

**Review of the Vermont Agency for Natural  
Resources FY 2006 State Enforcement and  
Compliance Programs**

**U.S. EPA Region 1 New England**

**SEPTEMBER 24, 2007**

## **EXECUTIVE SUMMARY**

### **Overall Picture**

The Vermont Agency for Natural Resources (VT ANR) meets federal standards for implementing its federally delegated Clean Air Act (CAA) Stationary Source, Clean Water Act (CWA) NPDES, and Resource Conservation and Recovery Act Subtitle C enforcement programs.

This means VT ANR is meeting federal program expectations. As is the case in all New England states, VT ANR implements some aspects of its programs very well. There are also aspects of VT ANR's programs that have areas for improvement. The recommendations for improvement that Region 1 is making for VT ANR are similar to recommendations Region 1 is making in each of the other New England states.

### **Sources of Information Included in Review**

Region 1 developed these findings from a review of VT ANR operations in Federal Fiscal Year 2006 (October 1, 2005-September 30, 2006). Region 1 reviewers examined FY2006 VT ANR/Region 1 agreements, information in Region 1 and VT ANR databases, and 70 VT ANR files (26 Air files, 24 Water files and 20 RCRA files). Region 1 reviewers discussed all this information with VT ANR program managers and staff. Vermont has a very low number of major sources in each program compared to other states. Because of this, reviewers carefully considered all of their findings in the context of Vermont's small regulated community and overall relative to national averages.

### **Resources**

Region 1 observed that there is 1 vacant position in the Air enforcement program and there are 2 vacant positions in the RCRA enforcement program. Region is recommending that VT ANR fill these positions.

### **Inspection Implementation**

One of the strengths of the VT ANR programs in FY06 was that it met or exceeded its inspection commitments in each of the programs. In Air, Region 1 recommends inspection reports include descriptions of specific emission units, pre-inspection activities and past compliance history. All programs complete their inspection reports quickly.

### **Enforcement Activity**

Enforcement response is good in each program, although, because the universe of major facilities in each program is small, analysis is difficult. VT ANR's Air, Water and Waste Programs are identifying a small number of significant violators. VT ANR successfully

returns violators to compliance. When VT ANR identifies significant violations, it addresses them with an appropriate enforcement response. Region 1 recommends that Air and Waste Programs improve documentation of their consideration of economic benefit in penalty calculations. In each program, Region 1 recommends that VT ANR assess the extent to which it mitigates penalties. Region 1 understands that a newly implemented Supplemental Environmental Project policy may address this issue.

### **Commitments in Annual Agreements**

VT ANR's PPA describes its compliance and enforcement commitments.

### **Data Integrity**

VT ANR maintains state data systems as well as providing information to EPA national systems. EPA is working with VT ANR to develop plans to improve data quality in Water and RCRA.

### **Element 13**

VT ANR did not provide information to Region 1 under Element 13.

### **Implementing the Review**

VT ANR hosted a kick-off meeting to begin the review on December 8, 2006 at its Headquarters in Waterbury. The VT ANR Deputy Commissioner and managers and senior staff from Region 1 and VT ANR participated in the meeting. After the kick-off meeting, state and federal staff worked out their own schedules for data examinations, file reviews and meetings. All file reviews took place at VT ANR's Waterbury office. File reviews began immediately after the kick-off meeting. Region 1 review staff met with VT ANR program managers on April 8, 2007 in White River Junction Vermont to discuss preliminary findings.

# Clean Air Act Stationary Source Enforcement Program

## Information Sources Included in the Review

Region 1's CAA portion of the VT ANR SRF evaluation included the review of 18 inspection and 8 enforcement files. All files selected for review had some action in federal fiscal year 2006 (FY06). Where there was VT ANR CAA action at a source in FY06, inspections or actions that preceded and/or followed-up on the FY06 action were also reviewed even if they occurred in a different fiscal year. Table 1 lists the facilities for which files were reviewed.

Regarding the selection of files for review, because Vermont's universe of major stationary sources and synthetic minor sources is relatively small, Region 1 chose to review all 18 of the FCEs that occurred in 2006. Similarly, because Vermont's universe of federally reportable enforcement actions was relatively small, Region 1 decided to review all 8 of VT ANR's enforcement files from 2006 even though all of the cases involved only minor or area sources.

The CAA evaluation also involved the review of data from AFS (primarily from FY06), supplied by EPA headquarters, which compared VT ANR's performance on certain metrics to national policy goals, VT ANR's commitments to Region 1, and the national average of state performance. Consistent with the November 2005 memorandum from Lisa Lund (Deputy Director, Office of Compliance, OECA), the review process served as both the state review framework and the compliance monitoring strategy (CMS) review. EPA Region I will supplement this report with a memo to OECA, under separate cover, discussing areas where, if any, the CMS review did not overlap the SRF.

**Table 1 – VT ANR Air Compliance and Enforcement Files Reviewed by REGION 1**

<b>ID Number</b>	<b>Facility Name</b>	<b>Review Category</b>
5000900002	Dirigo Paper (Dalton Hydro, LLC)	Inspection
5002500009	Putney Paper Company	Inspection
5000500006	EHV Weidman Industries	Inspection
500070040	Peckham Materials/W M Dailey (Colchester)	Inspection
5000500016	Mount Pleasant Crematory	Inspection
500010004	Middlebury College	Inspection
5001900003	Columbia Forest Products Indian Head Division	Inspection
5000300013	William E. Dailey, Inc. (Shaftsbury)	Inspection

5001100001	Energizer Battery Manufacturing	Inspection
5000700037	Burlington Electric Department (MCNEIL)	Inspection
5000100001	Agrimark Inc.	Inspection
5002100015	General Electric Co. (Plant #1)	Inspection
5001500005	Copley Hospital	Inspection
5002100030	Foley's Service Inc.	Inspection
5000300018	HBH Prestain	Inspection
5002100017	Rutland Plywood Corporation	Inspection
5002100018	Ames True Temper Corp.	Inspection
5000700020	The Offset House	Inspection
N/A	Champlain Oil Company	Enforcement
5002700020	Springfield Electroplating	Enforcement
N/A	Manosh Hardwoods, LLC	Enforcement
N/A	Benoir, Laurence Phillip	Enforcement
N/A	Scandore Construction Co., Inc.	Enforcement
N/A	Robert Manning	Enforcement
N/A	Jan deBoer	Enforcement
N/A	One-Stop Mini Mart Inc.	Enforcement

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## **Section 1: Review of Inspection Program Implementation**

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

### **FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):**

VT ANR's inspection program is one of its strengths. The inspectors are experienced, capable, and knowledgeable of the regulated facilities. As described in more detail below, the Air Compliance Section's level of fieldwork was commendable for being well above national averages.

The national compliance monitoring strategy, "CAA Stationary Source Compliance Monitoring Strategy, April 25, 2001" (CMS), creates a baseline requirement that states conduct a full compliance evaluation (FCE) at each of their major Title V sources at least once every 2 years, and at each of their synthetic minor sources permitted at above 80% of the major source threshold (SM80s) at least once every 5 years. However, these timeframes may be modified, if the state receives approval from the EPA Regional office. Several acceptable reasons for modified FCE schedules are suggested in the CMS.

Region 1 has approved a state-specific compliance monitoring plan for Vermont. Essentially, VT ANR's compliance monitoring plan uses 4 classes of inspection frequencies, "annual," "2-year," "3-year," and "5-year." VT ANR uses a computer program, the Inspection Targeting System (ITS), to rank facilities and to determine into which class each facility falls. The ITS score is based on the level of uncontrolled emissions, compliance history, and potential impact on local air quality, including the impacts of air toxics. Currently, there is only one major facility on an annual evaluation frequency and one on a 3-year frequency. Because of the relatively large quantities of air emissions, most Title V majors are selected for an on-site compliance evaluation every other year. Fourteen are currently identified as being on a 2-year frequency and eight are identified as being on a 5-year frequency. However, there are seven major facilities without a CMS indicator in the data system.

The 5-year class are those facilities that are selected for an on-site compliance evaluation every fifth year, regardless of ITS score. A facility may be placed in a 5-year class because it is either an oil-fired or gas-fired combustion source or a coating source. The combustion sources are typically in the 5-year class because there are few observable changes to the facility from year to year, they operate intermittently, and VT ANR has found few violations at these sources during on-site inspections. The coating sources are in the 5-year class because compliance is largely based on record-keeping and reporting, and typically there is little to observe during on-site inspections. VT ANR receives reports from those facilities and reviews them off-site at the office to determine compliance.

Additionally, VT ANR's compliance monitoring plan includes a number of state and EPA priorities, such as inspections of numerous minor sources, Stage II gasoline vapor recovery test observations, review of CEMS/COMS data reports, and stack test observations and report reviews.

### **Metric 1A: Major Sources**

According to the SRF Summary for Vermont in the national database, VT ANR appears to have conducted FCEs at 72.7% of its major Title V sources in the two fiscal years ending with FY06. However, this data metric of the SRF Summary Report does not appear to reflect VT ANR's state-specific compliance monitoring plan, including its 5-year inspection frequency classification of 5 of the 6 facilities that were not inspected during the two year cycle: Rock-Tenn Co.; Killington Ltd.; Okemo Mountain, Inc.; Green Mountain Power Corp., Unit #5; and Green Mountain Prestain, Inc. Therefore, although not indicated in the OTIS SRF Summary report, based on the Vermont-specific compliance monitoring plan, VT ANR conducted 94% of the Title V majors that were required to be inspected during the FY05-FY06 two year cycle. This is well above the national average of 81.9%.

Additionally, review of VT ANR's 5 year inspection activity showed that VT ANR conducted FCEs at three out of the five: Rock-Tenn Co.; Okemo Mountain, Inc.; and Green Mountain Prestain, Inc., between FY2002 and FY2006. Regarding the Killington Ski Area, VT ANR only issued the Title V permit in 2004 and the facility was recently inspected (February 2007). Regarding Green Mountain Power Corp., Unit #5, this source is an electrical power peaking unit that runs infrequently and only during periods of high demand, making it difficult to schedule an on-site compliance evaluation. It was last inspected in 2000 and VT ANR plans to conduct an on-site compliance evaluation at the facility later in 2007.

