failures, and continuing pH violations. The AOC required the Town to install continuous flow monitoring at the Village facility and have it fully operational by May 28, 2004, and to complete and submit a proposed Scope of Work (SOW) and implementation schedule by June 30, 2004 for each of the Village and Mill House facilities to address the pH violations at both facilities and sand filter rehabilitation at the Mill House facility. The AOC contained interim effluent limitations for pH. The AOC also included stipulated penalties for failing to submit accurate and timely DMRs, failing to sample at the required frequency, and missing AOC deadlines. The AOC also provided for the stipulated penalties to increase if any that became due were not paid.

The stipulated penalties were included in the settlement agreement to provide added incentive to comply. Stratford failed to sample the discharge for *E. coli* bacteria in April 2004 and incurred a \$1,000 stipulated penalty.

Stratford installed continuous flow monitoring and submitted a SOW by the specified deadlines of the AOC. DES incorporated additional schedule milestones into the AOC by letter (dated November 18, 2004) requiring the submission of a progress report by September 1, 2005, and, if chemical injection was determined to be necessary for pH control, for the chemical injection system design and for achieving full permit compliance by December 1, 2005 and November 1, 2006, respectively.

There were no stipulated penalties in the AOC for interim effluent limits violations, and Stratford violated the interim limits for pH contained in the AOC on seventeen occasions between April and December 2004. On February 9, 2005, the DES wrote to require Stratford to report by March 11, 2005 what measures it would take to immediately comply with the pH limits. DES also advised Stratford that a new AOC or an amendment of the AOC would include stipulated penalties for future violation of the interim limits and would establish that DES would not seek fines (totaling \$34,000 or \$2,000 per month of violation) for the seventeen interim effluent limits pH violations.

In March 2005, Stratford reported to DES that it had begun adding sodium bicarbonate to the treatment facilities' wetwells to achieve pH limits compliance. Stratford found that sodium bicarbonate addition was effective and proposed a 6-month demonstration period to document the reliability of the wastewater pH adjustment system and whether the AOC requirements were met. Stratford submitted a progress report by September 1, 2005 as required by the AOC and also proposed AOC schedule modifications to extend the demonstration period to document the effectiveness of the sodium bicarbonate system requiring a final report by May 15, 2006, and requested one-year extensions to the chemical addition system milestones. Stratford and DES met and, in a September 14, 2005, letter, DES incorporated the Town's proposed implementation schedule into the AOC.

Stratford has complied with the AOC deadlines, and has complied with effluent limits for pH ever since March 2005 when sodium bicarbonate addition began. Also, the hydraulic issues at the Mill House facility sand filter have been addressed through inflow sources reduction.

In hindsight, it appears that if stipulated penalties had been included in the Stratford AOC for interim effluent pH limits violations, the wastewater pH adjustment system may have been installed sooner. Also, if stipulated penalties were to be added to the Stratford AOC at a later date as was mentioned in the DES' February 9, 2005 letter, it could only have been done formally by consent in a document signed by both parties. The schedule amendments that were incorporated into the AOC through DES approval letters were done in accordance with Section E. of the AOC.

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

Compliance Assurance Response Policy (CARP) dated September 27, 2000, New Hampshire Code of Administrative Rules Part Env-C 600, enforcement files, DES inspection file, PCS database.

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED

Develop procedures to evaluate whether a proposed SEP should be considered as injunctive rather than as an environmental project that would not otherwise be required.

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

DES Commitments for the NPDES Compliance Program in the 2004 PPA		
Action	Commitment	Actual
Compliance inspections at NPDES WWTFs	88	100
Investigate "point" source discharge-related complaints	20	42
Develop a permit and compliance tracking database	develop database	done
Ensure that the database is continuously updated	update database	done
Develop an enforcement policy	develop policy	drafted
Develop a priority list of facilities in SNC needing enforcement	develop list	done
Take appropriate enforcement actions on all	25	10 formal;

applicable facilities		>80 informal
Provide technical assistance	125 hours	>125 hours
Permits and Compliance Section QAPP	finish QAPP	done

CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:

New Hampshire's FY 2003-04 Performance Partnership Agreement; FY04 DES Comprehensive Action Assessment Workplan Tables, inspection and enforcement files, QAPP and interview with DES

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED

None

**EPA Review of the DES Hazardous Waste Enforcement Program
[Resource Conservation and Recovery Act Enforcement Program]**

Information Sources Included in the Review:

The RCRA evaluation involved the review of 8 formal enforcement action case files, 6 informal enforcement case files, and 12 inspection files generated during federal fiscal year 2004 [FY04]. Case and inspection file reviews covered federal large quantity generators [LQGs], small quantity generators [SQGs], and conditionally exempt small quantity generators [CESQGs].¹² In addition, Region 1 utilized EPA Headquarters' data retrievals [metrics] generated from national enforcement and compliance databases, pulls from RCRAInfo, and DES data bases¹³. This information was used to answer 12 specific questions or elements. The 12 elements address three specific topics: Annual Inspection Coverage; State Enforcement Activity; and Database Integrity.

Case and Inspection Files Reviewed:

Randomly selected FY04 case and inspection files were reviewed by Region 1 during October 4 through 7, 2005 and November 10, 2005. HWCB staff members assisting Region 1 during this review were: John Duclos, Tod Leedberg, Linda Birmingham, Robert Bishop, and Tammy Calligandes. The following scheme was used to select the files for review:

- 4 LQG formal and 3 LQG informal enforcement case files;
- 4 SQG formal and 3 SQG informal enforcement case files; and
- 6 LQG and 6 SQG inspection files.

The files reviewed were:

Facility name:	ID number	Federal Generator Status	File Type (formal/informal enforcement, inspection only)	DES Group
1. Corning Netoptix	NHD986466381	LQG	formal enforcement	HWCB
2. Cleary Cleaners **	NHD981070196	LQG	formal enforcement	HWCB
3. C&M Screw Machine	NHD095511218	LQG	formal enforcement	HWCB
4. Sig-Arms **	NHD986472322	LQG	formal enforcement	HWCB
5. Colt Refining	NHD510177926	LQG	informal enforcement	HWCB
6. Northeast Lantern	NHD510156805	LQG	informal enforcement	HWCB
7. U.S. Gen New England	NHD120299888	LQG	informal enforcement	HWCB
8. Machine Craft	NHD500018767	SQG	formal enforcement	HWCB
9. Odyssey Press	NHD510165517	SQG	formal enforcement	HWCB
10. Mass Design	NHD986466290	SQG	formal enforcement	HWCB
11. Green Mtn. Rifle Barrel	NHD500012802	SQG	formal enforcement	HWCB

¹² DES' full quantity generator [FQG] status incorporates the federal LQG and SQG classifications. DES' small quantity generator [SQG] status is equivalent to the federal CESQG classification.

¹³ Region 1 also used the following documents in preparation for this evaluation: September 27, 2000 DES Compliance Assurance Response Policy [CARP]; DES Hazardous Waste Administrative Fine Authority [RSA 147-A:17-a]; DES Schedule of Fines [Env-C 600-616]; EPA Hazardous Waste Civil Enforcement Response Policy [1996 ERP], date March 15, 1996, and addendum to the 1996 ERP (EPA memo of April 18, 2000); EPA ERP, dated December 2003; EPA RCRA Civil Penalty Policies, dated October, 1990 and June 2003; March 1999 EPA Region 1 Final Review of the State of New Hampshire's Environmental Enforcement Programs; and FFY04 EPA/DES Performance Partnership Agreement and Work Plan.

12.All-State Steel	NHD510111339	SQG	informal enforcement	SIS
13.Celestica Corp.	NHD510172174	SQG	informal enforcement	HWCB
14.Uraseal Inc.	NH5986485217	SQG	informal enforcement	HWCB
15.A-Plus Finishing	NHD500014451	LQG	inspection only	HWCB
16.Trelleborg Sealing	NHD982750515	LQG	inspection only	HWCB
17.Benchmark Electronics	NHD980672349	LQG	inspection only	HWCB
18.Cytyc Corporation	NHD500011275	LQG	inspection only	HWCB
19.Portex/Smith Medical	NHD500022512	LQG	inspection only	HWCB
20.Kerk Motion Products	NHD500031372	LQG	inspection only	HWCB
21.Chemfab/St. Gobain	NHD982746778	SQG	inspection only	HWCB
22.North Elm St. Mobil	NHD510116668	SQG	inspection only	SIS
23.Dartmouth Printing	NHD054005319	SQG	inspection only	HWCB
24.Draper Energy Co.	NHD048659098	SQG	inspection only	HWCB
25.Town of Salem PW	NHD982195430	SQG	inspection only	HWCB
26.PSNH	NHD510174287	SQG	inspection only (transporter)	SIS

** = The proposed and final formal enforcement actions were not issued between 10/1/03-9/30/04; however, a significant amount of enforcement preparation did occur within this period in anticipation of issuing formal enforcement actions in early FY2005.

EPA did not review case or inspection files corresponding to treatment, storage and disposal facilities [TSDFs] since there were no active TSDFs (or associated files) in New Hampshire during FY04. EPA did not review civil case files developed by the State Attorney General's Office. Administrative case and inspection files from both the HWCB and the Special Investigations Section [SIS]¹⁴ were reviewed. HWCB is primarily responsible for conducting hazardous waste compliance evaluation inspections at notified generators, follow-up informal and formal administrative enforcement, declassifications, and technical assistance to regulated entities. In addition to its responsibilities to other DES programs, SIS conducts hazardous waste complaint investigations which may lead directly to civil or criminal actions at non-notified generators and transporters, and provides technical assistance to the NH Department of Justice in support of hazardous waste investigations.

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Hazardous Waste Management Program

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¹⁴ SIS is now referred to as the Spill Response Complaint Investigation Section [SRCIS].

Section I. Review Area: State Inspection Implementation

Discussion of EPA's Review of DES Hazardous Waste Program:

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

Since there are no active TSDFs in New Hampshire, this question is being answered in terms of federal LQGs, SQGs and CESQGs. The annual inspection targets in the FY04 PPA/PPG Work Plan required the HWCB to conduct 50 hazardous waste inspections and to ensure that 17% of the federal LQG universe was inspected. At the time of the PPA/PPG negotiation, the federal LQG (state FQG1) universe was estimated to be 193¹⁵, which committed the HWCB to conduct 33 federal LQG inspections. The remaining 17 inspections [50 minus 33] were to occur at federal SQG and CESQG (state FQG2 and SQG) facilities. The estimated federal SQG and CESQG universes are described in Element 12. The state inspection commitment was renegotiated during the course of FY04 to 30 federal LQG and 17 SQG/CESQG inspections, for a total of 47 inspections.¹⁶

DES' inspection tracking spreadsheet indicates that it conducted 30 federal LQG and 18 federal SQG and CESQG inspections during FY04. Using the Work Plan universe of 193 LQG facilities, DES inspected 16% of its LQG universe, basically fulfilling this renegotiated annual Work Plan commitment. The percentage of LQGs inspected was actually somewhat higher due a reduction in the number of LQG facilities over the course of FY04. Other Work Plan annual state inspection commitments [e.g., facilities with limited permits for elementary neutralization or wastewater treatment systems, and targeted inspections of used oil handlers] were also met in FY04.

