

**U.S. EPA Region 2
State Review Program Framework – FY 2005
Review of New York State Department of Environmental Conservation Enforcement and
Compliance Programs**

EXECUTIVE SUMMARY

Overall Picture

This report documents the findings and recommendations of the U.S. Environmental Protection Agency's (EPA) review of the New York State Department of Environmental Conservation's (NYSDEC) compliance monitoring and enforcement program based on the State Review Framework. The EPA Office of Enforcement and Compliance Assurance (OECA), all ten EPA Regions, the Environmental Council of States (ECOS) Compliance Committee and state representatives from each of the ten regions jointly developed the framework to assess state performance in enforcement and compliance assurance for the period of October 1, 2003 - September 30, 2004.

The report examines 12 elements of NYSDEC's compliance and enforcement program including: inspection implementation, enforcement activity, commitments in annual agreements and data integrity.

In most instances, NYSDEC exceeded the national average for inspection coverage and identifying and addressing significant violators. The report includes recommendations for improvement in each of the air, water and RCRA program areas, as well as, in areas of general enforcement policies and procedures applicable across all programs. EPA and NYSDEC have agreed to work together to resolve these issues. EPA and NYSDEC will have a close-out meeting within 6 months of the report being finalized to discuss progress on implementing all the recommendations in the report. The recommendations will also be tracked in the headquarters State Framework Review Tracking System. For the water program, NYSDEC acknowledges EPA's findings resulting from the State Review Framework Audit and both parties have agreed that implementation of this recommendation will be negotiated via the workplan process. It is anticipated the EPA will conduct a review of NYSDEC in two years to determine the status of the issues identified in this report.

Overarching Issues among the Enforcement Programs Reviewed

1) Penalty Calculation/Economic Benefit - EPA identified several issues related to penalty calculation and collection across all programs. Specifically, NYSDEC should, in all cases, factor into their civil penalty calculations the economic benefit accrued by the facility due to noncompliance. EPA is willing to work with NYSDEC to provide economic benefit training, as appropriate. NYSDEC has indicated that they welcome the opportunity to work with EPA to learn and better integrate economic benefit into the Department's civil penalty calculations where applicable. As such, training will be arranged with NYSDEC.

2) Standard Operating Procedures - The decentralized organizational structure of NYSDEC, while having an advantage of assuring a more localized response, may contribute to inconsistent implementation of policies and programs state-wide. EPA recommends that NYSDEC Central Office work with the nine NYSDEC regional offices to ensure that the State's policies and standard operating procedures (SOPs) are being fully and consistently implemented on a Statewide basis. EPA Region 2 also recommends that NYSDEC develop department-wide SOPs with regard to file maintenance, inspection documentation and penalty calculations. More specific suggestions are identified in the body of the report. NYSDEC has indicated that they understand the importance of SOPs with regard to file maintenance, inspection documentation and penalty calculations and will work to ensure consistency of such statewide throughout its programs. However, EPA and NYSDEC agree that this finding does not apply to the Hazardous Waste Program as that program is almost totally centralized.

3) New York State Freedom of Information Law (FOIL) - NYSDEC has raised the concern that some of the information in the files must be deemed confidential with respect to all third parties and NYSDEC stated they were upholding attorney/client privileges. Therefore, certain documents, such as inspector opinions/impressions relevant to an enforcement case and penalty negotiations, were redacted from case files. As such, EPA did not have access to certain files. EPA and NYSDEC have identified the resolution of this issue as important for future State oversight activities. NYSDEC has offered solutions to this issue, specifically, 1) establish a standard inspection report containing only the inspector's factual observations, with no opinions; and 2) include an initial penalty calculation in the file, per the CAA civil penalty policy, and upon the conclusion of the case, the attorney would include a final justification memo that explains the reasons for any deviations from staff calculations in a FOIL-able manner which does not violate any privileges. NYSDEC recognizes that the RCRA program presently has a good format for this method. EPA agrees with this proposed approach and will work with NYSDEC to ensure future implementation on a Department-wide basis.

4) State Enforcement Agreements - EPA and NYSDEC recognize the need to review and revise the State Enforcement Agreements and state penalty policies to ensure they are current. __

Media Specific Issues among the Enforcement Programs Reviewed

5) AIR HPV Identification and Reporting

The HPV discovery rate in New York, based on FCEs completed at major sources, in FY 2004 is 5.1%. This figure is low when compared to the national average (10.6%). The HPV discovery rate in New York, based on the universe of major sources, in FY 2004 is 3.9% versus a national average of 5.7%. During the file and data review, we found three (3) violations that should have been identified as HPVs and possibly two (2) more, but additional information is needed for a final determination. Hence, HPVs are not being properly identified. If extenuating

circumstances existed at these sources, NYSDEC should have pursued consultation with the EPA as warranted by the HPV policy.

With regard to reporting HPVs, according to *The Timely and Appropriate Enforcement Response to High Priority Violations* policy (HPV policy), the “clock starts” (i.e., day zero) no later than 45 days after the discovery date of a violation. If additional information or data is needed to determine if a violation is a HPV the agency has another 45 days; therefore, at a maximum, a State agency should communicate the discovery of an HPV to the EPA within 90 days. In New York, HPV cases are batch uploaded to AIRS monthly, meaning there is an immediate delay to when HPVs are reported to EPA. Also, NYSDEC does not assign a violation a “day zero” and upload the data to AIRS until a “case” is created. They do this as part of their quality assurance process. Region 2 evaluated 30 HPVs that were identified at facilities for which we reviewed either an inspection or an enforcement file during the file review process. Of the 30 HPVs (dating back to 2000), 16 of them (53%) were not reported to EPA within 90 days. To make this determination we looked at when the “day zero” occurred and when the “case” was initiated in NYS AFS. Also, in some instances NYSDEC reports multiple HPVs at a single source to EPA as a single HPV when, as provided in the HPV policy, they should be reported as separate HPVs, which contributes to their low identification rate.

EPA recommends that NYSDEC comply with the HPV policy and identify HPVs discovered during separate compliance activities conducted greater than 30 days apart at a single source as separate HPVs. Ensure that HPVs are being reported to the EPA within the timeframes specified by the HPV policy (a maximum of 90 days) and implement a protocol for consultation with the EPA to ensure all violations that warrant identification as an HPV are being identified as such. NYSDEC agrees with this recommendation and the Central Office has issued a memo to each Regional Air Pollution Control Engineer (RAPCE) to modify their methods of identifying and entering HPVs in NYS AFS. To assist with this modification, training materials are being developed by NYSDEC.

6) CWA Suspended Penalties - The majority of the enforcement actions issued contained suspended penalties (100% suspended with a few partial suspensions). Of fifteen (15) enforcement actions that assessed a penalty, nine (9) had some form of penalty suspension. Of the nine suspended penalties, four were suspended entirely without any evident justification. NYSDEC acknowledges EPA’s findings resulting from the State Review Framework Audit has indicated that it has already taken steps to issue directives regarding suspension of all penalties.

FORM A - EVALUATION FORM

Date: December 2005

Program Evaluated: CAA

Information Sources Included in the Review: AIRS, New York State Department of Environmental Conservation (NYSDEC) Air Facility System (AFS), Division of Air Resources Compliance and Enforcement Summary FY 2004, source files and interviews with select staff.

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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) is completed.**

Findings:

Biennially, NYSDEC provides Region 2 with a Compliance Monitoring Strategy (CMS) inspection plan that contains the FCEs they plan to conduct within a two year timeframe. The universes of facilities in New York is not static; the number of major sources, synthetic minor sources with the potential to emit greater than 80% of major source thresholds, synthetic minor sources, and minor sources change. Because the universes are fluid, discrepancies may exist when evaluating the coverage rate for each category of facilities. NYSDEC does an excellent job, however, of evaluating all of the facilities contained within their CMS plan in the time period specified.

Between FY 2002 and FY 2004, NYSDEC conducted over 19,000 compliance related actions, which is a remarkable level of effort. This does not include activities at sources that do not receive a NYSDEC ID because they are not required to obtain a permit, nor does it include events that may not have been entered in AIRS (i.e., periodic monitoring reports that are not MDRs).

In order to conduct the evaluation between the data found in the federal Aerometric Information Retrieval System (AIRS) and the NYS AFS database, Region 2 used the CAA State Review Framework Metrics (data metrics) for New York provided to us by EPA headquarters. This is the original source of the data that comprises the data metrics is AIRS.

Full Compliance Evaluations at Major Sources: Prior to FY 2004, as an internal policy, NYSDEC conducted FCEs at all major sources every year. They re-evaluated this policy and beginning in FY 2004 began conducting FCEs every year only at the largest and most complex sources and those with a history of noncompliance. The remaining portion of the universe receives an FCE once, every two fiscal years. At the time of the review, the data metrics indicated that NYS had a major source universe (those facilities with a major source classification code in AIRS) of 530 facilities and NYSDEC completed FCEs at 499 of these facilities for a coverage rate of 94.2% between FY 2003 and FY 2004, which is well above the national average of 75.7%.

