

FINAL REPORT

September 12, 2007

U.S. EPA Region 2

State Review Program Framework – FY 2006

Review of the Puerto Rico Environmental Quality Board

EXECUTIVE SUMMARY

Overall Picture

This report documents the findings and recommendations of the U.S. Environmental Protection Agency's (EPA) review of the Puerto Rico Environmental Quality Board's (PREQB) 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.

EPA and the States (through the Environmental Council of the States (ECOS) Compliance Committee) developed the State Review Framework to evaluate State performance in the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) Enforcement Program, CAA Stationary Sources and RCRA Subtitle C compliance and enforcement programs in a nationally consistent manner. Since CWA- NPDES and RCRA Subtitle C have not been delegated they are not covered in this report. The report examines 12 elements of PREQB's CAA Stationary Source compliance and enforcement program including: inspection implementation, enforcement activity, commitments in annual agreements and data integrity. The report documents systemic and crosscutting issues in PREQB's air enforcement and compliance program and includes recommendations for improvement in each of these areas.

EPA and PREQB will work together to develop an action plan to resolve identified issues. EPA and PREQB will have a meeting within 6 months of the report being finalized to discuss progress on implementing the recommendations in the report. The recommendations will also be tracked in the national State Framework Review Tracking System. It is anticipated the EPA will conduct a follow-up review of PREQB in the near future to determine the status of the progress made in addressing issues identified in this report.

Process Followed For the Review

Region 2's evaluation of PREQB's CAA Stationary Source compliance and enforcement program was conducted by staff from the Region's Air enforcement program using the Framework described above. For the on-site file review and interviews of PREQB managers, Air program staff traveled EQB offices in San Juan, Puerto Rico. The review occurred between November 27 and December 1, 2006.

The number of files that were reviewed was determined based on the protocol in the Implementation Guide, and considered the number of facilities in each universe of interest, the number of compliance evaluations performed and the level of enforcement activity. This resulted in EPA's request of six categories of files: major sources that had a full compliance

evaluation (FCE) completed in FY 2005, synthetic minor sources with the potential to emit 80% of the major source threshold (SM-80) that had a FCE completed in FY 2005, sources with an emission potential less than an SM-80 and minor sources subject to a National Emission Standard for Hazardous Air Pollutants (NESHAP minor) that had a FCE completed in FY 2005, major sources that received a Notice of Violation (NOV) in FY 2005, SM-80s that received a NOV in FY 2005, and sources with an emission potential less than an SM-80 and NESHAP minors that received a NOV in FY 2005. No formal enforcement actions were reported by PREQB for FY 2005; therefore, we could not review specific enforcement files. However, we notified PREQB that if enforcement was initiated, but not reported to EPA, files should be available to EPA during the on-site review. Fifty percent of the files requested were based on the completion of a FCE and fifty percent were based on the issuance of a NOV. Within the above representation of files, the number selected for review was skewed toward major sources and SM-80s in order to accurately evaluate PREQB for implementation of EPA's compliance and enforcement policies. Once the composition of the files was established, the specific files within each category were selected randomly. EPA requested 26 files (13 compliance evaluation files and 13 NOV files), plus an additional 7 alternate files, for review. Of the 33 files requested, we did not receive 3 of them. In addition, if an enforcement action was pursued in response to a compliance evaluation, we requested the enforcement file. Therefore, in total, we reviewed 39 files of which 22 were compliance evaluation files and 17 were enforcement files.

Information Considered From Other Reviews and Other Sources

In the Air program, the Region began the on-site review with a discussion between EPA and the Director of the PREQB Air Quality Program (AQP) and the Chief of the Inspection and Compliance Division (ICD) within the AQP. To augment the review, the Air program also reviewed the AQP's Air Pollution Control (APC) grant work plan for FY 2005. Results of the grant review were incorporated in the findings. EPA prepared for the interviews and file review using the State Review Framework data metrics.

Summary of Issues Identified/Recommendations

Inspection Implementation

1) Full Compliance Evaluation (FCE) coverage rate at major sources in PR is well below the national average - At the time of the review, the data metrics indicated that PR had a major source universe (those facilities with a major source classification code in AIRS) of 95 facilities. PREQB completed FCEs at 35 of these facilities for a coverage rate of 36.8% (35/95), between FY 2004 and FY 2005, which is below their commitment and less than what the EPA's Compliance Monitoring Strategy recommends. The national average based on State data for completing an FCE, is 79%. In addition, when EPA FCEs, conducted in PR during this time period, are included, the coverage rate is 42.1% (40/95) versus the national average of 80.7%.

During the time period covered by the review, based on their FY 2004 and 2005 inspection plans for title V sources, PREQB estimated the major source universe to be 69 facilities. Of the 69 Title V sources, PREQB reported a FCE was conducted at 35, which equates to a coverage rate of approximately 50%, which is also significantly below the national average of 79.9%.

2) Inspections at SM-80s - According to AIRS and the data metrics, the FCE coverage rate in Puerto Rico, for the time period FY 2002 to FY 2005, was 60% (6/10); which does not fully satisfy the Compliance Monitoring Strategy (CMS) commitment of 80%. The national average is 77%. The universe of sources has fluctuated since FY 2002, however, the coverage rate needs improvement.

3) Title V Annual Compliance Certifications received and reviewed - According to AIRS, 15 Title V annual compliance certifications were due and/or received in FY 2005 and 9 of them were reviewed, which equates to a 60% rate of review. The national goal is that 100% of all title V annual certifications received must be reviewed and entered in AIRS and the national average is 79.2%. EQB's rate of review is significantly below both the national goal and the national average.

4) Inspection Documentation - To ensure that all permit conditions, applicable regulations and current enforcement actions are evaluated, EPA recommends the use of a template that includes a checklist derived from a facility's permits, state registrations, or other records that are indicative of the processes or emission points at a facility. EPA also recommends the development of an inspection report template. Furthermore, neither technical staff nor inspectors are required to undergo formal training on how to conduct inspections or make compliance determinations. PREQB needs to establish a formal training protocol for all new inspectors and/or technical staff.

Enforcement Activity

1) HPVs - During the file review, EPA found instances of the PREQB failing to identify an HPV, not reporting HPVs and reporting HPVs late to the EPA. Additional training is needed for the PREQB staff on implementing the HPV policy including how to enter the data in AIRS. Additionally, it is incumbent on the EQB program managers to follow-up on HPVs referred to EQB's legal division for action and to report the HPV status to EPA.

2) Degree to which PREQB returns facilities to compliance status – EPA found that PREQB did not consistently ensure continuous compliance at all sources. Frequently, the only enforcement action taken is the issuance of a NOV. According to the OTIS website (*Clean Air Act Extended Management Reports*), in FY 2004 and 2005, 201 NOVs were issued at all sources; during that same time period only 2 formal enforcement actions were issued. Including FY 2006, 245 NOVs were issued at all sources during the three fiscal years and 8 formal enforcement actions were issued. Six formal enforcement actions were issued in FY 2006. During our file review, it became apparent that, if sources were subsequently able to demonstrate compliance with the regulation they violated, a formal enforcement action was not pursued. However, demonstration of compliance was often times not verified by PREQB.

PREQB needs to establish a procedure for conducting follow-up when a source identifies deviations or intermittent compliance in their title V annual compliance certification. PREQB needs to take formal actions that deter future violations at the violating facility and persuade others not to violate the law.

3) Penalties - During the period covered by the review, PREQB did not have a formal penalty policy for stationary sources. Currently, a draft policy has been prepared but is not yet final. Based upon the enforcement files evaluated, a penalty was assessed in only four cases. Notably, a penalty calculation justification was not included in any of the files we reviewed. Therefore, we could not determine if the appropriate gravity and economic benefit was included.

PREQB needs to finalize and implement their penalty policy provided that it is found to be consistent with Puerto Rico's Regulation(s) for the Control of Atmospheric Pollution and EPA's *CAA Civil Penalty Policy*. In the interim, the CAA Penalty Policy should be used to ensure national consistency. Furthermore, all enforcement cases where a penalty is assessed must have a penalty calculation worksheet in the file. The first calculation needs to be a computation of the potential maximum as allowed by their penalty policy for all provable violations. Also, the worksheet needs to include the justification for how a penalty was calculated and what factor(s) were considered in mitigating the penalty.

Data Entry

1) Timely Reporting- PREQB enters all enforcement data into AIRS by April 30 and October 31 of each year and FCEs on a monthly basis. PREQB needs to enter FCEs in AIRS as soon as feasibly possible (i.e., upon completion) and enter HPVs in AIRS within 45 days of discovery of the violation at the latest.

PREQB has indicated that it agrees with the recommendations contained within the report. In certain instances they have provided additional comments which have been included in the body of the report.

FORM A - EVALUATION FORM

Date: November/December 2006

Program Evaluated: CAA

Information Sources Included in the Review: AIRS, source files and interviews with select staff.

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Background

The 1990 State/EPA Enforcement Agreement defines each agency's role in implementing the Clean Air Act enforcement program in the Commonwealth. This agreement addresses areas such as inspections, enforcement, and the recording of compliance activity in the Aerometric Information Retrieval System (AIRS). The agreement states that the Puerto Rico Environmental Quality Board (PREQB) has the primary responsibility for enforcement of Puerto Rico's Regulations for the Control of Atmospheric Pollution consistent with the program's delegation to PREQB.

The PREQB is presided over by a Governing Board, which consists of a Chairperson, Vice-Chairperson and an Associate Member. The Governing Board presides over all program offices (air, water, RCRA, superfund, etc.), five (5) regional offices, and the Legal Affairs Office (LAO) and has the authority to override any decision rendered by the program offices. The PREQB stationary source compliance and enforcement program is implemented by the Air Quality Program (AQP), which implements enforcement activities at both major sources and minor sources. Additional responsibilities of the AQP include: EIS reviews, responding to citizens' complaints, title V and minor source permitting, data validation, ambient monitoring and air quality modeling. The Director's office of the AQP is located in the Central Office in San Juan. Each regional office also has a Director.

Implementing the Clean Air Act compliance monitoring program involves numerous divisions and regional offices within AQP. The Inspection and Compliance Division (ICD) is responsible for establishing annual priorities and the annual inspection plan. In coordination with the regional offices, the ICD is also responsible for conducting compliance evaluations and referring cases to the LAO for enforcement follow-up. In order to ensure that compliance evaluations are conducted in accordance with the EPA's Compliance Monitoring Strategy (CMS), the AQP Director must coordinate with each regional office and request that they evaluate specific facilities. The Permit and Engineering Division (PED) is responsible for evaluating permit applications and ensuring sources are accurately classified in AIRS. The Air Toxics Division (ATD) evaluates sources for compliance with all Maximum Achievable Control

Technology (MACT) regulations and refers violations to the LAO. For the time period covered by this review, the Validation and Data Management Division (VDMD) entered all data in AIRS. Beginning in May 2006, each AQP inspector was made responsible for entering his or her own air compliance and enforcement data in AIRS due to a reorganization of PREQB.

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:

Every year PREQB submits their annual inspection plan to EPA. It is included in their Air Pollution Control (APC) grant application. The application and ultimately the grant contain outputs/milestones, timelines for completion of the milestones and reporting requirements. Within the FY 2005 work plan, PREQB agreed to conduct FCEs at 50% of all title V sources, 33% of the mega-sites and 20% of all synthetic minor sources that emit or have the potential to emit at or above 80 percent of the Title V major source threshold (SM-80) in FY 2005.

Completing a full compliance evaluation (FCE) requires coordination among multiple divisions within AQP because no one division conducts all of the necessary evaluation. For instance, if a report is submitted that pertains to a MACT requirement, the ATD in San Juan is responsible for reviewing the report to determine compliance. If a fuel use or other parametric monitoring report is submitted, the VDMD in San Juan is responsible for reviewing the report to determine compliance. Generally, all other required reports are submitted to the ICD and/or the appropriate regional office. But, since neither the ICD nor the regional office directly receive all the reports necessary to complete an FCE, the ICD and/or the regional office must contact the responsible division to verify receipt and review of the report.

PREQB does not have a database separate from AIRS. They enter their compliance evaluations, enforcement actions, and related activities directly into AIRS.

Inspections at Major sources: Discrepancies exist between the universe of sources classified as major in AIRS, the universe of sources with a CMS code for a major source, the universe included in PREQB's APC grant work plan for title V sources, and a draft CMS plan provided to EPA during the on-site review. Therefore, in order to evaluate PREQB for completion of FCEs at major sources, this discrepancy needs to be taken into consideration. However, regardless of the universe used the FCE coverage rate at major sources in PR is well below the national average in all instances.

At the time of the review, 95 facilities were classified as major sources in AIRS. Between FY 2004 and FY 2005 (the CMS cycle), PREQB completed FCEs at 35 of these facilities for a coverage rate of 36.8%. The national average for the same time period is

79.9%. When you include EPA FCEs, the coverage rate is 42.1% (40/95) versus the national average of 80.7%.

Based on facilities' associated CMS codes, 55 facilities are major. According to the data in AIRS, 29 of the CMS majors received an FCE by PREQB between FY 2004 and 2005, which equates to a coverage rate of 52.7% (29/55), which is below the national average of 83.9%. When you include EPA FCEs, the coverage rate is 61.8% (34/55), which is below the national average of 84.8%.

Included in PREQB's FY 2004 and FY 2005 APC grant work plans is the objective to conduct FCEs at 50% of all title V sources. Also included in each work plan is an inspection plan for title V sources. Between both fiscal years, the inspection plans include 67 title V sources. However, one of the sources included in the inspection plan is a synthetic minor source according to AIRS and should not be included in the universe of majors. Three of the facilities are CMS mega-sites and should also not be included. Therefore, between the two fiscal years at least 63 major sources should have received an FCE. PREQB reported FCEs at 34 of these facilities, which equates to a coverage rate of approximately 54% for two fiscal years, which is also well below the national average of 79.9%. EPA conducted FCEs at an additional 3 facilities for a combined coverage rate of approximately 59% (37/63). Within two fiscal years, 100% of all major sources need to receive an FCE according to the CMS policy.

The inspection plans referenced above are established by PREQB on the premise that an FCE can not be completed at a major source until the source receives its title V permit. This is an inaccurate assertion. FCEs can and should be conducted at major sources without title V permits. According to documentation provided to EPA during the review, by the end of FY 2005, 37 facilities received their title V permit. Of the 37 major sources with a title V permit issued prior to the end of FY 2005, PREQB reported conducting an FCE at 18 of them between FY 2004 and FY 2005, which equates to a coverage rate of 48.6%. When you combine state and federal FCEs at sources with title V permits, the coverage rate is 59.5% (22/37), which is still below the 100% expected coverage rate.

Three mega-sites have been identified in PR. An FCE has not been reported for two of the mega-sites as of their CMS start date, which was October 1, 2001. At one of the mega-sites, 62 PCEs have been reported since October 2001, including nine on-site PCEs. Also, all air programs included in AIRS as applicable have been evaluated at least once; therefore, this may be indicative of a failure to report an FCE. At a different mega-site, 29 PCEs have been reported since October 2001 and 18 of them were on-site. However, in this instance, it is not apparent whether all applicable air programs were evaluated at least once during one of the PCEs.

The discrepancy in the universe of facilities, based on classification codes and CMS codes, is indicative of a data quality issue, which will be addressed in Paragraph 12 of this report.

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 policy 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 2005 at least 80% of the universe of SM-80s should have received an FCE. However, there exists a discrepancy between the universe of SM-80s established based on data in AIRS and a draft CMS evaluation plan that EPA received during the file review.

According to AIRS and the data metrics, the universe of SM-80s in Puerto Rico during the review period was 10 facilities. The FCE coverage rate for the time period FY 2002 to FY 2005 was 60% (6/10), which does not fully satisfy the CMS policy. The national average is 77%. We must take into consideration that the universe of sources has fluctuated since FY 2002.