¹⁵ During FFY04, the LQG universe fluctuated depending on which data source was consulted [e.g., 193 per the Work Plan, 145 per the EPA Headquarters' metrics, 135 per the 2003 LQG Biennial Reports, and 174 as of July 20, 2004 per state records]. These differences were, in part, due to generator misclassifications. The issue of misclassification was addressed, to a large extent, by a new and innovative HWCB compliance tool initiated in late FFY2003 and implemented throughout FFY04, namely the FQG Hazardous Waste Coordinator Certification Program (see Element 13). After the initial training, many FQG Coordinators realized that they were actually federal SQGs. This universe is continually being refined with each annual certification.

¹⁶ The commitment of 33 federal LQG inspections was renegotiated to 30 because of a mid-year reduction in inspector staff, the workload imposed by the FQG Hazardous Waste Coordinator Certification Program on the remaining inspector staff, and the resultant decrease in the LQG universe when some generators realized they were actually federal SQGs after attending certification training.

EPA's review of RCRAInfo data identified 29 LQG facilities that had never been inspected. Of these, 17 were new LQGs identified in calendar year 2005, 2 were low priorities for inspection because of their participation in EPA's Performance Track Program, and 8 were LQGs which notified in calendar year 2004 and are currently targeted for inspection. Only two established LQGs [Clean Harbors Environmental, NHD510000623 and Carlisle Restoration Lumber, NHD510176795] had never been inspected. In general, it appears that LQGs (when not newly notified or participating in EPA's Performance Track Program) are inspected at some point by the state.

Region 1 recognizes that, although the HWCB inspectors are highly skilled and dedicated, inspector resources are relatively low and have been gradually decreasing since FY2003. For example, the inspector resource statistics (expressed as full-time equivalents or "FTEs") from FY2003 to the present [January 2006] are as follows: 4.25, 2.75, 2.2 and 2.5, respectively. However, the HWCB has not seen a corresponding decrease in workload over the same period of time. The same inspector staff responsible for achieving the Work Plan inspection commitments is also tasked to carry out formal and informal enforcement work, complaint investigations against SQGs and CESQGs, technical assistance, training, and outreach to the regulated community. In recognition of and in order to address the low staff-to-workload ratio, DES implemented the FQG Certification and the SQG Self-Certification Programs described in Element 13.

In FY04, the national annual LQG inspection goal was established at 20% [assuming 100% LQG coverage in 5 years]. However, allowances were made to reduce this goal to no less than 8% if a state elected to pursue an alternative state-specific compliance problem. During FY04, the DES took advantage of this allowance by focusing inspection and enforcement resources in well-head protection areas and on implementing the FQG/SQG Certification Programs discussed in Element 13, while simultaneously meeting its negotiated 17% LQG inspection commitment. However, in FY2005 the goal of inspecting no less than 20% of the LQG universe annually became a nationally set target. Region 1 believes that DES will have difficulty meeting this 20% target, and its other compliance and enforcement work, given the current HWCB inspector staffing level. For example, the FY04 HWCB staffing profile indicates that only 2.2 inspector FTEs were available. FY04 was impacted by reductions in force, employee turnover and subsequent FTE shuffling to fill important inspector positions. The current FY2006 staffing profile only makes provisions for 2.50 FTE inspectors. A third state-funded inspector position [WMS III # 14731] was approved by the Governor, but has been placed on hold by the Commissioner since May 31, 2005. This position is the only funded inspector position left unfilled in the HWCB. Additionally, two HWCB positions [namely, WMS IV #19522 (inspector) and WMS IV # 42425 (SQG inspector)] have been abolished. The reduced HWCB inspector level jeopardizes the state's future ability to achieve the 20% LQG inspection target while carrying out other compliance and enforcement programs (such as targeting in well-head protection areas, FQG/SQG Certification Programs, SQG/CESQG complaint investigations and other Work Plan commitments). With the current inspector staffing level, and the emphasis placed on

meeting the 20% LQG target, the state will lose its flexibility to address these other important compliance and enforcement programs.

Despite staffing upsets, the HWCB was able to complete the inspection, compliance, enforcement, technical assistance and training work discussed in this report. However, many of the deficiencies noted herein are directly attributable to low staff numbers within both HWCB and SIS. [SIS inspectors are dedicated only part of the time to hazardous waste investigations.]

CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:

RCRAInfo, EPA Headquarters' metrics and a DES inspection-tracking database were used in reviewing DES' performance in this area.

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

In order to meet the national standard for annual and 5-year LQG inspection coverage, the additional compliance/enforcement PPA/PPG commitments, and to conduct significant state programs like the FQG and SQG Certification Programs discussed in Element 13, DES must address staffing cutbacks and shortages. DES should make every effort to fill the funded vacant inspector position and to re-establish the abolished SQG inspector position within the HWCB. EPA recommends that the vacant positions corresponding to WMS III #14731 and WMS IV # 42425 become filled as soon as possible to increase the current inspector pool to 4.5 FTE.

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

Inspection reports were reviewed for all 26 facilities. HWCB has developed a unique way to record inspection findings and prepare inspection reports, namely the use of checklists to record all inspection findings. These checklists were developed, in part, to foster consistent and expedited inspection report preparation. The checklists provide staff with a tool to quickly document findings, which allows them to dedicate more time to case development, additional field work or outreach to the regulated community. The checklists consist of program specific modules addressing areas including but not limited to: general facility information, process and waste descriptions, lists of violations, record-keeping, contingency planning, limited permit compliance, container inventory, and universal waste. At the conclusion of each inspection, HWCB staff complete a single page "Hazardous Waste Inspection Exit Debriefing" form which records all potential violations. This form is signed and dated by both the state inspector and the facility representative at the conclusion of the inspection. Upon returning to the office, staff transfers checklist information into a secure Oracle database. The database can be updated over time, and data can be selectively sorted and extracted to observe trends at a given facility, for a group of facilities or for specific topics. Once entered

into a database, the checklists are printed out and appended to create the State “Inspection Report”. The report is submitted to the facility as an attachment to any one of the various informal or formal enforcement tools available to DES. The date of the inspection report, if not clearly indicated on the checklists, is assumed to be the date on the attached enforcement document. The attached enforcement document reiterates the violations in greater detail and in narrative form.

EPA finds that the checklists successfully expedite report writing and establish a consistent reporting format from inspector to inspector. The combination enforcement document and checklist is usually sufficient to describe the violations. The transcription of violations from checklists, to the Exit Debriefing Form, to the attached enforcement document and to any subsequent enforcement documents is usually consistent and accurate. The entire package, consisting of completed checklists and attached enforcement documents, usually represents a complete and accurate inspection report. [Subsequent enforcement actions may include additional violations or delete previously noted violations based upon additional investigation resulting in new information.] There were a few discrepancies noted by Region 1:

1. For Benchmark Electronics, Colt Refining, Northeast Lantern, Sig-Arms and U.S. Gen New England, the inspection checklists were missing the “Container Inventory Report of Non-compliance”, while specific container violations were described in the attached enforcement document;
2. For Benchmark Electronics, the checklist was missing the “Universal Waste Module”, while 71 universal waste violations were described in the attached enforcement document;
3. For Kerk Motion Products, the attached enforcement document cites failure to post emergency information, but the violations were missing in the inspection checklist.
[Regarding items 1-3, HWCB did retrieve the completed missing modules from the Oracle database. The file omissions were evidently a photocopying error; however, based on file documentation, EPA could not determine whether facilities received complete inspection report packages.]
4. Consistent across all report packages, the details needed to fully understand the violations were found in the attached enforcement document. The checklists document violations in a more cryptic format. The checklists, as stand-alone documents, do not fully describe the violations. The review team had to refer to the attached enforcement document for details. [Examples: (a) the “Hazardous Waste Container Inventory Report on Non-Compliance” may identify a container as “one HW drum of acetone” while the violation is solely indicated by the question, “Are the containers in good condition such that there are no signs of leaks or pressure?”; (b) the “Waste Stream Summary” block may indicate “No” for adequate waste determinations, but no details are provided; and (c) the “Pre-Inspection Meeting Module”, asks “Does the facility manage its waste so there is no threat to environmental health/safety?” If “No” is indicated no explanation is provided; and
5. Some checklists made provisions for the inspector signature and date to indicate

when the report was finalized. This date provision assisted EPA in determining if reports were written in a timely fashion. Other checklists did not have such a provision and the reviewers defaulted to the date of the attached enforcement document or to the “page printed” date on the bottom of a checklist page.

Inspection reports generated by SIS are referred to as Reports of Initial Complaint Investigation (RICIs) and are very brief, stand-alone documents which describe investigation findings. SIS does not utilize the checklist modules.

CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:

File review information was used in assessing DES’ performance in this area.

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

1. HWCB should ensure that copies of complete inspection packages [as mailed to facility contacts] are retained in its enforcement files;
2. Inspection checklists should be revised to clearly indicate the date they were finished;
3. The checklists should be completed in enough detail to become “stand-alone” documents that become the foundation of subsequent enforcement work. A facility should not have to refer to an attached enforcement document to find the narrative that fully describes its violations. The checklists should be supplemented with a narrative description of all the violations observed during inspections. Region 1 recommends that DES, at minimum, establish a module or comment field dedicated to narrative violation descriptions; and
4. DES should ensure that HWCB receives the resources and support to implement modifications and additions to the inspection Oracle database.

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

HWCB readily identifies all violations during or just after inspections. The majority of the inspection reports reviewed were completed in a very timely manner, and violations were accurately reflected within the reports. This timeliness is, in part, due to the expedited nature of the checklists. Some exceptions were noted and delays were either related to: on-going investigations by the inspector or interactions with facility contacts to clearly identify the violations [e.g., Machine Craft, Trelleborg Sealing]; or the report write-up was viewed as a low priority [e.g., Draper Energy, a CESQG with minor violations and no follow-up enforcement] in order to allow staff to develop reports and cases for more egregious violators. SIS inspection reports (RICIs) are completed in a timely manner, usually on the same day of the investigation.

CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:

File review information was used in assessing DES' performance in this area.