During this same time period, NYSDEC estimated (using data pulled from NYS AFS) the major source universe to be 480 facilities and they indicated they conducted inspections at 476 of these facilities for a 99.2% coverage rate for the same time period, which is an excellent rate of coverage. NYSDEC believes that the universe of major sources is inflated due to sources being misclassified as major sources based on an applicable MACT program and by how emission capping provisions were recorded in the NYS AFS database. These problems are recognized and will be addressed.

Inspections at Synthetic Minor (80 percent of major source level)–(SM-80s): The universe of SM-80s is comprised of sources with an EPA or State classification code in AIRS for a synthetic minor source and a CMS source code for SM-80s. The CMS requires that FCEs be conducted at each SM-80 once every five years. The CMS policy has been in effect since FY 2002; therefore, by the end of FY 2004 at least 60% of the universe of SM-80s should have received an FCE. According to AIRS and the data metrics, the FCE coverage rate in New York for the time period FY 2002 to FY 2004 was 60.1% (182/303); which fully satisfies the CMS commitment. The national average is (69.2%). Since the implementation of the CMS, NYSDEC indicated that they have actually conducted FCEs at 274 SM-80s, based on NYS AFS. Some of these inspections may not have been captured during this review because the sources may have been determined to be natural minors, synthetic minors, or sources that no longer were required to obtain any permit. NYSDEC emphasized that this universe is extremely fluid, therefore, making it difficult to capture at a specific time the coverage rate.

Inspections at Synthetic Minor sources: States are not required by the CMS policy to conduct a specific number of evaluations (FCEs and/or Partial Compliance Evaluations (PCEs)) at synthetic minor sources and the State Enforcement Agreement with New York also does not specify a percentage required. According to the data metrics, during the period of review (FYs

2002 to 2004), NYSDEC inspected 31.6% (617/1952) of the universe of synthetic minors (sources with a synthetic minor source classification code in AIRS). By comparison, the national average is 66.7% coverage for this same period. When based on CMS synthetic minors (sources with a synthetic minor source classification code in AIRS and a CMS source code), which includes SM-80s, the inspection rate is 73.1% (228/312) for DEC, which is comparable to the national average of 76.2%. NYSDEC contests that based on data in NYS AFS they have a synthetic minor universe of 3,988 facilities and between FY 2002 and FY 2004 they evaluated 713 of these facilities, which equates to an evaluation rate of 17.9%. Reasons provided to us for the relatively low number of evaluations is that facilities inspected by NYSDEC may not be subject to a federally reportable program, a compliance determination may not have been made or a facility may not have or need any permits; therefore, the compliance evaluation activity conducted may not be reportable to AIRS. NYSDEC contends that it is conceivable that the inspection rates for other states may be inflated as is New York State by lack of reporting the full universe of SM sources.

Inspections at Minor sources: States are not required by the CMS policy to conduct a specific number of evaluations (FCEs and/or PCEs) at minor sources and the State Enforcement Agreement does not specify a percentage either. According to the data metrics, during the period of review (FYs 2002 to 2004), NYSDEC inspected 31.4% (1568/4992) of the universe of minor sources (sources that are not classified as a major or synthetic minor source in AIRS). By comparison, the national average is 23.5% for this same period. According to NYSDEC, based on data in NYS AFS there is a universe of approximately 5,662 minor sources in New York and from FY 2002 to FY 2004 NYSDEC conducted 7,758 compliance related activities at these sources.

Investigations at CAA stationary sources: The data metrics shows that one (1) investigation was initiated or conducted between FYs 2002 and 2004. However, since FY 2000 NYSDEC has initiated nine (9) in-depth PSD/NSR and NSPS investigations, mostly in the coal-fired utility industry. They were directed by EPA not to enter these investigations into AIRS because they were initiated prior to the effective date of the 2001 CMS. Seven (7) of these investigations have been concluded, while two (2) remain on-going. The one (1) additional investigation initiated in FY 2004 is at a cement manufacturer.

Title V Annual Compliance Certifications received and reviewed: According to AIRS 482 Title V annual compliance certifications were due, received, and/or reviewed in FY 2004. Of those, 464 were reviewed, which equates to 96.3% compared to the national average of 73.5%. According to NYSDEC this is a data error and only 464 certifications were due in FY 2004 and they received and reviewed 450 (97%). NYSDEC is investigating the cause of the discrepancy in reported numbers. It may be due to a second record being generated when a violation has been entered for failure to file a certification, then the certification is received and reviewed

Sources with Unknown Compliance Status Designations: AIRS generates an “unknown compliance status” for CMS sources when either an FCE was not done or an FCE was completed but was not entered into AIRS within two (2) calendar years. According to AIRS, 21 facilities had a system generated “unknown compliance status” at the time of the data pull (8/13/2005). NYSDEC has continually expressed to EPA that the 2001 CMS does not specify the use of calendar years; therefore, they interpreted the timeframe for completing an FCE at major sources and SM-80s to be fiscal years not calendar years. Consequently, 20 of the 21 facilities received an FCE within two (2) fiscal years but exceeded two (2) calendar years, which ultimately resulted in AIRS generating the “unknown compliance status.” NYSDEC agrees that one (1) facility did not receive an FCE within the two fiscal years.

Citation of information reviewed for this criterion:

Data contained in AIRS; OTIS CAA Extended Management Reports; the CAA Stationary Source Compliance Monitoring Strategy, April 25, 2001; staff interview; and NYS AFS, Division of Air Resources Compliance and Enforcement Summary FY 2004.

Recommendations if corrective action is needed:

The level of inspection activities undertaken by NYSDEC is indicative of a strong compliance/enforcement program. This finding is supported by data contained in NYS AFS, as well as, the federal AIRS system. NYSDEC does not currently have the ability to batch update the CMS code or frequency indicator in AIRS. But, in 2005 they received a STAG grant to modify their database to include these data elements and to provide them the ability to update CMS codes and frequency indicators in AIRS. When the NYS AFS modification is complete, the EPA anticipates granting them the authority to batch update this data requirement, making the universe of major sources and SM-80s in AIRS more reliable. Also, we recommend NYS establish a minimum state-wide training curriculum (class room and on-the-job) for their inspectors. NYSDEC is in the process of drafting a manual for compliance related activities. This will help ensure that there is a common basis among regional offices for handling inspections and Title V annual certification reviews. We also recommend further investigation into the possible duplication of Title V annual certification reviews and the mis-classification of major sources in AIRS. We recognize that NYSDEC is currently addressing these issues.

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

Findings:

For the file review, Region 2 requested 40 core files and 14 additional files. We selected additional files to ensure that we examine an adequate number of cases for each specific review metric and ultimately reviewed 51 files. Half of the files were inspection files and the other half were enforcement files. We requested all documentation that supported enforcement actions, as well as, documentation that supported activities that were conducted in response to an inspection.

Therefore, if an enforcement action was based on an inspection, the enforcement file should have had an inspection report. For the files that were requested, NYSDEC redacted several documents from the files citing attorney/client confidentiality concerns. Therefore, documents related to inspector opinions/impressions of the cases were not available for review. Also, as NYSDEC progresses towards a paperless office, inspection reports and other follow up activities are being generated, tracked and maintained electronically. NYSDEC did provide us with access to the NYS AFS database, however, several parts of the database were identified as “Confidential State Only Data” and were not available to us. There are no Department-wide Standard Operating Procedures (SOPs) for contents of an inspection report. Some regions have their own policies; the DEC Region 6 SOP that contains an inspection report template was provided to us for review. While we were told that the Region 6 SOP is similar to SOPs used in other Regions, we did not review SOPs from Regions other than Region 6.

For the inspection reports that were reviewed (35 reports), 24 reports were deemed to be incomplete, as they failed to include some of the basic elements of a compliance monitoring report set forth in the Compliance Monitoring Strategy. These elements include: accurate inventory and description of regulated emission units and processes, and an enforcement history. The inspection reports did not provide clear documentation that a comprehensive on-site inspection was conducted and one could not determine what was inspected and how the inspector determined compliance. 28 reports were AFS computer printouts only. However, five (5) of these AFS computer printout reports contained a detailed narrative with sufficient information. For one report, the RAPCE admittedly lost the inspection report and the only information they could find was that which is contained in AFS. Four (4) of the AFS printout inspection reports deemed the comment field (inspector’s narrative) “Confidential State Only Data,” therefore these data were not available to us.

Regarding accurate identification of violations, violations were identified in the inspection reports. But, NYSDEC stated that most violations are discovered through monitoring reports and annual certifications. In those files for which the only documentation of the on-site inspection was an AFS printout it was difficult to establish how compliance was determined. The AFS detail inspection report is comprised of permit conditions and the compliance status; as mentioned previously, some also contained narrative statements. For instance, one facility, a prepared foods manufacturer, that was subject to 40 CFR Part 60, Subpart Dc, was found to be in violation for failing to submit an Annual Compliance Monitoring report, provisions of 6 NYCRR 201-7; we could not determine from the file or any reports that the source was also evaluated for Subpart Dc reporting and recordkeeping requirements.

Regarding inspections of dry cleaners, NYSDEC utilizes a standardized Part 232 Dry Cleaning Compliance Inspection Report form that is very comprehensive (i.e., all units are identified, applicable regulations are clear, etc.) and user friendly. We found that inspections conducted using the inspection form documented findings and appeared to accurately identify violations.