According to the draft CMS evaluation plan, prior to the end of FY 2005 13 SM-80s existed in PR and an FCE was reported by PREQB for 9 of them (69.2%). According to PREQB, an FCE was conducted by them at an additional 3 SM-80s but they were not reported to AIRS for a total of 12 FCEs. EPA conducted and reported a FCE at an additional facility on the draft CMS plan. Therefore, according to PREQB a FCE was conducted at all 13 SM-80s between FY 2002 and FY 2005.

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 Puerto Rico does not specify a percentage either. According to the data metrics, during the period of review (FYs 2002 to 2005), PREQB inspected (i.e., conducted a FCE or a PCE) at 58.8% (20/34) of the universe of synthetic minors (sources with a synthetic minor source classification code in AIRS). 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 90.9% (10/11). The national average was not provided for comparison for this source category.

According to PREQB's APC grant work plan for FY 2005, 21 synthetic minor sources were scheduled to be inspected in 2005. One of the sources included in the inspection plan is a major source and two others are minor sources. However, there are two additional synthetic minor sources included in PREQB's draft FY 2007 CMS evaluation plan that are not included in the APC grant work plan. Therefore, the total number of synthetic minor sources, according to information provided to EPA by PREQB, is 20 facilities, of which 18 were inspected since FY 2002, which equates to a coverage rate of 90%. This includes two inspections that were never reported to EPA.

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 (FY 2002 to 2005), PREQB inspected (i.e., conducted a FCE or

a PCE) 42.5% (242/569) of the universe of minor sources (sources that are not classified as a major or synthetic minor source in AIRS). The national average for this source category was not provided for comparison. This data metric is informational only.

Investigations at CAA stationary sources: Investigations are a category of compliance monitoring activity recognized by the CMS. They are more resource intensive than the other compliance monitoring activities. This data metric evaluates investigations initiated and/or conducted within the last four fiscal years (FYY 2002 to 2005). The data metrics show that no investigation was initiated and/or conducted between FY 2002 and 2005 by PREQB; however, none were required.

Title V Annual Compliance Certifications received and reviewed: According to AIRS, 15 title V annual compliance certifications were due and/or received in FY 2005 and 9 of them were reviewed, which equates to a 60% rate of review. According to the data matrix, the national average is 79.2% and the national goal is that 100% of all title V annual certifications received must be reviewed and entered in AIRS. According to PREQB, two (2) of the six (6) certifications that were identified in AIRS as received but not reviewed were reviewed, but the inspector entered the wrong action code. A third certification identified in AIRS as received but not reviewed was actually received on September 21, 2005, and reviewed in FY 2006, therefore, was not included on the list of reviewed certifications because the list only included those reviewed in FY 2005.

Furthermore, during our review, the EPA received a document that PREQB is using to track the issuance of title V permits in PR. The document listed title V sources and the date on which their title V permit became effective as well as the status of those not yet issued. The list contained 30 sources that received title V permits prior to October 1, 2004. Therefore, according to this list, PREQB should have received 30 title V annual compliance certifications in FY 2005. As a result of EPA's FY 2005 end-of-year review of the AQP, EPA was notified that PREQB received 22 of the 30 annual compliance certifications that were due in FY 2005. Among the eight (8) that PREQB did not receive, five (5) had requested that the Governing Board terminate their title V permit because the facility did not operate in FY 2005; two (2) facilities were contesting and continue to contest their title V permit; and for one (1) a high priority violation (HPV) for failing to submit an annual compliance certification was referred to the LAO for enforcement. Therefore, taking into consideration the data quality issues and PREQB's notification that 22 annual compliance certifications were received, the actual review rate is 54.5% (12/22), which is below the national average.

According to the Title V Operating Permits System (TOPS), which contains information provided to the EPA by the state, territory or local agency, as of October 1, 2004, 28 sources received title V permits. Therefore, PREQB should have received and reviewed at least 28 annual compliance certifications in FY 2005. The discrepancy between AIRS, which indicates 15 certifications were due, and TOPS, which indicates that 28 certifications were due, is most likely due to a failure to enter the title V annual compliance certification due/received action code in AIRS.

The entry of the receipt of title V annual compliance certifications and their review into AIRS is a commitment in PREQB's APC grant work plan. However, during the file review, it became apparent that inspectors most often reviewed facility's emission reports but not annual compliance certification reports. There was documentation in the compliance evaluation files of receipt of title V annual compliance certifications but no documentation of their review.

Some sources in PR have requested that their title V annual compliance certification due date coincide with their title V permit anniversary date. But, the majority of title V permits will continue to require the submittal of the annual compliance certification by April 1 of each year. During the opening conference of our review, EPA advised the AQP program that waiting until the annual certification is submitted for the year in which an FCE will be completed is not necessary and that they should consider using the previous year's certification to complete the FCE.

Sources with Unknown Compliance Status Designations: AIRS generates an "unknown compliance status" in the EPA compliance status field for CMS major sources when a FCE is not reported in AIRS within two (2) fiscal years and the source does not already have a default compliance status of unknown or in-violation. According to AIRS, currently only one (1) facility in PR has a system generated "unknown" default compliance status. However, the source is classified by PREQB as a minor source and classified by EPA as a major source. Therefore, this discrepancy could be the reason the source's compliance status is designated "unknown;" the source was last inspected by EPA in 2000.

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; and staff interviews.

Recommendations if corrective action is needed:

During the file review and in accordance with the CMS policy, EPA received a draft CMS plan that contained all the relevant data elements for a complete inspection plan. PREQB needs to finalize the plan and provide it to EPA as soon as possible (received on April 17, 2007). Also, PREQB needs to continue to provide this plan to EPA on a biennial basis and on an annual basis, PREQB needs to submit any modifications to the biennial CMS plan. The CMS plan needs to be maintained as a separate document from the APC grant work plan. The CMS plan needs to be established so that major sources receive a FCE at least every two fiscal years, SM-80s at least every 5 fiscal years, and mega-sites at least every 3 fiscal years. PREQB needs to complete FCEs at the 2 mega-sites at which no FCE has been documented.

With regards to title V annual compliance certifications, PREQB and EPA need to enter the data requirements established by the CMS policy to ensure that all relevant MDRs (i.e., the date the annual certification is due, the receipt of the certification, the review of the certification, the result code for the review and whether any deviations were reported) are accurately entered in AIRS. To ensure the MDRs are entered, PREQB's reporting

requirements need to be further delineated in future annual APC grant work plans, beginning with the one for FY 2008.

PREQB needs to ensure that all title V annual compliance certifications received are reviewed. And each inspector needs to document receipt and review of both the annual emissions report and the title V annual compliance certification within each compliance file. They should be aware that the review of a title V annual compliance certification is a component of a FCE at those sources that are required to submit an annual compliance certification. In those years when a FCE is not conducted, PREQB needs to ensure that title V annual compliance certifications continue to be reviewed.

Furthermore, submittal of a title V annual compliance certification is a requirement of the title V program until a source's title V permit is officially rescinded or terminated. PREQB should consider this when deciding to pursue enforcement when a source fails to submit an annual compliance certification. Furthermore, failure to submit the certification should be considered a high priority violation (HPV).

The AQP needs to use any method available to complete an FCE at a major source prior to a title V permit being issued. For example, the inspector could use a permit application, draft permit or state permit to determine if all regulated pollutants, units and applicable air programs are evaluated for compliance.

PREQB needs to pursue access to the EPA Online Tracking Information System (OTIS) so that PREQB management and others, who do not frequently access AIRS, can monitor progress toward meeting the CMS policy requirements and other commitments regarding CAA compliance and enforcement. They need to obtain access by September 30, 2007. Also, PREQB needs to obtain access to the State Review Framework Data Metric web site, which will assist in improving PREQB's reporting by allowing PREQB management to monitor the data for timeliness and accuracy. Again, they need to obtain access by September 30, 2007. Over the years, PREQB's internet configuration has changed causing incompatibility issues with EPA nonpublic web sites. The AQP needs to assign a single individual as a point of contact for internet configuration issues so that if PREQB's internet configuration changes, the EPA can be contacted to respond and maintain PREQB's access to nonpublic EPA web sites. The AQP point of contact needs to work with EPA to resolve the configuration issues.

Additional PREQB Comment on the Recommendation:

The CMS plan will be revised and sent to EPA in October 2007. Some of the SMs covered by the CMS are closed. This modification will be submitted to EPA.

PREQB will verify with Region 2 the Title V annual compliance certifications if there are not received at AQP, because the same documents has to be sent to both Office. The AQP will request will work with PREQB's Office of Information System access to the EPA Online Tracking Information System (OTIS). The OSI is in charge of Internet configuration at PREQB.

Finally, the database used to retrieve the major source universe list is incorrect. There are not 95 facilities with a major source classification code. For 2005 the Title V sources are 65. Six of 65 are closed. Three are no longer Title V source. One is new Title V source. In summary, the total Title V active sources are 56.

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

Findings:

For the file review, 26 files were requested. EPA also requested 7 additional files for review upon determination by EPA that our findings needed to be confirmed or substantiated further. In addition, if an enforcement action was pursued in response to a compliance evaluation, EPA requested the compliance evaluation file and vice-versa. Therefore, in total EPA reviewed 22 compliance evaluation files.

For the inspection reports that were reviewed, in general, they included the date of the evaluation, the facility address and contact information, and the purpose of the inspection. However, 15 of the 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 CMS policy; namely, the applicable regulatory requirements, an accurate inventory and description of regulated emission units and processes, information on previous enforcement actions, and recommendations relayed to the facility during the compliance evaluation. Furthermore, none of the 15 inspection reports provided adequate documentation that a comprehensive on-site inspection was conducted. And we could not determine if all emission sources were inspected and/or the methods used for determining compliance. Examples of our findings include:

- Source 1: We could not determine if all units were evaluated. The inspector failed to identify the regulatory requirements for the facility's loading rack; control equipment operating parameters were not specified; and the records reviewed to determine compliance were not specified.
- Source 2: The inspector failed to describe the facility and each process; failed to reference NSPS regulations (Sub Dc and GG) and failed to make a compliance determination.
- Source 3: There was no indication in the report that the inspector evaluated all emission points, specifically there was no reference to the facility's tanks and valves. Also, the inspector did not conduct an evaluation of the visible emissions.

Neither technical staff nor inspectors are required to undergo formal training on how to conduct inspections or make compliance determinations. The only training received is on-the-job and through review of any self-instructional material from the AQP's library of material. To facilitate their inspections, some inspectors did utilize a check list developed from the source's permit that listed applicable regulations and one inspector utilized the Pharmaceuticals MACT Inspection Checklist. EPA also found an example of a report that included a table that identified the emission units, provided a description of the facility and

its processes, and identified the control equipment. In addition, EPA found instances of inspectors appropriately identifying violations discovered during their compliance evaluation as HPVs.

With regards to Title V annual compliance certifications, which are components of a FCE at major sources, we identified an issue. Generally, sources' Title V annual compliance certification submittals include a table summary on the first page and then the requisite permit terms and conditions on subsequent pages. We found discrepancies between what the source included in the table summary and how they reported compliance for each specific permit condition. For instance, a few sources identified that they were on-schedule for some of the permit conditions in the table summary. Upon review of each permit term and condition, the on-schedule compliance status was not reflected as it was in the table summary. EPA also found one source that reported both on-schedule and in continuous compliance for the same permit conditions. This lead EPA to the conclusion that sources may not know the difference between on-schedule, intermittent compliance and continuous compliance.

Citation of information reviewed for this criterion:
Inspection files, staff interviews

Recommendations if corrective action is needed:

To ensure that FCEs are, in fact, completed, PREQB needs to develop templates for documenting compliance evaluations and/or implement the use of an FCE checklist. EPA did find documentation that PREQB has already begun to use an FCE checklist as of February 2006, which should be implemented program-wide. To ensure all permit conditions, applicable regulations and current enforcement actions are evaluated and included in the necessary documentation, EPA recommends the use of a template that includes a checklist derived from a facility's permits, state registrations, and/or other records that are indicative of the processes or emission points at a facility. The checklist should be prepared in a uniform format this is easy for the inspectors to follow. The template needs to allow for additional evaluation if the facility's permit is not comprehensive. The 15 compliance evaluation files that did not include sufficient documentation to demonstrate that a FCE was completed should be reviewed by PREQB. EPA will provide the list. If EQB determines that an FCE was completed, but not accurately documented, EQB should report this to EPA during follow-up meetings. If PREQB determines that an FCE was not completed or it cannot be determined that an FCE was completed, EQB should prioritize these facilities and ensure a FCE is completed by the end of FY 2008 and properly documented.

EPA recommends the development of an inspection report template. The template needs to include all the basic elements for a compliance monitoring report that are specified in the CMS policy. The EPA shall provide PREQB with models and examples. Hard copies of these documents need to be maintained in the source file. The template should be developed by the end of FY 2008.

EPA also recommends providing the regulated community with guidance on the requirements of a title V annual compliance certification. The method for disseminating this information needs to be established by PREQB and can be on-going, hands-on training or internet based.

Finally, PREQB needs to establish a formal training protocol for all new inspectors and/or technical staff similar to the federal protocol (Executive Order 3500.1). Each inspector's training should be completed before they conduct compliance evaluations and/or site inspections without supervision. AQP management needs to evaluate each inspector's training history and determine if they are equipped to conduct compliance evaluations independently. In addition, PREQB staff need to become familiar with the training courses offered by the National Enforcement Training Institute (NETI) and take advantage of the courses when possible; many of the courses are internet based.

Additional PREQB Comment on the Recommendation:

The AQP will prepare a checklist by source category and their applicable requirement and will consider your recommendations regarding the template. AQP agrees that they need more training and will work with NETI to secure.

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

Findings:

All of the inspection reports contained a date on which the report was written. On average, inspection reports are completed within 9 days of the completion of the inspection. We discovered that one inspection report was never finalized because the inspector went on maternity leave soon after completion of the inspection. Since PREQB has no program-wide SOPs that require timely inspection reports, the failure to complete the inspection report was overlooked.

Citation of information reviewed for this criterion:

Inspection files, staff interviews

Recommendations if corrective action is needed:

None

Section 2: Review of State Enforcement Activity

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

Findings:

According to *The Timely and Appropriate Enforcement Response to High Priority Violations* policy (HPV policy), the timeframe for timely and appropriate enforcement response is dependent on how the violation was discovered. If a self-reported violation is a

HPV, it should be designated as such within 30 days. If the violation is discovered through other means and is a HPV, it should be designated a HPV no later than 45 days after the discovery. The enforcing agency has another 45 days if additional information or data is needed to determine if a violation is a HPV. Therefore, at a maximum, a state agency should designate a violation a HPV within 90 days. The HPV policy requires prompt reporting of HPVs to the EPA. The mechanism for reporting HPVs could be monthly meetings, e-mails, etc. Regardless of the mechanism, all potential HPVs should be discussed with EPA within at least 30 days of discovery. Within 60 days of designating the violation a HPV, it should be entered in AIRS. PREQB committed through the APC grant work plan to meet with EPA on a quarterly basis to discuss the progress of active enforcement cases. They also committed to submitting a report to EPA within 10 calendar days of the end of each quarter that summarizes all active HPV cases.

The HPV discovery rate in Puerto Rico, based on FCEs completed at major sources and entered in AIRS, in FY 2005 is 12.5% (2/16), which is above the national average (10.3%). However, according to PREQB, in FY 2005, they completed 21 FCEs at major sources. Therefore, the discovery rate in Puerto Rico, based on FCEs completed at major sources is 9.5% (2/21), which is below the national average.