The Title V facility for which VT ANR did not conduct a FCE during its planned inspection cycle was Omya, a large nonmetallic mineral processing facility that is normally inspected each year. Prior to 2007, the date of the last full FCE was August 24, 2004. While a FCE has not been completed for a 2 year period, VT ANR spent a large amount of time working with this facility during those two years. During this period (and before), a number of citizen complaints were filed regarding solid waste, water pollution, and air pollution issues related to the plant. The primary air complaints involved odors and potentially toxic emissions from the facility. VT ANR has been working closely with Omya and its engineering consultants (including TRC and others) on a voluntary basis to address the air issues. All parties agreed to a plan to identify the source of the odors and conduct a battery of tests to quantify the odors and any related toxic emissions. For example, in May and June of 2006, several tests were performed to quantify VOCs, semi-VOCs and aldehyde emissions from the East Plant and odor samples were also taken. The Air Division now has more emissions data about Omya's operations than it has ever had in the past. Omya made process changes that appear to have significantly reduced the odors. On June 15, 2007, VT ANR conducted a FCE at Omya that indicated

the source was in compliance with all applicable requirements.

For facilities classified in the 5-year inspection category, VT ANR normally considers the date of last FCE in its annual inspection targeting process to ensure that they are inspected at least once during the next 5 year period.

While VT ANR did not conduct an on-site compliance evaluation at all of the Title V major facilities during the past monitoring cycle, it has monitored compliance at all of the Title V facilities through annual review and documentation of the reports received from these types of facilities.

**Metric 1B: SM80 Sources**

Regarding FCE coverage of SM80s and minor sources, VT ANR inspected 100% of its SM80s and many of its minor sources during the past 5 year cycle. This level of activity is well above the national average of 82.5%. This is noteworthy given all of the other field work that the Air Compliance Section staff is required to perform, including performance-testing observations.

**Metrics 1C and 1D: Synthetic Minor and Minor Sources**

VT ANR has been very active in inspecting synthetic minors (non-SM80s) over the past 5 years, inspecting more than 87% of the synthetic minors and more than 40% of true minors. In FY06, VT ANR inspected 41 synthetic minor and true minor sources, as well as 3 area source dry cleaners.

**Metric 1F: Review of Self-Certifications**

In FY06, the national average for reviewing Title V compliance certifications was 81.4%. According to the OTIS SRF Results report, VT ANR reviewed 100% of the self-certifications, well above the national average.

**Metric 1G: Source in Unknown Compliance Status**

According to the OTIS SRF Results report, VT ANR had 1 facility in unknown compliance at the end of FY06, Omya, West (Verpol), in Florence, VT. As described above, on June 15, 2007, VT ANR conducted a full FCE at Omya that indicated the source was in compliance with all applicable requirements. VT ANR has spent a large amount of time working with this facility in the last two years, including observing testing at the facility, reviewing reports, and working with the company and community to address and resolve community odor complaints and related issues.

**CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:**

CAA Stationary Source Compliance Monitoring Strategy, April 25, 2001

**RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:**



1- By the end of January 2008, VT ANR should ensure that all major stationary sources have a CMS indicator in AFS.

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

The national CMS policy describes 7 basic elements that should be addressed in compliance monitoring reports<sup>1</sup>. Further, the CMS discusses that a FCE should include a review of all required reports, and to the extent necessary, the underlying records. This includes all monitored data reported to the agency, including CEM reports, Title V certifications, semi-annual monitoring and periodic monitoring reports. Also, the CMS states that the FCE should include an on-site review of facility records and operating logs, as well as an assessment of process and/or control equipment parameters.

**FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):**

In general, VT ANR's inspection reports were clear and well-written. Some of the inspection reports were very detailed and thorough. All of the inspection reports that EPA reviewed included: most general information; facility information; applicable requirements (usually as a cross-reference to the Title V permit); and an inventory and description of regulated emission units and processes (usually as a cross-reference to the Title V permit that was in the file). However, Region 1 found a number of inconsistencies regarding several of the other basic inspection report elements outlined in the CMS (some general information, inspection history, processes and emission units evaluated, on-site observations, and findings and recommendations) as described below.

**General information:**

None of the reports stated whether the evaluation was a PCE or FCE. However, VT ANR feels that this information is not needed because all of its inspections are FCEs and this information was readily available in the national database.

**Enforcement history:**

Most of the inspection reports Region 1 reviewed did not discuss or reference previous enforcement history, although historical information was located in the facility files.

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<sup>1</sup> 1. General information, including date, compliance monitoring category (full compliance evaluation (FCE), partial compliance evaluation (PCE), or investigation), and the official submitting the report;  
2. Facility information, including facility name, location, mailing address, facility contact, and phone number, Title V or mega-site designation;  
3. Applicable requirements, including all applicable requirements including regulatory and permit conditions;  
4. Inventory and description of regulated emission units and processes;  
5. Information on previous enforcement actions;  
6. Compliance monitoring activities, including processes and emission units evaluated, on-site observations, whether compliance assistance was provided, and any action taken by the facility to come back into compliance during the on-site visit; and  
7. Findings and recommendations relayed to the facility during the compliance evaluation (but not information traditionally reserved for enforcement case files).

**Processes and emission units evaluated, on-site observations:**

Among the eighteen inspection reports that Region 1 reviewed, there was wide variability regarding the level of detail in the report's description of which processes or emission units VT ANR evaluated on-site. Most reports also lacked mention of which specific records or reports were reviewed before, during, or after the inspection. For example, two facilities (Dirigo Paper, Putney Paper) were subject to sulfur in fuel limits and metal cleaning solvent requirements but there was no mention in the reports of whether those records were considered before, during, or after the inspection. Similarly, other facilities (EHV Weidman, Peckham Materials) were subject to a number of recordkeeping requirements and permit limits that were not discussed in the inspection reports. Other reports, such as for Middlebury College and William E. Dailey (Shaftsbury), did a good job of describing most of the files and records reviewed and included good cross-references to the permit conditions considered during the inspection, however did not discuss a number of units covered by the permits, e.g., auxiliary/back-up boilers, emergency generators.

Region 1 recognizes that it might not be possible or sensible to review all of the records at a facility during the inspection. Similarly, Region 1 recognizes that at a large, complex facility with many similar units (e.g., backup boilers or emergency generators) it may not be necessary to physically inspect every unit, particularly if some of them are not active on the day of inspection. However, in order to document the FCE, the compliance monitoring report should identify the method used to determine the entire facility's compliance status (e.g., review of a sampling of records and compliance certifications from the past 2 years, visual inspection of the equipment, etc.).

One suggestion would be for VT ANR to use a template checklist for each Title V or SM80 permitted source that provides the inspector with all of the permit conditions that apply to the source and provides space to note the compliance status and brief comments. Such a checklist could then be included with the report. Region 1 has provided VT ANR with an example of a similar checklist that is used by other states.

Similarly, although Region 1 understands that during FY06 VT ANR reviewed all of the 2005 Title V compliance certifications, none of the compliance monitoring reports said whether or not Title V certifications and semi-annual monitoring reports, or other periodic monitoring reports, were reviewed prior to the inspection to determine compliance with the applicable requirements.

**Inspection Report Findings and Recommendations:**

All eighteen reports had a section with recommendations and follow-up listing violations identified and next steps. However, in all of the reports where the facility appeared to be complying with the regulatory requirements on the day of the inspection, the report stated the facility was "in compliance." As discussed in the CMS policy, Region 1 believes that such a declaration of compliance or non-compliance/violation status should be reserved for enforcement case files. Region 1 recommended that VT ANR consider not including

enforcement related statements, such as declaring whether or not a facility is “in compliance” or “in violation,” in the monitoring reports. However, VT ANR strongly disagrees with Region 1 on this recommendation. It has been longstanding state policy to include such information in compliance monitoring reports, and VT ANR believes that the compliance statement should be included in the inspection reports.

**CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:**

CAA Stationary Source Compliance Monitoring Strategy, April 25, 2001

**RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:**

- 1) By January 30, 2008, VT ANR and Region 1 should meet to review and discuss to what degree compliance monitoring reports developed after July 2007 document the elements outlined in the CMS, including:
  - o Identification of the specific emission units and applicable requirements evaluated at the source.
  - o A brief description of which monitoring reports and compliance certifications the inspector reviewed before, during or after the onsite inspection.
  - o A past enforcement history narrative or reference to compliance or enforcement-related documents contained in the facility file, if they exist.

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

**FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):**

Although there is no strict deadline for inspection report completion, many states and regional offices generally agree that inspection reports should be completed within 2-6 weeks of the on-site visit. In fact, the SRF metric description indicates that the reporting time should not exceed 60 days. For all but one of the eighteen reports that Region 1 reviewed, VT ANR took longer than 60 days after the FCE to write the report.

Additionally, although Region 1 reviewed 18 files reported as FCEs conducted in 2006, VT ANR actually conducted several other inspections in 2006 but for which the inspection reports were missing from the files when Region 1 conducted its review. Those inspections included: Blue Seal Feeds (Richford) and McNeil Station. Regarding Blue Seal Feeds, VT ANR conducted the FCE in July 2006 but indicated that it was still waiting for information to be submitted by the company. In cases where information was requested from a facility as follow-up to an inspection, VT ANR’s policy is to wait on finalizing the inspection report. Therefore, a report had not been finalized. Regarding the FCE for McNeil Station, the inspection was conducted late in the fiscal year and the report had not been completed at the time of Region 1’s file review.

Region 1 is concerned that all but one of VT ANR's compliance monitoring reports were finalized more than 60 days after the inspection. Region 1 understands that, particularly in cases where inspectors do not find any obvious violations or are waiting for follow-up information, VT ANR has not been concerned by the length of delay in writing the reports. However, Region 1 is concerned that there is a risk that the full context of important information in the inspector's notes or memory could be forgotten or misunderstood due to long delays in writing the reports. In discussions regarding this metric, VT ANR said that the length of time for writing the inspection reports was related to resource pressures that the inspection staff faced. As discussed more fully in the Findings under Metrics 9, Region 1 is concerned that the vacancy situation has strained the Air Compliance Unit's ability to conduct all of the required compliance monitoring and enforcement-related activities in a timely manner.

Region 1 does note, however, that in cases where VT ANR discovers compliance issues during fieldwork, it responds quickly by providing immediate compliance assistance to the facility and/or by sending the facility a warning letter, often within 30 days of the inspection. Therefore, although the reports were delayed, in many cases, VT ANR had already addressed the compliance issues promptly during the same time period.

Additionally, missing compliance evaluation reports raises a question with regard to when VT ANR reports an FCE as completed. An FCE is not necessarily the date of the on-site visit. For example, if the State still needed to obtain information from Blue Seal Feeds after the July 2006 on-site visit in order to complete its review of the facility, the on-site visit could be considered a PCE and when the State receives the additional information from the facility, reviews that information, and is able to make a compliance determination based upon the information submitted, the State has completed another PCE. After this subsequent PCE, if the state does not need to obtain any further information in order to complete its evaluation of the entire facility, the State could then report that it has completed the FCE.