Once the inspection report is deemed complete in NYS AFS, the inspector can check a box for "Inspection Complete." After this takes place the inspector would need to get the Regional Air Pollution Control Engineer (RAPCE) or a system administrator to remove the check box if any changes needed to be made to the report.

Citation of information reviewed for this criterion:

Inspection files, NYS AFS, staff interviews, Region 6 Inspection Report template.

Recommendations if corrective action is needed:

To ensure all permit conditions, applicable regulations and current enforcement actions are evaluated, create an option/field within the NYS AFS to automatically create an inspection checklist from the information contained in NYS AFS including the sources permit or registration. Region 2 recommends the development of an inspection report template similar to the one developed by DEC Region 6. Elements of the Region 6 template that were lacking in other reports include: date of report; an indication of all applicable rules; space for recommendations, emission point breakdown, a description of stationary combustion installations, a description of particulate and HAP sources, and a description of other process sources; a table for a facility-wide emissions summary (actual and potential); and a form for field inspection observations. Hard copies of these documents or an electronic version should be maintained in the source file or NYS AFS database. A combination of the NYS AFS derived checklist and the Region 6 template facilitates more thorough inspection reports. DEC should ensure that all inspection reports contain the basic elements for a compliance monitoring report that are specified in the Compliance Monitoring Strategy. We recognize that NYSDEC is in the process of drafting a manual for compliance related activities that will include recommendations for the content of inspection reports. The Region 6 SOPs are being considered for incorporation in the compliance manual. EPA will provide NYSDEC with the names of the 24 incomplete inspections reports.

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

Findings:

Nine (9) of the inspection reports contained a date on which the report was written. However, for those inspection reports that were maintained electronically, or generated by AFS, 26 were not dated; therefore, we could not determine when the inspection report was finalized. Other actions in NYS AFS are date stamped, but these dates were, and are, not made available to the EPA. These dates include: the first time an inspection or other event record was saved (if an inspection is scheduled first and then later conducted, the date saved would be the date that the "date scheduled" was entered), the date a record is last updated and the date a compliance determination was first saved. A combination of these dates may act as sufficient surrogates for

dating an inspection report, but as previously mentioned they are not readily available. Also, there are no Department-wide SOPs that require when inspection reports must be written. The Region 6 SOP states that “Within two business days a copy of [the Field Inspection Observations Form] must be mailed to the facility that was inspected.” Region 6 inspectors are also required to enter the date of inspection and compliance status into NYS AFS within 5 working days, lending itself to timely completion of the inspection report. One of the Part 232 (dry cleaner) inspection reports was not signed and dated until 13 months after the inspection occurred.

Citation of information reviewed for this criterion:

Inspection files, Region 6 Inspection Protocol, discussions and email communication with DEC staff including a NYS AFS system administrator.

Recommendations if corrective action is needed:

Region 2 recommends that NYSDEC develop a department-wide Standard Operating Procedure requiring a minimum timeframe when inspection reports need to be completed. Also, if inspection reports are maintained electronically, ensure that there is a “date lock/timestamp” on when the inspection report was written and make this date visible when viewing the inspection report in NYS AFS. The most appropriate date would be when the report is deemed complete by the inspector and the “complete check box” is checked. If it is not feasible to make the date visible to non-NYSDEC staff, for future program evaluation activities, a report should be generated from NYS AFS that indicates when inspection reports are deemed complete by the inspector.

Section 2: Review of State Enforcement Activity

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

Findings:

According to *The Timely and Appropriate Enforcement Response to High Priority Violations* policy (HPV policy), the “clock starts” (i.e., day zero) no later than 45 days after the discovery date of a violation. If additional information or data is needed to determine if a violation is a high priority violation (HPV) the agency has another 45 days; therefore, at a maximum, a State agency should communicate the discovery of an HPV to the EPA within 90 days. In New York, HPV cases are batch uploaded to AIRS periodically (monthly), meaning there is an immediate delay to when HPVs are reported to EPA. Also, NYSDEC does not assign a violation a “day zero” and upload the data to AIRS until a “case” is created. They do this as part of their quality assurance process. Region 2 evaluated 30 HPVs that were identified at facilities for which we reviewed either an inspection or an enforcement file during the file review process. Of the 30 HPVs (dating back to 2000), 16 of them (53%) were not reported to EPA within 90 days. To make this determination we looked at when the “day zero” occurred and when the “case” was initiated in NYS AFS.

The HPV discovery rate in New York, based on FCEs completed at major sources in FY 2004 is 5.1%. This figure is low when compared to the national average (10.6%). The HPV discovery rate in New York, based on the universe of major sources in FY 2004 is 3.9% versus a national average of 5.7%. Since 2000, NYSDEC has experienced a declining rate in the number of HPVs identified. This is due to an actual reduction in the number of violations (they have fewer Title V non-filers) and, also, a standard procedure not to identify additional HPVs discovered during separate compliance activities conducted greater than 30 days apart at a single source when the violations will be resolved by a single enforcement action. This standard procedure is required under an agreement between the Division of Air Resources and the Division of Environmental Enforcement. Also, during the file and data review, we found three (3) violations that should have been identified as HPVs and possibly two (2) more, but additional information is needed for a final determination. These violations occurred at major sources that operated without a proper permit for nine years (HPV Criteria 6); failed to install an opacity monitor (HPV Criteria 7); failed to maintain opacity records (HPV Criteria 7); exceeded an emission limit (possibly Matrix Criteria 2); and failed a stack test (possibly Matrix Criteria 1 and General Criteria 7). Hence, HPVs are not accurately being reported to the EPA. If extenuating circumstances existed at these sources, NYSDEC should have pursued consultation with the EPA as warranted by the HPV policy.

Citation of information reviewed for this criterion:

NYS AFS, OTIS Management Reports, HPV policy, discussions and email communication with DEC staff and AFS administrators.

Recommendations if corrective action is needed:

Comply with the HPV policy and identify HPVs discovered during separate compliance activities conducted greater than 30 days apart at a single source as separate HPVs. Ensure that HPVs are being reported to the EPA within the timeframes specified by the HPV policy (a maximum of 90 days). Implement a protocol for consultation with the EPA. NYSDEC agrees with this recommendation and the Central Office has issued a memo to each Regional Air Pollution Control Engineer (RAPCE) to modify their methods of identifying and entering HPVs in NYS AFS. **To assist with this modification, training materials are being developed by NYSDEC.** Region 2 has provided the names of the 5 newly-identified HPVs to NYSDEC and will followup with NYSDEC to ensure followup action, where appropriate, occurs. Region 2 will continue to **work with NYSDEC on potential lead changes as part of workshare efforts.**

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

Findings:

The compliance orders issued by NYSDEC have specific requirements and schedules for the source to return to compliance. However, we did discover a case (a landfill) for which a Notice of Violation (NOV) was issued for alleged New Source Performance Standard (NSPS) violations that were not included in the Order on Consent to which it was linked in NYS AFS for resolution. The compliance schedule in the order did not require actions specific to the NSPS violations. In another case a facility was cited for the same violation (failure to submit an Annual Compliance Monitoring report) three years in a row (Calendar years 2002, 2003 and 2004). In a subsequent order issued in 2002, they were required to pay a \$7,500 penalty. It appears evident, therefore, that the initial enforcement action (penalty) did not act as an effective deterrent against future non-compliance. In order to foster future compliance, the EPA would anticipate an escalated penalty for the 2003 and 2004 violations.

Citation of information reviewed for this criterion:

Enforcement files, NYSAFS.

Recommendations if corrective action is needed:

Ensure that enforcement actions address all violations for which the source received a NOV. Take enforcement actions that persuade violators to take precautions against falling into non-compliance repeatedly for the same violation and persuade others not to violate the law.

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:

In FY 2004, out of 104 HPVs characterized as “unaddressed,” 77 HPVs exceeded the 270 day timeliness threshold for receiving an addressing action. Therefore, 74.0 % of HPVs characterized as “unaddressed” in FY 2004 were not addressed within 270 days, which is above the national average of 58.6%. NYSDEC does not have the authority to issue unilateral administrative orders, therefore, all orders must be negotiated, which may require additional time. Generally, NYSDEC has issued the source a NOV and a “proposed” Order on Consent, however, this is not considered an addressing action by EPA. If the facility is not cooperative they will then issue a Notice of Hearing and Complaint. NYSDEC has stated that additional reasons for the extended time frames for addressing HPVs are the types of violations (PSD cases at electric utilities), the type of source (facilities owned by a government agency) and some cases required the negotiation of an Environmentally Beneficial Project (EBP).

Citation of information reviewed for this criterion:

AIRS, OTIS Management Reports, NYS AFS, source files and staff interviews

Recommendations if corrective action is needed:

The State should prioritize its enforcement actions so that HPVs are addressed within 270 days. Also, they State should more frequently use their authority to issue Notices of Hearing and Complaint or refer cases to the State Attorney General's office and not allow cases to remain unaddressed for extended periods of negotiation.