The HPV discovery rate in Puerto Rico, based on the universe of major sources according to the data in AIRS, in FY 2005, is 1.5% (2/131) versus a national average of 4.9% (36 of the 131 facilities included in this data metric are permanently closed). According to PREQB, the universe of major facilities in FY 2005 in PR was 69; therefore, the HPV discovery rate, based on the universe of major sources, is 2.9%, which is still below the national average (4.9%).

During the file review, EPA found instances of the AQP failing to designate a HPV, not reporting HPVs, reporting HPVs late to the EPA, and entering HPVs in AIRS late. The AQP failed to identify an HPV at a landfill which did not operate control equipment for four years. In addition, the AQP identified a violation at another landfill as an HPV and included it as such in their referral to the LAO, but no HPV was reported to EPA. We also found an instance of not reporting HPVs to EPA in a timely manner. A pharmaceutical preparation facility was issued a NOV on September 12, 2005, for opacity violations discovered using Method 9. Their opacity limit is 20%; four six minute readings were greater than 30%; therefore, the opacity violations are an HPV. PREQB did not report the HPV to EPA until June 2006, approximately 270 days after the violation was discovered.

Ultimately, it is the responsibility of the Chief of ICD to identify a violation as an HPV, but the pursuit of enforcement is left to the discretion of the LAO. In the referral package to the LAO, the Director of AQP includes a memo that recommends pursuing the violation as an HPV. But, according to AQP, after the violation is referred to the LAO, they have little involvement. This practice contributes to deficiencies in timely and appropriate enforcement response.

Citation of information reviewed for this criterion:

OTIS Management Reports, HPV policy, source files, staff interviews

Recommendations if corrective action is needed:

Additional training on implementing the HPV policy tailored to Spanish speaking inspectors is needed for PREQB. The training needs to include specific case studies and allow for adequate time for a question and answer session. All relevant documents and training materials should be translated into Spanish. In addition, the AQP needs to implement actions proactively to establish their responsibility for ultimately addressing and resolving violations (enforcement response). The AQP need to promote, among other things, more frequent coordination within PREQB and between PREQB and EPA. Specifically, PREQB needs to submit reports to EPA and participate in conferences on a monthly basis as opposed to quarterly, as it is currently required. Therefore, the grant work plan should be modified beginning with the FY 2008 work plan to include more frequent meetings (i.e., monthly) between EPA and PREQB for the purpose of discussing violations and their possible identification as HPVs, resulting in HPVs being reported to the EPA within 30 days of discovery, and other enforcement cases. This process needs to be formalized in a SOP, which needs to also include entering the HPVs in AIRS within 60 days of designating the violation a HPV. EPA will monitor PREQB meeting this requirement bi-annually via OECA's *CAA HPV Identification Report*.

In addition to reporting the HPV to EPA, PREQB should ensure that the facility's compliance status is updated in AIRS when an HPV is discovered; the compliance of the facility should be changed to "in-violation."

Additional PREQB Comment on the Recommendation:

A training on how to enter data into AIRS was held in April 2006. However, AQP is in need of additional training. AQB will work with EPA to secure necessary training.

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

Findings:

Most often the only enforcement action taken is the issuance of a NOV. According to the OTIS website (*Clean Air Act Extended Management Reports*), in FY 2004 and 2005, 201 NOVs were issued at all sources. During that same time period only 2 formal enforcement actions were issued. If you include FY 2006, 245 NOVs were issued at all sources during the three fiscal years and 8 formal enforcement actions were issued.

During EPA's file review, it became apparent that if sources claimed that they returned to compliance a formal enforcement action was not pursued. However, demonstration of compliance was often times not documented and/or verified by PREQB. For instance, the AQP issued a NOV for excess H₂S emissions to a petroleum refinery. The source responded to the NOV but there was no record in the file whether the source returned to compliance or the AQP initiated a follow-up enforcement action (i.e., referred the case to the LAO). EPA also found an instance where a pharmaceutical preparation facility received a NOV for opacity violations and a subsequent inspection by the EPA indicated that the source

continued to violate the opacity standards. There was no follow-up to the NOV by PREQB. Also, EPA found instances where multiple NOV's were issued for the same repeat violations at a facility. These violations did not constitute an HPV; a minor source failed to maintain records and conduct necessary inspections. We did find an example where a follow-up inspection determined that the source returned to compliance after receiving a NOV; however, the follow-up inspection was conducted nine months after the violations were initially discovered. A separate source received a NOV for failing to conduct opacity readings for six (6) boilers. PREQB clarified to the source that each boiler required an opacity reading, even though some boilers shared stacks. The violation was resolved in AIRS, but nothing in the file indicated the source returned to compliance.

In addition, PREQB does not pursue all violations discovered. For example, during an on-site inspection, an inspector found that a source was operating without operating the required control equipment. A NOV was issued as follow-up to the inspection, but it did not identify the failure to operate the required control equipment. And there was no documentation in the source file that indicated the source began operating the control equipment and returned to compliance. The NOV was issued for separate additional violations.

EPA also learned that the AQP does not have a formal standard operating procedure (SOP) for conducting follow-up activities when a source identifies deviations and/or intermittent compliance in their title V annual compliance certification; potential violations are not being pursued.

Citation of information reviewed for this criterion:
Enforcement files, staff interviews, OTIS

Recommendations if corrective action is needed:

When a violation is discovered, PREQB needs to abide by a SOP and/or an enforcement response policy that dictates actions to ensure that sources return to compliance and documentation of final resolution in all cases where a NOV is issued. The SOP should include, at a minimum, the following elements: 1) time frames for informal and formal enforcement response (i.e, issuing NOV's and subsequent formal enforcement actions), 2) periodic internal PREQB meetings between AQP and LAO, and 3) periodic meetings with EPA to discuss progress and possible lead changes where appropriate and/or necessary. As a reference, PREQB should refer to federal enforcement response policies, especially the HPV policy. PREQB needs to ensure that NOV's include all violations discovered, formal enforcement actions address all violations for which the source received a NOV, and enforcement actions includes complying actions that will return a source to compliance with all applicable state and federal regulations. In addition, PREQB needs to establish a procedure for conducting follow-up when a source identifies deviations or intermittent compliance in their title V annual compliance certification. The enforcement actions that PREQB issues need to persuade the violators to take precautions against falling into non-compliance for the same violation and deter others from violating the CAA and its regulations. Included in their enforcement response policies, must be provisions to escalate enforcement actions if the facilities do not respond to the initial action.

Additional PREQB Comment on the Recommendation:

AQP requests that Region 2 provide technical assistance to PREQB to prepare a SOP and/or enforcement response policies and other relevant enforcement and compliance guidance documents.

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:

Enforcing regulations and performing activities in conformance with the *Timely and Appropriate Enforcement Response to High Priority Violators (HPV)* is included in PREQB's APC grant work plan. However, 1 out of 3 HPVs that were characterized as "unaddressed" at some time during FY 2005 was not addressed within the 270 day timeliness threshold pursuant to the HPV policy. Therefore, 33.3% of HPVs characterized as "unaddressed" in FY 2005 were not addressed within 270 days, which is below the national average of 55.8%. The one HPV that was not addressed within 270 days has since been addressed.

During the file review, EPA found instances of the AQP identifying violations as HPVs within their referral to the LAO, but the HPV was not reported to EPA. For example, a violation was discovered on August 11, 2004, at a landfill. A NOV was issued on November 10, 2004, and a second NOV was issued on April 14, 2005, for additional violations. On July 29, 2005, an Administrative Order was issued with a \$4,000 penalty assessed. On December 15, 2005, the Governing Board mitigated the penalty to \$2,000; however, there was no record in the file that documented the penalty was paid. On March 24, 2006, when a third NOV was issued for additional violations, the referral to the LAO included a note that certain violations included in the referral were HPVs.

A cement manufacturer failed to conduct daily opacity evaluations at each of 22 stacks. Two months after the source received the NOV, they submitted a response to PREQB that provided an explanation regarding corrective action conducted in response to the NOV. There was no indication in the file as to whether PREQB verified the implementation of the corrective action. Six months after the source's response was received, the AQP referred the case to the LAO. The failure to conduct daily opacity readings for emission points that are deemed major for particulates would be considered "substantial" interference with determining compliance and, therefore, an HPV. The source does not have a continuous opacity monitor or other means to determine compliance. PREQB did not identify the violation as an HPV. PREQB relinquished lead to the EPA for these violations on September 1, 2006, since we were also pursuing separate violations at the facility. However, PREQB should have identified the HPV in AIRS and linked an action code for a lead change to the HPV.

No formal enforcement actions were reported to EPA in FY 2005. However, during EPA's end-of-year review for their APC grant, it was reported by PREQB that one Administrative Order was issued during the fiscal year. Furthermore, during our file review, we learned that a second Administrative Order was issued in FY 2005. In addition to these two formal actions, nine Orders to Do and Show Cause were issued, principally to dry cleaners.

Citation of information reviewed for this criterion:

AIRS, OTIS Management Reports, source files and staff interviews

Recommendations if corrective action is needed:

PREQB needs to prioritize its enforcement actions so that HPVs are addressed within 270 days, which is the timeframe specified in the HPV policy and, PREQB needs to ensure that the appropriate enforcement action is taken that will ensure compliance. Also, PREQB needs to report all formal enforcement actions to EPA in accordance with the latest Information Collection Request.

Enforcement response for HPVs needs to be included in the enforcement SOP and/or response policy referenced in Element 5 above. The response needs to include timelines, communication between PREQB offices and EPA, reporting, and entering the requisite data elements in AIRS. Development of such a response policy should begin immediately.

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

Findings:

During the period covered by the review, PREQB did not have a formal penalty policy for stationary sources. Currently, a draft policy has been developed. PREQB does not reference the *CAA Civil Penalty Policy*. Until the draft policy is approved by the Government Board, it is the discretion of the attorney assigned to each case to determine and negotiate "an appropriate penalty." Due to mitigating policy and practices, we were informed that this often results in 50% of an assessed penalty being mitigated. We were also informed that the draft penalty policy does include a penalty matrix for noncompliance.

Of the enforcement files evaluated, a penalty was assessed in four cases. However, a penalty calculation sheet was not included in any of the files we reviewed. Therefore, EPA could not determine if the appropriate gravity and economic benefit was included.

Citation of information reviewed for this criterion:

Source files, staff interviews, the *CAA Civil Penalty Policy*.

Recommendations if corrective action is needed:

PREQB needs to finalize and implement a penalty policy that is consistent with Puerto Rico's Regulation(s) for the Control of Atmospheric Pollution and EPA's *CAA Civil Penalty*

Policy as soon as possible. This requires a penalty policy that includes assessments for both the gravity of the violation and, at a minimum, the economic benefit experienced due to noncompliance. While finalizing the PREQB penalty policy, PREQB needs to use the *CAA Civil Penalty Policy*. Furthermore, all enforcement cases where a penalty is assessed must have a penalty calculation worksheet in the file that includes a computation of the potential maximum penalty assessment allowed by the law. In addition, the worksheet needs to include the justification for how an assessed penalty was calculated and what factor(s) were considered in mitigating the penalty.

Additional PREQB Comment on the Recommendation:

The Legal Affairs Office in PREQB is currently working on a penalty policy.

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:

No formal enforcement actions were reported in AIRS in FY 2005. However, a formal action was issued and the defendants paid a \$160,000 penalty and were required to pay another \$300,000 in injunctive relief (in-house improvements). A calculation was provided in the file for the cost of injunctive relief.

Citation of information reviewed for this criterion:

AIRS, OTIS Management Reports, source files, *CAA Civil Penalty Policy*.

Recommendations if corrective action is needed:

PREQB needs to report the assessed penalty to EPA via AIRS. During the quarterly conferences held between PREQB and EPA, PREQB needs to provide EPA the documentation/calculations described in paragraph 7.

Additional PREQB Comment on the Recommendation:

The Legal Affairs Office in PREQB is currently working on a penalty policy.

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):

According to PREQB's Air Pollution Control grant application work plan, PREQB agreed to issue 39 NOV's, 39 NOD's and 14 Administrative Orders. They issued 80 NOV's, but only 11 AOs, including 9 Orders to Do and Show Cause. Among the reasons given for the shortfall in formal enforcement actions are an insufficient number of attorneys designated

to work on the cases and excessive workload. EPA was informed during the State Review Framework interviews that PREQB has assigned a full time attorney to the Air Quality Program and is initiating actions to hire an additional attorney.

PREQB submitted their title V Corrective Action Plan (CAP) on February 28, 2005, which addressed a projected deficit of \$1 million. According to EPA (per EPA's end-of-year review report), the CAP provided a "solid blue print to make appropriate modifications to the title V financial program." Through an Intergovernmental Personnel Act (IPA), EPA staff will continue to coordinate activities established in the CAP. The purpose of the IPA is to assist the PREQB, Office of Budget, Finance and External Resources in the implementation and assessment of a successful financial management system, which includes Title V program funds.

Citation of information reviewed for this criterion:

Recommendations if corrective action is needed:

PREQB needs to meet their commitments/objectives established in their APC grant work plan. Where expected shortfalls will occur, PREQB needs to take steps to address the shortfalls in advance of the end of the work plan year. These expected shortfalls need to be discussed during the quarterly (or more frequently) meetings between PREQB and EPA.

Additional PREQB Comment on the Recommendation:

The database used to retrieve the major source universe list is incorrect. There are not 95 facilities with a major source classification code. For 2005 the Title V sources are 65. Six of 65 are closed. Three are no longer Title V source. One is new Title V source. In summary, the total Title V active sources are 56. AQP recommend a new retrieve after the database be corrected. AQP requests a new report after the corrections in AIRS System are completed.

Section 4: Review of Database Integrity

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

Findings:

Included in PREQB's APC grant work plan is the requirement to enter all enforcement data into AIRS by April 30 and October 31 of each year and FCEs monthly. This is not in-line with the HPV policy and/or any ICR, which requires entry of all MDRs within 60 days of the action/activity. At a landfill a violation was designated a HPV on September 22, 2005, according to AIRS; the action was entered in AIRS on June 8, 2006, approximately 170 days after the violation was designated a HPV. This is based on the "Day Zero" date achieved and the record creation date in AIRS. HPVs need to be entered in AIRS within 60 days of designating the violation a HPV. Other instances of late reporting HPVs arose because the PREQB staff that entered the HPVs did not enter them accurately. They failed to identify them as "key actions;" therefore, the action was not recognized as an HPV. AIRS has since been modified and all "Day Zeros" that are entered are automatically identified as a "key action."

During the period covered by the review (FY 2005), inspectors from ICD were not responsible for entering their own data. They provided an AIRS data entry form to a single point person in the VDMD who entered all AIRS data. The Chief of the ICD reviewed each data entry form prior to submittal to the VDMD, which may have contributed to untimely data entry. Beginning in May 2006, all ICD inspectors are responsible for entering their own compliance data in AIRS.

Citation of information reviewed for this criterion:

AIRS, OTIS Extended CAA Management Reports, OTIS Management Reports, staff interviews, and Air Pollution Control Program grant application for FY 2005.

Recommendations if corrective action is needed:

PREQB needs to enter all MDRs, including FCEs and HPVs, in AIRS as soon as feasibly possible (i.e., upon completion, designation, etc.), but no later than 60 days of the activity/action date or, in reference to HPVs, within 60 days of designating the violation a HPV. Also, all PREQB inspectors need to maintain access to AIRS. If 90 days lapse and an inspector has not accessed AIRS, his or her password is revoked. In order to regain access his or her password would need to be restored by EPA. This requires time and can cause a delay in entering data. In accordance with the 2005 ICR, non-HPV violations (i.e., compliance status per air program pollutant) need to be reported in AIRS within 60 days of determination. The results codes also need to be entered for stack tests and title V annual compliance certification reviews. In addition, the compliance status of a facility needs to be modified within 60 days of a compliance determination.