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

None

Section II. Review Area: State Enforcement Activity

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

According to EPA Headquarters' metrics, DES' only new SNC during FY04 equates to a new SNC identification rate per 100 inspected facilities of 1.5%. [EPA Headquarters' metrics incorrectly identifies this facility as A-Plus Finishing, which was not identified as SNC or addressed by a state penalty action until FY2005. The actual new SNC facility identified and addressed in FY04 was Circle Tri-Cleaners, which was referred to the State Attorney General's Office for civil enforcement.] The same metrics indicate that the national rate for identifying new SNCs is 3.2%.

The real question to answer is: Why does DES identify so few cases of SNC? In order to address this question, Region 1 had to understand DES' enforcement approach against violations and how the state distinguishes between SNC and secondary violators (SV). EPA had to consider if the state accurately classified violations using its own classification scheme, and if the Region agrees with the state's approach.

Chapter 1 of the CARP provides that DES' federally authorized programs are subject to federal timely and appropriate requirements. Timely means the enforcement action is initiated within the period specified in the federal policy. Appropriate means that the enforcement response adequately addresses all compliance issues and imposes an appropriate penalty. Chapter 1 also identifies the federal guidance for the hazardous waste program as the "EPA's Hazardous Waste Civil Enforcement Response Policy" dated March 15, 1996 [1996 ERP]. The CARP has not been updated to include EPA's April 2000 clarification of the 1996 ERP or the updated ERP of December 2003. The 1996 ERP provides the definition of SNC and SV used by the DES.¹⁷ The following describes how these 1996 ERP SNC/SV definitions were applied in FY04.

¹⁷ 1996 ERP Definitions: Significant Non-Compliers are facilities for which formal enforcement is appropriate and have caused actual exposure or a substantial likelihood of exposure to hazardous waste or hazardous waste constituents; are chronic or recalcitrant violators; or deviate substantially from the terms of a permit, order, agreement or from statutory or regulatory requirements. Secondary Violators are those facilities which do not meet the criteria listed above for SNC; are typically first time violators; pose no

1. The April 2000 clarification of the 1996 ERP advises regulators to “look beyond *actual* releases to *threatened* releases.” The HWCB tends to assign the SNC designation to facilities with actual releases;
2. The HWCB Administrator indicated that his group did not become aware of EPA’s December 2003 ERP [with an effective date of February 15, 2004] until late in FY04. Therefore, none of the FY04 determinations took into account the broadened definition of SNC which considers human health and potential exposure of workers;
3. Other factors influencing HWCB SNC designations are whether a facility had been inspected prior to the violations, and whether the facility promptly addressed the violations. If a facility takes prompt action to return to compliance, had not undergone a prior inspection, and/or its violations did not result in a release, HWCB will consider the facility a first-time offender and SV¹⁸; and
4. The HWCB agrees with EPA that substantial deviations from statutory or regulatory requirements favor the SNC designation, although there may be some differences of opinion between EPA and the state on what constitutes a substantial deviation.

Using the above interpretation of the 1996 ERP, of the eight facilities whose formal enforcement case files were reviewed during the audit and the eleven facilities that received formal enforcement actions (either initiated or settled by HWCB or SIS) during FY04, fifteen were designated as SVs by the state, while only four of these facilities were designated as SNCs (namely, Mass Design, Tyree Brothers, Hampshire Chemical, and Circle Tri Cleaners). Of the fifteen facilities designated as SVs, there were only three state-designated SV facilities that would have been considered SNC by the Region [Cleary Cleaners (settled in FY05), C&M Screw Machine and Sig-Arms, Inc. (settled in FY05)]. At present, EPA and the state simply agree to disagree on the violator status of these three facilities. The disagreements hinge on differences of opinion regarding each facility’s degree of deviation from regulatory and statutory requirements. It is the Region’s view that, had the state reconsidered the degree of deviation from regulatory requirements for these three facilities, it would have exceeded the national SNC designation rate in FY04 (5.8 % versus the national rate of 3.2%).

Regardless of the violator status, EPA acknowledges the state’s strong enforcement stance against SV facilities. Region 1 recognizes that, although the state is somewhat frugal in applying the SNC flag, it takes the same rigorous formal enforcement stance against recalcitrant SVs that it takes against SNC violators. HWCB and SIS do not limit the initiation of formal penalty actions to SNC facilities. In summary, the state not only

actual threat or a low potential threat of exposure to hazardous waste/constituents; or do not have a history of recalcitrance or non-compliant conduct.

¹⁸ The HWCB Administrator assured EPA that, in the future, a first-time inspected facility may not be given as much deference if its hazardous waste coordinator participated and passed either the FQG or SQG Certification Programs, since these programs are designed to repeatedly educate generators of state requirements and their duty to comply.

addressed and penalized 4 active SNC cases (3 old and 1 new) during FY04 [Tyree Brothers (SIS), Hampshire Chemical, Mass Design and Circle Tri Cleaners (new)], but also issued initial and final administrative fines to eleven state designated SVs [C&M Screw, Greenerd Press, Corning Netoptix, Green Mountain Rifle Barrel, North Elm Street Mobil (SIS), Odyssey Press, Robbie D. Wood (SIS), Stericycle (SIS), Vermillion, Kollsman, and Wakefield Engineering]. Additionally, two SV facilities received non-penalty administrative orders in FY04 [Machine Craft¹⁹ and Atlantic Bridge and Engineering (SIS)]. In total, DES issued 22 [12 proposed and 10 final] formal penalty enforcement actions to 15 violating facilities, and enforcement actions (without penalties) to 2 facilities in FY04. The state contends that these FY04 enforcement statistics would have remained unchanged regardless of the designated violator status.

CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:

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

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

1. DES should develop a protocol to ensure that important national policies and guidelines received within the Department are distributed in a timely fashion to the appropriate program managers (e.g., EPA's 2003 ERP). Region 1 will also ensure that important national policies and documents are forwarded directly to the HWCB management;
2. Given that EPA's 2003 ERP, with its broadened definitions of SNC and SV, are currently applied by the state, DES should revise the September 27, 2000 CARP to incorporate EPA's 2003 ERP. At minimum, DES should issue a policy memorandum that incorporates the 2003 ERP by reference into existing CARP. This memorandum should require the consistent application of this more recent definition of SNC;
3. See recommendation for staffing improvements described in Element 1. A sufficient inspector pool will allow greater coverage of facilities and will decrease the likelihood of "forgiving" SNC violators as "first-time offenders"; and
4. HWCB should ensure that facilities that have successfully participated in the FQG and SQG Certification Programs are not as readily given "first-time-inspected" deference when making decisions on violator status and formal enforcement.

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

¹⁹ Machine Craft further received a penalty action in FFY2005.

All of the formal enforcement cases reviewed by EPA contained adequate injunctive relief to return facilities to compliance. Most of these facilities returned to compliance within 240 days, regardless of generator size or violator status. The exceptions were Machine Craft [LQG] and Cleary Cleaners [LQG], which took 309 days and 574 days to return to compliance, respectively. Both cases were labor intensive and the delays were caused by very case-specific issues and not by any degree of inaction by the state. These files clearly documented constant interactions and negotiations between the parties.

Another case (Mass Design, SQG) did return the facility to compliance within the 240 day limit, but it took greater than 360 days (i.e., 516 days) to reach settlement. Unlike other HWCB case files, there were no explanations in this file to document why settlement took so long. EPA discovered that a seldom used final enforcement tool (Administrative Order by Consent, with Penalties) caused undue delays as the document was routed and reviewed within the Department. HWCB is no longer using this type of enforcement tool. In general, case files were well-organized and clearly documented facts. It was only this file that failed to document reasons for the settlement delay.

Informal enforcement actions with corrective measures and/or schedules were sufficient to return minor violators to compliance. However, there was one informal SIS case that should have been addressed by a formal penalty action. This case [All-State Steel, SQG] was investigated by SIS in response to a citizen's complaint. The file documented 17 SIS site visits all of which indicated ongoing or new violations. After the 5th investigation, the facility was issued a unilateral order without penalties, and coded "returned to compliance" in RCRAInfo. However, the file indicated continuing violations during the remaining 12 site visits. Unlike any of the other HWCB and SIS files, the All-State Steel file was disorderly which made it difficult to follow the sequence of events. The compliance track taken with All-State Steel appeared to be an anomaly counter to the usual enforcement approach taken by either HWCB or SIS. Evidently, facility-specific conditions (such as pending changes of ownership by multiple potential buyers and the original owners' willingness to work with SIS) led the state to take this 'multiple-site-visit' approach. As an anomaly, this situation was not repeated in other SIS or HWCB cases. It is EPA's opinion that All-State Steel was clearly a recalcitrant SNC violator which should have received a formal penalty action with injunctive relief.

CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:

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

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

1. SIS' enforcement protocol should be improved to readily escalate the level of enforcement for recalcitrant violators, as described in the CARP.

2. SIS' file documentation practices should be brought into par with those practiced by the HWCB.

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

The 1996 ERP defines Significant Non-Compliers as those facilities for which formal enforcement is appropriate and defines formal enforcement as an action which mandates compliance and initiates a civil, criminal or administrative process which results in an enforceable agreement or order. The definition of an appropriate enforcement response is given as "an action that will achieve a timely return to compliance and serve as a deterrent to future non-compliance by eliminating any economic advantage received by the violator. A formal enforcement response to SNC will be considered appropriate when penalties or alternative punitive mechanisms are incorporated in the formal response, and that penalties or punitive mechanisms recover the economic benefit of non-compliance plus some appreciable amount reflecting the gravity of the violations".

The discussion of whether or not reviewed actions considered economic benefit and gravity is addressed in Elements 7 and 8. The question of whether HWCB and SIS actions are appropriate has already been answered to a large extent in Elements 4 and 5. Aside from the case specific situations discussed in Elements 4 and 5, EPA found that the majority of actions are taken in a timely manner, prescribe corrective measures (injunctive relief), assess and collect penalties, and return facilities to compliance. In fact, HWCB and SIS take a more aggressive enforcement stance since the 1996 ERP definitions for 'formal and appropriate penalty responses' are broadly applied to both SV and SNC violators.

With the exception of All-State Steel [see Element 5], the informal enforcement actions reviewed were timely and prescribed corrective measures and/or schedules that were sufficient to return minor violators to compliance. Other than All-State Steel, EPA agrees with the state's decisions to pursue these facilities with informal enforcement.

CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:

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

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

See recommendations in Element 4.

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

According to the CARP, DES' statutory penalty authorities do not distinguish between economic benefit and gravity components but rather specify a 'per violation per day' maximum for administrative fines and civil and criminal penalties. Whatever penalty is calculated for a given violation, the amount cannot exceed the per violation per day statutory maximum. The per violation per day statutory maximum is assumed to be sufficient to cover both economic benefit and gravity. The statutory per violation per day maximum penalty for administrative cases is \$2,000 and the statutory per violation per day maximum penalty for civil cases is \$50,000.