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

Findings:

The primary purpose of the *NYSDEC Civil Penalty Policy* (NYSDEC Penalty Policy) is to “articulate the Department’s policies for assessing and collecting penalties in a manner that will assist DEC in efficiently and fairly deterring and punishing violations...” Secondly, the policy is intended to “establish a systematic, statewide approach to assessing penalties.” The policy does not provide specific minimum penalty amounts or ranges but simply provides guidance for assessing, mitigating and collecting penalties. It is stated in the policy that “at a minimum, penalties should remove any economic benefit that results from a failure to comply with the law” and a gravity component should be included “to ensure that the violator is economically worse off than if it obeyed the law.” The two components that DEC considers for the gravity portion of a penalty are potential harm and actual damage caused by the violation (i.e., actual or possible harm, amount of pollutant, sensitivity of the environment, toxicity of the pollutant, length of time of violation); as well as the relative importance of the type of violation in the regulatory scheme. Therefore, the penalty amount should equal the gravity component, plus the benefit component and any adjustments consistent with the Policy. The only component of the EPA *CAA Stationary Source Civil Penalty Policy* (CAA Penalty Policy) that the NYSDEC Penalty Policy does not consider is the “size of violator.”

Economic benefit is not universally considered throughout the NYSDEC. For instance, one enforcement case we reviewed was for failing to modify a Title V permit and operating without control equipment. Based on the NYSDEC Air Civil Penalty Worksheet, which was in the file and references the CAA Penalty Policy, no economic benefit was assessed for operating without control equipment. According to the NYSDEC Penalty Policy, as well as the CAA Penalty Policy, a facility experiences a benefit from avoided costs if they fail to properly operate and maintain pollution control equipment; therefore, an economic benefit should have been assessed for the aforementioned violation.

In a second example, a coating operation had recordkeeping violations, failed to implement permit requirements to establish a Complaint Response Procedure and failed to operate capture and control equipment. The preliminary penalty calculated using the NYSDEC Penalty Policy was \$344,000, based on a penalty calculation sheet. This was reduced to a “DEC bottom line penalty” of \$136,500. In the final consent order the penalty assessed was \$50,000 (an 85%

reduction from the calculated penalty) of which \$25,000 was suspended. Therefore, the facility ultimately was required to pay 7% of the original penalty calculated. The file had no justification for any of the reductions. And, again, no economic benefit was considered for failing to properly operate and maintain pollution control equipment, which is in opposition to both the federal and State penalty policies. This also exemplifies penalty mitigation that appears to be inconsistent with the Policy.

Another example of possible inappropriate penalty mitigation was found at a printing and coating operation. The violations included failure to maintain solvent usage records, maintaining incomplete records for five years and exceeding an emission standard. A penalty calculation was provided to us that included an economic benefit and a gravity component that totaled \$126,000. The gravity component was reduced to \$87,000 based on future installation of control equipment. Therefore, the final mitigated penalty was \$96,000. In the final order the facility was assessed a penalty of \$40,000 (a 60% reduction from the final mitigated penalty). Then, \$20,000 was suspended; therefore, the facility ultimately was required to pay \$20,000 (20% of the final mitigated penalty). No explanation was provided for the reduction in the final penalty.

Out of 28 files that were reviewed that had formal enforcement actions taken, NYSDEC did not provide the penalty assessment calculation for 19 of them; therefore, further assessment of their penalty calculation procedures was not possible. Some of these documents were redacted from the files and were identified as confidential.

A common practice that we observed is the use of the “Short-Form Order on Consent,” (short-form order) which was adopted in May 2004. The short-form order, according to NYSDEC’s *Air Violation Penalty Policy for Short-Form Orders on Consent*, is only appropriate where: 1) remedial action is not required or has been satisfactorily completed already in accordance with program directives or where only a minor compliance activity lasting no more than six months duration is required; 2) the form has been endorsed by the Regional Attorney and the appropriate program supervisor; and 3) the penalty amount assessed does not exceed \$20,000, provided that the payable portion of the penalty amount assessed does not exceed \$10,000, and, if warranted, the suspended portion of the penalty amount assessed does not exceed \$10,000. The Order does not have to go through a formal concurrence process.

Appendix I of the *Air Violation Penalty Policy for Short-Form Orders on Consent* establishes ranges for the gravity component of a penalty for a violation that can be addressed using the short-form order. Examples of penalty ranges include: late submittal of a state permit application, \$3,000 - \$10,000; and late submittal of an annual compliance certification report at a major source, \$500 - \$10,000. In files reviewed that used a short-form order, the penalty calculations were not provided; only a final penalty was provided. A Regional Air Pollution Control Engineer (RAPCE) stated that depending on the type of violation (i.e., recordkeeping or emission exceedance) and the circumstances in which the violation was discovered (i.e.,

inspection or self reported) the State does consider economic benefit. Then, the appropriate penalty amount is discussed and agreed upon with the Regional attorney on a case-by-case basis.

Of the nine files reviewed, where a penalty calculation sheet was provided, we found evidence that Regions use penalty values set forth in the CAA Penalty Policy to calculate their penalties. However, they did not always use the policy in its entirety. Aside from not considering the size of the violator (based on their own policy), they did not always consider sensitivity of the impacted environment and the length of violation. Also, of all the cases reviewed that had penalty calculation sheets, economic benefit was only included in one of the penalty calculations. We believe there were at least three (3) additional violations for which an economic benefit should have been assessed, including the two (2) previously mentioned.

Citation of information reviewed for this criterion:

Source files, staff interviews, the NYSDEC Penalty Policy and the CAA Penalty Policy.

Recommendations if corrective action is needed:

All enforcement cases where a penalty is assessed must have a penalty calculation worksheet in the file. The first calculation should be a computation of the potential statutory maximum for all provable violations as stated in the NYSDEC Penalty Policy. The worksheet should include the justification for how a penalty was calculated and what factor(s) were considered in mitigating the penalty. When using the CAA Penalty Policy, NYSDEC should use all factors to calculate the gravity component of a penalty allowable by the NYSDEC Penalty Policy. Also, when warranted, NYSDEC should factor into their penalty the economic benefit accrued by the facility due to noncompliance.

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

Findings:

For HPVs that received a formal enforcement action, according to the data metrics, the state assessed a penalty in 90.6% of the cases compared to a national average of 84.4%. This number, however, is not accurate. The actions in AIRS for which no penalty is associated are issuances of Notices of Hearing and Complaint, which are characterized in AIRS as addressing actions. A Notice of Hearing and Complaint initiates an administrative proceeding. If the proceeding results in enforcement, then NYSDEC would issue an Administrative Consent Order (ACO) that would assess a penalty. Four of the five Notices of Hearing and Complaint that were identified as not having a penalty assessed were followed by the issuance of ACOs which assessed penalties (three of which were issued in FY 2005). Therefore, out of 53 HPVs, 52 included a penalty (98%), which is well above the national average of 84.4%. According to NYSDEC, no economic benefit was recovered by many of the sources; the majority of the HPVs were

recordkeeping/reporting violations. Therefore, few of the penalties in the above referenced HPV cases warranted inclusion of an economic benefit component.

Citation of information reviewed for this criterion:

AIRS, OTIS Management Reports, source files, CAA Penalty Policy, HPV policy and the NYSDEC Penalty Policy.

Recommendations if corrective action is needed:

Pursue the recommendations NYSDEC made to the EPA to modify how Notices of Hearing and Complaint are mapped to AIRS; possibly map the issuance of a Notice of Hearing and Complaint to the action type "OT," other addressing action.

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

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

Findings (including successful performance and areas for improvement):

Commitments established in the NYSDEC/EPA Enforcement Agreement for AIR have been met successfully.

Citation of information reviewed for this criterion:

1984 NYSDEC/EPA Enforcement Agreement for AIR.

Recommendations if corrective action is needed:

Recommendations are not necessary.

Section 4: Review of Database Integrity

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

Findings:

The completion of a FCE is most often entered in both NYS AFS and then AIRS at the end of the fiscal year. The reason provided to us by NYSDEC is that a review process has been implemented and in order to avoid a system generated unknown compliance status in AIRS, RAPCEs were directed by the Central Office to enter FCEs at the end of the fiscal year. This also, in NYSDEC staff's opinion, allowed for more flexibility regarding when inspections could be completed during the year. Most of DEC's regional offices complete their FCEs when they perform final checks to ensure that all reports have been received and reviewed, the Regional Air Pollution Control Engineer has met with the inspectors and reviewers, and he/she is sure of the comprehensive evaluation of the compliance status of the facilities. Since the reports have

usually been reviewed well ahead and the inspections have been conducted during the fiscal year as allowed, the final step to accomplishing the FCEs can be done in rather short order. Most regions believe it is more efficient for them to pull the tracking reports and perform these final checks for several facilities at one time, which is usually the end of a federal fiscal year. However, since compliance is not determined through a FCE but rather a component of a FCE (i.e., review of a monitoring report, an on-site inspection, a Title V certification review, etc.) oftentimes compliance is determined well in advance of the determination that a FCE was completed and entered into AIRS. Now that the generation of unknown compliance status in AIRS will be based on fiscal years as opposed to calendar years, as it was previously, NYSDEC Central Office has encouraged their Regional counterparts to begin entering FCEs in the NYS AFS database as they are completed.