Additional PREQB Comment on the Recommendation:

AQP will follow your recommendations. MDR will be part of the checklist.

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

Findings:

During the period covered by the review (FY 2005), PREQB used an AIRS data entry form. The chief of the ICD reviewed each form and then provided those forms to the VDMD. The inspectors were not responsible for entering their own data. Examples we found of inaccurate reporting of MDRs include:

- No stack tests were reported during FY 2005. Evidence of a stack test was found during the file review;
- Non-applicable air programs reported in AIRS;
- Lack of CMS Codes and Frequency Indicators;
- Regulated pollutants not reported in AIRS;
- Inaccurate pollution classification;
- Inaccurate air program pollutants. The source was not subject to NSPS for pollutants listed;
- Missing the date that title V annual compliance certifications are received and title V annual compliance certifications reviewed;

- Inaccurate entry of the review of an annual emission statement as the review of a title V annual compliance certification;
- Inaccurate program operating status, the Government Board signed a resolution terminating a source's title V permit and absolving them from their title V permit requirements. The title V program code in AIRS was not changed from temporarily closed to permanently closed;
- Missing applicable air programs;
- Some actions did not match those found in the compliance evaluation files;
- Some compliance evaluations were entered as FCEs in AIRS, but were identified as PCEs in the inspection reports; and
- Missing actions: compliance evaluations and the issuance of NOV's.

The MDR for CMS Indicators (source codes) and CMS Frequency Codes is updated by the EPA. Since this a multi-step process (EPA must receive a CMS inspection plan that includes the necessary CMS data elements from PREQB), 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. There are seven facilities in AIRS with a major source classification or minor source classification with a CMS code for SM-80s.

Another issue discovered pertains to the operating status of facilities. While trying to determine an accurate universe of facilities, we found three sources whose operating status were modified more than six years ago to indicate temporary operation. PREQB requested guidance on closing facilities in AIRS since it can take an extended period of time for the Governing Board to officially terminate a source's title V permit (i.e., when should a title V air program code be "permanently" closed?). Some facilities may have equipment but are no longer operating and are in the process of petitioning the Governing Board to rescind their title V permit. EPA policy states that if a source has a valid title V permit, the title V air program code needs to remain "operating" in AIRS. Not until the title V permit is officially terminated and the source is officially relieved of all permit requirements should the title V air program code be "permanently" closed.

Citation of information reviewed for this criterion:

AIRS, OTIS Management Reports, OTIS Extended CAA Management Reports

Recommendations if corrective action is needed:

Provide an updated CMS Plan to EPA on a yearly basis in conjunction with the Air Pollution Control work plan. However, PREQB needs to use the template provided by EPA. Enter all Air Program subparts for a facility upon completion of a full compliance evaluation. Ensure all MDRs are reported accurately. Enter all stack tests and results in accordance with the *CAA National Stack Test Guidance*, September 30, 2005.

If a title V permit is still active, meaning it has not yet been rescinded; PREQB needs to continue to inspect those facilities to report their compliance status in accordance with the title V permit. In AIRS, the operating status of the facility needs to be maintained for the title V air program code to indicate the source is "operating" until the title V permit has been

closed out permanently and the facility is no longer required to comply with any of their title V permit requirements.

Furthermore, all MDRs need to be entered accurately. A quality control/quality assurance plan needs to be developed and implemented that includes frequent review of the data in AIRS. To expedite this process, PREQB can use the OTIS website. Specific data requirements that need to be updated are: 1) facility's compliance status per air program pollutant; 2) air program operating status; 3) air program pollutant classification; 4) actions within air programs, such as, the issuance of NOV's, FCEs, Stack Tests, and the review of title V annual certifications.

Additional PREQB Comment on the Recommendation:

AQP will provide an updated CMS Plan to EPA on a yearly basis and will use the template provided by EPA.

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:

PREQB enters MDRs directly into AIRS. The source level compliance status, classification codes, compliance evaluations and the results of compliance evaluations are included in the APC grant work plan as required data elements.

Title V Universe:

At the time of the pull that comprised the data metrics, AIRS indicated a universe of 95 operating majors and 69 operating majors with a title V air program code. During the file review PREQB provided EPA with a draft CMS plan, according to the draft CMS plan, the current universe of title V majors is 58 sources.

State agrees with source count:

PREQB utilizes AIRS to maintain the universe counts. Therefore, the universe established by PREQB in AIRS accounts for those sources within those categories. Discrepancies may be caused by a discrepancy between the EPA classification and the PREQB classification. There are instances in AIRS where the state classification is different than the EPA classification. The highest pollutant level (major versus synthetic minor, synthetic minor versus minor) will rise to the plant level classification. Therefore, if EPA identifies a source as synthetic minor and PREQB identifies it as minor, the source on a plant level will be classified as a synthetic minor.

- Major sources: Based on PREQB's most recent Air Pollution Control work plan, the universe of major sources in PR is 70, which includes three mega-sites. This number does not reflect information we received during the file review, which indicated the major source universe is 58 sources.
- Synthetic minor sources: According to the state classifications in AIRS, there are 23 synthetic minor sources in PR. This includes three sources that are temporarily shutdown according to their operating status in AIRS. One has been temporarily shutdown since

January 1998, another March 2000 and the third since April 2001. In addition to the 23 sources identified in AIRS, there are 11 sources that are included as synthetic minor sources in PREQB's FY 2007 inspection plan. This equates to a synthetic minor source universe of 34 sources. But, according to PREQB, there are 26 synthetic minor sources in PR.

- NESHAP minor sources: According to AIRS, there are 8 NESHAP minor sources in PR. According to PREQB, there are 14 NESHAP minor sources in PR.

Subprogram Universe:

The below numbers include sources temporarily shut-down, sources under construction and planned sources. The total counts are derived from PREQB's Air Pollution Control Grant application for FY 2007 work plan.

- CAA-NSPS: According to PREQB, there are 149 NSPS affected sources in PR.
- CAA-NESHAP: According to PREQB, there are 10 sources affected by NESHAP regulations in PR.
- CAA-MACT: According to PREQB, there are 169 MACT affected sources in PR.

Compliance Monitoring Counts Complete:

- Number of FCEs completed: According to AIRS, 19 FCEs were conducted in FY 2005 at operating majors, synthetic minors and NESHAP minors. According to PREQB 26 FCEs were conducted in FY 2005 at operating majors and synthetic minors.
- Number of PCEs reported: According to AIRS, at all sources, 318 PCEs were reported in FY 2005.

Historical non-compliance counts complete:

Historical data in AIRS may not get updated by either the PREQB or EPA; therefore, this data metric may not be accurate. According to AIRS, the total number of sources that were identified to be "in-violation" during any period in FY 2005 was 337.

Notice of Violation Counts Complete:

According to AIRS, 66 sources received a total 80 NOV's in FY 2005. According to PREQB, they issued 139 NOV's to 138 facilities in FY 2005.

HPV Counts Complete:

PREQB agrees that three HPV's were identified at three different facilities in FY 2005.

Formal Action Counts Complete (needs further info from PREQB):

In FY 2005 PREQB issued two (2) Administrative Orders, neither of which were entered in AIRS. PREQB also issued an additional 9 Orders to Do and Show Cause, mostly to dry cleaners.

Assessed Penalties Complete (needs further info from PREQB):

The total assessed penalties in PR was \$499,000 in FY 2005.

Number of Major Sources Missing CMS Policy Applicability:

Of the 58 sources included in PREQB's draft CMS plan, which includes 3 mega-sites, 11 are missing a CMS code. A 12th facility that is included as a major facility on the draft CMS plan is classified as a minor source in AIRS and has no CMS code. Currently, maintenance of the CMS Code and Frequency Indicator is the responsibility of the EPA.

Citation of information reviewed for this criterion:

AIRS, IDEA, OTIS Management Reports, OTIS Extended CAA Management Report.

Recommendations if corrective action is needed:

PREQB needs to enter all MDRs in AIRS including enforcement actions, the issuance of NOV's, FCEs, air program operating status, compliance status, and HPV's. PREQB shall begin to provide EPA with an annual CMS plan, so that EPA can maintain the appropriate source CMS Code and Frequency Indicator in AIRS. PREQB needs to update AIRS continuously in accordance with the latest Information Collection Request.

As previously stated, with regards to title V annual compliance certifications, PREQB and EPA need to implement already established roles and responsibilities to ensure that all title V annual compliance certifications received are reviewed and all relevant MDRs (i.e., the date the annual certification is due, the receipt of the certification, the review of the certification, the result code for the review and whether any deviations were reported) are accurately entered in AIRS. PREQB's responsibilities need to be more clearly delineated in future annual APC grant work plans, beginning with the one for FY 2008.

Additional PREQB Comment on the Recommendation:

AQP will enter all MDRs in AIRS including enforcement actions, the issuance of NOV's, FCEs, air program operating status, compliance status, and HPV's.

9/25/2007

**State Review Framework
Direct Implementation Region 2 NPDES and RCRA Programs in
Puerto Rico for FY2005**

Executive Summary

Introduction

This is the report of OECA's review of Region 2's direct implementation of the CWA/NPDES and RCRA/Subtitle C programs in Puerto Rico using the State Review Framework process. OECA conducted the review because Puerto Rico is not approved for those two programs. Region 2 conducts the enforcement and compliance program in Puerto Rico from both the Regional Office in New York and the Caribbean Environmental Protection Division (CEPD) in San Juan, Puerto Rico. The CEPD office has the primary responsibility for managing the CWA/NPDES and RCRA/Subtitle C enforcement and compliance programs.

Process for SRF Review

In order to capture the full range of program activity, the review was conducted in both the CEPD offices in Puerto Rico and the Region 2 offices in New York. The OECA review team conducted the on-site review of the Region 2 direct implementation of the Puerto Rico CWA/NPDES and RCRA/Subtitle C compliance and enforcement programs on November 6 to 8, 2006 in the Caribbean Environmental Protection Division (CEPD) offices in San Juan, Puerto Rico, and from November 20 to 21, in the Region 2 offices in New York City. This review is based on FY 2005 data, which was the most complete data available at the time of the review.

Prior to the on-site visit, the review team conducted several preliminary calls with managers and staff in Region 2 and CEPD to obtain preliminary information and to organize the review. A conference call for the review team, Region 2, and CEPD was conducted on September 20, 2006 to discuss program and logistical issues related to the review. The review team then obtained and analyzed the data metrics from OTIS and selected the inspection and enforcement files for review. The preliminary data findings and the file list were shared with the Region for their input. On November 1, the review team conducted a conference call with the Region and CEPD to discuss the initial findings. Also on November 1, the review team sent the entrance letter that included the preliminary data findings and list of files for review to the Region and CEPD. The on-site portions of the review focused on the file review. There have been subsequent follow-up calls and email communications with the Region to gather additional information.

Major Regional Priorities and Accomplishments

Two priorities and accomplishments are of note:

- The CEPD office was reorganized in February 2006 to be able to manage

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their increased responsibility that was transferred to them from the New York office for conducting the enforcement and compliance program in Puerto Rico.

- PRASA, the commonwealth's water authority, is now under a consent decree to address widespread noncompliance throughout the commonwealth. The current consent decree represents a commitment to achieve compliance with the CWA at the numerous facilities owned and operated by PRASA.

Cross Media Findings

The major cross media findings for both the CWA and RCRA programs are:

- Inspection coverage is above the national average
- Consistently well prepared and complete inspection reports.
- The BEN model is not always used to calculate economic benefit. This is most common in RCRA enforcement actions where the gravity component is judged to be less than \$5,000.
- Inspection reports are not timely.

Media Specific Findings

NPDES

- Inspection coverage of major sources in Puerto Rico in FY 2005 is above the national average.
- Inspection reports are not always completed in a timely manner.
- Region 2, both the New York office and CEPD, do not enter single event violations into ICIS-NPDES.
- Region 2 enforcement actions in Puerto Rico in FY 2005 were generally appropriate; however, three exceptions are discussed in the report. The nature of these exceptions is the inappropriate use of an expedited settlement, allowing a source to remain out of compliance for an unspecified period of time pending a permit modification, and using a compliance order to replace a permit.
- Penalties are assessed in 45% of the formal enforcement actions. One-third of those files reviewed contained sufficient documentation.
- Economic benefit is calculated for each of its penalty actions. The CEPD office has been using an alternative, potentially problematic, method of calculating economic benefit for certain types of cases.
- Penalties for storm water expedited settlement offer (ESO) are lower than the amounts established in the national ESPO policy. The Region has also assessed more than one ESO to a violator.
- The SNC identification rate (88%) in Puerto Rico for FY 2005 is high. This is possibly due to the issues in negotiating a civil consent decree to address

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many of these violations.

- There are data entry inaccuracies such as non-linking of enforcement actions in PCS, not entering enforcement actions into PCS, double entry of an inspection, and enforcement actions not entered into PCS.

RCRA

- Inspection coverage for RCRA sources in Puerto Rico in FY 2005 is above the national average.
- Inspection reports are complete and well maintained. Inspection reports identify potential violations that often lead to enforcement actions.
- Inspection reports are not completed in a timely manner.
- Enforcement actions are appropriate. Penalties are calculated for all enforcement actions and appear to be appropriate; however, there needs to be better documentation of economic benefit.

Major Recommendations

NPDES

- Enter Single Event Violators into ICIS-NPDES.
- Address the timeliness of inspections reports.
- Use BEN model for assessing economic benefit in penalty calculations.
- Improve data quality, e.g., link violations, in ICIS-NPDES.
- Coordination with OECA to ensure application of storm water ESO policy is consistent with national approach for penalties and the number of ESOs per violator.

RCRA

- Address the timeliness of inspection reports.
- Use the BEN model to calculate economic benefit.
- Reconcile data, e.g., source universe for LQGs, enforcement actions, in RCRA Info.

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Program Evaluated for Region 2 CWA NPDES for Puerto Rico

Review Place and Date

Caribbean Environmental Protection Division Office, Puerto Rico	November 6 to 9, 2006
Region 2 Office, New York City	November 20-21, 2006

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Background

Organizational Structure

Puerto Rico is not authorized to run the NPDES program; therefore it is managed by EPA Region 2. Responsibility for the program is shared between the Water Compliance Branch of the Division of Enforcement and Compliance Assistance (DECA) in the Region 2 office in New York City and the Caribbean Environmental Protection Division (CEPD) in San Juan, Puerto Rico. The primary responsibility for the program is with the CEPD office, which was reorganized in February 2006. The NPDES program in CEPD is managed by two branches. The NPDES Municipal Programs Branch is responsible for the municipal water systems and the wastewater treatment facilities. The Multi-Media Permits and Compliance Branch together are responsible for NPDES industrial facilities. Data entry

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responsibilities for PCS (and now ICIS-NPDES) are distributed between the New York office and CEPD. Although more responsibility has been shifted to CEPD, the New York office is responsible for entry of permit and DMR data as well as their compliance data into the system of record for FY05. CEPD is responsible for entering their inspection and enforcement-related data.

File Selection for Puerto Rico NPDES Program

The source universe in Puerto Rico is 75 major NPDES sources, 189 non major NPDES sources, and 449 other sources (e.g., wet weather, unpermitted). The file selection universe was 290 files. This is based on 195 enforcement actions and 95 inspections conducted by the Region in FY 2005. The File Selection Protocol recommends reviewing between 15 to 30 files if the universe is less than 300 files. 41 files were selected (20 inspection files and 21 enforcement files) in order to have a breadth of inspection and enforcement files to review. The review team initially decided that it was not appropriate to review enforcement files for sources that would be coming under the upcoming consent decree with PRASA, Puerto Rico's major water utility company, which meant that no enforcement actions at PRASA facilities would be reviewed. However, the review team reviewed eight PRASA enforcement files for an FY05 administrative order that addressed failure to submit DMRs for one quarter in 2004. (Two of these facilities were not originally identified as PRASA facilities.)