EPA understands that compliance evaluations are often performed in several discrete activities throughout the year. EPA believes that reporting the separate activities as PCEs in the AFS data system is one effective way to manage the evaluations. However, EPA recognizes that states are not required to report PCEs in AFS and that VT ANR does not currently choose to report PCEs. Therefore, for facilities where the compliance evaluations are performed in pieces, EPA is concerned that VT ANR may need to pay closer attention to the timing of when the full compliance evaluations are recorded in AFS as completed FCEs.

**CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:**

None

**RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:**

- 1) By January 30, 2008, VT ANR and Region 1 should meet to review and discuss to what degree compliance monitoring reports developed after July 2007 were completed in a timely manner. VT ANR should strive to ensure that the majority of compliance monitoring reports are completed and finalized in a timely manner, e.g., within 60 days. Region 1 recommends that, rather than waiting for the additional information before writing the report, VT ANR's inspector should write and finalize the report as soon as practicable.
- 2) By January 30, 2008, VT ANR and Region 1 should meet to review and discuss the accuracy of the tracking of compliance evaluations performed after July 2007.
- 3) Region 1 recommends that VT ANR fill the vacant air compliance staff position.

## **Section 2: Review of State Enforcement Activity**

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

#### **FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):**

The following data metrics raise questions about VT ANR's low rate of HPV identification. However, one explanation for VT ANR's low rate of identifying HPVs is that they have the smallest major source universe in New England (22 Title V majors). Where a universe of sources is small, a statistical comparison with other states with significantly larger source universes is not practical. Therefore, due to the small universe of major sources in Vermont, it is difficult to make statistical comparisons of VT ANR's program with national averages. With so few sources and HPVs, it is easy to over-analyze Vermont's program for patterns of enforcement response based on so small a sample size.

Additionally, EPA believes that VT ANR's historic evaluation of most majors on an annual basis may be another explanation for the low rate in identifying HPVs. When discussed with the state, VT ANR agreed that its frequent evaluations, including in-the-field compliance assistance, were certainly assisting facilities to maintain compliance. As an example, VT ANR described its work over the past several years to assist asphalt batch plants that had historically had compliance issues. Through its combination of assistance and evaluations, VT ANR had helped to bring a number of facilities into compliance and keep them on track.

#### **Metric 4A: HPVs Discovered per Major Source FCE Coverage**

The national average for HPV discovered per major source FCE coverage was (9.3%), and the national goal for this metric was half of the national average (4.6%). Although VT ANR reported one new HPV, Dirigo Paper, in FY06, the discovery date was actually

in FY05. VT ANR discovered no new HPVs in FY06 (0%). Therefore, VT ANR was below the national goal for this metric.

**Metric 4B: HPV Discovered per Major Source**

The national average for HPVs discovered per major source was (4.4%), and the national goal for this metric was half of the national average (2.2%). Although VT ANR reported one new HPV, Dirigo Paper, in FY06, the discovery date was actually in FY05. VT ANR discovered no new HPVs in FY06 (0%). Therefore, VT ANR was below the national goal for this metric.

**Metric 4D: Percent of Enforcement Actions with Prior HPVs**

The national average for this metric is 77.7% and the national goal is for each state to be above half the national average (38.9%). The SRF Summary Report indicates that VT ANR had 0% which is well below the national goal.

**Metric 4E: Percentage of HPV Determinations Identified in a Timely Manner**

The national HPV policy requires that, as soon as possible (within 60 days of the initial identification) after an agency initially detects a potential high priority violation, that agency should identify the HPV to Region 1. Although the HPV was identified on May 23, 2005, VT ANR did not report the HPV information to Region 1 until January 17, 2006, 239 days after the discovery date. Therefore, VT ANR's reporting of the HPV was not timely. Discussions with VT ANR, however, revealed that the Dirigo Paper case was unusually complex and that there were a number of problems with the opacity monitoring equipment that led to a long delay in the decision to list the facility as an HPV. For example, due to a number of issues related to the placement of the continuous opacity monitoring system (COMS) on Dirigo's smoke stack, VT ANR was not confident that earlier 2004 data was truly indicative of a violation. Additionally, during that time, VT ANR also required Dirigo to conduct a performance test for particulate matter which it passed. Only after changes were made to the COMS in 2005 and opacity violations appeared to be reoccurring did VT ANR determine that it was time to take enforcement action and list Dirigo as HPV.

**Metric 4F: Percentage of HPV Determinations That Are Accurately Reported**

VT ANR accurately identified and reported the violation and "day zero" for Dirigo Paper as May 23, 2005.

**CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:**

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

**RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:**

1) During the regular quarterly meetings and more frequent conference calls and email exchanges between VT ANR and Region 1, VT ANR should discuss with EPA any

violations that are potential HPVs. In the future, if VT ANR detects a potential high priority violation, VT ANR should identify the HPV to Region 1 within 60 days of the initial identification. Further, for any new HPVs, VT ANR should endeavor to resolve or address HPV cases within 270 days of day zero.

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

**FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):**

During FY06, VT ANR took 8 formal enforcement actions, i.e., Assurances of Discontinuance (AODs), against minor and area sources. See table 2 below. As part of the SRF file review, EPA reviewed all 8 of the formal enforcement actions that VT ANR took in FY06.

**Table 2: FY06 Formal Enforcement Files Reviewed**

<b>Facility Name</b>	<b>Action Type</b>
Scandore Construction Co., Inc.	NOAV & AOD
Robert Manning	NOAV & AOD
Jan deBoer	NOAV & AOD
One-Stop Mini Mart Inc.	NOAV & AOD
Champlain Oil	NOAV & AOD
Springfield Electroplating	NOAV & AOD
Manosh Hardwoods, LLC	NOAV & AOD
Lawrence Phillip Benoir	NOAV & AOD

Based on the file review, it appears that VT ANR required injunctive relief for all of the formal enforcement actions in FY06. All 8 of the enforcement actions included injunctive relief, such as corrective or complying actions that returned the facilities to compliance within a specified timeframe and/or compliance schedules, as well as penalties. All of the enforcement actions were formalized by an Assurance of Discontinuance (AOD) signed by both parties. The AODs contained schedules of compliance, where applicable.

Additionally, VT ANR places a strong emphasis on returning facilities to compliance through informal mechanisms before proceeding to formal actions. During FY06, VT ANR took more than 75 informal enforcement actions, including 14 NOAVs and at least 50 warning letters, e.g., to gasoline dispensing facilities for testing or reporting issues. The companies to whom VT ANR issued NOAVs are listed in Table 3 below:

**Table 3: FY06 NOAVs**

<b>Violator Name</b>	<b>Action Type</b>	<b>Action Date</b>
Dirigo Paper Co.	NOAV	1/13/2006
Norton Gas	NOAV	2/7/2006
Champlain Oil Company	NOAV	2/7/2006
McNeil Gen. Station	NOAV	3/9/2006
North Country Hospital	NOAV	3/10/2006
Vt. Academy	NOAV	3/31/2006
Corner Mobil	NOAV	4/26/2006
Sugarhouse Wooden Goods	NOAV	5/9/2006
Mt. Anthony Union H.S	NOAV	5/15/2006
B&B Auto Repair	NOAV	6/27/2006
North Country Hospital	NOAV	6/30/2006
CWJ Enterprises	NOAV	11/27/2006
CWJ Enterprises	NOAV	11/27/2006
Pike Industries, Inc.	NOAV	12/19/2006

It is noteworthy that VT ANR was able to get most facilities back into compliance through informal means. Where the informal mechanism did not achieve compliance, or where there were repeat violations, however, VT ANR issued NOAVs and/or AODs. For example, in the case of Champlain Oil, between 2004 and 2006, VT ANR issued numerous warning letters to the company regarding the failure to conduct pressure decay tests. When the company continued to fail to meet the requirements after repeated warnings, VT ANR issued a NOAV and subsequently an AOD.

**CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:**

Files reviewed

**RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:**

None

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

**FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):**

Based on these metrics and the lack of formal enforcement cases against Title V majors or SM80 facilities in FY06, it is difficult for Region 1 to determine whether VT ANR is correctly applying the national enforcement policies, including the HPV policy. As discussed in the review of Metric 4, due to the small universe of major sources in Vermont, it is difficult to make statistical comparisons of VT ANR's program with



national averages. With so few sources and HPVs, it is easy to over-analyze Vermont’s program for patterns of enforcement response based on so small a sample size.

**Metric 6A: Percent HPVs Unaddressed for More Than 270 Days**

EPA’s Timely and Appropriate Enforcement Response to High Priority Violators (“the HPV policy”) of July, 1999 requires that EPA and the states address and resolve HPVs within 270 days of discovery of the violation (“day zero”). The national average for this metric is 45%. VT ANR has not addressed 100% of its current HPVs (Dirigo Paper, or Dirigo) within 270 days, significantly slower than the national average.

In June 2007, Dirigo Paper closed its facility in Vermont. However, EPA understands that over the past two years, VT ANR had worked closely with Dirigo through numerous meetings, discussions, phone calls, letters, etc., to try to bring the facility back into compliance. Additionally, on January 13, 2006, VT ANR issued a NOAV to Dirigo for the related violations. Unfortunately, the facility had numerous technical problems with its wood-fired boiler and was unable to attain and maintain compliance with the opacity limits, particularly during start-up and shut-down operational modes. Before the facility shut-down, VT ANR was working with the company to determine what the appropriate injunctive relief should be for the wood-fired boiler.

EPA also notes, as discussed above in metric 4, that given the small universe of sources and small number of HPVs identified each year in Vermont, it is difficult for EPA to make statistical comparisons of VT ANR’s program with national averages. Furthermore, it is difficult to draw conclusions about VT ANR’s response based on FY06 information alone. Therefore, although the SRF was designed to look at a one-year (FY06) snapshot of VT ANR’s program, Region 1 also looked at the length of time from “day zero” until HPVs were resolved for several years of HPV data (going back to 1998). See Table 4 below:

**Table 4: Vermont Air Pollution Control Division’s Response to “High Priority Violations” From September 1997 through May 2007**

Facility Name	Town	Day Zero	Date Resolved	Number of Days from Day Zero to Date Resolved
Springfield Electroplating, Inc.	Springfield	9/15/97	12/23/98	464
Omya, Vt. Marble Power Division	Florence	10/1/98	3/19/01	900
American Paper Mills of Vermont	Gilman	8/10/01	4/18/02	251
Southwestern Vt. Medical Center	Bennington	2/11/02	2/25/03	379
HBH Prestain, Inc.	East Arlington	3/28/03	5/21/04	420
Dirigo Paper Co./Dalton Hydro	Gilman	5/23/05	06/??/07	

These data seem to confirm that, with its small universe of sources, historically VT has identified and resolved relatively few HPVs and that, like in other states with larger

universes, response times have varied depending on the types of sources and complexities of violations. Further, because there are so few HPVs, it is not possible to compare statistically within a type of subcategory (e.g., testing failures versus monitoring issues) in order to draw meaningful conclusions.