For civil enforcement, federally authorized programs (such as RCRA) follow the applicable EPA penalty policy to impose or mitigate the gravity component of a penalty (e.g., the CARP references EPA's October 1990 RCRA Civil Penalty Policy). The gravity for administrative enforcement cases is determined by either using the Schedule of Fines (Env-C 602 through 616), or it is calculated using a penalty matrix described in the CARP when a particular violation is not listed in the Schedule of Fines. EPA observed consistent and appropriate application of the Schedule of Fines in the administrative cases reviewed during this audit.

Although the CARP states that DES' statutory penalty authorities do not allow for the collection of separate, stand-alone penalties for economic benefit, discussions with DES enforcement staff made it evident to the Region that it is the practice of both HWCB and SIS to take into account the existence and degree of economic benefit.²⁰ The Region is aware that HWCB does estimate and actively discuss whether or not a facility gained from a significant economic benefit, and whether or not that economic benefit can be recouped using the Schedule of Fines. However, the reviewers were not able to find a single penalty action case file that clearly documented consideration or estimation of economic benefit. Upon further inquiry, the reviewers were provided with a copy of an economic benefit estimation for Machine Craft (retrieved from the Enforcement Coordinator's computer), and later learned that this information was located in the case's confidential file. Therefore, at least one of the formal enforcement action case files reviewed clearly documented economic benefit considerations. The Region believes that HWCB and SIS consider economic benefit for each violation, but the documentation for such considerations is either lacking or difficult to find. On the other hand, gravity (or the per violation-per day penalty from the Schedule of Fines) was well-documented in the files.

Since civil penalty caps are higher than administrative fine caps, HWCB and SIS often take this into consideration when deciding if a violator should be pursued administratively or civilly. In other words, if a facility's economic benefit and appropriate degree of gravity cannot be recouped through the administrative Schedule of Fines, the case may be referred to the state Attorney General's Office for civil enforcement. Some other conditions used to decide if a case is more suitable for civil

²⁰ DES' RCRA program utilizes EPA's BEN model to estimate the amount of economic benefit.

enforcement are situations in which there is substantial and ongoing harm or a respondent fails to comply with administrative efforts. Factors favoring the pursuit of an administrative case include that a fine is appropriate and sufficient for a deterrent effect or a respondent has failed to comply with previous informal warnings. If the HWCB/SIS assessment of the economic benefit can be recouped using the Schedule of Fines and the case is not otherwise suited for civil enforcement, the enforcement response is usually an administrative fine. It is the Region's opinion that the formal enforcement cases reviewed were all appropriately pursued administratively.

Of the 15 penalty actions referenced in Element 4 [Tyree Brothers, Hampshire Chemical, Mass Design, Circle Tri Cleaners, C+M Screw, Greenerd Press, Corning Netoptix, Green Mountain Rifle Barrel, North Elm Street Mobil, Odyssey Press, Robbie D. Wood, Stericycle, Vermillion, Kollsman, and Wakefield Engineering], DES proposed \$297,791 in penalties in FY04 and collected \$560,318 in penalties and sanctions from pre-FY04 and FY04 violators. However, since documentation regarding economic benefit was missing from most case files, it was difficult for the reviewers to know, with certainty, if economic benefit was considered and recouped.

CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:

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

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

1. All administrative case files should document whether or not a given violation resulted in a significant economic benefit. If no significant economic benefit was achieved, then a statement of fact should be found in the file. If significant economic benefit resulted from a violation, the estimated economic benefit amount should be clearly documented in the file;
2. DES should review and revise (where appropriate) its Schedule of Fines to increase the per violation per day caps in order to allow the pursuit of administrative cases that might otherwise be forced down the civil enforcement route to recoup economic benefit; and
3. The CARP should be revised to reference EPA's December 2003 RCRA Civil Penalty Policy. At minimum, the DES should issue a policy memorandum that incorporates the 2003 RCRA Civil Penalty Policy by reference into the existing CARP.

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

As discussed in Element 7, the Region found that there is general compliance with the settlement provisions of the October 1990 RCRA Penalty Policy; that administrative fines are determined using the Schedule of Fines; and that both civil and administrative procedures take into consideration economic benefit and gravity (although the documentation of economic benefit was lacking).

CARP [Penalty Settlements] elaborates on the October 1990 Penalty Policy by providing detailed guidelines on penalty (gravity) mitigation. The following appropriate gravity mitigation methods described in the CARP were observed to reduce penalties: self-reported violations; one-time, non-continuing offenses; good faith efforts to comply; compliance history; cooperation; new information that explains or excuses the violations; conditional suspension where DES elects to suspend a portion of the penalty contingent on the facility performing a certain corrective action or remaining violation free for a specified period of time; and conducting a SEP to off-set the gravity portion of the penalty.²¹

Minimum cash payments are also established in the CARP, which requires that minimum payments make provisions for recouping significant economic benefit and some degree of gravity (deterrent). Although the gravity mitigations allowed by the 1990 RCRA Penalty Policy and CARP were clearly documented in the case files, it was next to impossible to determine if minimum cash payments met the condition of recouping economic benefit, since economic benefit determinations were poorly documented. Furthermore, if the Region were to assume that the facilities addressed by FY04 penalty actions did not gain from economic benefit, the documented reductions in gravity often exceeded the CARP guidelines of 30-50% (when no SEPs are involved) and 15-25% (when SEPs are included) [e.g., C&M Screw Machine and Greenerd Press]. Region 1 later discovered that the documented penalty reductions in these cases resulted from ‘ability-to-pay’ concerns. In fact, the HWCBC coordinated the ability-to-pay [ABEL] analyses with EPA and these analyses warranted reductions in penalty below the guidelines established in the CARP. Other instances of significant gravity reductions (below the guidelines established in the CARP) resulted from the consistent ‘forgiving’ of all Class II violations. Forgiving Class II violations is not a mitigating circumstance allowed by the CARP.

CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:

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

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

1. See recommendations 1 and 3 under Element 7;

²¹ Other mitigating factors allowed by the CARP, but not observed during the file review are: environmental self-audits; small business; and inability to pay.

2. Administrative Fine settlements should clearly follow the guidelines established in the CARP for collecting appropriate minimum payments. In order to achieve this, DES should give greater consideration to penalties associated with some Class II violations and not unilaterally forgive all Class II violations to foster settlement. Based on case specifics, some Class II violations may be worthy of penalty collection.

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

DES has a PPA/PPG agreement and Work Plan with EPA which outlines RCRA enforcement and compliance related commitments. In general, DES met many commitment targets in FY04. Some targets were renegotiated during the course of the year, some commitments just barely missed their mark, but two important commitments significantly missed their goals [see bolded items below]:

Item	Descriptive	Commitment	Achieved
1	Issue Administrative Fines and Requests for Enforcement Action (RFEs) for facilities in SNC/HPVs	12	10 final \$\$ actions
2	Referrals to the P2 program from hazardous waste inspections	50	36
3	Conduct 50 hazardous waste inspections	50 [33@ LQGs]	48 [30 @ LQGs]
4	Provide modular workshop courses for those who completed FQG hazardous waste coordinator certifications [described in Element 13]	12	4
5	Conduct follow-up inspections of a statistically valid number of SQG facilities in Rockingham and Strafford counties in support of the SQG Self -Certification Program [described in Element 13]	100	0

Regarding item 1, EPA acknowledges that HWCB and SIS actually issued 22 [12 proposed and 10 final] formal penalty enforcement actions to 15 violating facilities. However, the state only designated 4 of these facilities as SNC [Tyree Brothers, Hampshire Chemical, Mass Design and Circle Tri Cleaners], resulting in a total of 5 final actions against SNC facilities. [Note: Hampshire Chemical received two penalty actions in FY04.]

Regarding item 2, EPA understands that fulfillment of this commitment is highly dependent on the type of violations uncovered. HWCB continues to make a relatively high number of referrals to the P2 program.

Regarding item 3, this commitment was renegotiated between HWCB and Region 1 during FY04. The revised commitment of inspecting only 30 [instead of 33] federal LQG facilities and 17 federal SQGs/CESQGs [for a total of 47 state inspections] accommodated an inspector staff reduction during the fiscal year, the workload imposed by the FQG Hazardous Waste Coordinator Certification Program on the remaining inspector staff, and the reduced LQG universe size resulting from the FQG training. The HWCB was able to slightly exceed these revised inspection commitments.

Regarding item 4: While implementing the FQG Certification Program in FY04 [see Element 13], the HWCB found that, based on generator needs and interest, more comprehensive ‘basic’ training sessions were needed to successfully provide FQG generators with the information needed to properly manage hazardous wastes. Consequently, the HWCB shifted its resources away from advanced topic specific [modular] training sessions towards additional comprehensive basic training sessions.

Regarding item 5, failure of HWCB to meet this commitment undermines the SQG Certification Program [see Element 13] designed, in part, to balance the discrepancy between reduced inspector staffing and the compliance inspection/enforcement workload. This commitment suffered directly from the abolished inspector positions described in the recommendation section of Element 1.

CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:

Information from RCRAInfo, EPA Headquarters’ metrics, file review data and the FY04 Work Plan (updated through September 30, 2004 by HWCB) was used in reviewing DES’ performance in this area.

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

See recommendation for staffing improvements described in Element 1.

Section III. Review Area: Database Integrity

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

DES is fastidious about entering inspection, compliance and enforcement histories into RCRAInfo. All the FY04 reviewed inspections and follow-up enforcement actions

(whether informal or formal) appeared to be entered into RCRAInfo in a timely fashion. Additionally, DES maintains a desktop computer program [inspection and enforcement tracking Lotus spreadsheet] which records inspections completed, actions taken, and other key information such as: who is responsible for the inspection and/or follow-up action, the type of enforcement action taken, when an action was initiated and finalized, when a facility returned to compliance, and when a penalty was paid.

EPA's data metric specific to this question focused on the timeliness of compliance and enforcement data associated with the SNC facilities of FY04. Consequently, the data metric indicated 100% timeliness for the entry into RCRAInfo of the only new SNC facility identified during FY04 [Circle Tri-Cleaners]. As described in Element 4, the HWCBC is frugal in assigning SNC designations. In order to fully understand the timeliness of data entry Region 1 looked at both inspection/enforcement data entry for SV and SNC facilities and found it to be very good.

New Hampshire is a relatively new 'translator state' for the management and upkeep of handler (generator) information. Handler information is now automatically updated into RCRAInfo from DES' OneStop database in a timely and accurate fashion.

CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:

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

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

None

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

Again, EPA's data metrics developed to address this question focused on the accurate entry of compliance and enforcement data associated with SNC facilities. In order to fully understand DES' ability to accurately enter inspection/enforcement histories, the Region had to consider both SV and SNC facilities. The following conclusions can be made regarding the accuracy of compliance and enforcement data in RCRAInfo for both SV and SNC facilities:

1. Entry of data elements associated with compliance inspections, including associated violations, are accurately reflected in RCRAInfo;
2. Entry of informal enforcement actions [e.g., Notices of Past Violations, Letters of Deficiency, Notices of Findings] and unilateral administrative orders, which are not affiliated with proposed and final penalties, are accurately reflected in RCRAInfo;
3. Entry of formal enforcement actions with proposed administrative fines and

compliance schedules, final administrative fines and compliance schedules, SEPs, penalty payments and any other affiliated information, although completely recorded in RCRAInfo, are consistently not accurately reported in RCRAInfo. The following trends were observed by EPA in many of the reviewed formal enforcement actions:

For settled formal enforcement actions that involved proposed and final administrative penalties, the entire enforcement history (proposed and final) and penalty payment are recorded under the RCRAInfo code designated for final actions. HWCB fails to separately enter initial enforcement actions in RCRAInfo. This trend was observed in all but two cases (Greenerd Press and Tyree Brothers). Additionally, the final action recorded in RCRAInfo may be incorrectly linked to the date of the initial, proposed action. This dating error was observed in the following cases: C+M Screw, Corning Netoptix, Green Mountain Rifle Barrel, Odyssey Press, Mass Design, and Cleary Cleaners.

These anomalies misrepresent the state's enforcement work in EPA's national RCRA database, give the impression that no proposed actions are pending resolution, and fail to give the state credit for initiating formal enforcement actions during a given fiscal year.

4. DES initiates the SNC flag in RCRAInfo upon completion of the legal review process for a given formal enforcement document. This date generally falls upon the issuance date of the initial action. This is the same approach used by Region 1; and
5. Enforcement actions in response to violations (formal and informal, proposed and settled) are clearly and accurately recorded in the states' desktop database.

Finally, one of EPA HQ's metrics looked at long-standing secondary violations "not returned to compliance or identified as SNC after the lapse of 240 days". This metric identified 40 such facilities. Based on DES records, the total number of 'long-standing' facilities was actually 32. According to DES, many of these incidences of long-standing non-compliance corresponded to investigations that have since been resolved or are currently under remediation. At the time of the review, approximately 28 of these 32 facilities had been addressed or returned to compliance. The violations for the remaining facilities were considered so old that they have lost significance and should be coded as "stale" in RCRAInfo. DES agreed to update RCRAInfo accordingly.

CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:

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

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

1. The HWCB needs to enter separate actions in RCRAInfo for initial/proposed and

final/settled formal enforcement penalty actions, and then ensure that the correct issuance dates are associated with the correct actions. Region 1 will work with DES to identify which RCRAInfo codes to utilize in future to ensure that this happens. At present, DES compliance staff only use a limited number RCRAInfo codes which, unfortunately, excludes most choices for proposed actions. EPA and the HWCB will discuss training needs on the use and maintenance of state data in RCRAInfo; and

2. DES and EPA have agreed to at least annually review a retrieval of long-standing violations to ensure that they are either addressed, or accurately recorded in RCRAInfo in the event that they had already been addressed.

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

FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):

The minimum data requirements are complete. The following FY04 information corresponds to HWCB unless otherwise noted. **EPA and DES agree that the data presented below (based on more recent DES data base retrievals) accurately reflect RCRA compliance statistics during the period of review. (Response to OECA comment)** [Refer to applicable comment in brackets (#)]:

No. of TSDFs-----	0	
No. of LQG/state FQG1-----	~193 beginning FY	(1)
	~174 end of FY	
No. of SQG/state FQG2-----	~207 beginning FY	(1)
	~306 end of FY	
No. of CESQG/state SQG-----	~3043 to 3611	(1)
No. of Facilities Inspected -----	48	(2)
No. of Facilities with Violations -----	39	
No. of DES Informal Actions-----	25	
No. of DES Formal Actions (initial and final) -----	22 [12 HWCB and 10 final actions]	(3)
No. of new SNC facilities -----	1 [HWCB action]	
No. of SNC Facilities with DES formal enforcement-----	4 [3 HWCB actions; 1 SIS action]	

- (1) In state of flux. Quantity refined with each passing FQG and SQG Certification Program.
- (2) Includes: 30 LQG CEIs, 3 LQG PEIs, 5 SQG CEIs, 10 CESQG CEIs [plus ~20 repeat or SIS investigations].
- (3) Formal penalty actions to 15 violating facilities (see Element 4).

CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:

RCRAInfo, EPA Headquarters’ metrics and DES’ compliance/enforcement database were used in reviewing DES’ performance in this area.

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

DES and EPA agree to annually review the above statistics as they are

reflected in DES data bases and in RCRAInfo and to reconcile any differences between the two data sets. (Response to OECA comment)

<p>Section IV: Optional Evaluation Element: DES FQG Hazardous Waste Coordinator Certification Program and SQG Self-Certification Program</p>

13. Additional program elements reviewed at the request of DES.

13.1 Full Quantity Generator Hazardous Waste Coordinator Certification Program

The DES FQG Hazardous Waste Coordinator Certification (FQG-HWCC) program is designed to provide a sustainable forum for educating and certifying generators of hazardous waste in the complex regulatory area of hazardous waste management. The program requires all hazardous waste generators producing ≥ 220 pounds of hazardous waste in a month [i.e., state FQGs, which include federal LQGs and SQGs] to have on staff, at the facility where the hazardous waste is generated, a Hazardous Waste Coordinator (HWC) certified annually by the DES. It is the goal of the program to empower each certified HWC to be responsible for ensuring generator awareness and compliance with hazardous waste management requirements. The program places the burden on generators to hire and maintain certified HWCs at their facilities that are knowledgeable about the requirements governing hazardous waste management, including storage, transportation and disposal. Another significant goal of the program is that it expands the reach and accessibility of HWCB inspectors into the regulated community beyond that usually achieved by traditional compliance inspections. This program ensures that no generator will be out of compliance due to ignorance of the rules and that each generator is committed to enhancing environmental stewardship. The performance measure associated with this program is enhanced compliance with the regulations and reduced instances of hazardous waste mismanagement, thus providing greater protection to public health and the environment. The FQG-HWCC program was established in response to legislation passed in 2002, which took effect on January 1, 2003, under RSA 147-A:5, III. The HWC's initial certification is valid for one year and may be renewed for subsequent one-year terms.

To implement this new program, DES designed a comprehensive one-day HWCC course which covers the following topics: hazardous waste determination; facility classification and notification; rules governing storage, packaging and labeling; manifest and quarterly reporting requirements; site inspection and personnel training requirements; management of incompatible wastes; preparedness, prevention and contingency planning; facility permitting; universal waste; waste oil recycling; pollution prevention; and recent rule changes. First-time applicants attending the basic course are required to take a comprehensive written examination which they must pass in order to become state certified. Those HWCs that do not pass the exam are offered the opportunity to repeat the training and re-take the exam in order to become certified.

DES also developed industrial specific courses for photographic developers (silver recovery), gas stations and environmental consultants.

Once certified, the HWC may renew their certification on an annual basis. The HWC has the option to retake the basic course or select from a list of advanced courses (i.e., modular workshop courses mentioned in Element 9) such as hazardous waste determination, inspections and enforcement, and pollution prevention/waste minimization. DES hopes to continually develop additional advanced courses based on generator input and compliance inspector recommendations. The advanced courses are one-day long, with the morning dedicated to the advanced topic and the afternoon to a refresher on the basics of hazardous waste management. HWCs that have maintained their certification from year to year are not required to re-take a certification exam, but HWCs that have allowed their certification to lapse must retake and pass the initial certification exam.

DES held 19 training sessions between May 14 and December 17, 2003, which trained 737 hazardous waste coordinators. The average test score was 87 % and 95 % of the attendees passed the exam. In calendar year 2004, DES held 16 training sessions and trained 705 hazardous waste coordinators. The average test score for 2004 was 86 %, and 93 % of the attendees passed the exam. In calendar year 2005, DES held 18 training sessions, which trained 666 hazardous waste coordinators. The 2005 average test score was 86 %, and 90 % of the attendees passed the exam. The program is funded by an annual certification fee of \$125 and a \$75 fee per course. The fee supports the program Supervisor VII (.5 FTE) and a Waste Management Specialist IV (1 FTE) to implement the program. The FQG-HWCC program also relies heavily on the knowledge and experience of the HWCB inspectors to develop training modules and lecture at the various courses.

The FQG-HWCC program is a new and creative approach to environmental compliance monitoring because it reaches out to educate and certify the regulated community first and foremost, which is then followed-up by the traditional inspection and enforcement approach. It is a long-standing DES premise that a well-trained regulated community will lead to higher levels of compliance and better environmental results. Increased generator compliance allows DES inspector and enforcement staff to focus their efforts on the segment of FQGs that, despite repeat training on proper hazardous waste management, remain recalcitrant violators. Although training is common to other environmental programs, the combination of training with the mandatory requirement for having a state-certified HWC at the generator's facility is a new concept. The FQG-HWCC program is a positive and enthusiastic approach to sustain the continued long term compliance of the regulated community through a five step process: Training; Certification; Inspection; Enforcement; and Compliance Measurement. Several Region 1 RCRA inspectors have attended FQG Certification training sessions and found them to be very thorough and effective. Recent EPA inspections have shown improved compliance at facilities that successfully completed the FQG Certification Program.

The compliance measurement aspect of the program (i.e., assessment of the program's success) has suffered due to hiring and staffing restrictions. For instance, DES' goal is to hire summer interns to conduct compliance surveys at FQG facilities. Initial and recurring summer survey data establish a statistically valid compliance baseline and then measures the program's impact on compliance over time. This effort has been hampered by insufficient resources to regularly hire summer interns, an outside contractor to analyze the data, and to dedicate a HWCB inspector to train and oversee the interns and contractor.

To review the details of the FQG-HWCC program, log onto <http://des.nh.gov/HWCB/HWCCert/>

13.2 Small Quantity Generator Self-Certification Program

The Small Quantity Generator Self-Certification (SQG-SC) program is designed to provide a means to check the compliance status of the hazardous waste generators that produce < 220 pounds of hazardous waste in each and every month [i.e., state SQGs corresponding to federal CESQGs]. The program requires SQGs to complete and submit a Self-Certification and Declaration of Compliance Form (Self-Certification Form) to DES once every three years. To complete the Self-Certification Form, the generator is required to review its hazardous waste activity and conduct a compliance evaluation inspection of its facility for compliance with the applicable SQG rules. SQGs determined to be in compliance mark the Self-Certification Form accordingly and sign a declaration of compliance certification statement. SQGs determined not to be in compliance must submit a corrective action plan which describes the actions the facility will take to come into compliance. The corrective actions are required to be made as soon as possible, but in no event later than 90 days from the date the Self-Certification Form is due. Facilities out-of-compliance are required to sign a certification statement that the information provided is true and accurate.