The team selected files for review using the following categories for enforcement files: major facilities, storm water, unpermitted, and minors. Categories for inspection files are: CSO, Sampling inspections, CEI, and storm water. The files were randomly selected from each of these categories. The break out is as follows:

Puerto Rico NPDES Enforcement Files			
Type	Number		Total
	Non PRASA	PRASA	
Individual majors	3	3	6
Storm water	5	0	5
Unpermitted	5	0	5
Minors		5	5
Totals	13	8	21

Puerto Rico NPDES Inspection Files			
Type	Number		Total
	Non PRASA	PRASA	
CSO	2	0	2
Sampling	3	0	3

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Storm water	3	0	3
CEI	6	6 (4 municipalities, 2 industrial)	12
Total	14	6	20

The distribution of files reviewed in the CEPD office and the Region 2 office are discussed in the findings below.

Puerto Rico CWA Element by Element Review

Section 1: Review of State Inspection Implementation

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

Findings:

Metric 1a – 81.3% of all major CWA NPDES sources in Puerto Rico (61 of 75 major sources) were inspected by EPA (the Region 2 office in New York and CEPD) and the Commonwealth of Puerto Rico in FY 2005. This is above the national average of 68% and below the national goal of 100%. 36.0% of the majors (27) were inspected by Region 2 (New York office and CEPD) and 45.3% (34) were inspected by Puerto Rico.

Metric 1b – 22.2% of non-major CWA NPDES sources in Puerto Rico (42 of 189) were inspected by EPA (the Region 2 office in New York and CEPD), and Puerto Rico in FY 2005. 6.3% (12) of non-major sources were inspected by EPA Region 2 and CEPD, and 15.9% (30) were inspected by Puerto Rico. The informal benchmark is 20% of minors to be inspected per year (one inspection within a permit cycle).

Metric 1c – 10.5% (47) of other NPDES sources were inspected in FY2005 by EPA.

The NPDES program is not approved to the Commonwealth of Puerto Rico, but the Puerto Rico Environmental Quality Board (EQB) conducts a significant number of NPDES inspections. Metric 1a shows that in 2005 there were a combined total of 61 NPDES major inspections. Thirty-four (34) of the inspections were conducted by EQB and 27 by EPA. Metric 1b shows that there were a total of 42 non-major NPDES inspections. Thirty (30) of the inspection were conducted by EQB and 12 by EPA. Metric 1c shows that there were a total of 47 inspections conducted by EPA at NPDES sources other than those identified under 1a and 1b. The Region provides CWA section 106 grant funds

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to the Commonwealth to conduct those inspections.

Metric r -- In FY 2005, Region 2 had a total major source commitment number in ACS, but did not break it out by state. Therefore, there is no specific inspection commitment for Puerto Rico. In FY 2005, 34 major source inspections were conducted in Puerto Rico (17 by EPA and 17 by EQB). Also in FY 2005, 42 non-major NPDES inspections (12 EPA and 30 EQB), and 47 inspections (all by EPA) at sources other than NPDES were conducted. In FY 2005, Region 2 met its overall target of inspecting 406 major sources throughout the Region. It can be assumed that the targets for Puerto Rico were also met.

Based on the data in PCS for Puerto Rico, there are 336 records for non-major or unpermitted facilities that are listed as never having been inspected. Of these 336, 57% (193) are permitted facilities. Thirty of these non-major facilities are listed as being in noncompliance for at least one quarter in the most recent 12 quarters. Fourteen of these facilities are permitted and 16 are unpermitted facilities. Region 2 indicates that these unpermitted facilities (PRASA Backwash) are being addressed, draft permits were recently proposed for eight facilities and in the near future draft permits will be proposed for the remaining universe. Twenty six (26) of these 30 noncompliant facilities have received a formal enforcement action at some point in time, though the data do not show which of these actions took place in the most recent 12 quarters. These data raise issues about the completeness of inspection data, since inspections for these types of facilities are frequently the method for identifying noncompliance, and the written inspection report generally forms a significant part of the factual basis for enforcement actions.

Below is a breakout of the types of facilities:

Non-Majors in PR Never Inspected		
Permit Types		Number in PCS
1	General (G)	27
2	Standard Individual (O)	33
3	Unpermitted (U)	142
4	Pretreatment (P)	54
5	Stormwater (S)	80
	Total	336

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Fifteen of these non-major sources are reported to be in noncompliance. Their noncompliance status is as follows:

Non-Majors in PR Never Inspected By Violation Type			
Compliance Codes as Listed in OTIS	Description of Compliance Codes	#	Percentage
N	Reportable noncompliance (RNC)	8	53%
D	SNC for reporting violation - non-receipt of DMR	2	13%
E	SNC for effluent violations of monthly average limits (TRC and chronic)	1	7%
R	Compliance - an enforcement action has been issued, and the facility has completed all requirements of the action	0	0
P	Compliance - an enforcement action has been issued, and facility compliance with the action is pending final completion.	0	0
S	SNC - compliance schedule violation - not following schedule	1	7%
X	SNC for effluent violations of non-monthly average limits (TRC and chronic)	3	20%
T	SNC for compliance schedule reporting violation	0	0
C	Compliance - manual override of noncompliance by state or EPA region.	0	0
Total		15	100%

Most of the noncompliance is for reportable noncompliance (RNC) and non-reporting. Some of these are effluent violations that should trigger follow-up inspections.

Possible explanations for such a high number of non-major sources that are not inspected are: 1) some of the facilities may have been inspected by Puerto Rico EPQ and not reported in PCS: 2) the lack of an inspection frequency policy for some of these facility types may be an issue. In addition, there may be facts about these types of facilities that EPA is not aware of. It is not clear that this indicates that there is a problem. It would, however, be a useful line of inquiry as a follow-up to the review.

In response to this finding, which is based on FY 2005 data, Region 2 indicates that all PRASA minor wastewater treatment plants are being inspected twice a year by EPA and twice a year by EQB since October 2006. Regarding inspections at minor drinking water facilities (STS), the Region has inspected ninety during this FY 2006. Region will work to inspect other Minors with non-compliance problems based on available resources in relation the revised NPDES compliance monitoring strategy.

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

Recommendations:

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Region 2 should assess the situation for the non-majors that appear to have non compliance problems and no inspections to determine whether data problems exist. Region 2 should inform OECA about any remedial steps and schedules that are established. As indicated above, Region 2 has increased its inspections of non-major facilities. The Region should provide OECA with its plan for continuing this inspection regime. This plan should be shared with OECA by November 30, 2007. OECA should conduct the same analysis as soon as the 2007 data is available to assess whether the number of non-majors without inspections has decreased. The results of that analysis should be discussed with the Region to determine if further action is required. This should be accomplished by February 2008.

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

Findings:

A total of 25 inspection reports were reviewed. 20 of these inspection reports belonged to the 20 inspection files that were selected for review. The remaining 5 reports belonged to facilities under enforcement file review. (The enforcement actions in the other enforcement files were based on DMR reporting and no other inspection reports were available in the files.)

Inspection reports in two files initially selected were not reviewed. One of the files, Quality Health Service of PR, could not be located either by CEPD or the Region 2 office in New York. Another file, for Suiza Dairy, was not reviewed because the inspection at this facility was found to have been a pretreatment inspection conducted by PRASA and the report was written in Spanish.

Metric 2a – 100% (25 of 25) of the inspection reports reviewed contained complete inspection documentation. This included 12 reports reviewed in New York, 12 files reviewed in Puerto Rico, and one file that was shared in both locations. There were, however, three facilities (Walmart Supercenter, Phillips Puerto Rico, and Mora Development Corp) had more than one inspection in the Inspection Year 2005. Although the inspections were coded separately in PCS, they were reported in one report when there should be a separate report for each inspection.

The files reviewed in Puerto Rico were well organized and contained the form 3560 coversheets, narratives of findings, and supporting photographs. Findings from the inspection and potential violations are well documented in the inspection

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reports. Of particular note, the inspection reports for the PRASA facilities are well written and the documentation of problems at the facilities directly links to injunctive relief for each facility that is stipulated in the recently lodged PRASA consent decree.

Inspections at storm water sites, both industrial storm water and construction storm water, make effective use of photographs to document noncompliance and demonstrate discharges offsite. The determination of violations is made based on follow-up meetings between the Region's enforcement attorneys and the inspectors.

The Inspection files maintained in the Region 2 office in New York were also complete; however, there were frequently multiple copies of inspection reports and/or administrative enforcement actions. This complicated the review, although the review team concluded that the all of the relevant information was present, that the narrative inspection reports were well written, and that potential violations were properly documented.

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

Recommendations:

Region 2 needs to include in their SOP for conducting inspections provisions that each separate inspection requires a separate inspection report, that reports are complete, and that each inspection is reported separately into the ICIS-NPDES database. Region 2 agrees with this recommendation and indicates that they have initiated this procedure. The Region should provide OECA with the revised SOP that includes this procedure by the end of November 2007.

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

Findings:

Metric 3a – 28% (7 of 25) inspection reports affecting 24 facilities were completed in a timely manner. Six of these inspection reports were non-sampling compliance evaluations, for which the standard for timely completion is 30 days. The other timely report was for a stormwater inspection, completed in 17 days. The average number of days to complete a Puerto Rico inspection report is 82 days and the median is 72 days. The range is 42 to 308 days for the reports that are not timely. The standard for completing sampling inspections reports is 45 days. None of the three sampling inspections met this standard.

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They took 63, 76, and 83 days to complete.

There is some difference in timeliness observed between the New York and CEPD offices. Of the seven timely inspection reports, five were conducted by CEPD. Overall, the CEPD completed 42% (5 of 12) inspection reports in less than 30 days. The New York office completed 17% (2 of 12) inspection reports in less than 30 days. Six of the non-timely reports were conducted by the New York Office and six were conducted by CEPD. One non-timely inspection report was developed jointly by the two offices. Three inspection reports were incorporated into other reports and the timeliness of one report could not be determined.

As noted in the discussion under Element 2, the inspection reports in both New York and Puerto Rico offices are complete and document potential violations. The New York inspection reports identified potential violations that led to one SNC determination one formal and one informal action. (There were a total of nine enforcement actions included in the files, most of which did not appear to be directly linked to inspections.) The Puerto Rico reports led to one SNC determination (in addition to other DMR-related SNC), one formal and one informal action (in addition to other DMR-related formal enforcement). The enforcement actions taken without the sources being in SNC were at stormwater or other non-major permitted sites for which there is currently no SNC definition.

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

Recommendations if corrective action is needed:

The New York and San Juan offices should analyze the inspection review process to determine the cause(s) of delays in preparing and securing management review and approval of inspection reports. As a result of that analysis, Region 2 should implement improved procedures and management controls that will bring average inspection to final report performance in line with the 30 and 45 day goal.

In response to this recommendation, Region 2 reports that since October 2006, the inspection reports of the PRASA wastewater treatment plants and drinking water plants are being completed within 30 days of the inspection. This is being accomplished by developing an inspection itinerary for the MWPB. MWPB should provide the inspection itinerary to OECA by October 31, 2007.

Also in response to this recommendation, Region 2 reports that they have already analyzed the timeframes involved in the other inspections and determined that some of the delays are related to large numbers of

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facilities being inspected by NY staff during trips to Puerto Rico. When staff inspect 10-15 Stormwater Construction Sites it is difficult to assure that reports are prepared within the 30 day period and that cease and desist Orders to address non-compliance are issued as soon as possible. To address this issue additional staff from the Water Compliance Branch has been assigned to generate stormwater enforcement actions in follow-up to these inspection trips, which frees up time for the inspector to complete their reports.

- 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:

Metric 4a – Zero single event violations are reported in the database at major or non-major facilities in Puerto Rico in FY 2005.

Single event violations are violations of the CWA's NPDES requirements that are documented during a compliance inspection, reported by the facility, or determined through other compliance monitoring methods by the permitting authority. Entry of single event violations is required (WENDB) for majors in the PCS Policy Statement, and is expected to become required for non-majors once the ICIS-NPDES Policy Statement is finalized. While not every SEV is SNC, they should still be entered into the data systems. The Final Single Event Violation Data Entry Guide for PCS sent out in June 2006 contains the latest guidance on the subject. Single Event Violation tracking is critical to forming an historic electronic record of inspection and compliance determinations. Tracking inspection results can impact future enforcement decisions, particularly when a permittee continues to exhibit the same violation over the course of several years. Electronic documentation of violations also improves the accuracy of public information. Region 2 indicates that the guide was not applicable until after the initiation of this review. While that is correct, OECA had issued the "Interim single Event Violations Data Entry Guide for PCS" in September 2005.

Metric 4b – 88% of facilities in Puerto Rico were in SNC in FY 2005 according to the OTIS data. These violations are at major sources and are identified through DMR reporting. If the Single Event Violations are entered into PCS, and depending on the nature of those violations, then it would be likely that the percentage of SNC would be even higher.

The most likely reason for this high SNC rate for Puerto Rico is that the Region does not link formal actions to violations in PCS, which is discussed under metric 11a later in this report. Linking an action to a violation has the benefit of

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automatically resolving RNC/SNC at the violation level, and may result in fewer facilities under this metric. Region 2 indicates that this rate was very high due to PRASA's waste water treatment plants, which was addressed by the recent Consent Decree. Revising this metric by removing all 39 facilities that are labeled as PRASA facilities, 8% of the facilities (29 out of 36 facilities) in SNC, which is below the national average of 17.3%.

Metric 4d – Nine inspections identified SNC, four by the New York office and five by CEPD. Nine additional SNC identifications were confirmed through DMR reporting. Eight inspections identified violations that are not subject to the current SNC definition due either to being: (1) a minor POTW or industrial facility; or (2) a storm water facility that is not covered by the existing SNC definition.

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

Recommendations if corrective action is needed:

Region 2 needs to develop a process for entering Single Event Violations into the ICIS-NPDES.

Region 2 reports that now with the linkage of data entry by the inspectors into ICIS NPDES these Single Event Violations are being entered. OECA has checked ICIS-NPDES on September 13, 2007 and it does not appear that SEVs are being entered for Puerto Rico. The OECA report that analyzes SEV data since January 1, 2007 shows that there are no SEVs for Puerto Rico. Region 2 and OECA should confer on this discrepancy and develop a plan for ensuring that Puerto Rico is entering SEVs into ICIS-NPDES. This should be completed by October 31, 2007.

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

Findings:

21 enforcement files were reviewed for this element. Seven files were in the New York office and 14 files were with CEPD.

Metric 5a – 100% (21 of 21 files) of the enforcement files reviewed had formal enforcement actions, although as noted below, one of these actions (at Puerto Rico Electric Power Authority) was determined not to be appropriate.

Metric 5b – 9.5% (2 of 21 files) of the files reviewed contained informal actions in

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the form of section 308 letters, which is defined under metric 12f. These facilities also received formal action.

Region 2, both the New York office and the CEPD, are consistent in taking formal enforcement to address non-compliance, whether or not the violations are in SNC. The Region first issues administrative compliance orders. In most cases, an administrative penalty order is issued either simultaneously with or after the compliance order.

Eight of the files reviewed were for facilities operated by PRASA. Prior to the review, the review team came to an understanding that it was unnecessary to review violations at PRASA facilities that are covered by the recent consent decree. The eight files for PRASA facilities that were reviewed were subject to an administrative compliance order that was issued on January 5, 2005 PRASA facilities. This action came about due to DMR non reporting violations that occurred during a strike at PRASA facilities that disrupted the data flow to PCS and placed each of these facilities in SNC for one quarter. These PRASA facilities returned to compliance and no subsequent penalty order was issued for these violations.