Citation of information reviewed for this criterion:

AIRS, OTIS Extended CAA Management Reports, OTIS Management Reports, and staff interviews

Recommendations if corrective action is needed:

Enter FCEs into AIRS as soon as feasibly possible (i.e., upon completion). EPA recommends that the NYSDEC Central Office move beyond encouragement and implement procedural changes to facilitate the timely completion and entry of FCEs in AIRS by their Regional counterparts. However, NYSDEC believes they are meeting both the letter and spirit of the CMS Policy using their current procedures. Specifically, the policy states that FCEs may be accomplished as a series of PCEs. All types of PCEs are logged into AFS in a generally timely manner. FCEs are also logged in a timely manner, when they are accomplished. The disagreement at hand is not whether the FCE entry is timely. The disagreement is over when an FCE has been accomplished. Most of DEC's regional offices accomplish their FCEs when they perform final checks to ensure that all reports have been received and reviewed, the Regional Air Pollution Control Engineer has met with the inspectors and reviewers, and he/she is sure of the comprehensively evaluated the compliance status of the facilities. Since the reports have usually been reviewed well ahead and the inspections have been conducted during the fiscal year as allowed, the final step to accomplishing the FCEs can be done in rather short order. Most regions believe it is more efficient for them to pull the tracking reports and perform these final checks for several facilities at a time. While EPA understands NYSDEC's position, it is still our position that FCEs need to be entered into AIRS as soon as possible. Since PCEs comprise an FCE, EPA is in the process of evaluating the state for entry of PCEs in order to better track NYSDEC FCEs progress.

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

Findings:

Not all MDRs are accurately entered into AIRS. The following situations resulted in a few

instances of inaccurate reporting of MDRs. However, EPA acknowledges the effort of the state to enter accurate data. For instance, two (2) Title V certification reviews that were entered as data reviews, which is an action reserved for such activities as reviewing semi-annual and other periodic monitoring reports. As it was explained to us, when NYSDEC was modifying permits to change reporting periods to a calendar basis the logic embedded in their AFS system required modification. During this modification process, Title V certification reviews may not have received the appropriate action code to distinguish the review from other types of data reviews. DEC stated that they are aware of the occurrence and have taken steps to ensure Title V certification reviews are identified as such in AIRS.

Also, a discrepancy exists between the federal AIRS database and the NYS AFS database regarding the universe of facilities. This is most often due to the fluid nature of the universes; they are constantly changing. But, also, the MDR for CMS Indicators (source codes) and Frequency Codes must be updated by the EPA. Since this a multi-step process (EPA receives the source codes from NYSDEC), inaccuracies in the universe of facilities may exist due to the lag time. This is most relevant to the universe of SM-80s, since the universe depends on the CMS Indicator. According to NYS AFS, approximately 250 synthetic minor sources should have received a CMS Code "S" to indicate they are an SM-80, but have not received the code.

Another common occurrence found in AIRS is when the Title V air program code is associated with a source that is not a major source, other than sources subject to title IV of the CAA that are required to have Title V permits. This is indicative of a source that has received an emissions cap, so they are permitted below Title V thresholds. But, when a compliance or enforcement activity occurs related to the cap and that action is loaded to AIRS, the Title V program code is also loaded to AIRS. Because there is historic enforcement actions linked to the Title V air program code in NYS AFS there is no easy remedy and the Title V air program code will continue to upload to AIRS. If they did eliminate the air program code in NYS AFS they would corrupt and lose valid data. Depending on the criteria for establishing the universe of sources, this may cause a mischaracterization of the size of the universe of major sources. They do enter all Permit Program Data Elements (PPDEs) into AIRS. These data elements could be used to establish a Title V universe of facilities.

A fourth data accuracy issue, which DEC has discussed with the EPA in the past, involves the reporting of HPVs. If a facility has an active HPV case and subsequent HPVs are discovered at any time prior to the active HPV being addressed and the HPVs will be addressed by the same enforcement action, they are linked to a single "day zero." Therefore, the number of HPVs reported to AIRS will be artificially low. For example, in FY 2004, 13 violations at 9 facilities were merged or linked to cases (a single "day zero") initiated in FY 2001, 2002 or 2003, which means these 13 HPVs were not reported to EPA. NYSDEC agrees that this is an issue and the NYSDEC Central Office has issued a memo to each RAPCE to modify their methods of identifying and entering HPVs in NYS AFS. To assist with this modification, training material is

being developed by NYSDEC.

Citation of information reviewed for this criterion:

AIRS, OTIS Management Reports, OTIS Extended CAA Management Reports, DEC staff interviews.

Recommendations if corrective action is needed:

Provide an updated CMS Plan to EPA on a yearly basis. Modify NYS AFS so that the Title V air program code is not added to AIRS inaccurately. Also, NYSDEC should report HPVs to EPA in accordance with the HPV policy.

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:

NYSDEC utilizes an electronic interface, in which they have invested significant resources, to enter all data into AIRS. They provided additional data elements that were not required by the 1998 ICR. These elements include the Title V permit data elements and the stack test pollutant. They are also leaders with respect to the modernization of AIRS, on which they have been exhaustively working with the EPA, other states and NESCAUM.

Title V Universe:

At the time of the pull that comprised the data metrics, AIRS indicated a universe of 514 operating majors and 497 operating majors with a Title V air program code. Based on information received from NYSDEC the universe of operating majors in NYS should be approximately 480 sources, this number does, however, change frequently. Some of the discrepancy may be explained by major sources that are legally operating under their preconstruction permits prior to the issuance of their Title V permit in addition to those that have physically shutdown but continue to hold their Title V permits.

State agrees with source count:

major sources: NYS believes the universe of major sources should be close to 480 sources.
synthetic minor sources: According to NYSDEC, the universe of synthetic minor sources should be closer to 3,988 facilities; the data metrics show a universe of 1,952 facilities. According to NYSDEC, the universe of synthetic minor sources in AIRS is comprised of only those sources at which a federally reportable action occurred or that are subject to a federally reportable program; therefore, the universe that is available to EPA is artificially low. Also, if no compliance determination was made the evaluation would not be reported; therefore, the facility would not be uploaded to AIRS.

§ NESHAP minor sources: NYS agreed with the universe.

Subprogram Universe:

- CAA-NSPS: NYSDEC agreed with the universe
- CAA-NESHAP: NYSDEC agreed with the universe
- CAA-MACT: According to NYSDEC there are 3001 facilities in NYS subject to at least one MACT subpart. This is a substantial difference between the 488 reported via AIRS in the data metrics. Because there are approximately 3000 operating dry cleaners in NYS that are subject to 40 CFR 63, Subpart M; we believe the substantial discrepancy is caused by the definition of “federally reportable.”

Compliance Monitoring Counts Complete:

- Number of FCEs completed: During the reporting period, NYCRR 201-7 (capping provisions) was not a federally reportable program; therefore, sources that received an FCE that were subject to 201-7 (i.e., synthetic minors) were not reported to AIRS and the number of FCEs reported is low. In FY 2004 the total number of FCEs completed, according to NYSDEC, was 534; according to the data metrics based on AIRS 525 FCEs were completed.
- Number of PCEs reported: During the reporting period FY 2004, DEC conducted 6,372 actions that are mapped to the EPA PCE action code. DEC reports these actions as specific action types (e.g., state inspection, review of semi-annual report, etc.). The discrepancy between the 3,224 reported in AIRS and 6,372 reported in NYS AFS is due to actions that are not federally reportable.

Historical non-compliance counts complete:

Historical data in AIRS may not get updated by either the NYSDEC or EPA; therefore, this data metric may not be accurate. According to DEC, in FY 2004 398 facilities were found to be “in-violation.” This number is significantly different than the 1,927 noncompliance status indicators in AIRS. If the pollutant is not mapped to AIRS the compliance status may not be changed by NYS AFS; therefore, the compliance status could perpetually indicate noncompliance.

Notice of Violation Counts Complete:

The CAA OTIS Management Report lists 463 State Notices of Violation. According to NYS AFS, 912 Notices of Violations were issued to stationary sources in New York in FY 2004. In New York NOV's are system-generated, which has led to sources receiving multiple NOV's for the same violation. For instance, if a violation was reported through a semi-annual monitoring report and the same violation was discovered through an on-site routine inspection, the source would receive two NOV's. This was most prevalent in NYSDEC Region 2 office. This practice does not, however, account for the large discrepancy, which may be caused by facilities receiving an NOV for violating a state-only regulation.

HPV Counts Complete:

AIRS indicates that 27 new HPVs (pathways and sources) were discovered in FY 2004. According to NYSDEC the total number of individual HPVs (pathways) was 60 and the total number of sources with HPVs was 40. 13 of the HPVs were linked to “day zeroes” initiated in FY 2001, 2002, or 2003 at nine (9) facilities; therefore, these additional HPVs are not reported to EPA. Three (3) HPVs at three (3) sources were withdrawn. One (1) HPV discovered in FY 2004 at a source was linked to an FY 2003 HPV but later withdrawn. Finally, there was one (1) HPV discovered in FY 2004 that was never entered in NYS AFS as a “case,” therefore, the violation was never assigned a “day zero” and uploaded to AIRS.

Formal Action Counts Complete:

The formal action count (165) is artificially high because both Administrative Consent Orders and Notices of Hearing and Complaint are “mapped” to the same National Action Code in AIRS (8c). Therefore, formal actions may be double counted because sources may receive both a Notice of Hearing and Complaint and a Consent Order for the same violation. NYSDEC has recommended modifying how Notices of Hearing and Complaint are mapped to AIRS. With this in mind, DEC reported issuing 230 Orders on Consent in FY 2004, however, this number, which is higher than what is in AIRS, is attributable to orders issued to gasoline dispensing stations.