#### **CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:**

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

#### **RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:**

1) During the regular quarterly meetings and more frequent conference calls and email exchanges between VT ANR and Region 1, VT ANR should discuss with EPA any violations that are potential HPVs. In the future, if VT ANR detects a potential high priority violation, VT ANR should identify the HPV to Region 1 within 60 days of the initial identification. Further, for any new HPVs, VT ANR should endeavor to resolve or address HPV cases within 270 days of day zero.

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

#### **FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):**

During FY06, VT ANR took 8 formal enforcement actions against minor stationary sources but none against Title V majors or SM80s. VT ANR has administrative penalty statute, regulations, and policy that it uses in the calculation of penalties, including gravity and economic benefit. As part of the SRF file review, Region 1 reviewed all 8 of the formal enforcement actions that VT ANR took in FY06. In all of the FY06 enforcement cases, VT ANR calculated penalties using a standardized worksheet, “Initial Violation Environmental Administrative Penalty Form,” that included both gravity and economic benefit questions for the case team to consider.

EPA understands that it is VT ANR’s standard practice to always consider and attempt to include discernable and provable economic benefit. Further, EPA understands that while under VT ANR’s penalty rule, Section 302(d), including economic benefit is discretionary, VT ANR tries to include it whenever possible.<sup>2</sup> However, Region 1 found that the penalty calculation worksheets were not filled out in a consistent manner. For example, in only one of the case files Region 1 reviewed (Champlain Oil), did VT ANR indicate on the worksheet that there was any economic benefit. For all of the others, the economic benefit portion of the worksheet was either not filled out or was simply marked

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<sup>2</sup> VT ANR is currently working on novel theories on two current ongoing cases to obtain “illegal profits.” VT ANR has devoted much time and expense to these cases and hopes to share any success it has in the future with such actions.

“no,” but offered no explanation as to how economic benefit was assessed. Region 1 recognizes that particularly for violations at minor and area sources or short duration violations, economic benefit might not be significant or easily calculated. However, all of VT ANR’s penalty calculation worksheets should reflect that economic benefit was considered even in those situations.

Additionally, in the seven cases where no economic benefit was included or determined, Region 1 questions whether some economic benefit should have been included. Region 1 recognizes that with small cases, economic benefit may be de minimis and therefore difficult or not possible to calculate. However, Region 1 suggests looking at cases for similarities with other cases that included economic benefit. For example, although VT ANR assessed an economic benefit for the Champlain Oil stage II vapor recovery case, no economic benefit was assessed for the One-Stop MiniMart stage II vapor recovery case. While Region 1 recognizes that the scope of the two cases was different, the same type of economic benefit would have presumably been present in both, e.g., the avoided cost of testing and reporting per violation, even if small.

While all of VT ANR’s FY06 formal enforcement actions included a penalty assessment, Region 1 is concerned about the lack of penalty actions at Title V or SM80 facilities, such as Dirigo Paper. Although VT ANR issued an NOAV to the facility in January 2006, Dirigo Paper continued to operate with intermittent violations for almost two years without penalty. Although the facility shut-down in June of 2007, such a lack of penalty action in cases like this can create an economic advantage for the facility, rather than deterrence, and an un-level playing field for similar facilities in the region.

**CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:**

Clean Air Act Stationary Source Civil Penalty Policy, October 25, 1991.

**RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:**

1) In the future, VT ANR should consistently document its consideration of economic benefit in all penalty calculations, e.g., through its Initial Violation Environmental Administrative Penalty Form. Even where there is little or no economic benefit to collect, the worksheet should document this determination in the file. VT ANR has already agreed and discussed this with the attorneys who fill out the forms. By January 30, 2008, VT ANR and Region 1 should meet to review and discuss to what degree penalty forms developed after July 2007 include such documentation.

2) By January 2008, EPA recommends that VT ANR consider revising its penalty rule, Section 302(d), so that the consideration of economic benefit in a penalty calculation is not discretionary. EPA believes that since Vermont must consider mitigating factors when calculating a penalty, economic benefit should also be considered. VT ANR and EPA will discuss this at the January 2008 meeting between the two agencies.

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

**FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):**

**Metric 8A: Actions with Penalties**

Although the state review framework data Metrics 8a and 12i indicate that no penalties were assessed or collected in Vermont from federally reportable sources during 2006, the state collected \$21,500 (\$20,500 + \$1,000 in SEP) in penalties from 8 stationary minor and area sources in FY06. See Table 5 below.

**Table 5: FY2006 VT ANR CAA Stationary Source Penalty Actions**

<b>Respondent</b>	<b>Violations</b>	<b>Eff. Date of Agreement</b>	<b>Penalty Amount</b>
Scandore Construction Co.	Open burning	10/13/05	\$2,000
Champlain Oil Co.	Stage II vapor recovery: failed to do annual maintenance & 5-year retests	4/14/06	\$3,000
Manosh Hardwoods	Failed to obtain construction permit	4/18/06	\$2,125
Jan deBoer	Open burning	4/18/06	\$2,625
Robert Manning	Open burning	6/21/06	\$1,000SEP
Laurence Benoir	Open burning	7/14/06	\$500
One-Stop MiniMart	Stage II vapor recovery: failed to do annual maintenance & 5-year retests	7/17/06	\$1,250
Springfield Electroplating, Inc.	Failed to keep required records re: Cr electroplating, plus various hazardous waste violations	9/28/06	\$9,000

The national average for this metric was 76.8%. In the 8 enforcement actions in FY06, VT ANR assessed and collected penalties at all (100%) of them which is well above the national average.

VT routinely mitigated penalties by 25% or more if settled cooperatively through an AOD (i.e., by consent). VT ANR explained that this is also done to avoid needless settlement discussions. Similarly, VT ANR’s penalty policy allows penalties to be reduced through negotiation for other factors, such as for cooperation and ability to pay considerations. In 4 of the cases reviewed (Scandore Construction, Champlain Oil, Manosh Hardwoods, and Lawrence Benoir), the amount of penalty was mitigated 25 - 50%. While Region 1 understands that under VT ANR’s penalty policy, penalties may be mitigated, Region 1 noted that the enforcement files were not consistent in documenting how the mitigated amount was decided.

Additionally, in two cases (Champlain Oil and Robert Manning), while VT ANR had calculated penalties, VT ANR offered the facilities to mitigate 100% of the penalty amount in exchange for supplemental environmental projects (SEPs). In one of the cases, the company did not choose the SEP option and the penalty was paid to the state. In the other, an open burning case, the penalty was sent directly to a municipality to purchase fire rescue equipment. EPA's SEP policy, however, would not allow a SEP to substitute for 100% of an assessed penalty. Region 1 discussed the SEP concern with VT ANR which said that since the date of the enforcement actions in early 2006, VT ANR has revised its SEP policy, which became effective on September 1, 2006. The new SEP policy limits SEPs to 75% of penalty, other than the portion of the penalty addressing economic benefit which is consistent with EPA's SEP or Administrative Penalty policies.

**Metric 8B: Percent of Actions at HPVs with Penalties**

The national average for this metric in FY06 was 76.8%. As discussed in metric above, although VT ANR issued an NOAV in January 2006, the one HPV in the state, Dirigo Paper, operated with intermittent violations for almost two years without penalty until it ultimately closed down in June 2007. Therefore, VT ANR (0%) was well below the national average.

**CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:**

1. Vermont Agency of Natural Resources (VT ANR), Chapter 20, Environmental Administrative Penalty Rules
2. VT ANR Environmental Administrative Penalty Guidance, 7/25/90.
3. EPA's Final Supplemental Environmental Projects Policy (SEP Policy), April 10, 1998.

**RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:**

- 1) By January 30, 2008, VT ANR and Region 1 should meet to review and discuss to what degree new enforcement files document how the mitigated amount was decided.

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

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

**FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):**

VT ANR's FY06 PPA commitments included conducting FCEs at 12 Title V majors, 8 SM80s, and 43 inspections at minor sources. During FY06, VT ANR conducted 11 FCEs at Title V majors (92%), 6 FCEs at SM80s (75%), 41 inspections at minor sources (95%), and 3 inspections at dry cleaning facilities (area sources). During FY06, VT ANR also monitored 27 Stage II vapor recovery performance tests, 10 stack emission

compliance tests, as well as reviewing numerous CEMS/COMS excess emission reports, reviewing 19 Title V compliance certifications, and issuing numerous open burning permits.

Although not part of the PPA, it should be noted that VT ANR's Air Division also received and responded to 54 citizen complaints during FY06. This does not include a significant number of air pollution complaints that are handled directly by Environmental Enforcement Officers in the ANR's Enforcement Division. With regard to the complaints to the Air Division, roughly 50% of the complaints required field visits or inspections. Some complaints required multiple field visits as well as other follow up work, such as issuance of NOAVs or institution of enforcement actions.

Although VT ANR's inspections fell slightly short of the PPA commitments, as discussed in Element 1 above, VT ANR met the minimum CMS commitments for Title V majors and SM80s; therefore, Region 1 is not concerned. Region 1 recognizes the significant workload that VT ANR's air compliance unit inspectors currently carry, including compliance monitoring, regulatory enforcement, open burning permit issuance, data tracking, responding to tips and complaints, and rulemaking activities. Region 1 commends the Air Division for the total quantity of field work performed by the limited staff.

Based on discussions with VT ANR, Region 1 understands that there were several reasons that VT ANR was not able to meet its PPA commitments fully. Foremost, during FY06, VT ANR's air compliance program continued to have 1 unfilled inspector position. The position was vacated in 2001 and appears to have been eliminated from the air compliance group although responsibility for carrying out the work remains with that group, including the duties of monitoring compliance at the state's 350 Stage I and II gasoline dispensing facilities. The loss of the inspector position and absorption of the Stage I and II duties has strained the air compliance section's ability to conduct all of the required compliance monitoring and enforcement activities. Therefore, Region 1 is concerned that the additional duties that have been added to the air program without replacement or additional staff have strained the air division's ability to conduct all of the required compliance monitoring and enforcement-related activities.