Thirteen of the files reviewed were for non-PRASA industrial or wet weather sources. Eleven of the cases were for storm water or SSO violations, which do not have SNC violations. Twelve out of those 13 actions required that the sources return to compliance. Some but not all of the compliance orders were successful in returning sources to compliance. In the instances where there is no return to compliance the Region spends considerable effort in escalating the enforcement response. Specific findings from the files include:

- Three of the facilities that were issued a compliance order were also issued Class II penalty orders.
- Seven of the files indicated that the sources had not returned to compliance, and that the Region is in the process of escalating the enforcement response. In two cases 308 letters have already been issued. In two others, penalty orders are being prepared.
- One case (Cooperative Camioneros) was an administrative order where the source did not return to compliance. The Region is now considering other enforcement options. Since the on-site visit, Region 2 has decided to refer the matter to DOJ and intends to send the referral to DOJ by the end of FY 2007.
- Two other cases (Better Roads and PREPA) were also administrative orders that did not return the source to compliance. These two orders are discussed

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in Element 6, below.

Citation of information reviewed for this criterion: **CWA EMS, Expedited Settlement Policy, Section 309(a) of the CWA, CWA Penalty Policy.**

Recommendations if corrective action is needed:

No recommendation required.

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

Findings:

Metric 6a – 73.3% (55 of 75) enforcement actions at major sources were not timely. This is almost ten times the national average of 8.8%. The national goal for this metric is less than 2%. Of the 55 facilities, all except one have been in non-compliance for 12 of the last 12 quarters. Four of the SNCs do not have any record of action (formal or informal) in PCS. The majority of the 55 facilities is part of the PRASA consent decree, and is in non-compliance for effluent and schedule violations.

The Region states that many of these facilities are also on the Watch List, but has not yet provided Headquarters with a comparison. The recent PRASA consent decree should address many of the facilities appearing in SNC; however timeliness is still an issue.

Metric 6c – 87% (13 of 15 SNCs) of the SNC reviewed in the files were addressed properly.

Eight of the SNCs were the PRASA facilities under the January 5, 2005 consent order. These were instances of SNC determined by DMR reporting, or in this case, non-reporting.

Eleven files were for wet weather cases, either stormwater or SSOs. Violations were found at each of these sites, but they are not SNC since there is no wet weather SNC definition. It was determined that 10 of the 11 sources with violations were addressed properly.

As noted in the findings for Element 5, Region 2 follows policy and guidance in addressing violations, whether they are or are not in SNC and most violations are appropriately addressed. However, there are instances where violations are not addressed appropriately. Three instances where violations were not addressed appropriately are:

- An expedited stormwater order was issued against a source (Guirimar Construction Corp.) where prior ESOs had been issued, rendering this

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additional ESO an inappropriate action. For the previous ESOs, the penalties were less than allowed under the policy and compliance was not verified prior to issuance of the ESO. ESOs are not to be used for repeat violations. That requires additional escalation of the enforcement response. Also, the two prior ESOs were not entered into PCS. In addition, Region 2 assessed penalties in some storm water ESOs that were below the amounts indicated in the storm water ESO policy. Region 2's belief is that the ESO policy establishes a ceiling for penalties, but allows lower penalty amounts. This is not consistent with the reviewer's understanding of the national policy. Region 2 agreed to coordinate with the headquarters storm water ESO expert to clarify whether their practice is consistent with national policy and amend their practice if necessary to comply with the national approach.

- The Administrative Order for one facility (Better Roads Asphalt) was appropriate, but the facility did not return to compliance and continues to violate its permit because they are waiting for changes or modifications to the water quality standards. The new standards would prompt permit modifications. In other words, the source believes that they are in compliance with the revised standards, which as of yet, are not in place. The Region should ensure that the permit is amended in a timely manner, or should take other action to return the facility to compliance.
- The compliance order issued against one facility (Puerto Rico Electric) was inappropriate. This was inappropriate because the compliance order was in effect used in place of a permit to authorize discharges. Compliance orders should not be used for this purpose. The Region recognizes this is an unusual practice and assured the review team that it does not plan to use this approach again.

Citation of information reviewed for this criterion: CWA EMS

Recommendations if corrective action is needed:

Regarding the timeliness of actions (under 6a), the Region should ensure that it is using the Watch List as an effective management tool, and linking all formal actions to the relevant violations in PCS / ICIS-NPDES. This is discussed in further detail under metric 11a. Linking an action to a violation has the benefit of automatically resolving RNC/SNC at the violation level, and may result in fewer facilities under this metric.

Region 2 needs to ensure that violations are addressed appropriately. In particular, the Region should not issue an ESO for

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a wet weather facility when an initial ESO did not bring the source back into compliance. The Region needs to reassess the case described above concerning the proposed permit revision and consider further action to address the issue. Region 2 reports that they agree that Guirimar Construction Corp should not have been given the opportunity for a second ESO. The Region has put into place a set of controls including tracking a facility by location and name, reviewing prior year cases assignments to identify potential multiple ESOs and enhanced supervisory checklists to prevent this from occurring. By October 31, 2007, Region 2 should share with OECA this procedure to verify that it is in place.

Region 2 should cease its practice of using penalties lower than the ESO policy amounts in ESO cases and amend their practice to comply with the national approach. They should continue their coordination with OECA/OCE to ensure this is done. By November 30, 2007, Region 2 should demonstrate to OECA that new procedures are in place.

Region 2 should continue to track the permit revisions for the source that needs one (Better Roads) to ensure that they are made in a timely manner. If permit revisions are not made, the region should evaluate what other action is needed to return the facility to compliance. Region 2 reports that it understands that if the permit modification process does not progress in a timely manner that additional action will need to be taken to address continuing non-compliance through enforcement. By November 30, 2007, Region 2 should ensure that either the process for permit modification is underway or that it will enforce the existing permit. By November 30, 2007, the region should report to OECA on the status of the resolution of this issue.

- 7. Degree to which a 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:

Metric 7a – 45% (9 of 20) of the formal enforcement actions reviewed included a formal penalty order. Only three of the files reviewed (33%) contained calculation for gravity and economic benefit consistent with applicable policies.

The three files that contained sufficient documentation were well documented

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and provided evidence that gravity was properly calculated, consistent with civil penalty policy. In these files economic benefit was calculated consistent with the EPA BEN policy.

The main reason for the remaining files to not have sufficient penalty documentation is that the review team reviewed program files and did not have access to the Regional attorneys' files. Some penalty calculations for opening offers or penalty proposals were found in a number of the files, but the files generally did not contain bottom line calculations, or justifications consistent with the penalty policy for the penalty assessed in final settlement agreements. Conversations with program staff, as well as some documents provided upon request, indicated that penalties were calculated properly, but still there was not sufficient documentation in the files provided to us for review. We were told that the confidential calculations are kept in the attorneys' files for the case.

The Region regularly calculates economic benefit and does this for each penalty it assesses. There is a question of how the Region interprets and applies the policy in certain cases. It was learned from the CEPD office they do not always use the BEN model in the situations where the economic benefit calculation requires taking into account the use of local taxes. The Region's alternate method may in fact derive higher values. This was discussed with the Region and it may be that the BEN model can now accommodate the needs of these actions. Region 2 explained that the tax law in Puerto Rico suffered additional changes that the BEN model does not consider. Furthermore, the tax law is expected to be modified once again. The Region believes that the approach being used at CEPD to estimate the economic benefit in penalty orders, estimates a more realistic economic benefit of each violation. The problem with the tax code was identified in 2002 and in 2004 OECA modified the BEN model to correct the problem. CEPD should be using this version of the model.

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

Recommendations if corrective action is needed:

Region 2, the New York office and CEPD, needs to be using the most recent version of the BEN model to calculate economic benefit. Region 2 should not wait to implement this recommendation. They should also contact OECA to arrange for additional training in the use of the model. Training should be scheduled before November 2007. If there are any upcoming changes to the Puerto Rico tax code, Region 2 and CEPD should inform OECA/OCE as soon as possible in order to assess the need for any future modifications of the BEN model that may be

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required.

Region 2 should ensure that enforcement case files include penalty calculations that document that the penalty assessed in a case is consistent with the penalty policies. It is not really necessary to show that an opening proposal tracks the penalty policies when the penalty assessed is a lower amount. By November 31, 2007, Region 2 should demonstrate to OECA that documentation of these penalty calculations are routinely part of the enforcement file, and continue to remain confidential.

- 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:

Metric 8a and 8b – The Region is not entering Puerto Rico penalty data into PCS. (These are informational-only metrics, due to the fact that penalty data is not required [WENDB] to be entered under the PCS Policy Statement.) The Region has not provided the SRF team with any penalty data to compensate for the lack of information available in PCS and OTIS.

As noted in Element 7, nine of the files show that penalties were assessed with the formal actions. One action was lodged for \$20,000. Other penalties were proposed for \$98,000, \$70,000, \$25,075.

Metric 8 d – The review team learned that penalties were collected for each of the penalty orders; however, there is no documentation in most of the files to this effect. Per EPA policy, penalty collection is the function of the financial office in Cincinnati, Ohio and it is not required that the enforcement file confirm that payment was received. It is good practice; however, to confirm receipt of payment with the finance office and include such documentation in the file. It may also be required to do so for storm water ESOs. There was a copy of the check for the \$4,100 ESO penalty from ME Salve Distribution Center.

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

Recommendations if corrective action is needed:

Region 2 needs to begin to enter penalty amounts into ICIS-NPDES

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and document collection in the files.

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

9. Enforcement commitments in the Annual Commitment System.

Findings:

Metric 9a – In FY 2005, Region 2 had a total major source commitment number in ACS, but did not break it out by state. Therefore, there is no specific inspection commitment for Puerto Rico. However, in FY 2005, 34 major source inspections were conducted in Puerto Rico (17 by EPA and 17 by EQB). Also in FY 2005, 42 non-major NPDES inspections (12 EPA and 30 EQB), and 47 inspections (all by EPA) at sources other than NPDES were conducted. It can be assumed that the targets for Puerto Rico were also met.

Citation of information reviewed for this criterion: **FY 2004 MOA Guidance and the FY 2005 National Program Guidance**

Recommendations if corrective action is needed:

None

Section 4: Review of Database Integrity

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

Findings:

Metric 10b – The metric is: Regions should evaluate what is maintained in PCS by the State and ensure that all minimum data elements are properly tracked and entered according to accepted schedules. During the on-site review, the team used the PCS data shown in OTIS facility reports for each of the sources used in the file reviews. The data in the files were compared with the data in the reports. This included the dates for inspections and the enforcement actions, as well as the types of actions. Overall, the data in the OTIS reports corresponds with the data in the files, indicating that data requirements are reported accurately into PCS. There are other types of data errors identified during the review, which are outlined in the findings under Elements 11 and 12.

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It is difficult to assess the timeliness of entering the data requirements into PCS or now ICIS-NPDES. There is no documentation in the files to indicate when this activity takes place.

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

Recommendations if corrective action is needed:

Region 2 needs to document in the files when WNDB data is entered into ICIS-NPDES. This should be part of the SOP for reviewing and ensuring file completeness and accuracy. Region 2 reports that this information is now being required in monthly updates. Region 2 should share a couple of these monthly updates with OECA. By November 31, 2007, Region 2 should demonstrate to OECA that this process is in place.

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

Findings:

Metric 11a – Zero actions are linked to violations in PCS according to the data metrics.

Linked actions are required information, and can be accomplished through the use of the EVTP field (a WENDB required element) in PCS and other means in ICIS-NPDES. Without this data, OECA cannot determine with any certainty why an action was taken. In addition, if the action includes a compliance schedule, it is impossible to tell which monitoring periods, parameters, or events are associated with the compliance schedule if EVTP and other applicable fields (EVMD, EVPR, EVSC, EVSD, etc.) are not entered. Linking an action to a violation has the additional benefit of resolving RNC/SNC at the violation level, and may result in fewer facilities on the Watch List (and under metrics 4b and 6 as described earlier).

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

- 1) PRR05A855 (Florida Lime Corp.) and PR0000892 need to be linked to the same facility in ICIS.
- 2) The 2003 and 9/30/05 administrative orders for PRR05A882 (Puerto Rico Cement, Inc.) need to be entered into PCS and ICIS-NPDES.
- 3) The 9/8/04 administrative order (CWA-02-2004-3085) for PRR05B189 (ESSROC, San Juan Cement, Inc.) needs to be entered into PCS and ICIS-NPDES.

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- 4) For PRR10A910 (Palacio del Rio), the inspection date in PCS is the inspection report date, not the date of the actual inspection. In addition, the NOV issued to this facility should be entered as an informal action into PCS and ICIS-NPDES.
- 5) For PRR10B458 (Mora Development Corp.), the inspection date in PCS/ ICIS-NPDES should be 3/18/05, not 3/17/05. In addition, the 5/27/05 administrative order (CWA-02-2005-3217) should be entered into PCS or ICIS-NPDES.
- 6) For PRU200790 (Mr. Ruben Ortiz-Galarza & Assoc), the 12/15/05 administrative order (CWA-02-2006-3301) should be entered into PCS and ICIS-NPDES.
- 7) For PRU200810 (Municipality of San Juan), the data of the action in PCS (2/24/05) does not match the date on file (8/24/05).
- 8) For PR0000400 (Shell Chemical Yabucoa Inc.), the 5/17/05 NOV should be entered as an informal action into PCS and ICIS-NPDES.
- 9) For PR0000850 (Phillips Puerto Rico Core Inc), one inspection was entered twice into PCS/ ICIS-NPDES for 3/2/05 and 3/3/05. At the same time, the 5/2/05 inspection was missing from PCS/ ICIS-NPDES. Inspection data for this facility needs to be cleaned up.
- 10) For PR0021997 (SB Pharmco), there were 12 quarters of reporting violations when there was no discharge – this is a data issue that should be addressed.
- 11) As mentioned earlier, the 12/27/04 inspection at Suiza Dairy (PRPRR00A176) was incorrectly coded in PCS as an EPA lead compliance evaluation inspection. However, this inspection was found to have actually been a pretreatment inspection conducted by PRASA. This should be cleaned up in PCS and ICIS-NPDES.
- 12) The consent decree against PRASA wastewater treatment plants needs to be entered into PCS and ICIS-NPDES as soon as it is complete.
- 13) For PRR10B519 (Levitt Homes Builders Corporation), the 5/26/06 APO and penalty information need to be entered into ICIS-NPDES.
- 14) 3/1/05 and 3/8/05 regional inspections at PRR10B435 (ME Salve Distribution Center) are missing from PCS. In addition, the 5/4/05 administrative order is missing in ICIS-NPDES and the 11/15/05 ESO and \$4,100 penalty information is missing from PCS and ICIS-NPDES.
- 15) The bypass at PRU200750 (Palma Dorada Pump St) needs to be entered as a single event violation and linked to the FY05 action, and any associated penalty information should also be added to PCS/ ICIS-NPDES.
- 16) PR0000698 (Puerto Rico Electric Power Authority) has unresolved compliance schedule violations. These need to be addressed.
- 17) For PRU200990 (Guirimar Construction Corp.), the order dated 9/15/05 is missing from PCS/ ICIS-NPDES. In addition, the 2004 and 10/6/06 ESOs are also missing from PCS/ ICIS-NPDES. Any associated

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penalty data needs to be entered as well.

18) For PRU200970 (Municipality of Naranjito-Coli), the 4/11/05 inspection and 6/9/05 308 letter need to be entered into PCS.

19) The facility names for PR0026085 (Thames-Dick Superaqueduct) and PR0025861 (Barranquitas WWTP) should indicate that these are PRASA facilities.