Assessed Penalties Complete:

The total for penalties assess in NYS AFS in FY 2004 was \$3,200,985. According to AIRS the total was \$3,145,880.

Number of Major Sources Missing CMS Policy Applicability:

NYSDEC provides a list of CMS indicators and frequency codes to EPA every two fiscal years. They do not have the authority to batch update the source codes and frequency indicators in AIRS, therefore, it is the responsibility of the EPA to update this MDR.

Citation of information reviewed for this criterion:

AIRS; IDEA; OTIS Management Reports; OTIS Extended CAA Management Reports; NYS AFS and AFS administrators; Division of Air Resources, Compliance and Enforcement Summary, FY 2004.

Recommendations if corrective action is needed:

The data in AIRS needs to be maintained in a manner consistent with that which is maintained in NYS AFS for federally reportable compliance and enforcement activities. Efforts should be made to reconcile the data in the two databases to the greatest extent possible. Additionally, EPA and NYSDEC should continue to support the modernization of both databases to establish mechanisms for a more efficient and comprehensive interface between the two databases. Upon modification of the NYS AFS, NYSDEC should accept the authority to update the CMS Indicator and Frequency Code in AIRS.

FORM A - EVALUATION FORM

Date: October 31, 2005 - November 4, 2005

Program Evaluated: NPDES

Information Sources Included in the Review: File Reviews of NYSDEC files in Central Office located in Albany, NY

EPA Evaluators: Christy Arvizu	Phone: (212) 637-3961
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NYSDEC acknowledges EPA's findings resulting from the State Review Framework Audit and both parties have agreed that implementation of the recommendations in this report will be negotiated via the workplan process. Additionally, EPA acknowledges that NYSDEC has already taken steps to issue directives regarding suspension of all penalties.

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

Findings:

According to PCS, NYSDEC inspected 69.1% of all the majors, which is greater than the national average of 64.2% of all majors inspected. Yet, the percentage of majors inspected is lower than NYSDEC's policy. According to NYSDEC's Inspection of Major and Significant Minor Wastewater Facilities Technical and Operational Guidance Series (TOGS), it is the policy to conduct at least one comprehensive inspection of each major and significant minor facility each year.

One significant statistic to note is NYSDEC's inspection rate of non-majors which is 53.2%, more than double the national average of 22.9%.

Of the twenty (20) inspection files which EPA reviewed, two (2) did not provide documentation that a comprehensive annual inspection had been conducted in FY 2004. The remaining eighteen (18) files provided some form of documentation (i.e. inspection reports, transmittal letters) that at least one annual comprehensive inspection had been conducted during FY 2004.

Citation of information reviewed for this criterion:

CWA Framework Metric Results/data, Technical and Operational Guidance Series (TOGS) 1.5.1
- Inspection of Major and Significant Minor Wastewater Facilities

Recommendations if corrective action is needed: EPA recommends that NYSDEC continue to implement and strengthen its inspection policy which requires at least one comprehensive inspection to be conducted at each major and significant minor annually so that 100% of all facilities are inspected each year. **NYSDEC acknowledges EPA's findings resulting from the State Review Framework Audit and both parties have agreed that implementation of this recommendation will be negotiated via the workplan process.**

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

Findings:

According to NYSDEC's Inspection of Major and Significant Minor Wastewater Facilities Technical and Operational Guidance Series (TOGS), specific inspection forms are to be filled out for each type of inspection. The inspection form offers three ratings: satisfactory, unsatisfactory, or marginal. During EPA's file review, we observed that the large majority of inspections received satisfactory ratings and very few received unsatisfactory ratings. However, some inspection reports received overall "satisfactory" ratings even though some portions of the inspection were rated "marginal" or deficiencies were identified.

Of the twenty (20) inspection files that EPA reviewed, all of the files provided documentation that the appropriate state inspection form was being used with varying levels of detail by Region.

Citation of information reviewed for this criterion:

NYSDEC Central Office Files, Technical and Operational Guidance Series (TOGS) 1.5.1 -
Inspection of Major and Significant Minor Wastewater Facilities

Recommendations if corrective action is needed: EPA recommends that, where violations or deficiencies are identified during an inspection, the State should not assign an overall rating of satisfactory to the facility unless immediate corrections are made and identified in the inspection report for future reference. **NYSDEC acknowledges EPA's findings resulting from the State Review Framework Audit and both parties have agreed that implementation of this recommendation will be negotiated via the workplan process.**

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):

NYSDEC's Technical and Operational Guidance Series (TOGS) for Inspection of Major and Significant Minor Wastewater Facilities (1.5.1) states that the inspection form shall be completed during the inspection or as soon as possible thereafter. No specific timeframe was stated in the TOGS for transmittal of completed inspection reports to the permittee. Guidance and instruction was provided in terms of what is required in the transmittal letter to the permittee but no timeline was given. In discussion with NYSDEC staff (Chuck Haugh), the implicit deadline is within 30 days. EPA's NPDES Compliance Inspection Manual indicates that reports should generally be completed and sent to the permittee within 30 days. Of the eighteen (18) annual comprehensive inspections reviewed sixteen (16) were completed and transmitted within 30 days of the inspection. In the remaining two (2) inspections, completion and transmittal of inspection reports exceeded 30 days.

Violations were identified in inspection reports, however, several of the inspection reports were still rated satisfactory with violations identified (i.e. Honeoye Falls Annual Comprehensive inspection conducted on 2/24/04, review of DMRs showed BOD & Suspended Solids violations). No Notice of Violation was sent nor was any documentation present indicating that the facility was under an enforcement action to correct the violations. In only two cases, where violations or deficiencies were noted during the inspection, was a Notice of Violation sent to the permittee.

In most instances, inspection reports did not indicate Significant Noncompliance (SNC).

Citation of information reviewed for this criterion:

NYSDEC Central Office Files, Technical and Operational Guidance Series (TOGS) 1.5.1 - Inspection of Major and Significant Minor Wastewater Facilities, EPA's NPDES Compliance Inspection Manual

Recommendations if corrective action is needed: EPA recommends that NYSDEC and its Regional offices evaluate their inspection rating scheme and ensure timely and appropriate follow-up, e.g. Notice of Violation. In addition, EPA recommends that, where violations or deficiencies are identified during an inspection, the State should not assign an overall rating of satisfactory to the facility unless immediate corrections are made and identified in the inspection report for future reference. **NYSDEC acknowledges EPA's findings resulting from the State Review Framework Audit and both parties have agreed that implementation of this recommendation will be negotiated via the workplan process.**

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

Findings:

As Significant Noncompliance is not reported to EPA directly, but instead into EPA databases, whereupon SNC is system generated after data entry. Upon review of Draft Managers and Managers Quarterly Noncompliance Reports (QNCRs) and Watch List, EPA and NYSDEC discuss facilities in SNC through the Significant Noncompliance Action Program process. In addition, information that is not entered into PCS are shared with EPA and discussed through SNAP. It is important to note that single event violations are required to be entered for major permittees. PCS and ICIS-NPDES codes are available for spills and bypasses.

According to the CWA Data Metrics, NYSDEC has a 27.4% SNC frequency rate for majors, which is markedly higher than the national average of 17.9%. This may be attributable to the inclusion of a large number of water quality-based limits in State permits.

Citation of information reviewed for this criterion: CWA Framework Metric Results/data

Recommendations if corrective action is needed: Region 2 will ensure that the state has the Final Single Event Violation Data Entry Guide for PCS sent out in June 2006. Single event violations are required to be entered for major permittees.

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

Findings:

Of the 20 files that were reviewed for enforcement actions, EPA noted that compliance schedules were established in consent orders. However, most of the enforcement files EPA reviewed showed that the compliance schedules were routinely modified at the facility's request as they were not going to be able to meet the dates established in the consent order. However, when these consent orders were modified, no stipulated penalties were collected or assessed (i.e. Village of Albion Joint Municipal, Catskill SD #4).

Citation of information reviewed for this criterion: NYSDEC Central Office Files

Recommendations if corrective action is needed: The State should impose appropriate sanctions, in the form of stipulated penalties, for delays in attaining compliance with milestones established in Orders. **NYSDEC has indicated that it has already taken steps to issue directives regarding suspension of all penalties.**

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

Findings:

NYSDEC's TOGS for Compliance/Enforcement of SPDES Permits (1.4.2) is what should be used by all the DEC Regional Offices to determine enforcement response and penalties.

EPA's review of the files indicates that the Regions are not utilizing the TOGS. It appears that the Regions have latitude in determining what kind of enforcement action should be taken and what penalties are assessed and collected.

Several inspection reports showed deficiencies but there was no follow-up action taken, such as a Notice of Violation (NOV). In three cases, a letter from the NYSDEC Regional office was sent transmitting the inspection report and areas of concern that needed to be addressed (Greenfield Sewer District WWTP, Astoria Generating Station, Catskill SD #4). The transmittal letter did not ask for a response, or corrective action, within a certain number of days nor was any evident follow-up action performed by the State with the facility to ensure that the areas of concern were addressed. In very few cases, where violations were noted through inspections, was an NOV sent (i.e. Tully Environmental, Inc., Port Henry/Moriah Joint WWTF).