Additionally, during FY06, Region 1 understands that the air compliance group at VT ANR was also very busy working on a draft regulation for outdoor wood-fired boilers. Wood-fired boilers are a serious concern for VT ANR due to the high concentrations of air pollutants, including particulates and numerous hazardous pollutants that are emitted from these devices. Each year, VT ANR's air compliance section receives numerous complaints about air pollution from these devices. VT ANR has taken a leadership role in New England on this issue. VT ANR has been working closely with NESCAUM and EPA's Office of Air Quality Planning and Standards, as well as A.S.T.M. and numerous stakeholders, on draft regulations that, when finalized, will be some of the first in the country that control these highly polluting sources. However, the resources needed to support this rulemaking effort further strain the air compliance unit's ability to conduct

its required compliance monitoring and enforcement activities

**CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:**

Environmental Performance Agreement between the Vermont Department of Environmental Conservation and the US Environmental Protection Agency, Region I for Federal Fiscal Years 2004, 2005 and 2006

**RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:**

1) As indicated in Element 3, Region 1 recommends that VT ANR fill the vacant air compliance position so it can meet its PPA commitments.

**Section 4: Review of Data Integrity**

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

**FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):**

**Metric 10A: Percent of HPVs Entered More Than 60 Days After Designation**

Regarding data Metric 10a, the national average for the percent of HPVs entered more than 60 days after the designation was 57.6%. However, as described in the discussion of Metric 4 above, during FY06, VT ANR identified and entered one HPV (100%) in FY06, Dirigo Paper, 293 days after discovery, which was not timely.

**Metric 10R: Minimum Data Required Fields Properly Entered Within 60 Days**

Regarding Metric 10r, VT ANR enters AFS data directly into the AFS database. For the majority of non-HPV MDRs, VT ANR did a good job of reporting non-HPV MDRs to AFS before the 60 day deadline. In discussions with VT ANR, they explained that their goal is to enter the data into AFS within the 60 days, generally when the NOAV is issued, but that because of resource pressures, as discussed in the findings under Metric 9, e.g., the AFS Manager is also an inspector and test observer, the violation data was sometimes delayed.

**CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:**

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

**RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:**

None - In discussions and meetings with VT ANR during Spring, 2007, VT ANR has already committed to ensure that new HPV and other MDR information will be entered into AFS within 60 days of the initial identification or activity.

**11) Degree to which the MDRs are accurate.**

**FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):**

At the end of each FY, Region 1 and VT ANR staffs jointly review all the VT ANR's actions listed in AFS for that FY and ensure that AFS correctly reflects VT ANR's activities. Any discrepancies discovered via either comparison are generally corrected promptly, usually before the end-of-year data deadline. VT ANR's data manager is diligent about quality control in the database. Region 1 and VT ANR coordinate regularly regarding the maintenance of the CMS universe. Data Metric 11.b. (showing that 100% of VT ANR's FY06 stack tests have appropriate results codes entered in AFS) demonstrates the high level of data quality maintained by VT ANR.

**Metric 11A: Number of HPVs Per Number of Non-complying Sources**

The national average for this metric is 97.1% with the national goal of less than or equal to 100%. During Region 1's review, data Metric 11A indicated that VT ANR had 2 non-complying sources: Dirigo Paper and Smith, Inc., and one HPV, Dirigo Paper. However, based on discussion with VT ANR, the Smith, Inc. facility has been shut-down for several years. After discussing this with VT ANR, the data for Smith, Inc., was corrected.

**Metric 11B: Stack Test Results at Federally Reportable Sources – Percent Without Pass/Fail Results**

The national average for this metric is 15.5% with a national goal of 0%. VT ANR has 0% of its stack test results without the results. This impressive result demonstrates VT ANR's commendable commitment to observing tests, reviewing the testing information, and ensuring the information is entered into the national database in a timely manner.

**Metric 11C: Accuracy of Minimum Data Requirements (MDRs)**

Generally, VT ANR's MDRs in FY06 were accurate. As discussed further in Metric 12 below, however, there were a small number of data elements that need to be updated but have since been corrected.

**CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:**

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



**RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:**

None

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

**FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):**

In general, during FY06, the data that VT ANR entered into AFS was an accurate reflection of VT ANR's activities and source universe. In addition to the MDRs, VT ANR is also currently entering the data related to the Title V certifications' due and received dates and results of the review which Region 1 greatly appreciates. In reviewing the data in the SRF Summary Report Metric 12, however, there were some minor issues that are noted below:

**Metric 12A: Title V Universe**

The SRF Summary Report indicated that there were 21 Title V majors, but only 20 with Title V program codes. It appeared that the Ethan Allen facility in Beecher Falls should have a Title V code "V." After discussion with VT ANR, the data was corrected.

**Metric 12D: Compliance the Monitoring Counts Complete**

The SRF Summary Report indicates that VT ANR conducted 40 FCEs in FY06, but discussions with VT ANR indicated that it conducted 58 FCEs at major and minor sources, plus 3 FCEs at dry cleaners (area sources). However, because some of this activity was at minor and area sources, the information was not required to be input into AFS.

**Metric 12H: Formal Action Counts Complete and Metric 12I: Assessed Penalties Complete**

The SRF Summary Report indicates that VT ANR issued 0 formal actions and assessed \$0 in penalties but Region 1's file review indicated \$21,500 for the 8 formal actions at minor and area sources. Region 1 understands that because these actions were taken against minor and area sources that the information is not required to be input into AFS.

**CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:**

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

**RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:**

None

# **Review of the Vermont Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) Inspection and Enforcement Program for the 2006 Fiscal Year**

## **Overall Picture**

VT ANR has delegation to issue and enforce permits issued under the Clean Water Act (CWA) NPDES Enforcement Program. The Wastewater Management Division (WWMD) issues permits, conducts inspections, tracks compliance, provides compliance assistance and initiates formal enforcement. The Enforcement Division undertakes formal enforcement. VT ANR regulates a universe of about 200 NPDES permitted facilities and industrial users. Of these, 34 are NPDES majors and 15 are Significant Industrial Users (SIUs). WWMD has 15 full-time and part-time staff to handle this work. This does not include stormwater compliance.

VT ANR has a data system to track NPDES permit compliance and enforcement data. This state system transmits data to EPA's Permit Compliance System (PCS) database for WWMD. WWMD is responsible for coding NPDES permit requirements, entering discharge monitoring reports (DMR) data, and coding and tracking enforcement actions in the data system. EPA enters VT inspection data directly into PCS.

## **Sources of Information Included in Review**

The findings in this report are based on a review of WWMD operations in Federal Fiscal Year 2006 (October 1, 2005-September 30, 2006). The Region 1 reviewer examined FY06 VT ANR/EPA agreements and information in federal and state databases and read 20 inspection reports for NPDES core program inspections conducted in FY06. For each of the 34 major sources, and 10 of the minor source inspection reports, Region 1 checked to see whether the data system correctly reflected the inspections and whether WWMD pursued follow-up enforcement. There are no regional water offices so EPA only looked at the Waterbury office. Each inspection and case file was organized under a standard format. Where both WWMD and the legal office had files, the WWMD file referenced the document located in the legal files. Each inspection and case file was organized under a standard format. Region 1 representatives attended a compliance evaluation inspection at Rutland, Vermont, led by a WWMD inspector to observe field procedures. In addition, Region 1 representatives attended two performance audit inspections led by a WWMD inspector. Region 1 reviewed the enforcement files for four enforcement cases that were in process during the FY06 period and interviewed the case teams, including technical and legal staff. The Region 1 Reviewer also interviewed the state and federal data experts regarding the VT ANR data.

## **Inspection Implementation**

The Region 1 representative reviewed reports for twenty-six inspections.

Inspection coverage: WWMD inspected 76% of the major sources in FY06. While EPA encourages states to get to 100% of the major sources each year, states are allowed to substitute two minor inspections for one major. Taking the minor coverage into

consideration, Vermont's inspection coverage met EPA guidance.

Due to the migration of data from PCS to ICIS-NPDES in 2006, the state review framework metrics for VT ANR do not reflect all the inspections conducted by WWMD in FY06, even though most of the inspections were entered in PCS. Because of this, the reviewer manually calculated the percent coverage rate.

The FY06 WWMD inspection reports reviewed were timely and included a full narrative report. All of the 20 reports EPA reviewed were written within 30 days of the inspection. The reports are multiple pages and written in the form of a letter to the facility. WWMD provides a grade or rating in each inspection report and specific actions the facility can take to improve compliance or performance. WWMD conducts performance audit inspections (PAIs) and compliance enforcement inspections (CEIs) separately to assure a thorough review of lab practices. For a PAI, the inspector arrives early to observe pulling of the sample, and stays through the entire sampling procedure. PAIs often take more than one day. The CEI Region 1 observed included an off-site pump station. At both PAIs and CEIs, inspectors work with standard inspection checklists.

Water Inspection Reports Reviewed:

<b>ID NUMBER</b>	<b>FACILITY NAME</b>
VT0000248	FIBERMARK NORTH AMERICA, INC.
VT0000264	ENTERGY NUCLEAR VERMONT YANKEE
VT0000400	IBM CORPORATION
VT0000469	ROCK-TENN COMPANY
VT0100013	BELLOWS FALLS W W T F
VT0100021	BENNINGTON STP
VT0100111	ESSEX JUNCTION MTP
VT0100129	FAIR HAVEN W W T P
VT0100153	BURLINGTON MAIN STP
VT0100188	MIDDLEBURY W W T F
VT0100200	NEWPORT W W T F
VT0100226	BURLINGTON NORTH END W W T F
VT0100242	NORTHFIELD MTP
VT0100269	POULTNEY MTP
VT0100366	SOUTH BURLINGTON AIRPORT PKWY
VT0100374	SPRINGFIELD W W T F
VT0100501	SWANTON VILLAGE W W T F
VT0100510	WINOOSKI WPCF
VT0100579	ST. JOHNSBURY W W T F
VT0100714	WEST RUTLAND
VT0100871	RUTLAND W W T F
VT0100889	BARRE W W T F

VT0100897	CASTLETON M T P
VT0100919	WINDSOR W W T F
VT0101010	HARTFORD W W T F
VT0101028	HINESBURG W W T F

**Enforcement Activity**

WWMD maintains a low significant non-compliance (SNC) rate, as compared with other states. The national average SNC rate for FY06 was 19.4%, whereas the VT ANR SNC rate was 5.9%. Two major sources, Dirigo Paper, and Essex Junction, show up in the data system for having late discharge monitoring reports. WWMD reported that the Dirigo Paper violation was due to a WWMD data error; the Dirigo reports were actually received on time.

Vermont conducted both informal and formal water enforcement in FY06. Five facilities received notices of alleged violation (NOAV), and the state took four formal actions during the year.

Penalty Calculations: Though there were penalty calculations in the four formal action case files reviewed by EPA, the case team calculated but did not collect economic benefit penalties. In each of the four cases EPA reviewed, the entire penalty was paid in the form of a supplemental environmental project. Two of the cases reviewed for this report had sizable settlements (Burlington North’s total settlement amount was \$58,375, and the Shelburne settlement was \$83,250.)