20) For PR0022438 (PRASA WTP Guaynabo), the inspection type (CEI, not enforcement case support) and date (5/19/05, not 5/19/04) need to be corrected. In addition, NOV issued against this facility need to be entered into PCS/ICIS-NPDES.

Citation of information reviewed for this criterion: PCS, OTIS

Recommendations if corrective action is needed:

The Region should begin to link actions to violations in PCS (or ICIS-NPDES) as required as stated in the PCS Policy Statement, or future guidance.

The Region needs to make the corrections itemized above, and coordinate with CEPD to establish a process to ensure that Puerto Rico NPDES data is accurately entered into ICIS-NPDES. This process should be in place by October 31, 2007.

Region 2 reports that now that PCS is not being used, enforcement actions are linked to violations in ICIS-NPDES and that ICIS-NPDES is being fully utilized. OECA's review of ICIS-NPDES indicates that linking of actions to violations has not yet occurred for all of the facilities listed above. One example is Puerto Rico Cement, Inc. Region 2 and OECA need to confer on this recommendation and assess this discrepancy.

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

Region 2 is responsible for entering all data in ICIS – PCS for Puerto Rico.

Metric 12b indicates that Region 2 has correctly coded limits at 85% of major facilities, compared to the national goal of 95%.

Metric 12c indicates that Region 2 is exceeding expectations for DMR data entry at non-major facilities. Although this data is not currently required, the DMR data entry rate is 97%.

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Metric 12f indicates that Region 2 is not tracking informal actions for majors in PCS as required in the PCS Policy Statement. Some of the data entry issues listed under Element 11 includes entry of NOV's or 308 letters for specific permits (such as PRU200880, PRU200970, and PR0022438). In general, types of actions tracked under 12f are:

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

*These codes refer to enforcement sensitive data.

Metrics 12g1 and 12g2 - The non-compliance rates for non-majors under metric 12 g1 and 12 g2 are 78.8% (149 of 189) and 96.8% (CY 2004 – 150 of 155) respectively. A significant number of these facilities are PRASA, which may be addressed in the consent decree under development; however, considering that over half of standard/individual permittees are non-majors in Puerto Rico, Region 2 needs to obtain a better understanding of non-major non-compliance. Increased attention to non-major non-compliance data will lead to more accurate annual non-compliance reports and will allow for better inspection targeting and priority decisions under the NPDES program.

Metric 12g3 – Some of the non-major non-compliance rate (about 8%) may be attributable to DMR non-receipt. This is either reflective of true non-compliance or merely late data entry.

Citation of information reviewed for this criterion: PCS, OTIS

Recommendations if corrective action is needed:

Region 2 needs to improve the data entry of “correctly coded limits” for majors. Region 2 should also begin tracking the items referred to as “informal actions” (described above) in the national data system. Region 2 should demonstrate to OECA by October 31, 2007 that these improvements are in place.

For metrics 12 g, OC would like the Region to analyze why the non

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compliance rates seem so high and report back to OECA. This may be related to the issues under Element 1. The analysis requested under Element 1 should apply to this recommendation.

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Program Evaluated for Region 2 RCRA Subtitle C for Puerto Rico

Review Place and Date

Caribbean Environmental Protection Division Office, Puerto Rico	November 6 to 9, 2006
Region 2 Office, New York City	November 20-21, 2006

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Background

Organizational Structure

The review team conducted the on-site review of Region 2's implementation of the Puerto Rico (PR) compliance and enforcement program on November 6 to 9, 2006 in the San Juan, Puerto Rico Office and on November 20-21, 2006 in the Region 2 New York office. This review is based on FY 2005 data, which was the most complete data available at the time of the review. The team conducted phone calls with the Regional RCRA program managers before the visits in order to discuss the data metrics. The on-site review focused on the file review.

The review team reviewed the work of the Region 2 Caribbean Environmental Protection Division (CEPD) and the Division of Enforcement and Compliance Assistance (DECA). The RCRA program is not delegated to Puerto Rico: however, based on information provided by Region 2, the Puerto Rico Environmental Quality Board (PREQB) manages an active RCRA program in Puerto Rico. Region 2 and PREQB work in concert and have developed a good working relationship that follows an established division of labor. Besides

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funding, Region 2 provides training, audits and oversight to PREQB as well. The focus of this review is primarily on the RCRA compliance and enforcement program implemented by Region 2.

As mentioned earlier, Puerto Rico is not authorized to manage the RCRA program. PREQB does receive grant funding to manage its own program, which includes conducting inspections. In addition to grant funding, Region 2 provides training and conducts mid-year and end-of-year audits of PREQB's hazardous waste program including compliance activities. In 2005, the Region 2 Caribbean office was expanded and given more responsibilities for the conducting RCRA program inspections and pursue enforcement actions in Puerto Rico. Currently, CEPD has one RCRA FTE who is responsible for about 10% of the RCRA Subtitle C inspections in Puerto Rico and Virgin Islands. PREQB has 7 FTEs who conduct about 90% of the RCRA Subtitle C inspections. Until recently, most RCRA inspections and enforcement actions were sent to Region 2 office in New York for review. For FY 2007, formal enforcement actions will still be reviewed by the New York Office prior to issuance/finalization.

File Selection for Puerto Rico RCRA Subtitle C Program

In FY 2005, there were 304 sources in the RCRA universe in Puerto Rico. This includes 8 TSDs, 99 LQGs, and 197 SQGs. The number of inspections was 256 (8 TSDs, 51 LQGs, and 197 SQGs). The number of enforcement actions was 48. The EPA actions that were applicable for the review included inspections at 8 LQGs and 36 SQGs, and 6 enforcement actions for a total of 50 files. Based on the File Selection Protocol, with less than 300 files in the universe, it is required to review between 15 to 30 files.

The review team decided to review 20 files, all 6 enforcement files and a selection of 14 inspection files for TSDs, LQGs, SQGs, and CESQGs. One of the inspection files and one of the enforcement files was for the same handler, University of Puerto Rico at Mayaguez so that in actuality, a total of 19 distinct files were reviewed, 13 inspection files and 6 enforcement files. (Although the data metrics indicate that the Puerto Rico EQB conducted inspections at all of the TSDs, some of them show up in the data as LQGs as well and some of those were inspected by Region 2.) Within these categories, the review team randomly selected inspection files for 3 TSDs, 6 LQGs, 3 SQGs, and 2 CESQGs. Five of the inspection files and 7 of the enforcement files were located in the CEPD office. Seven inspection files and one enforcement file were in the New York office.

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Puerto Rico RCRA Element by Element Review

Section 1: Review of State Inspection Implementation

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

Findings:

Metric 1a – 100% (8 of 8) TSDFs in Puerto Rico were inspected in the FY 2004 – FY 2005 period, meeting the national goal of 100% of operating TSDFs be inspected every 2 years. These inspections were conducted by the Puerto Rico Environmental Quality Board (PREQB). In addition, as required under the RCRA Core Program, the regional office is required to inspect at least two TSDFs in each state each year; in FY 2005, it inspected three.

Metric 1b – 51.5% (51 of 99) LQG inspections were conducted in Puerto Rico in FY 2005, which is above the national average of 18.1% and the national goal of 20% per year. EPA conducted seven of these inspections. These data were provided by Region 2 and differ from the data in the OTIS report of the RCRA data metrics. The OTIS report indicates that 38% (78 of 207) of LQGs were inspected in Puerto Rico in FY 2005. The reason for the discrepancy is that the method Region 2 uses to calculate the active universe of LQGs. This method is based on the active universe in the three-year BRS Report. When a facility reports twice during the three-year period, the Region adds it to the active universe. Data for this reporting cycle is based on the 1999-2003 BRS Report.

Metric 1c – 97% of the LQGs in Puerto Rico were inspected during the five year reporting period from FY 2001 – FY 2005, which is above the national average of 44.4%, and which nearly meets the national goal of 100%. The OTIS data reports that 60% (125 of 207) had been inspected over the five-year reporting period. The data were adjusted for the same reason described in Metric 1b.

Metric 1d – 100% (197 of 197) SQGs were inspected in Puerto Rico over the five-year reporting period of FY 2001 – FY 2005, which exceeds the national average of 8.8%. The OTIS data shows that 25% (156 of 629) of the SQGs were inspected. The data were adjusted for the same reason described in Metric 1b.

Metric 1r – Region 2's ACS commitments for FY 2005 were 2 TSDFs and 6 LQGs. These commitments were met. The commitment for LQGs was exceeded by one inspection.

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Region 2 has good inspection coverage in Puerto Rico of the TSDs, LQGs, and SQGs. The Region knows the active universe based on BRS reporting, but there is the issue of maintaining an accurate inventory of active facilities in RCRA Info. The Region needs to ensure that the database is up to date and accurate. If there are facilities listed in RCRA Info that are no longer active, then their status needs to be changed.

Citation of information reviewed for this criterion: **RCRAInfo and BRS Reports**

Recommendations:

Region needs to update RCRA Info to ensure that the universe of active LQGs, and SQGs in Puerto Rico is accurate and corresponds to the universe that is derived from the BRS Report. Since the on-site review, Region 2 has updated the LQG, SQG, and CESQG universes in RCRAInfo based on the BRS data.

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

Findings:

A total of 19 inspection reports from FY 2005 were reviewed. Thirteen reports were in the inspection-only files. The other six reports were in the enforcement files.

Metric 2a – 74% (14 of 19) of the inspection reports reviewed contained most of the elements required for complete inspection reports. 53% (10 of 19) of the inspection reports identified potential violations

Region 2's reports documented what was observed during the inspections and contained narrative statements of findings and the potential violations, if any. Also, photographs usually accompanied the report to document what was found at the facility. Five reports were deficient in that they were neither signed nor dated to document that the report had been reviewed by management, or if they met the 30 day requirement for completing the reports. The review team also found that most of the inspection reports focused on waste management areas and not on waste determination. Most of the inspection reports provided little information on the process units and how the facilities determined if they had a hazardous waste which is required by the "Revised RCRA Inspection Manual" (November 1998).

The EPA RCRA program has determined that a common problem among waste

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generators is that they mischaracterize their hazardous wastes. As a result, Region 2 should put more emphasis on identification of all waste streams and proper determinations of those streams for future RCRA inspections. Region 2 indicated that it agrees that reviewing the processes carried out by the generator is an important component of all inspections conducted by regional inspectors. According to Region 2 this is usually the first section of every inspection report, and is followed by a list of waste streams generated and waste characterizations done by the generator. However, Region 2 indicated that for generators that have few processes that are well understood, the inspector may not have provided a full description of the processes and waste characterizations carried out.

Region 2 and PREQB work well together to ensure inspection coverage of the TSD, LQG, and SQG universe in Puerto Rico. The review team did observe several instances of overlap and duplication. In one instance, both CEPD and PREQB conducted CEI inspections at the same source (Stryker) within a two-day period. During these inspections, no violations were found. In another instance, EPA inspected a facility (Amcor Flexibility) in March 2005 and the inspection report indicates that there were no potential violations: however, the OTIS facility report shows that this facility was inspected by a PREQB inspector in January 2005 and July 2007 and that they took a formal enforcement action that assessed a \$20,800 penalty. The facility report also shows that this facility was in SNC during the quarter that the EPA inspection took place. Region 2 has clarified that the Amcor Flexibility inspection was a RCRA Air Emissions inspection conducted by the New York Office. The NY Office has developed expertise in this area and conducts all the RCRA Subpart BB Air Emission inspections in the region. Therefore, there was no duplication of effort in this case. The inspector found no RCRA Air Emission violations during the inspection.

Citation of information reviewed for this criterion: RCRAInfo, RCRA inspection and enforcement files.

Recommendations if corrective action is needed:

Region 2 should begin to conduct waste determinations during the inspection or if they are reviewing waste determinations made by the facility it should be documented, as indicated by the November 1998 "Revised RCRA Inspection Manual" in order to ensure that the sources are characterizing the hazardous waste properly. (Region 2 agrees to provide, in each of its inspection reports, a full description of the processes and waste characterizations carried out by the generator.)

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Region 2 needs to build on its current inspection process to ensure the completeness of inspection reports. This should include continuing to use systems already in place, such as the “Facility Chronological Events Chart,” a report date and a manager’s signature for all reports, and documentation that inspection data is entered into RCRA Info in a timely manner. A checklist is needed. There should be training in this system for Region 2 personnel. There should be a schedule and milestones for implementing this process. (Region 2 agrees to ensure that all inspection reports are signed and dated by the Supervisor/Team Leader reviewing the reports. Further, the Region will ensure that once the Inspection Report has been signed and dated by the Supervisor/Team Leader, the inspection will be entered into RCRAInfo within one week.)

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

Findings:

A total of 19 inspection reports from FY 2005 were reviewed. Thirteen reports were in the inspection only files. The other six reports were in the enforcement files.

Metric 3a – 32% (6 of 19) of the inspection reports reviewed were prepared in a timely manner in FY 2005. This is within 30 days of conducting the inspection. As noted under Element 2, 10 of the 19 inspection reports identified violations; 4 from the inspection-only files and 6 from the enforcement files.

The timeliness of inspection reports could be measured for eleven of the reports that contained inspection dates, but no report dates.

The average length of time to prepare inspection reports, where timeliness could be determined, was 48 days ranged from 2 days to 270 days. The two timely reports were completed within two and three days of the inspection. The length of time to prepare the six untimely reports ranged from 45 days to 270 days.

Timeliness of preparing and completing inspections reports is an issue for both the New York office and CEPD. The review team learned that the Region has a system for tracking inspection reports. The review team found that Region 2 does not consistently implement its tracking system to document timing of events related to conducting inspections and reporting on them. Some of the files contain the “Facility Chronological Events Chart” which documents the date of every action taken by Region 2 for each facility. This chart is a useful tool for tracking all inspections and enforcement actions

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According to Region 2, in general, inspectors are given two weeks to complete inspection reports. It is also important to take into account that in FY2005, the CEPD inspectors were still learning the RCRA program and took more time than an experienced inspector would need to complete inspection reports. Four of the untimely inspection reports identified potential SNCs and these reports had to be reviewed by the New York Office. This added significantly to the time to complete the inspection reports. As CEPD has gained more experience, the timeliness of completing inspection reports has improved. Also, the New York Office is no longer reviewing CEPD's inspection reports, which has also improved timeliness of report completion. In addition a new tracking tool is being implemented in CEPD, which will improve the timeliness of completing inspection reports.

Region 2 indicates that the timeliness and completeness of CEPD inspection reports should improve over time as their inspectors gain more experience. Also the New York Office is no longer reviewing CEPD's inspection reports, which has also improved timeliness of report completion. In addition a new tracking tool is being implemented in CEPD, which will improve the timeliness of completing inspection reports.

Citation of information reviewed for this criterion: RCRA ERP

Recommendations if corrective action is needed:

Region 2 needs to build on its current process to ensure the timeliness of inspection reports. This should include continuing to use systems already in place, such as the "Facility Chronological Events Chart," and should include the requirement that all reports are dated and signed by a manager, and that inspection data is entered into RCRA Info in a timely manner. A checklist is needed. There should be training in this system for Region 2 personnel. There should be a schedule for implementing this process. (As indicated for Metric #2, the region agrees that it needs to ensure that all inspection reports are signed and dated by the Supervisor/Team Leader and that the inspections are entered into RCRAInfo one week after.)

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

Metric 4a – 5.2% of inspections discover SNC by both EPA and Puerto Rico

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EQB. There were ten SNCs, eight were identified by EQB and two by EPA. This is above the national average of 3.2%.

Metric 4c – 10 new SNC were discovered in FY 2005. This is a review indicator to judge how well new SNC is being discovered. There is no national average, but discovering these SNCs in the year is an indication of an active program.

Metric 4d – 91 % (32 of 35) of formal enforcement actions taken by both EPA and Puerto Rico EQB during the fiscal year received a prior SNC listing.