The SQG-SC program was established in response to legislation passed in 2003, which took effect on July 1, 2003 under RSA 147-A:5, IV. A phased implementation schedule was enacted by dividing the state's 10 counties into 3 distinct geographic zones, each containing an estimated 1,300 SQGs. Self-certification declarations are required to be submitted to DES by January 1. The three geographic zones have staggered program start years of 2004, 2005 and 2006, respectively. At the time of this report, all three zones covering the entire state have initiated the SQG-SC declaration process. Generators in a given geographic zone must repeat their self-certification declarations every three years from the original start date.

To implement this new program, DES adopted interim small quantity generator self-certification rules under Env-Wm 514 of the Hazardous Waste Rules, which were later adopted as final rules on August 18, 2005. The self-certification rules provide the process for self-certification, identify the content of the Self-Certification Form and describe the criteria for a corrective action plan. DES provides the Self-Certification Form to the SQGs by October 1 and schedules workshops, usually in October and

November, to provide additional assistance to the SQGs. Since October 2003, over 30 training sessions were held and attended by over 500 people, and over 300 telephone assistance calls were logged.

In September 2003, 1,106 Self-Certification Forms were sent to the SQG facilities in Rockingham and Strafford counties. In September 2004, 1,270 Self-Certification Forms were sent to the SQG facilities in Hillsborough and Cheshire counties. In September 2005, 1,184 Self-Certification Forms were sent to the SQG facilities in Merrimack, Coos, Carroll, Belknap, Sullivan and Grafton counties. Recalcitrant SQGs that failed to submit their forms by January 1 receive a phased enforcement response that included: a phone call to provide direct assistance, a first notice of non-compliance letter, a follow-up site visit, a final notice of non-compliance sent by certified mail which threatens administrative fines, and finally a Notice of Proposed Administrative Fine.

Of the 1,106 Self-Certification Forms sent in September 2003 to the SQG facilities in Rockingham and Strafford counties, 1,076 or 97% are considered “resolved” as follows:

1. Participating in the program (706 or 64%) - forms returned with fee or forms returned/fee exempt;
2. Identified as declassified/inactivated generators (178 or 16%)- no long generate hazardous wastes;
3. Identified as generators of used oil for recycling (184 or 17%)- are not required to self-certify; and
4. Identified as FQG generators (8 or < 1%)- transferred to the FQG-HWCC program.

The remaining 30 or 2.7% remain “unresolved” and require further investigation to determine if they still generate hazardous waste and, if not, why they retain an active EPA ID number. Some unresolved cases stem from undeliverable self-certification forms or from fee payment issues.

As of December 15, 2005, only 3 Notice of Proposed Administrative Fines were issued to known recalcitrant SQGs in Rockingham and Strafford counties, and these were settled before the formal hearing process. Statistical data for the Self-Certification Forms sent in September 2004 and 2005 are not available at this time.

The SQG-SC program is funded by a \$180 fee due with the Self-Certification Form every 3 years. The fee supports the program Supervisor VII (.5 FTE), a Program Assistant I (1 FTE), an Environmentalist IV (1 FTE) and a Waste Management Specialist IV (1 FTE). Unfortunately, the Waste Management Specialist IV (WMS IV) position created under the statute in FY04 was abolished in the FY 2006 state budget. This WMS IV inspector’s function was to target compliance evaluation inspections at SQGs that failed to provide Self-Certification Forms by January 1. The WMS IV position was also to conduct site visits at 10% of the SQGs that provided their Self-Certification Forms in order to statistically determine whether or not the Self-Certification Forms are true and accurate. This abolished position resulted in the failure to achieve the FY04 Work Plan commitment for Rockingham and Strafford counties described in Element 9, and undermines the program’s measure of success and ability to assess generator integrity.

The SQG-SC program is an innovation to the traditional inspection and enforcement approach typically applied to the regulated community. This is a creative approach implemented to monitor the compliance status of a large number of state SQGs (greater than 3000). These facilities are usually low-priority targets for traditional inspection, given the realities of a limited number of state inspectors. To review the details of the SQG Self-Certification program, log onto <http://des.nh.gov/SQG/>

RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:

DES should make every effort to provide the staffing necessary to carry out the compliance measurement/program success aspects of both the FQG certification and SQG self-certification programs, namely:

1. Establish funding to allow hiring of summer interns to conduct compliance surveys at FQG facilities;
2. Establish funding to employ an outside contractor (or dedicate in-house staff without jeopardizing other program commitments) to analyze data from FQG summer compliance surveys;
3. Ensure sufficient HWCB inspector staffing to provide training and oversight of the FQG summer compliance surveys [see staffing recommendation for Element 1]; and
4. Ensure sufficient HWCB inspector staffing to target compliance evaluation inspections of the SQGs that did not provide Self-Certification Forms, and to conduct site visits at 10% of the SQGs that provided Self-Certification Forms [see recommendation for Element 1].

OECA Review of the Region 1 CWA NPDES Program in New Hampshire

EPA Region 1 has the authority to manage the CWA NPDES program in New Hampshire, which includes the permitting and enforcement programs. Although NHDEP has its own state authorities over surface water discharges, Region 1 has the primary responsibility for this program in New Hampshire. The following is OECA's SRF report of Region 1's CWA NPDES program in New Hampshire.

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**Program Evaluated for Region 1 CWA/NPDES Program in
New Hampshire**

Review Place and Date

Region 1 Office, Boston, Massachusetts

October 3 to 5, 2006

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Overview and Summary

Review Process

The review team conducted the on-site review of the Region 1 direct implementation of the New Hampshire NPDES compliance and enforcement programs on October 3 to 5, 2006 in the Region 1 offices in Boston, Massachusetts. This review is based on FY 2005 data, which was the most complete year of data available at the time of the

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review.

This is a State Review Framework review of Region 1's NPDES direct implementation of the program in New Hampshire. The review is being conducted under the same implementation process that is specified for reviewing a state's programs. The same implementation guide, file selection protocol, and metrics are used for this review.

OECA and Region 1 began planning for the review in August 2006 with initial discussions between the OECA and Region 1 Office of Environmental Stewardship (OES) managers and staff. The team worked with two Units in the Office: the Water Technical Unit and the Regulatory Legal Unit. The Water Technical Unit is responsible for compliance monitoring, conducting inspections, and managing enforcement actions. The Regulatory Legal Unit provides legal council on all enforcement. When violations are detected (through either DMR reporting or inspection reports) the inspectors and legal staff work together to assess the findings and recommend the appropriate enforcement response.

The first step was to identify the universe of inspection and enforcement files to use in selecting the files for the on-site review. The team downloaded the data metrics and underlying data from the OTIS web site in order to analyze the data and to select the files to be reviewed. The team also used data from ICIS and PCS in order to have the complete list of enforcement actions conducted by the Region in New Hampshire in FY 2005. After analyzing the data and preparing the list of files for review, the OECA team prepared a list of issues and conducted a conference call on September 26, 2006 with the Region to discuss those issues. A formal introduction letter was sent to the Region on September 28 that presented the data metrics, identified the files for inspection, and outlined the main data issues. An entrance meeting was conducted with Region 1 OES managers and staff at the beginning of the visit on October 3rd and an exit meeting was conducted at the end of the visit on October 5th to provide the review team's initial findings based on the data analysis and file reviews.

Although New Hampshire Department of Environmental Services (DES) is not authorized to run the NPDES program, the state conducts its own NPDES program and shares the inspection work with Region 1. This division of labor is described further in findings of the report below.

File Selection for New Hampshire

The universe of water sources in New Hampshire during FY 2005 was 240 sources consisting of 52 NPDES major sources, 61 non-major NPDES sources, and 127 other sources. There were 23 files in the universe of files for the review that consisted of 6 formal enforcement actions concluded and 17 inspections conducted by Region 1. It was decided to include all of these files in the review. The inspection files included 10 municipals, 5 unpermitted storm water sources, and 2 storm water sources. The enforcement files included 4 municipals, 1 industrial and 1 storm water cases.

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Summary of Findings

The Region 1 Office of Environmental Stewardship conducts an active NPDES program in New Hampshire. The following report describes the detailed findings for Elements 1 through 12 of the State Review Framework and the metrics for each of those elements. This section summarizes the main findings of the reports.

- Region 1 works well with the New Hampshire DES. Although New Hampshire is not authorized for the NPDES program, they do conduct a large portion of the program coordinate inspections.
- EPA inspection reports are usually timely but there are notable exceptions that skew the data. The average number of days for EPA to complete a report for inspections conducted in New Hampshire is 30 days.
- Inspection report writing is inconsistent. The majority of reports contain the 3560 form and supporting photographs. A number of them contain narrative summary, but not if there are no potential violations.
- Enforcement actions are appropriate, the orders are well written, and the penalty policy is followed.
- EPA enforcement actions in New Hampshire are not always concluded in a timely manner.
- Single Event Violations are not being entered into the ICIS/PCS database.

Overarching Finding

An initial, overarching finding from the review relates to the condition and location of the inspection and enforcement files. The review team provided the Region with a list of files more than two weeks in advance of the review and they were unable to readily access the files for the review. The files are kept by the inspectors or attorneys who worked on those activities and not in a central filing system. The Region has a central filing system for permits, but that is kept by a different office on a different floor in the building. Compliance information (i.e., inspection reports) is not routinely kept with the permits file. There is a historic central enforcement filing system maintained by a contractor, but this file room has been traditionally reserved for finalized enforcement cases that are held prior to forwarding to an off-site records center. The Regional enforcement staff uses the filing system to a limited extent and finds it more convenient to keep active enforcement files at their desk. The problem is that files are scattered and difficult to locate. Moreover, there is no central historical compliance and enforcement file for many of the permitted facilities. Without the extended historic records, it was difficult to see the whole compliance history in the files. The OTIS facility reports were helpful in assessing some of the compliance history. In addition the Regional inspectors and attorneys were available to discuss the details of the specific files, which was very helpful. The main issues in the condition of the enforcement and compliance files relate to retaining institutional knowledge required for understanding the compliance and enforcement history of each facility. The Region needs to address

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this issue.

Recommendations if corrective action is needed:

Region 1 should develop a plan for organizing and maintaining the historical compliance and enforcement files to ensure that they have the requisite documentation so files contain historical records for a facility and that Regional inspectors and managers have ready access to these materials.