In some cases, enforcement actions that were executed failed to address all violations found (i.e. Seneca Falls, Depew Sanitary Overflows).

However, based on the data metrics, NYSDEC has only 2.6% of the state's active majors in unaddressed significant noncompliance. The state is below the national average of 3.0%, but greater than the recommended 2% level.

Citation of information reviewed for this criterion: NYSDEC Central Office Files, CWA Framework Metrics Results/data

Recommendations if corrective action is needed: The decentralized organizational structure of DEC, while having an advantage of assuring a more localized response, may contribute to inconsistent implementation of policies and programs state-wide. EPA recommends that NYSDEC Central Office oversee more closely the nine NYSDEC regional offices to ensure that the state's TOGS are being followed and implemented.

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

Findings:

For the majority of the files EPA reviewed, no gravity or economic benefit calculations were done. Nor were TOGS penalty assessment guidance used in the majority of the files reviewed.

One case, Ticonderoga SD #5, used a draft penalty assessment guidance that had not yet been finalized (NYSDEC Region 4). One other instance, the TOGS appeared to have been followed (Alcoa - East) but part (\$3,500) of the total penalty was suspended, therefore only \$4,000.00 was assessed. There was no documentation in the file stating whether or not the penalty had been collected.

In two (2) of the twenty enforcement files provided, calculations were done for gravity and economic benefit in the early stages of the enforcement action but the final outcome did not reflect the calculations nor did it indicate that gravity and economic benefit were utilized in the penalty assessment. In one instance, Village of Cayuga Heights, DMR violations were noted for total phosphorus and fecal coliform. However, when the enforcement action was executed, no penalty was assessed for effluent violations. This is not consistent with NYSDEC's TOGS penalty assessment guidance. The enforcement action only had a Schedule A and stipulated penalties for future violations.

Citation of information reviewed for this criterion: NYSDEC Central Office files, Technical and Operational Guidance Series (1.4.2) Compliance and Enforcement of SPDES Permits

Recommendations if corrective action is needed: EPA recommends that NYSDEC Central Office oversee more closely the nine NYSDEC regional offices to ensure that the state's TOGS are being followed and implemented including stipulated penalties, for delays in attaining compliance with milestones established in Orders and will work to ensure consistency in the 9 Regions.

NYSDEC acknowledges EPA's findings resulting from the State Review Framework Audit and will work to ensure consistency in the 9 Regions.

Element 8 -- Degree to which final enforcement actions take appropriate action to collect economic benefit and gravity in accordance with the penalty policy considerations

Findings:

None of the enforcement actions reviewed included economic benefit and gravity. The documentation for final penalties assessed was not present in the files. However, it was clear that the penalties were not consistent with the TOGS. In addition, most of the enforcement actions issued contained suspended penalties (100% suspended with a few partial suspensions). Of fifteen (15) enforcement actions that assessed a penalty, nine (9) had some form of penalty suspension. Of the nine suspended penalties, four were suspended 100% without any justification.

Minimal documentation was found in the files indicating whether or not penalties were collected, when they were assessed and not suspended. EPA noted that of the 10 enforcement actions that carried a payable penalty, only 6 files contained some form of documentation that penalties were

collected.

No documentation in majority of files indicating whether or not stipulated penalties were assessed and collected for facilities missing compliance schedules or milestones in consent orders (i.e. Village of Delhi STP, Greenfield Sewer District WWTP). Examples of cases where stipulated penalties were assessed and collected are Catskill SD #4 and Alcoa - East.

One facility (Catskill SD #4) missed a compliance schedule deadline of 2/1/04 despite receiving a reminder from NYSDEC on 12/11/03 informing them that they may miss the deadline and of the need to request a consent order modification. After the 2/1/04 deadline passed, NYSDEC sent a letter to the permittee on 2/5/04, four days past the compliance schedule in the consent order, informing them that they missed the deadline and had one last opportunity to request a consent order modification. As a result of the letter, the permittee submitted a request for modification to the consent order on 2/13/04. The modification request was granted and the consent order was modified on 3/9/04.

Citation of information reviewed for this criterion: NYSDEC Central Office files

Recommendations if corrective action is needed: EPA recommends that NYSDEC Central Office oversee more closely the nine NYSDEC regional offices to ensure that the state's TOGS are being followed and implemented. **NYSDEC acknowledges EPA's findings resulting from the State Review Framework Audit and both parties have agreed that implementation of this recommendation will be negotiated via the workplan process.**

8. **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:

Enforcement commitments in the Performance Partnership Agreement (e.g. Significant Noncompliance Action Program (SNAP), and inspections), between EPA and New York were accomplished in a timely and complete manner.

Citation of information reviewed for this criterion: Performance Partnership Agreement, Significant Noncompliance Action Program (SNAP)

Recommendations if corrective action is needed: N/A

9. **Degree to which the Minimum Data Requirements are timely.**

Findings:

For the files reviewed, all minimum data requirements for timeliness were satisfied.

Citation of information reviewed for this criterion: PCS, Quarterly Noncompliance Reports (QNCR), Significant Noncompliance Action Program (SNAP)

Recommendations if corrective action is needed: N/A

10. **Degree to which the Minimum Data Requirements are accurate.**

Findings: For the files reviewed, all minimum data requirements for accuracy were satisfied.

Citation of information reviewed for this criterion: PCS, Quarterly Noncompliance Reports (QNCR), Significant Noncompliance Action Program (SNAP), Watch List

Recommendations if corrective action is needed: N/A

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

Findings: NYSDEC is not linking actions to violations. This was not discovered during the data analysis because the SRF website was providing incorrect information. The 99.3% listed for NY actually refers to actions not linked to violations. Since the EVTP field is WENDB for majors, the actions and violations should be linked.

Citation of information reviewed for this criterion: PCS, Quarterly Noncompliance Reports (QNCR), Significant Noncompliance Action Program (SNAP), Watch List

Recommendations if corrective action is needed: NYSDEC should begin linking actions to violations.

12. **Degree to which the Minimum Data Requirements are complete.**

Findings: For the files reviewed, all minimum data requirements for completeness were satisfied.

Citation of information reviewed for this criterion: PCS, Quarterly Noncompliance Reports (QNCR), Significant Noncompliance Action Program (SNAP), Watch List

Recommendations if corrective action is needed: N/A

FORM A - EVALUATION FORM

Date: November 2005

Program Evaluated: RCRA

EPA Evaluator: Joel Golumbek, Chief, RCB-HWCS

NYSDEC Contact: Tom Killeen, Hazardous Waste Section Chief

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

Findings:

Except in one instance, the NYSDEC met or exceeded its goal for conducting inspections during the Federal Fiscal Year 2004, as per the requirements specified in the Grant Workplan, RCRA Program Policy, and RCRA statutory requirements.

The NYSDEC completed inspections of all but one of its operating TSDFs during the FY 2003-2004 two year period (the one which was not inspected had an ongoing enforcement action and the state attorney requested that it not be inspected while negotiations were on-going).

The NYSDEC inspected 21 % of their LQGs based on 2004 state manifest data, which is just above the 20% policy goal set by OECA for the Core Program. EPA used the state automated manifest system to determine generator status and the LQG universe in FY 2004 instead of the 2003 BRS data since the manifest data is more current and better reflects the actual FY 2004 LQG universe. Because the state has an automated manifest system, EPA and the state are able to determine the amount of hazardous waste each generator ships off-site each year. The amount shipped off-site is considered a good estimate of the amount of hazardous waste generated.

However, the NYSDEC and EPA combined only inspected about 80 percent of LQGs during the FY 2000-2004 period (This 80% level is based on the number of LQGs that reported under the Biennial Reporting System for each of the years 1999, 2001, and 2003; these LQGs were considered to represent the permanent LQG universe that needs to be inspected over the five year period.) Although this percentage coverage exceeds the national average of 71.4%, EPA and the state need to work together to ensure that the permanent LQGs are inspected over the five year period. The NYSDEC has now allocated more of its limited resources to complete the required 100 % LQG inspections over the five year period.

NYSDEC has indicated that with regard to the percent of the LQG universe inspected within five years, there was some confusion on what the evaluation period should be. The EPA report of 531 LQGs, based on biannual report data from 1999, 2001 and 2003, evaluated inspections done from 10/01/99 to 10/01/04. It was NYSDEC's understanding that since the review was through Federal Fiscal 05, the evaluation period should have been 10/01/00 to 9/30/05. Because of this, it took significant time in evaluating the data.

Differences between the report and New York's analysis of the rating period shows that there were 20 facilities whose last inspection was between 10/01/99 and 9/30/00, and who should have been counted as not being inspected within the rating period, while there were 15 facilities inspected between 10/01/04 and 9/30/05, who should not have been considered as not inspected in the five year period. A list of the facilities is available and has been provided to EPA..