Metric 4e – Four SNCs were identified in the FY 2005 inspection reports that were reviewed. Two of these SNCs were reported in a timely manner as measured by the timeliness of reports discussed in Element 3. Five of the six enforcement actions were based on SNCs discovered in previous years.

As indicated by the data metrics, the Region aggressively identifies and addresses SNCs in Puerto Rico. However, timeliness of reporting inspection reports and SNC is an issue for the Region 2 RCRA program. Region 2 has indicated that in FY 2005, an SOP was developed addressing the process of when to enter SNCs into RCRAInfo. The date that a draft RCRA 3008(a) complaint is sent to the Office of Regional Counsel (ORC) is considered the SNC determination date. At that time, the Program Case Manager will enter the SNC determination date into RCRAInfo.

Citation of information reviewed for this criterion: RCRA ERP

Recommendations if corrective action is needed:

Same as Element 3.

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

Metric 5a – 100% (6 of 6) enforcement files reviewed for the Puerto Rico RCRA program where formal enforcement actions.

A 3008 compliance order was issued for each of the six facilities reviewed. Each of these formal enforcement orders required the sources to return to compliance with schedules, included injunctive relief, penalty assessments that included discussions of economic benefit.

Four of the files contained documentation in the form of letters from the owners that the sources had returned to compliance. One of the files indicated that the

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source had not yet returned to compliance. And one file contained no documentation on return to compliance, but the review team learned from CEPD that return to compliance was verified through a conference call with the facility. The formal enforcement actions were thorough and well prepared.

Metric 5b – Five of the 6 files showed that NOVs were issued to the sources following the inspection. In three cases, two NOVs were issued to the facility prior to taking a formal enforcement action in order to obtain a return to compliance.

Citation of information reviewed for this criterion: RCRA ERP, RCRA Civil Penalty Policy

Recommendations if corrective action is needed:

No recommendation.

6. The degree to which a Region's takes timely and appropriate enforcement actions, in accordance with policy relating to specific media.

Metric 6a – Data for timeliness of enforcement actions is not currently available. Metric is addressed in file metric 6c below.

Metric 6b – 35 formal RCRA enforcement actions were taken by both EPA and Puerto Rico in FY 2005. This number is the Region's correction to the OTIS number of 45 formal actions. This metric is an indicator of enforcement activity. This number indicates that Region 2 is actively pursuing enforcement actions in Puerto Rico.

Metric 6c -- 33% (2 of 6) formal enforcement actions were taken in a timely manner, based on the timeliness guidelines in the RCRA ERP. The data comes from information in the file records.

Metric 6d – 100% (6 of 6) of the enforcement actions reviewed were appropriate.

Region 2 takes a number of RCRA enforcement actions in Puerto Rico, which indicates that they are discovering violations, both SNC and SV, and pursuing enforcement actions. One of the actions (Pfizer) was taken by the New York office. The other five actions were taken by the CEPD office. The Regions compliance orders are well written and complete. They clearly show the counts, and the penalties sought for each of those violations. Economic benefit is also considered for each penalty.

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The main issue under this element is timeliness of enforcement actions. Four of the 6 enforcement actions reviewed took longer than one year from the date of the inspection to filing the compliance order. In one case (Catholic University), the Region 2 took nearly two years to issue the order. There does not appear to be a pattern for why actions take this much time. In some instances, it has taken a longer than average amount of time to prepare the inspection report. In one action (Catholic University), the Region took one year to complete the inspection report. In another action (PREPA) inspections were conducted in 1998, 1999, and December 2000; two NOV's were issued in May 2001; and the administrative order was issued in October 2004. In another example (Ponce Airlines), the inspection was conducted in August 2001, an NOV was issued in 2003, a Default Order/Initial Decision was issued in June 2006, and a Default Order was issued in August 2006. All of which came after a previous CA/CO was issued back in May 1999. The Region does not let violations go unaddressed. They escalate the enforcement response until there is an order and a return to compliance. However, there are issues of timeliness that should be addressed.

Resources may be one possible reason for the timeliness issues. The branch also has responsibility for the Virgin Islands. In FY 2005, responsibility for the RCRA program was transferred to the CEPD, which had two inspectors, but had only one RCRA inspector at the time of the on-site visit. It should be noted that the New York office is still responsible for conducting inspections for compliance with the RCRA Air Emission requirements, conducting inspections at petroleum refineries, and for conducting groundwater monitoring compliance evaluations at Land Disposal Facilities (CME and O&M inspections). Since the visit, the CEPD has hired new staff. It will take time to train them, but this should help improve the timeliness of completing inspection reports and preparing cases in the future. Region 2 has indicated that although CEPD has hired new RCRA staff, these new employees will be performing RCRA Permitting and Corrective Action work in addition to enforcement. CEPD currently has two work years allocated for RCRA inspection and enforcement and this will be the level to which these functions will be performed. CEPD's plan is to have its RCRA permitting/corrective action staff become certified inspectors by the end of FY 2007.

As noted above, Region 2 believes that 3 of the 6 enforcement actions were taken in a timely manner, and that the principle reason for the untimeliness of the other 3 actions was the learning curve that CEPD was on, and the need for the New York office to review the inspection reports and draft enforcement documents prior to issuance of the enforcement actions. As indicated above, CEPD will be putting in place a tracking system for inspection reports and enforcement documents development. The timeliness of preparing and issuing enforcement actions is expected to improve and adhere to the RCRA Enforcement Response timeframes.

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Citation of information reviewed for this criterion: RCRA ERP

Recommendations if corrective action is needed:

The Region needs to improve the timeliness of enforcement actions. They need to assess the time it takes to complete inspection reports and make determinations of violations and of SNC. They also need to assess the time it takes to issue an administrative order once it has been decided to proceed with an action. Region 2 in Puerto Rico (CEPD) should put in place a tracking system for inspection reports and enforcement documents development.

7. Degree to which the Region includes both gravity and economic benefit calculations for all penalties, appropriately using the BEN model or consistent state policy.

Metric 7a –100% (6 of 6) Puerto Rico RCRA enforcement actions reviewed included calculations for the gravity component of the penalty. Economic benefit was considered for each of these actions; however, no economic benefit was assessed as part of the final penalty for any of those actions.

Each of the files contained documentation on the calculation and assessment of the gravity component of the penalty. The administrative orders outlined each of the counts and the assessed penalty. The final orders contained the final penalties, although there were no justification memos in the files for these final penalties. Region 2 has indicated that the justification memos are in ORC's files, which were not reviewed by the review team because the ORC attorney in Puerto Rico was not able to meet with the team and share the file information.

Economic benefit was considered for each of the actions reviewed, but ultimately was not assessed in any of the final penalties. The Region's judgment is that economic benefit that is less than \$5,000 is insignificant and is not required to include it in the penalty. The review team did not find in the files calculations or analyses that would support the conclusion that the economic benefit of non-compliance for any of these actions was less than \$5,000.

According to the most recent RCRA Civil Penalty Policy (2003), the economic benefit of noncompliance must be calculated and added to the gravity-based penalty component when the violation results in "significant" economic benefit as defined in the policy. The policy states that enforcement personnel may forgo the inclusion of the benefit component where it appears to be insignificant. The economic component must be applied if the applicable amount meets the following criteria:

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When the gravity based and multi day total penalty is:	EBN should be pursued if it totals:
\$30,000 or less	At least \$3,000
\$30,001 to \$49,999	At least 10% of the proposed penalty
\$50,000 or more	\$5,000 or more

Four of the files documented final penalty assessments of \$37,000 (Catholic University), \$67,000 (PREPA), \$55,000 (Pharmacia & Upjohn Caribe), and \$32,500 (Ponce Airline). These penalty amounts fall under the Penalty Policy's definition of when economic benefit needs to apply. If the economic benefit of noncompliance for these facilities is insignificant, then the Region needs make the calculation using the BEN model to make that determination.

There are two findings: 1) the Region is not using the most recent definition of an insignificant amount of economic benefit; and 2) the Region needs to calculate the economic benefit of noncompliance before it can determine if that benefit is insignificant. Region 2 indicates that they use the method for assessing economic benefit specified in the 2003 RCRA Civil Penalty Policy. In most instances, it is clear which violations may have a significant economic benefit. For these violations, the Region calculates the economic benefit using the BEN model. For those violations that clearly have no economic benefit, the Region does not believe that there is no value in spending resources to it.

Citation of information reviewed for this criterion: RCRA ERP, RCRA Civil Penalty Policy (2003), BEN Model

Recommendations if corrective action is needed:

Region 2 should improve the file documentation of their decisions on how they apply the 2003 RCRA Civil Penalty Policy. They need to document the economic benefit calculation, and they need to justify a decision not to calculate economic benefit using the BEN model based on the criteria in the penalty policy.

- 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:

Metric 8a – \$278,400 in final penalties were assessed by both EPA and Puerto Rico EQB for RCRA enforcement action in FY 2005. EPA was responsible for

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\$159,000 of the final assessed penalties.

Metric 8b – 56% of EPA and Puerto Rico RCRA enforcement actions assessed a penalty. EPA was responsible for 17% of the enforcement actions with penalties. As noted above all six formal enforcement actions reviewed included penalties.

Region 2 believes that this metric is inaccurately calculated and notes that the all of the EPA and Puerto Rico EQB complaints and final orders assessed a penalty. Also, the combined number of these actions was 35 and not 45.

Metric 8c – 67% (4 of 6) of the files reviewed for formal enforcement actions contained copies of checks from the facilities indicating that the penalties had been collected by EPA. The other two files indicated that the actions were not yet final and that the penalties had not yet been collected.

Region 2 assesses penalties with compliance orders and collects those penalties.

Citation of information reviewed for this criterion: RCRA Info

Recommendations if corrective action is needed:

No recommendation. The issue in calculating metric 8b is most likely found in the select logic for the metric. This is an issue that will be address during the evaluation of the data metrics.

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

9. Enforcement commitments in the Annual Commitment System.

Findings:

Region 2 meets its inspection commitments. Region 2's ACS commitments for FY 2005 were 4 TSDFs and 6 LQGs. These commitments were met. The LQGs commitment was exceeded by one inspection.

Citation of information reviewed for this criterion: ACS Commitments

Recommendations if corrective action is needed:

No recommendation.

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Section 4: Review of Database Integrity

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

Findings:

Metric 10a – 75% (12 of 16) of SNCs were entered into RCRA Info more than 60 days after the SNC determination was made by both EPA and the state. EPA is responsible for 75% of this SNC reporting and 50% by the state. This is higher than the national average of 38.4%.

Metric 10b – Nationally required data elements are entered into RCRA Info. Data in the files compared with the OTIS facility reports indicates that this data flow occurs. Timeliness of data entry cannot be determined from the files. Metric 10a indicates that data entry is not timely for SNC entry. However, it cannot be automatically assumed that other data is not entered in a timely manner. There is no documentation in the files to track data entry.

Citation of information reviewed for this criterion:

Recommendations if corrective action is needed:

Region 2 should ensure that RCRA data from inspection reports and enforcement actions are entered into RCRA Info in a timely manner. Region 2 has had an SOP in place since 2005 that defines the date when a SNC determination is made and the timeframe for entering the SNC data element in RCRA Info. The Region agreed that all inspections will be entered into RCRA Info within one week of the date that the reports are signed by the Supervisor/Team Leader. Enforcement actions are normally entered into RCRA Info within a week of the action being taken.

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

Findings:

Metric 11a – No SNCs were shown as being determined on the same day that the formal action was completed. This means that Region 2 is accurately entering SNC data.

Metric 11b – 6 Secondary Violations were listed in RCRA Info as remaining in noncompliance for more than three years without being returned to compliance or being redesignated as SNC. The RCRA ERP states that the secondary violator status should be changed after 270 days. This metric was calculated in

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mid-2006. A review of the new on-line version of the metrics in OTIS shows that this number of SVs was 20. This may be a data accuracy issue where the final return to compliance dates is not entered into the database. If this is not the case, then the Region will need to assess these facilities to determine how best to return them to compliance or designate them as SNC and address them appropriately. Region 2 indicates that 9 facilities on the list are PREQB cases. There are 5 municipal solid waste landfills that were inspected for compliance with 40 CFR Part 258 regulations; these were done to obtain information for our PR Municipal SW landfill initiative. EPA does not have enforcement authority under RCRA 3008(a) since EQB has an approved solid waste management program. These inspections were primarily for information gathering and should not be counted for the purpose of this metric. That leaves 8 cases. All but one of these cases are data errors; all returned to compliance.

Metric 11c – The files do not provide a way of verifying data accuracy and the reporting of data. What can be seen from the files is that dates of inspections and enforcement actions are accurately reflected in the database. As noted in Element 10, there is no documentation in the files to track data entry in RCRA Info.

Citation of information reviewed for this criterion: RCRA Info

Recommendations if corrective action is needed:

Region 2 needs to review the Secondary Violations that are listed in OTIS under metric 11b and ensure that they have the correct return to compliance date. Consistent with the RCRA ERP, SVs that have not returned to compliance after 240 days need to be designated as SNC and addressed. The Region should bring the 8 PREQB SVs to PREQB's attention to do the same.

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:

Region 2 reviewed the data metrics under Element 12 and provided the following revised numbers, some of which have been discussed in previous elements. The cells in shadow indicate where Regional data corrects data in OTIS.

Metric Name	Description	Guidance Requirement or Goal	Combined Region/State or State-only Data	EPA Number	Regional Correction
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Active facility universe counts accurate*	12a1. Number of operating TSDFs in RCRAInfo	Region and state should agree on operating universe count.	Combined	8	
	12a2. Number of active LQGs in RCRAInfo	Region and state should agree on active universe count.	Combined	207	99
	12a3. Number of active SQGs in RCRAInfo	Region and state should agree on active universe count.	Combined	629	197
	12a4. All other active handlers in RCRAInfo	Region and state should agree on active universe count.	Combined	1,159	
Inspection counts complete	12b1. Number of inspections performed by state during reporting period.	Mandatory data elements are listed in the RCRAInfo documentation.	State-only	181	
			Combined	229	
	12b2. Total # of facilities inspected during reporting period	Mandatory data elements are listed in the RCRAInfo documentation.	State-only	162	
			Combined	193	
Violation counts complete	Number of facilities with violations during reporting period	Mandatory data elements are listed in the RCRAInfo documentation.	State-only	74	35
			Combined	114	53
Notice of violation counts complete	12d1. facilities with state NOVs (informal enforcement actions)	Mandatory data elements are listed in the RCRAInfo documentation.	State-only	40	35
			Combined	62	58
	12d2. total state NOVs (informal enforcement actions) issued	Mandatory data elements are listed in the RCRAInfo documentation.	State-only	46	39
			Combined	71	64
SNC counts complete	12e1. # of new SNCs in last FY;	Mandatory data elements are listed in the RCRAInfo documentation.	State-only	8	
			Combined	10	11
	12e2. # of facilities in SNC in last FY	Mandatory data elements are listed in the RCRAInfo documentation.	State-only	40	10
			Combined	47	15
Formal action counts complete	12f1. facilities with formal actions.	Mandatory data elements are listed in the RCRAInfo documentation.	State-only	29	
			Combined	35	
	12f2. total formal actions taken.	Mandatory data elements are listed in the RCRAInfo documentation.	State-only	38	29
			Combined	45	35
Assessed penalties complete	Total amount of final (assessed) penalties	Mandatory data elements are listed in the RCRAInfo documentation.	State-only	\$119,400	
			Combined	\$278,400	

Citation of information reviewed for this criterion: RCRA Info

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Recommendations if corrective action is needed:

Region 2 and OC should work together to reconcile the data in RCRA Info and OTIS. There needs to be a timeframe and milestones for implementing this recommendation. Region 2 agrees with this recommendation.