See Region 1 Action Items A, C and D, attached

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Findings for Region 1 Direct Implementation of

NPDES Program in New Hampshire

Section 1: Review of State Inspection Implementation

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

Findings:

There are 240 water sources in New Hampshire in FY 2005: 52 major NPDES sources, 61 non-major NPDES sources, and 127 sources other than NPDES.

Metric 1a: 67.3% (35 of 52) (of major sources were inspected in 2005 by EPA Region 1 and the New Hampshire Dept of Environmental Services. Seven of these inspections were conducted by EPA Region 1 and 28 inspections were conducted by the New Hampshire DEP. This percentage is close to the national average of 68% and but below the goal of 100%.

Metric 1b: 52.5 % (32 of 61 in the universe) of the non major CWA NPDES sources were inspected by New Hampshire, which is above the informal benchmark of 20% per year (one inspection within a permit cycle).

Metric 1c: 5.5% (7 of 127) of the non-NPDES sources were inspected in New Hampshire in FY 2005, all of which were inspected by Region 1.

Metric 1r: In FY 2005, Region 1's Annual Commitment System (ACS) commitment was to conduct 45 inspections. The state and Region 1 conducted 36 major inspections and 32 non major inspections, exceeding the annual commitment.

New Hampshire is not authorized for the NPDES program. However, New Hampshire DES has an active state NPDES program. EPA Region 1 and the state have developed a good working relationship and follow an established division of labor. The New Hampshire DES has authority for surface water discharges. The data and conversations with the Region 1 water compliance staff indicate that the Region and State have concentrated their inspection approach to major NPDES sources, which is consistent with OECA core program guidance, and storm water, which is a national wet-weather priority. 100% of major facilities should be inspected each year as set in existing NPDES policy and guidance. EPA policy allows for Regions and states to trade off major source for non-major source inspections. The Region has increased its inspection coverage of non-major facilities and storm water facilities in lieu of meeting the 100% major source target.

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Citation of information reviewed for this criterion: **CWA EMS**

Recommendations if corrective action is needed:

None

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

Findings:

Seventeen inspection reports in the 17 inspection only files were reviewed. Two of the six enforcement files contained inspection reports, one of which was a state inspection. Thus 19 inspection reports were reviewed.

Metric 2a: 88% (15 of 17) inspection reports reviewed were complete in that they at least contained a completed 3560 form. However, only 65% (11 of 17) of the files contained a narrative report to accompany the 3560 form.

As a rule the Regional inspectors do not include a narrative to the report if there are no potential violations or issues. Storm water inspections usually contained photos to support the observations. Follow-up letters to the facility were included in the file. However, in one inspection (Waterville), the OECA reviewers did not find evidence of follow up with the facility even though there were three observations that are potential violations. In another file (Nestle Waters), the inspection report was not complete, but in the facility file there was a follow-up letter to the facility that provided additional detail on the findings of the inspection. Some of the 3560 inspection forms contained brief descriptions of equipment problems, etc., written in summary form. These were issues, but not indication of specific violations. (If these "minor" issues persisted over several years, however, they might be considered to be violations. For this reason, it is important to note these inspection findings in the files as well as electronically in PCS or ICIS-NPDES. See discussion under Metric 4.) One inspection report (Shepherd's Hill) omitted the name of the facility and the permit number.

While most of the inspection reports were complete, the files reviewed did not contain other information such as previous inspection reports or other correspondence to or with the source. In this respect there was little or no historical information to help put the file into context. The review team had access to the Region's inspectors and supervising attorneys who were able to provide additional information and insight into specific cases and how they were managed. These conversations helped to supplement the file documentation and give the reviewers confidence that the Region's inspection program is working in an appropriate manner.

Citation of information reviewed for this criterion: ***CWA EMS, OECA National***

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Program Guidance (2005)

Recommendations:

Region 1 should develop an SOP and a system to track the process for conducting inspections, completing inspection reports, and documenting determinations of violations. It is important to identify SNCs and SEVs as quickly as possible in order to adhere to the timeliness criteria for issuing enforcement actions. Inspection reports need to be complete enough to determine what was inspected and what was found. In the long run, the files should contain the historic record of the facility to ensure that future inspectors can easily find inspection reports, notes to the file and other files information. This will help inspectors to understand the compliance history of a facility.

See Region 1 Action Items C, D, and E attached.

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

Findings:

Metric 3a: 58% (10 of 17) inspection reports were timely and contain information and facts for making a compliance determination.

Given that 58% of inspection reports were timely, the Regions performance is skewed by several reports that took 54 days to complete and one outlier inspection report (Newport) with 98 days between the inspection and the report. Another cut at the data show that the average number of days to write an inspection report was 30 days. The median was 22 days. Seven inspection reports were written 2 to 26 days beyond the 30 day goal.

Region 1's inspection reports do not specifically identify violations, but they do contain findings that point towards potential violations. Routine CEI inspections at NPDES permit holders are conducted to determine compliance, maintain inspection presence and for case support. Violations at these facilities are usually identified through DMRs reported into PCS, now ICIS-NPDES. Violations identified through CEIs at these sources are Single Event Violations and are not reported to PCS or ICIS-NPDES by the Region. Nine reports from inspections at these sources documented potential violations in the inspection file.

Compliance determinations are made after a follow-up meeting between the Region's enforcement attorney and the inspector. This is a system that appears to work well, and by which violations are properly identified and appropriate action is taken.

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Citation of information reviewed for this criterion: **CWA EMS**

Recommendations if corrective action is needed:

For those inspections reports that took more than 30 days, especially the one that took 98 days, the Region should examine the reasons for why it took so long to write a final report and prepare a plan for avoiding unduly long delays.

See Region 1 Action Items F. and G.

Single Event Violations should be entered into ICIS-NPDES. See recommendation under Element 4.

See Region 1 Action Items B and E.

Section 2: Review of State Enforcement Activity

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

Findings:

Metric 4a – Zero Single Event Violators.

The Region is properly identifying potential violations (mainly from inspections at storm water sites and pretreatment plants) based on the inspection reports. However, in the 17 inspection files reviewed, the review team found at least eight instances (storm water) where single event violations could have been identified, but were not entered into PCS.

While not every SEV is SNC (most are storm water violations, for which there is currently no SNC definition), they should still be entered into the data systems. SEVs are violations of the CWA's NPDES requirements that are documented during a compliance inspection, reported by the facility, or determined through other compliance monitoring methods by the permitting authority. SEVs are required to be entered into the national system (PCS or ICIS-NPDES) for all NPDES major permittees, and the "Final Single Event Violation Data Entry Guide for PCS" was issued in June 2006 contains the latest information on the subject. (OECA strongly encourages the entry of SEVs at non-major facilities; however, at this time, this requirement is pending the issuance of the ICIS-NPDES Policy Statement.) SEV tracking is critical to forming an historic electronic record of inspection and compliance determinations. Tracking inspection results can impact future enforcement decisions, particularly when a permittee continues to exhibit the same violation over the course of several years. Electronic documentation of violations also improves the accuracy of public information. The Region did not appear to know that this is a reporting requirement.

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Metric 4b – 21.2% (11 of 52 in source universe) of major permittees in New Hampshire have a SNC identification rate of which is above to the national average of 18.6%. Most of the violations found at major sources are identified through DMR reporting. Depending on the nature of the SEV identified through inspections, entry of SEVs into PCS may raise the state's SNC rate for majors. Violations are often properly and accurately identified through inspections at storm water sites, however they are not being entered into the national database as SEVs. As noted above, storm water violations are not currently defined as SNC, but they should be entered and tracked in PCS or ICIS-NPDES as single event violations.

Metric 4d – This metric is the percentage of SNC determinations that are accurately reported. Based on the file review, no SNC was identified as a result of the Region's inspections in New Hampshire. Ten of the 17 inspection files reviewed were for CEI inspections conducted at municipalities and industrial users. CEI inspections at these sources are not routinely reported as Single Event Violations and because of this, it may be possible that there is SNC that may be overlooked by the Region. National EPA policy does not preclude the Regions from using CEIs to make SNC determinations. Inspections at other types of sources, such as storm water, do not lead to SNC determinations because there is presently no wet weather SNC definition.

Citation of information reviewed for this criterion: **CWA EMS**

Recommendations if corrective action is needed:

The Region needs to begin reporting single event violations into ICIS-NPDES as soon as possible. Also, the Region needs to use CEIs to identify SNC when appropriate.

See Region 1 Action Items B and E.

Information currently available only in the Region's CSO-SSO database needs to be entered into the national data system so that it will be accessible by OECA and the public. The new 3560 form (distributed in January 2006) contains a list of single event violations to facilitate data entry.

See Region 1 Action Item H.

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

Findings:

Six enforcement files for New Hampshire were reviewed during the on-site visit.

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Metric 5a: 33% (2 of 6) of the formal enforcement actions had return to compliance schedules as part of the settlement. The 2 ACOs with deadlines are well prepared. The penalty orders are good. One of the actions was a penalty order that did not require compliance. The issue is with the ACOs that did not contain deadlines. The Region would be better off using Section 308 authority in order to obtain the needed information, and then following up with a 309 with a compliance deadline. This issue was discussed with OECA's Water Enforcement Division, which indicates that the Region 1 approach is within OECA policy.

Metric 5b: None of the enforcement actions reviewed in the files contains an informal action. The Region indicates that they prefer to take formal enforcement actions rather than informal actions.

Citation of information reviewed for this criterion: **CWA EMS, Expedited Settlement Policy**

Recommendations if corrective action is needed:

None

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

Findings:

Metric 6a: 11.5% (6 of 52) of majors did not have timely and appropriate enforcement actions according to the metrics report. The national average is 9.1%, and the national goal is less than 2%.

The Region is aware that it carries a several sources on the QNCR and Watch List. A quarterly Watch List report that explains what is happening to get them off the list is prepared. The Region sets strong inspection commitments in the Annual Commitment System (ACS), but notes that they lack the resources to complete all of the follow-up actions in a timely manner. The Region indicates that they only take formal enforcement actions to address this non compliance. These actions are more complicated than informal actions and take more time to complete. A number of these actions are at storm water sites. The storm water actions are a national priority, and they tend to be addressed before some of the DMR driven actions. Also, the Region has lost staff, especially inspectors in the last couple of years (one experienced inspector was deployed in the National Guard during 2005), which impedes their ability to complete all of the formal actions in a timely manner. Some of this SNC may be dealt with using informal actions, per OECA policy relating to the Enforcement Management System (EMS) on addressing SNC. The Region is aware of this and has initiated a work group to explore how best to use informal actions to address the less complicated SNC problems.