EPA Region 2 as part of their College and University, and Health Care Facility Initiatives have entered into Audit Agreements with more than 100 facilities in New York, many of which are Large Quantity Generators. NYSDEC's Hazardous Waste Program has not inspected those facilities for which EPA has an active Audit Agreement. A review of NYSDEC's data shows that there are 13 LQGs which presently have audit agreements and who have not been inspected in greater than five years. NYSDEC have also identified 14 CERCLA facilities within the listing. NYSDEC believes a more accurate number of uninspected facilities at this time is 81.

Further, of the 102, which showed as not being inspected in actuality, 15 had been inspected prior to 9/30/05, 20 were missed due to the incorrect report period, 13 are subject to audit agreements, and 14 were easily identifiable CERCLA sites (there are probably more of these especially in Region 2). This would bring the number of actual sites to 80.

As was done in previous years, EPA Region 2 will coordinate its inspection activities with the State, and focus its LQG inspections in those regions that the state has resource shortfalls in.

Citation of information reviewed for this criterion: RCRAInfo, BRS, State Manifest System

Recommendations if corrective action is needed: EPA and the State need to continue to work together during the planning process to ensure that all the above LQGs are inspected over the five year period.

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

Findings:

All the findings and documentation contained in the Compliance Evaluation Inspection (CEI)

reports were complete and contained sufficient information which explained and documented observations to support the SNC and SV violation determination status.

Citation of information reviewed for this criterion: State Case Files

Recommendations if corrective action is needed: N/A

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

Findings:

All inspection reports are completed in a timely manner and all violations are identified in a timely manner. The ERP calls for the identification of violations to be made within 150 days of the inspection. A review of the files and RCRAInfo indicated that the inspection reports, which included the identification of violations, were completed well within this 150 day timeframe.

Citation of information reviewed for this criterion: RCRAInfo and State Case Files

Recommendations if corrective action is needed: N/A

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

Findings:

All SNC violations are reported to EPA in a timely and accurate manner. In FY 2004, NYSDEC exceeded the national SNC identification rate (3.6% versus 3.2%). However in NYSDEC's Regions 5 and 6, the SNC identification rate was 1% which is well below the State average. The NYSDEC indicated that Region 6's SNC identification rate significantly increased in FY 2005, and that one can expect variability in SNC identification rates from year to year. In Region 5, NYSDEC indicated that the majority of handlers are CESQGs and the small regulated handler universe is inspected on a frequent basis. This results in very low SNC identification rates.

NYSDEC reported SNCs for 100% of its formal actions versus the national average of 55.5%. However, although the NYSDEC makes its SNC determinations within 150 days of the date of the inspection (see Element 3 above), many SNCs are entered into RCRA Info within seven (7) days of the taking of the enforcement action. EPA is concerned that the State delay in entering of the SNC designation is preventing EPA from tracking unaddressed SNCs and having these cases appear on the Watchlist. Discussion with NYSDEC indicates that the SNC is entered into RCRA Info at the time that the case is referred to the NYSDEC attorney, and that many times, the attorney issues the enforcement action within a week of the referral.

The NYSDEC's hazardous waste program has established the date an enforcement case is first referred to the Division of Environmental Enforcement as the date of the SNC. Evaluation of the last three years of enforcement data, shows that at no point would our use of this set point to define the date of SNC would have delayed the facility appearing on the watchlist. More importantly, until sign-off by the Section Chief, a SNC determination has not been officially made as the case investigation is ongoing until that time. Until that point, facts are still being acquired and regulatory violations are being developed. Because the cases are so well vetted at the point of referral, and because NYSDEC's legal staff have instituted very efficient procedures for developing complaints and proposed orders for the less complex cases, the time between referral (SNC designation) and issues of a complaint is often short.

EPA agrees that this procedure is appropriate.

Citation of information reviewed for this criterion: RCRAInfo and Information provided by state personnel

Recommendations if corrective action is needed: NA

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

Findings:

Enforcement response in the form of Final Orders for SNCs (25 CAFOs were issued-see Metric 12) and NOV's for SVs were issued (301 NOV's were issued-see Metric 12) in all SNC and SV cases. Both CAFOs and NOV's include a section directing the facility to take specific corrective actions to be taken by a specific date or within a certain number of calendar days. The enforcement responses direct the facility to submit a written explanation of the corrective measures taken to achieve compliance and supporting documentation that such actions were taken.

Citation of information reviewed for this criterion: State Case Files

Recommendations if corrective action is needed: N/A

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

Findings:

Enforcement actions in all but one of the SNC cases were taken within the 240 days identified in the Enforcement Response Policy (ERP). In one case, a complaint was issued 313 days after the

inspection. In all the SV cases, Notices of Violation were issued within the 150 day timeframe. Therefore, in all but one of the cases, enforcement actions were timely.

In regards to the appropriate manner in which enforcement actions are taken, all SNC and SV cases were issued enforcement actions which were appropriate with the violations that were identified. (NOVs for SV cases and formal actions with penalties for SNCs).

Citation of information reviewed for this criterion: RCRAInfo and State Case Files

Recommendations if corrective action is needed: N/A

7. Degree to which the state includes [appropriate] gravity and economic benefit calculations for all penalties

Findings:

In all but one of the SNC cases, the gravity portion of the penalty was appropriately calculated according to EPA's 2003 RCRA penalty policy. In one case, multiday penalties should have been assessed for the violation of "storage in excess of 180 days", but this was not done. In general, the State does not assess multi-day penalties nor do they evaluate economic benefit.

Citation of information reviewed for this criterion: State Case Files

Recommendations if corrective action is needed: See Section 8 below.

8. Degree to which final enforcement actions (settlements) take appropriate action to collect economic benefit and gravity portions of a penalty

Findings:

All but one final order of 25 such actions reviewed, included a specific penalty. The one order that did not include a specific penalty cited the statutory maximum in lieu of including a specified penalty amount. (Note that the methodology used to calculate Metric 8b was incorrect; instead of determining the ratio of number of CAFOs with final penalties to the number of CAFOs, the ratio used was the above numerator over the number of CAFOs and complaints. The correct metric % should be 96%, not 40%. This error was communicated to Michael Barrette of the Office of Compliance, OECA-HQ, who agreed and indicated that the error would be corrected).

With respect to penalty settlements, penalties ranging from 37% to 100% were collected in the 10 SNC cases evaluated (one case had no final order). In all but two cases, the final penalty was appropriate.

In general, the State does not assess multi-day penalties nor do they evaluate economic benefit. The apparent reasons given by the State for not assessing multi-day penalties and not imposing economic benefit is that they are not explicitly required in the last signed State/EPA Enforcement Agreement (SEA). This SEA was signed in 1988 and indicates that the state will use the May 8, 1984 RCRA Penalty Policy (1984 RPP) and “the subsequent amendment”. The 1984 RPP explicitly requires that EBN be included when it exceeds \$2,500. It also indicates that multi-day penalties be included for egregious violations and can be included for other violations as well. The subsequent amendments to the 1984 RPP, the 1990 RCRA Civil Penalty Policy and the 2003 revision, both spell out more explicitly when multi-day penalties should be included and how to calculate them.

The NYSDEC indicated that it has a “problem” with the fact that the inclusion of multi-day penalties is mandated in the above 1990 and 2003 penalty policies for the most serious violations and presumed to be included for less severe violations, as well. The NYSDEC stated that it has other methods of increasing the penalties in lieu of multi-day penalties, although in these cases, the penalties would not be as high.

With respect to economic benefit , NYSDEC indicated there is no state systematic method of calculating EBN. However, the NYSDEC did indicate that nothing precludes it from using EPA’s model (“BEN”) for calculating EBN. It should also be noted that the state’s general penalty policy does require that economic benefit be assessed and included when appropriate. In the cases reviewed for this audit, none of the cases had significant economic benefit associated with them.

Citation of information reviewed for this criterion: State Case Files

Recommendations if corrective action is needed: It was agreed that further discussion needed to take place with respect to the above issues, including revisiting and updating the 1988 SEA. In addition, NYSDEC will begin to calculate multi-day penalties and the economic benefit accrued by the facility due to noncompliance immediately following formal training by EPA on these issues and, if necessary, the development of any internal DEC penalty guidance toward such penalty calculations.

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:

The NYSDEC has met or exceeded all inspection and enforcement commitments under the grant.

Citation of information reviewed for this criterion: RCRAInfo

Recommendations if corrective action is needed: N/A

- 10. Degree to which the Minimum Data Requirements are timely;**
- 11. Degree to which the Minimum Data Requirements are accurate; and**
- 12. Degree to which the Minimum Data Requirements are complete**

Findings:

Overall, inspections, violations, enforcement actions, and return to compliance dates are being entered into the RCRA Info database in a timely, accurate, and complete manner. In general, inspections, violations, enforcement actions, and return to compliance dates are entered within a month of the activity being completed. As indicated in Metric 10a, all SNCs are entered into RCRA Info database within 60 days of SNC determination date as compared to the national average of 47.1%. As discussed above, and as reflected in Metric 11a, the NYSDEC enters the SNC designation within 7 days of the enforcement action in many cases. However, EPA is satisfied with the state's explanation of why this is the case. With respect to Return to Compliance (RTC) Dates, NYSDEC only had 2 cases over three years old with no RTC date (note, that Metric 11b indicates the number 15; 13 of the cases are EPA cases). The national total is 2943.

Citation of information reviewed for this criterion: RCRAInfo

Recommendations if corrective action is needed: N/A