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New Hampshire actions are above the 2% threshold for SNC facilities that are beyond the enforcement timeliness milestones (metric 6). This means that six facilities had at least two consecutive quarters on the QNCR with unresolved SNC violations at the same pipe and parameter or a currently open compliance schedule violation and no formal action. Part of the reason for the high rate of facilities without timely action is that the Region is entering some cases only into ICIS and not into PCS which is the database used to derive the metrics. Of the six NH cases reviewed, four existed only in ICIS (this issue is discussed in further detail under elements 10 and 11).

Citation of information reviewed for this criterion: CWA EMS

Recommendations if corrective action is needed:

Region I should continue to improve its timeliness of addressing and reporting SNC to ICIS-NPDES. The work group already in place to look at this issue is a good start and should be encouraged. The group should share its findings and implementation schedule to OECA for review and comment.

See Regional Action Item K.

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

Findings:

Metric 7a – The metric is the percentage of formal enforcement actions that include calculation for gravity and economic benefit consistent with applicable policies. 50% (3 Of 6) enforcement files reviewed had penalty orders. One of the penalties was only partially documented in the file, and did not discuss the impact of the SEP on the settlement. The penalty for this case was adjusted downward from \$59,000 to \$36,000. The SEP is valued at \$24,000. One action was against an SSO and used the National Municipal litigation tables contained in the Penalty Policy. Another action contained a well documented penalty that was eventually reduced due to the ability to pay by the owners of the facility.

Citation of information reviewed for this criterion: **CWA Civil Penalty Policy** and **BEN Model**

Recommendations if corrective action is needed:

None

8. Degree to which final enforcement actions (settlements or judicial results) take

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appropriate action to collect economic benefit and gravity portions of a penalty, in accordance with penalty policy considerations.

Findings:

Metric 8a – The data metric, based on information in PCS, indicates that there were no actions with penalties. This is not correct since three files were reviewed where the actions had penalties. This data may be because penalty data is not a required reporting element in PCS. In addition to entering some actions only into ICIS, the Region only enters penalty data into ICIS, not PCS.

Metric 8b - The data metrics show that the Region assessed penalties for no enforcement actions in FY 2005. This is not accurate since the files indicate that the Region regularly assesses penalties as part of their enforcement actions.

Metric 8c – As noted in Element 7, penalties are calculated and documented in the files. What is not indicated in the files is whether the penalties are actually collected. The Region states that penalty information is sent to the financial office in Cincinnati, Ohio for collection. The files contain no documentation that the penalties have been collected. However, the Regions Finance Office tracks payment of penalties. At time of settlement, Region 1 enters the penalty amount in ICIS.

Citation of information reviewed for this criterion: **CWA Civil Penalty and BEN Model**

Recommendations if corrective action is needed:

Reporting penalties into ICIS-NPDES is not a requirement, but OECA suggest that Region 1 begin to report them in order to show the complete picture of their enforcement activities. The Region will enter penalty information into ICIS as it has in the past.

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

- 9. Enforcement commitments in the PPA/SEA (written agreements to deliver product/project at a specified time), if they exist, are met and any products or projects are complete. *For Regions the MOAs for FY 2004 and the Annual Commitment System since FY 2005.***

Findings:

Metric 9a – In FY 2005 Region 1 committed to conducting 45 inspections in the ACS system. As noted in Element 1., the New Hampshire DEP and Region 1 conducted 35 major inspections and 32 non-major inspections. Therefore the Region has exceeded its inspection commitments.

Citation of information reviewed for this criterion: **FY 2004 MOA Guidance and the FY**

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2005 National Program Guidance

Recommendations if corrective action is needed:

None

Section 4: Review of Database Integrity

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

Findings:

During the on-site review, the team used the PCS data shown in OTIS facility reports for each of the sources used in the file reviews. The data in the files were compared with the data in the reports. Data discrepancies were found in such areas as the dates for inspections and the enforcement actions, as well as the types of actions. Issues worth noting are reported below.

In preparation for the on-site review, a discrepancy between the actions reported in PCS and those reported in ICIS was discovered. While actions are required to be entered into both systems, there was one action that was only listed in PCS, and 4 actions that were only listed in ICIS. The Region recognizes this issue, and has already taken steps to remedy the situation. Because New Hampshire NPDES data is now in ICIS-NPDES, the Region will need to ensure that the NPDES actions in ICIS are appropriately linked to NPDES permits migrated from PCS.

Metric 10b 35% (8 of 23) of the inspections were correctly entered into the data systems, either PCS or ICIS. As described under metric 4, at least 13 possible Single Event Violators were not reported in PCS or ICIS-NPDES. In addition, several of these files were missing SNC designations.

The following specific problems were identified in the enforcement and inspection files:

- One of the actions was not properly linked to permits in PCS and ICIS. Thibeault (case 01-2005-0039) should have a program ID of NHU000023 in ICIS (not 6685324). In addition, this action should be entered into PCS under NHU000023.
- EPA's 5/26/05 stormwater inspection for Tamposi-Nash (Hudson Sand and Gravel) was not entered into PCS under NHU000021.
- The Region needs to begin entering 308 letters, warning letters, and NOVs into PCS/ ICIS-NPDES as "informal" actions. For example, a 11/22/04 letter EPA letter to Nestle with findings and recommendations from the 11/17/04 inspection should be entered into PCS/ ICIS-NPDES. In addition, a 11/08/05 letter to Waterville Valley WWTP detailing deficiencies from a 10/26/05 inspection should also be entered into the EPA databases.
- The expedited settlement for Jaffrey WWTF is not in PCS. In addition, the inspection data was incorrectly listed as 3/14/05 in PCS – it is 3/3/05 in the file.

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- For Dover (NH0101311), there appears to be double data entry of ACOs in PCS (3/19/04 entry is correct, but 1/14/05 entry is in error).
- Claremont WWTF has several “resolved pending” violations as of October 2004. These may be data errors that need to be fixed in PCS/ ICIS-NPDES.

Citation of information reviewed for this criterion: **PCS, OTIS, File Reviews**

Recommendations if corrective action is needed:

The Region should develop an SOP or management practice to assure that actions in ICIS-NPDES are appropriately linked to a NPDES facility or permit, that SEV violations are entered in the data systems, and that inspections are reported in the data systems in a timely manner.

See Region 1 Action Items B, E, H, I and L.

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

Findings:

Metric 11a – The data metrics show that no actions are linked in PCS. This is required information, and can be accomplished through the use of the EVTP field (a WENDB required element) in PCS and other means in ICIS-NPDES. Without this data, OECA cannot determine with any certainty why an action was taken. In addition, if the action includes a compliance schedule, it is impossible to tell which monitoring periods, parameters, or events are associated with the compliance schedule if EVTP and other applicable fields (EVMD, EVPR, EVSC, EVSD, etc.) are not entered. Linking an action to a violation has the additional benefit of resolving RNC/SNC at the violation level, and may result in fewer facilities on the Watch List.

Metric 11b – Inspection dates for all except one of the 17 inspections reviewed were entered correctly and timely into PCS. However, as discussed under element 10, several of the files indicate that some data are missing from the database, including single event violations and some enforcement actions.

Citation of information reviewed for this criterion: **PCS, OTIS, File Reviews**

Recommendations if corrective action is needed:

The Region should begin to link actions to violations in PCS (or ICIS-NPDES) as required. [A timeframe and milestones for implementing this recommendation needs to be developed by OECA and Region 1.]

See Region 1 Action Item L.

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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:

Metric 12b - Indicates that NH has correctly coded limits at only about 82.7% of the major facilities compared to the national goal of at least 95%.

Region 1 explained to the review team that those NPDES facilities whose final limits end date did not coincide with the NPDES permit expiration date were considered as having been incorrectly coded. The practical implication of this “coding error” in PCS was minimal since permits that were administratively continued due to a timely reapplication would still be measured against their final limits, even after the permit expiration date. However, under ICIS, a facility’s final limits end date not only needs to be the same as the NPDES permit expiration date, but it must also occur on the last day of a month. If this does not occur, problems may occur in the printing of Discharge Monitoring Reports. The Water Technical Unit has already discussed this issue with the Region’s Office of Ecosystem Protection, which is responsible for issuing NPDES permits to ensure that the wherever possible the effective date of all reissued NPDES permits is the first day of the month and that permits expire on the last day of the month. These changes are expected to improve the Regions correctly coded permits metric performance.

Metric 12f indicates that NH is not tracking informal actions for majors in PCS as required for the PCS Policy Statement. As noted under metric 10, the Region has been sending out letters detailing inspection findings, which should be entered as “informal actions” into PCS and/or ICIS-NPDES in order to be counted under 12f. Types of actions tracked under 12f are:

- 03 - Warning Letter
- 05 - Phone Call
- 07 - Pre-enforcement Meeting
- 10 - 308 Letter
- 15 - Written Information Request
- 20 - Notice of Violation (NOV)
- 30 - Agency Enforcement Review *
- 31 - Referred to DOJ *
- 32 - Referred to State AG *
- 70 - QNCR Comment *

* These codes refer to enforcement sensitive data.

Metrics 12g1 and 12g2 - The non compliance rates for non majors under metric 12 g1 and 12 g2 are 62.3% (33 of 61) and 93.2% (CY 2004 – 41 of 44)

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respectively. This data suggests that New Hampshire may have a significantly more serious noncompliance problem with non-major NPDES permitted facilities compared to majors. This might not be surprising given the historical focus on tracking and addressing significant non-compliance (SNC) for majors. Considering that over half of standard/individual permittees are non-majors in New Hampshire, Region 1 needs to obtain a better understanding of non-major non-compliance. Increased attention to non-major non-compliance data will lead to more accurate annual non-compliance reports and will allow for better inspection targeting and priority decisions under the NPDES program. Region 1 indicated to the review team that the data metric for non-majors is reportable non-compliance and is more encompassing than the significant non-compliance metric for majors. The Region also recognizes that a significant portion of minor non-compliance is related to non-reporting and is placing more emphasis on minor NPDES data quality.

Metric 12i indicates that the Region is not reporting penalty data to PCS. Although not a required field, the Region should inform OECA of any penalty data that was not reported to PCS or ICIS.

Region 1 is responsible for entering all data in ICIS – PCS for New Hampshire. The States do not submit all data but have sent in data for state enforcement actions but they were not entered into ICIS/PCS. Although New Hampshire receives 106 grant funds from EPA, they do not currently do any data entry into PCS or ICIS-NPDES.

Citation of information reviewed for this criterion: **PCS, OTIS**

Recommendations if corrective action is needed:

For metric 12 g1 and g2, OC would like the Region to analyze why the non compliance rates seem so high and report back to OECA.

See Region 1 Action Item I and M.

The Region needs to improve its rate for “correctly coded limits” and begin tracking the items referred to as “informal actions” (described above) in the national data system.

See Region Action Items I and N.

If resources are an issue in implementing these recommendations, the Region may consider asking the State to assume some data entry responsibilities.

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See Region 1 Action Item J