Timeliness of Enforcement: All cases were settled and filed within nine months of the violation.

**Commitments in Agreements**

Three of the agreements reviewed for this report included specific compliance commitments with deadlines. The fourth did not require such commitments because compliance was achieved prior to settlement.

Water Enforcement Case Files Reviewed:

<b>ID NUMBER</b>	<b>FACILITY NAME</b>
VT0100226	BURLINGTON NORTH
VT0100331	TOWN OF SHELBURNE
VT0100153	BURLINGTON MAIN
VT0100200	CITY OF NEWPORT

**Data Integrity**



**inspections/evaluations (covering core requirements and federal, state, and regional priorities)**

**FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):**

The four water inspectors in WWMD schedule inspections in order to cover about two-thirds of the major permit holders each year. This assures they get to every major at least once every two years. Some years they substitute problem minors for majors, and some years they may visit a particular major more than once. VT ANR has a regulatory requirement to visit minor permit holders at least once every three years. In addition, WWMD visits 80 percent of its significant industrial users each year.

The VT ANR WWMD conducts three types of inspections: performance audit inspections: (PAIs) which review lab practices; compliance evaluation inspections (CEIs) which look at the operation of a treatment plant or industrial facility; and significant industrial user (SIU) inspections. While VT ANR refers to its compliance evaluation inspections as “reconnaissance inspections,” these are several hour inspections that meet EPA’s definition of a CEI.

According to the NPDES Compliance Inspection Manual EPA 305-X-04-001, July 2004:

The CEI is a non-sampling inspection designed to verify permit compliance with applicable permit self-monitoring requirements, effluent limits, and compliance schedules. Inspectors must review records, make visual observations and evaluate treatment facilities, laboratories, effluents and receiving waters. During the CEI, the inspector must examine both chemical and biological self-monitoring. . .

**Metric a-Inspection Coverage-NPDES Majors**

WWMD performed inspections at 76% of its 34 major facilities in FY 2006. (See attached table of major sources reflecting inspection activity in FY06.) Some majors were inspected more than once.

**Metric b- Inspection Coverage-NPDES Minors**

WWMD inspects each minor every 3 years, so the coverage rate runs above 30%. Region 1 will work with WWMD to assure all the minor inspections are reflected in PCS.

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

VT ANR conducts inspections at storm water facilities, audits municipal pretreatment programs, conducts industrial pretreatment inspections and investigates complaints.

**Metric r:**

Yearly Commitments or Multi-Year Plans: EPA’s national goal is 100% annual inspection coverage at NPDES major facilities, including inspections conducted by both states and EPA, and allowing for substitution of important minor water inspections for

major inspections.

The VT Department of Environmental Conservation State Enforcement and Assistance Priorities for Fiscal Year 2007, includes WWMD goals. These include:

- ❖ Inspection of about 70% of all majors
- ❖ Inspection of about 33% of all municipal minors
- ❖ Inspection of about 80% of all pretreatment facilities
- ❖ Inspection of as many non-municipal minors as time allows
- ❖ Technical assistance
- ❖ Enforcement against chronic violators, or those that may create an adverse impact on public health or the environment, or those who are not forthcoming about existing non-compliance.

The Performance Partnership Agreement between Region 1 and VT ANR Department of Environmental Conservation includes water quality-based performance measures, and NPDES Majors coverage commitments.

#### **CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:**

- FY04- FY06 Performance Partnership Agreement
- The VT Department of Environmental Conservation State Enforcement and Assistance Priorities for Fiscal Year 2007
- State Review Framework Data Metrics
- Inspection reports
- Permit Compliance System (PCS) database (as reflected in ECHO and OTIS)
- NPDES Compliance Inspection Manual EPA 305-X-04-001, July 2004

#### **RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED**

None

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

#### **FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):**

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

The particular focus WWMD places on sampling, laboratory QA/QC, test methods, recordkeeping and reporting is a strength of its inspection program. The State inspector going to a treatment plant for a compliance evaluation inspection completes a checklist that includes inspection preparation in the office and covers all aspects of the facility's operation.

Region 1 observed that WWMD inspectors had reviewed the wastewater discharge data prior to the inspections and they discussed the DMR data with the operators.

In addition to the 3560 form, WWMD inspectors write narrative reports that are typically 2 – 4 pages in length, and include concerns, comments and recommendations. WWMD inspectors make determinations of compliance in the reports and give a rating to the facility after the inspection. Reports are routinely sent to the inspected facilities. Region 1 observed that the rating system seems to motivate the regulated community to improve its practices.

Region 1 discussed with WWMD and the Enforcement Division, the potential litigation risks posed by compliance determinations and performance ratings in inspection reports. Region 1 believes that such a declaration of compliance or non-compliance/violation status should be reserved for confidential enforcement case files.

**CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:**

EPA NPDES Compliance Inspection Manual, September 1994  
WWMD inspection reports  
Observations of inspectors in the field  
Discussions with inspectors

**RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED**

None

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

**FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):**

The inspection reports Region 1 reviewed were all completed well within the required 30-day time period. Inspector job descriptions include the benchmark of completion of inspection reports within 30 days.

**CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:**

WWMD inspection reports  
PCS data in ECHO and OTIS

**RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED**

None



## **Section II. Review Area: Enforcement Activity**

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

### **FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):**

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

No single-event violations (i.e., violations not arising from routine inspections and compliance monitoring) at Major or Minor facilities were reported and tracked by PCS in FY06 according to the state review framework results. WWMD does maintain its own database for tracking SSOs, dry-weather discharges from CSOs, and other single-event violations and reports. In addition, WWMD tracks and follows up on the findings on inspections. When enforcement actions addressing single-event violations are issued, the PCS database shows formal enforcement action compliance tracking. (Note: the EPA policy which will require entry of single event violations in EPA data systems is not yet final.)

#### **Metric b (Frequency of SNC):**

The DMRs that are submitted by the Major and Minor NPDES permittees are entered into the PCS database in a timely manner. Violations are addressed quickly and informally so that VT ANR has very few significant non-compliers showing up in the PCS data system. EPA encourages this use of informal compliance measures.

WWMD maintains low significant non-compliance (SNC) rates, as compared with other states. The national average SNC rate for FY06 was 19.4%, whereas the VT ANR SNC rate was only 5.9%. Because the water program is a “self-reporting” program, this low SNC rate does not indicate inadequacy in the inspection program. On the contrary, to keep the SNC rate low in water, a state must respond quickly to reported violations. All major facilities showing SNC in 2006 received timely action by Vermont.

#### **Metric c (Wet weather SNC placeholder):**

WWMD has taken wet weather enforcement actions to address Sanitary Sewer Overflow (SSO) and Combined Sewer Overflow (CSO) discharges violations. All four of the penalty cases reviewed for this report were for wet weather violations.

- ❖ Burlington North – pipeline break causing SSO
- ❖ Town of Shelburne – SSO bypass of treatment plant
- ❖ Burlington Main – CSO non-disinfected discharge
- ❖ City of Newport – violation of CSO order

WWMD did not conduct any Concentrated Animal Feeding Operation (CAFO)

inspections in FY06. (Because of uncertainties in the CAFO regulations, EPA did not require CAFO inspections that year.) In FY07, WWMD has started doing inspections of potential CAFOs.

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

SNC determinations (permit limits violations, compliance schedule milestones violations, violations of enforcement orders, or failure to provide a compliance schedule report for final compliance of a DMR within 30 days) are automatically flagged by the PCS database.

**CITATION OF INFORMATION REVIEWED FOR THIS CRITERION**

State Review Framework Data Metrics  
PCS database, as reflected in ECHO and ICIS  
Case files

**RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED**

None

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

**FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):**

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

- ❖ The agreement with Burlington North requires replacement of failed pipeline by December 31, 2005.
- ❖ The Town of Shelburne was given 30 days to hire a consultant to evaluate the alarm and response system, and to implement at public notification system. Within 60 days, the Town was required to implement a new alarm system to detect treatment plant bypasses.
- ❖ Burlington Main had a one-time CSO non-disinfected discharge of about 900,000 gallons. Because corrective action was not needed, the action did not include injunctive relief.
- ❖ The agreement with the City of Newport for violation of a CSO order required immediate implementation of a test program for biosolids, reporting of all overflows, and installation of new pumps by April 1, 2006.

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

Inspection reports include findings and recommendations, and in some case require the facility to make corrections and report by a certain deadline. These are not entered into PCS as informal enforcement actions, though they may function in that way. For example, the August 7, 2006 inspection report for the Town of Readsboro includes the following statement: “By September 15, 2006, please send a schedule with the dates by which all the visual and audio alarms at all five pump/ejector stations will be operational, and please inspect the floating baffle in the secondary treatment lagoon and send a schedule for its repair.” As long as the inspection report findings bring about quick compliance, there may be no need for NOAVs or formal enforcement.

WWMD issued five Notices of Alleged Violation (NOAV) in FY06. Three of these were major sources: Poultney, St. Albans, and Stowe. One was a NPDES minor, Alburg, and one was a pretreatment source, Franklin Foods.

**CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:**

Enforcement files  
Inspection files  
PCS data as reflected in ECHO and ICIS  
Tables and charts provided by WWMD (attached)

**RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED**

None

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

**FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):**

**Metric a (Timely action to address SNC.):**

In FY06, there were two instances of SNC in the PCS data system due to permit violations. These violations were both for late reporting. Essex Junction submitted its August 2006 report late. WWMD received it Thursday 10/12 and entered data on Tuesday 10/17. The next batch file went 10/23 so it was received in PCS >30 days after the due date. The Dirigo Paper “violation” was caused by a WWMD data entry error. WWMD did not enter the Turbidity result for August and PCS flagged it as a non-reporting violation. Dirigo did sample and report as required. Both of these violations were resolved by the following quarter.

All four enforcement actions reviewed for this report were settled in less than ten months.

<u>Facility</u>	<u>Date of Violation</u>	<u>Date of Agreement</u>	<u>Period</u>
Burlington North	4/6/05	10/3/05	~6 months

Town of Shelburne	5/10/05 (last of 4)	1/25/06	~9 months
Burlington Main	7/26/05	4/12/06	~9 months
City of Newport	6/14-15/06	1/3/06	~7 months

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

There were no major facilities without timely action.

**Metric c (Percentage of SNCs addressed appropriately.):**

There were no unaddressed instances of SNC due to permit limit violations in the 2006 fiscal year at Vermont’s major facilities.

**CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:**

40 C.F.R. Part 123.45, the QNCR Guidance Manual  
 SRF data metrics reports  
 Enforcement files

**RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED**

None

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

**FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):**

In the Burlington North case, a pipe broke, causing a discharge of about 500,000 gallons of raw sewage to the Winooski River over an eight-day period. Although the community spent \$40,000 on temporary repairs for the pipe break, and expected to spend \$1,400,000 for the long term solution of burying the pipe, economic benefit was de minimis because of the short duration of the violation. WWMD considered only the cost of employee training when calculating economic benefit. The gravity calculation considered: impact on public health, safety and welfare; impact on the environment; knowledge of requirements and violation; past compliance record; length of time violation persisted; and adjustments. The final settlement amount was \$58,375.

The Town of Shelburne had four overflow incidents between June 2004 and May 2005, releasing more than 300,000 gallons of sanitary sewage into the LaPlatte River and Monroe Brook due to pipe blockages and failure to detect overflows and respond to alarms. The case team calculated an economic benefit of \$60,000 for cost savings due to failure to maintain adequate staffing. The \$60,000 amount is the cost of one staff person for 18 months. The gravity calculation considered: impact on public health, safety and welfare; impact on the environment; knowledge of requirements and violation; past

compliance record; length of time violation persisted; and adjustments. The final settlement amount was \$83,250.00.

On July 26, 2005, the Burlington Main wastewater treatment plant discharged about 900,000 gallons of wastewater without disinfection due to employee error. WWMD considered the cost of training and a small amount of chlorine when calculating economic benefit and found it was de minimis. The gravity calculation considered: impact on public health, safety and welfare; impact on the environment; knowledge of requirements and violation; past compliance record; length of time violation persisted; and adjustments. The final settlement amount was \$7500.

The City of Newport was cited for failure to properly treat bio-solids, and for a June, 2005 overflow of 160,418 gallons of untreated sewage. The case team determined that the violations were due to human error and economic benefit was de minimis. The gravity calculation considered: impact on public health, safety and welfare; impact on the environment; knowledge of requirements and violation; past compliance record; length of time violation persisted; and adjustments. The final settlement amount was \$12,531.

**CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:**

Case files.  
Discussions with case teams

**RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED**

None

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

In two of the four cases reviewed for this report, the penalties were substantial, given that they were for one-time events, and the respondents were municipalities.

Burlington North	\$58,375
Shelburne	\$83,250
Burlington Main	\$7500
Newport	\$12,531

EPA's SEP policy would not allow a SEP to substitute for 100% of an assessed penalty. Region 1 discussed the SEP concern with VT ANR which said that since the date of the enforcement actions in early 2006, VT ANR has revised its SEP policy, which became effective on September 1, 2006. The new SEP policy limits SEPs to 75% of penalty, other than the portion of the penalty addressing economic benefit which is consistent with

EPA's SEP or Administrative Penalty policies.

**FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):**

VT ANR received substantial penalties in two cases and the cases resulted in environmentally beneficial SEPs.

**CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:**

Case files  
Inspection files  
PCS database, as reflected in ECHO and OTIS

**RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED**

None

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

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

There are no specific inspection or enforcement commitments in the PPA. Region 1 and VT ANR have agreed that there will be an inspection plan negotiated with VT each year which outlines the number and nature of the state inspections.

**CITATION OF INFORMATION REVIEWED FOR THIS CRITERION:**

VT ANR's Performance Partnership Agreement.

**RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED**

None

**Section 4: Review of Data Integrity**

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

**FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):**

Many of the inspections conducted by WWMD were not in the PCS data system, or they were coded incorrectly. Currently, Region 1 enters inspections for WWMD, but WWMD will take responsibility after the migration of Vermont data from PCS to

NPDES-ICIS. (Vermont is a batch state for all but inspections, so it will be in the last wave of states to migrate to NPDES-ICIS.)

WWMD does not enter single-event violations in PCS or its own data system. Entry of single-event violations will likely be a requirement of the ICIS-NPDES Policy Statement when it is finalized.

**CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:**

WWMD inspection data, OTIS, ICIS

**RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:**

- 1) Region 1 and VT will meet on September 25, 2007 to review data entry procedures for inspections and single event violations.
- 2) By December 31, 2007, EPA and the WWMD shall meet to discuss inspection data entry and PCS/ICIS transitional issues and to schedule future follow-up discussions and training.
- 3) Within three months of the finalization of the ICIS-NPDES Policy Statement, the VT ANR shall submit a plan for complying with the Policy.

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

**FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):**

Region 1 and VT ANR will meet on September 25, 2007 to review data entry procedures for inspections and single event violations.

**CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:**

ICIS, OTIS

**RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:**

See recommendations for Metric 10.

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

**FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT):**

EPA reviewers manually tabulated FY06 data and found:

- WWMD inspected 76% of the major sources in FY06.
- VT-ANR conducts storm-water inspections, but these are not entered in PCS.
- WWMD did not enter any single-event violations in FY06.

- Vermont was able to keep its water SNC rate for FY06 at the low rate of 5.9%, as compared to the national average SNC rate for FY06 of 19.4%.
- In FY06, all major facilities (100%) in VT received timely enforcement action for water violations. (By comparison, the national average for timely action in FY06 was 92.1 %.)
- There are no penalties for VT actions in PCS for FY06.

See recommendations under Item 10.

**CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:**

NPDES ICIS, ICIS guidance documents, OTIS

**RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:**

See See recommendations under Item 10.



## **VT ANR Resource Conservation and Recovery Act (RCRA) Enforcement Review**

### **File Review Selection:**

The Region randomly selected 12 enforcement files and 8 inspection files for review. The files reviewed included inspections at SQGs, LQGs and TSDs. Enforcement files included 10 lower-level and 2 higher-level actions.

When reviewing enforcement actions in FY2006, Region 1 reviewed the inspection documentation for those actions. This included the review of inspection documentation that occurred prior to FY2005.

### **FFY2006 File Review Selections**

#### **Enforcement Files**

VTR000514273 Bradford Oil P&H Truck Stop  
VTR000012252 MEI Division ME Baker Company  
VTR000512913 Northwest Technical Center  
VTR000513705 Rutland Printing Center  
VTR000513630 Vermont Protective Coating Inc.  
VT5000000935 EHM Production Inc.  
VTD000791871 Exxon Mobile Burlington Terminal  
VTR000500447 Irving Oil Corporation Springfield Blue  
VTD981215809 Killington LTD  
VTR000503995 Matrix Chem  
VTR000501601 Midway Oil Corporation Warehouse  
VTD108866898 Vermont Machine Tool

#### **Inspection Files**

VTD001081215 Ethan Allen Operations Inc. Beecher Falls  
VTD000791699 Safety Kleen Systems  
VT6572824294 Vermont Air National Guard  
VTD981206246 Okemo Mountain Inc.  
VTD054822994 Stanley Tools Pittsfield Plant  
VTR000503904 Dorr Oil Company  
VTR000015727 Knights Kitchen  
VTR000514554 Sign A Rama

### **Data Metrics:**

The data metrics used to evaluate VT ANR were provided by EPA at the beginning of the evaluation process.

**Section I. Review Area: Inspections**

**1) Degree to which VT ANR has completed the universe of planned inspections.**

**FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)**

VT ANR completed 39 field inspections after projecting that it would complete 50 field inspections. The completed inspections included at least 20% Large Quantity Generator (LQG), the required Treatment, Storage & Disposal Facility (TSDF) inspections, Small Quantity Generator, and Very Small Quantity Generator inspections.

The OTIS spread sheet shows that for **Metric 1A** VT ANR conducted 5 TSDF inspections (100%) and for **Metric 1B**, it conducted 20 LQG inspections (26.3%). Those inspections included both compliance evaluation inspections and focused inspections. VT ANR conducted inspections at all of its operating TSDFs in FY06, exceeding the commitment to complete this universe in a two-year cycle. A print-out of the RCRAInfo data shows that VT ANR conducted a total of 56 evaluations during FY2006. The evaluations included compliance evaluation inspections, as well as focused inspections, compliance schedule inspections, financial record reviews, non-record reviews, and follow-up inspections. Due to VT ANR's PPA agreement with EPA, only field inspections are counted towards the PPA commitment (39 inspections).

VT ANR supplied EPA with the following information regarding the total universe of 76 LQGs documented in the OTIS spread sheet for FY06. **Metric 1C** – Inspection coverage for active LQGs (5 FYs) – period ending FY06. According to OTIS there were 30 facilities that were listed as “not counted,” or that were considered not inspected within five years. According to VT ANR, some of these facilities were one-time LQGs, due to several facilities that reported to BRS in the past having been assigned a temporary ID number. Other facilities switch between LQG and SQG based on facility operations. Each location was a LQG for only a limited time in the past. A data glitch in RCRAInfo caused them to reappear as LQGs and become part of Vermont's LQG universe when their records were edited for another purpose. The errors have been corrected, and the temporary ID numbers no longer come up as LQGs in RCRAInfo. Regarding LQGs with temporary ID numbers being counted as the Vermont LQG universe, VT ANR will respond quickly to those types of discrepancies as necessary.

Based on the above information, VT ANR's LQG universe is 46 facilities. Based on this, VT ANR's LQG coverage was 43% in 2006 and the 5-year LQG coverage is 100%.

**CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:**

National Program Guidance was used in reviewing this element. Also, Region 1 reviewed the EPA RCRA data metrics and the RCRAInfo Database.

**RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:**

None

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

**FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)**

The majority of VT ANR's inspection reports were detailed. The reports included information regarding the opening conference with the company, general observations, waste generation, facility processes, potential violations observed, photographs, supporting documentation gathered, and the closing conference. In addition to writing an inspection report, VT ANR also fills out an inspection checklist. When taking photographs, VT ANR adheres to its Digital Photograph Operating Procedure, dated July 2006. The majority of VT ANR planned inspections are unannounced except for those facilities where there may be security concerns or special accommodations for access. In that case, VT ANR will give prior notice the afternoon before the day of the inspection.

Three of the twenty inspection reports reviewed were lacking some pertinent information. The inspection reports for Vermont Protective Coating and Rutland Printing noted that a handler notification needed to be filled out by each facility, which means these two facilities were not notifying as conditionally exempt small quantity generators. The closing conference section of the reports lacked language indicating that failure to notify is regarded as a deficiency. The inspection report of Vermont Protective Coating observed that the company performed on-site and off-site sandblasting work. Region 1 feels that the report should have included the nature of the sand blasting in more detail; any test result of the sand-blasted material, and any other documentation that would reveal if the waste from the sand-blasted material was a hazardous waste. In the inspection report for Exxon Mobile, there was reference made to a 6,000 gallon underground hazardous waste storage tank. After referencing the tank, there was no indication in the report regarding any further investigation of the tank. Upon further inquiry by Region 1, VT ANR stated that the tank meets the fuel-to-fuel exemption. Region 1 feels that a further description of the tanks process should have been detailed in the report to support that fact. Overall VT ANR's reports are well written.

**CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:**

Region 1 used the RCRA Basic Inspector Manual in reviewing this element. The Region also reviewed 8 inspection files and 12 enforcement files during the review. Inspection documentation was reviewed for all files, including enforcement files. Files were randomly selected for RCRA activities conducted by VT ANR.

**RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:**

None

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

**FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)**

Drafting inspections reports and the initial determination of possible enforcement are part of a single process at VT ANR. There are two levels of enforcement that VT ANR could take after an inspection: informal and formal actions. VT ANR first drafts a decision document to summarize observation of violations observed. After peer review, the type of enforcement action is determined. VT ANR's goal is to complete this process in 90 days.

All inspection reports reviewed were completed in a timely manner. There was one inspection report reviewed in which the violations were not determined in a timely manner. EHM Production was inspected on March 31, 2005, and violations were determined on October 7, 2005. The violations were determined 190 days after the initial inspections. VT ANR said the reason for the delay in violation determination for EHM was post inspection follow-up with the company. EHM was unable to provide the information to the inspector during the inspection.

**CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:**

Region 1 used the EPA's Hazardous Waste Civil Enforcement Response Policy (2003) and VT ANR's Vermont Hazardous Waste Management Program Compliance Procedure "Revised of May 2006" element. The Region also reviewed 8 inspection files and 12 enforcement files during the review. Inspection documentation was reviewed for all files, including enforcement files. Files were randomly selected for RCRA activities conducted in each of VT ANR's office.

**RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:**

None

**Section II. Review Area: Enforcement Activity**

**4) The degree to which significant violations and supporting information are accurately identified and reported to EPA's national database in a timely manner.**

**FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)**

**Metric 4A** – This element addresses SNC identification. The national average is 3.1% and the national goal is 1.6% (1/2 the national average). VT ANR informed Region 1 that Metric 4A shows 0.0% because of RCRIS Version 3 data glitches and because one inspector was unaware of the need to separately identify SNCs (in addition to the other violations) when entering inspection data. There were actually two facilities that should have been identified as SNCs. Therefore VT ANR’s SNC rate would have been 4.0%. Currently there are 13 SNCs unresolved in the OTIS spread sheet. Seven of the 13 unresolved SNCs relate to one company, Wesco Inc. which is scheduled for trial in the Environmental Court system of the state of Vermont. Therefore the violations can not be closed until completion of the trial. Two of the other facilities are in various stages of negotiations (Grafton Metals and Hodgdon Brothers Inc.). The remaining four cases, Precision Valley Finishing, Vermont Machine Tool, Winooski Auto Sales, and Midway Oil Corporation, had been resolved, but not reported as SNNs. Since the file review, VT ANR has reported the SNN for each of these cases in RCRAInfo.

VT ANR informed Region 1 that it will train new inspectors on RCRAInfo data entry, and they will be monitored for two months. The Data Manager will also pull reports every six months from RCRAInfo to check that all inspections have been entered and determine if any other data errors exist.

**CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:**

Region 1’s RCRAInfo database and OTIS State Framework Results spread sheet.

**RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:**

- 1) Region 1 recommends that VT ANR report to Region 1 every 6 months until September 30, 2008 on progress entering inspections, correcting the accuracy of the SNC listings and other enforcement information in RCRAInfo.
- 2) Region I will provide VT ANR training on identifying and reporting SNCs.
- 5) **The degree to which enforcement actions include required corrective or complying actions that will return facilities to compliance in a specific time frame.**

**FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)**

All enforcement actions reviewed, whether higher (SNC) or lower-level (SV), clearly identify complying actions and set out time frames for return to compliance. Enforcement actions in all files reviewed identified corrective actions required, the regulatory citation, and a date for return to compliance. In most cases, VT ANR either conducts a follow-up inspection or issues a compliance letter based on submittals from the company. A discussion of penalties associated with formal actions can be found in Element 7.

There are two levels of response that VT ANR could take after an inspection. First, VT ANR writes up a decision document to summarize observation of violations. After peer review, the type of enforcement response is determined. The two types of enforcement response initiated by VT ANR are called informal and formal actions. If the facility is determined to be a SV after the review of the decision document, the facility receives a Notice of Alleged Violation (NOAV) with a return to compliance date. If the facility is considered to be a (SNC) then a referral package is put together for formal enforcement. Depending on the complexity of the case, a formal enforcement action can be forwarded to the Agency of Natural Resources Enforcement Division or the Vermont Attorney General's Office. A SNC determination is made for facilities that (a) have caused actual exposure or substantial exposure or substantial likelihood of exposure to hazardous waste or hazardous constituents; (b) are chronic or recalcitrant violators; or (c) deviated substantially from the terms of a permit, order, agreement or from RCRA statutory or regulatory requirements.

In the case of Okemo Mountain Resort, Region 1 believes that VT ANR should have determined that the facility was a SNC. Out of the eighteen violations cited by VT ANR, six of them definitely qualify as being violations that (a) could cause the likelihood of exposure of hazardous waste constituents to the environment and (b) are substantial deviations from RCRA regulatory requirements. VT ANR also states in the decision document that it has been 17 years between inspections; therefore a NOAV may be warranted. The lapse of time between inspections should not be a criterion for determining whether a violation merits a SNC determination. The enforcement responses in the remaining files were issued consistently and in accordance with VT ANR's compliance procedures.

VT ANR stated that Okemo is generally a conditionally exempt small quantity generator (CEG) for federal hazardous waste. CEGs are regulated less stringently than small or large quantity generators. Based on manifest records forwarded to Region 1 by VT ANR, Okemo tripped the threshold from a CEG to SQG in 2006 for federal hazardous waste. In prior years Okemo was a SQG for Vermont hazardous waste only.

Regarding the issuance of two NOAVs by VT ANR, there were violations referenced as side notes in these documents instead of being cited as specific violations. As a result of that practice, these violation notations are not reported in the RCRAInfo data base. This undermines the ability to conduct effective enforcement in various instances. This practice weakens the ability to track recalcitrance, and it also makes it difficult to accurately assess the seriousness of the violation. The note in the Okemo NOAV stated that waste solvent containing paint was allowed to evaporate before disposal. The Rutland NOAV stated that fixer that contained silver was mixed with rags before disposal. VT ANR stated during the review that the reason for just making a statement about these violations in the NOAV (as opposed to adding counts) was because of evidentiary concerns.

**CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:**

Region 1 used the EPA's Hazardous Waste Civil Enforcement Response Policy (2003) and VT ANR's Vermont Hazardous waste Management Program Compliance Procedure "Revised of May 2006" to assess Element 5. Region 1 reviewed 8 inspection files and 12 enforcement files during the review. Inspection documentation was reviewed for all files, including enforcement files. Files were randomly selected for RCRA activities and reviewed at the VT ANR's state office.

**RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:**

1) Regarding NOAV notations, VT ANR should develop and submit a policy indicating the circumstances under which a side-note rather than a citation in an NOAV should be used by September 30, 2008.

**6) The degree to which VT ANR takes timely enforcement actions, in accordance with RCRA policy.**

**FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)**

**Metric 6B** is a "no activity" indicator meaning that if it is 0, the region and state should discuss the circumstances that lead to no enforcement activity. It shows that VT ANR is taking enforcement actions. VT ANR routinely issues enforcement actions in a timely manner. Of the 20 files reviewed, 12 were reviewed to determine whether appropriate enforcement actions taken. Ten of the files included lower-level responses and two included higher-level response.

Under VT ANR's policy, the time frame to complete an inspection report and issue a lower-level enforcement action is between 45 and 90 days. If the response takes greater than 90 days, then a memo to the file should be prepared documenting the reason for the delay. The time required for return to compliance is 35 days. For a higher-level enforcement action (SNC), a referral package for enforcement should be drafted within 60-90 days. If the referral takes longer than 90 days, an explanation should be entered in the file. After the issuance of the order, the facility must document its return to compliance for VT ANR.

After reviewing all of the enforcement files, only one high-level case (EHM Production) has exceeded the recommended 90-day schedule for return to compliance or completion of a formal enforcement case. The inspection occurred on March 31, 2005, but an assurance of discontinuance has not yet been issued. There was no memo in the file explaining the delay.

The majority of the files reviewed surpassed EPA's enforcement response policy regarding return to compliance for informal and formal response times. EPA's return to compliance for informal actions is 150 days from inspection and return to compliance for formal actions is 360 days. VT ANR has shorter timelines. They are 125 days for

informal actions and 180 days for formal actions.

**CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:**

Region 1 used the EPA's Hazardous Waste Civil Enforcement Response Policy (2003) and VT ANR Hazardous Waste Compliance Procedure (May 17, 2006). The Region reviewed 20 inspection files and 11 enforcement files during the review. Inspection documentation was reviewed for all files, including enforcement files. Files were randomly selected for RCRA activities conducted VT ANR's state office.

**RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:**

None

**7) Degree to which a state includes both gravity and economic benefit calculations for all penalties.**

**FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)**

VT ANR, in accordance with its Administrative Penalty Rules, must issue penalties from \$0-\$25,000 per violation. Region 1 reviewed two cases in which VT ANR issued penalties in the amount of \$2,350 and \$23,500, respectively.

As stated in Element 5, formal enforcement actions are referred to the Agency of Natural Resources Enforcement Division or the Attorney General's Office. VT ANR attempts to settle all cases which are retained at the Agency. If not settled, the cases are tried in Environmental Court. Formal enforcement actions are referred to the Attorney General's office depending on case value, complexity and many other factors. VT ANR has developed an Administrative Penalty Form (calculation work sheet) to calculate penalties. There are three classes of violations which VT ANR may use when issuing an enforcement action. They are Class I, Class II, and Class III. Within each class of violation there is a penalty range set as follows: Class I, \$0-\$25,000, Class II, \$0-\$17,500 and Class III, \$0-\$5,000. Within each class, the exact penalty amount assessed is based on the scoring system for the violations. The score determines the percentage of the maximum penalty in that Class that VT ANR will assess. For example, if a Class II violation has a score of 3-4 = 20%, then VT ANR will assess an initial penalty amount of \$3,500 (.20 x \$17,500.) At this point, the scoring system represents: environmental harm, regulatory harm, and history of noncompliance. After the initial penalty is calculated, the following adjustments are accounted for: willfulness, negligence, economic benefit, multi-day and any mitigating factors. During the administrative penalty process, VT ANR issues an initial letter to the facility inviting it to a conference to settle the enforcement action. If both parties come to an agreement, an assurance of discontinuance is signed by both ANR and the respondent.

Region 1 reviewed two formal enforcement case files, Midway Oil and Vermont



Machine Tool. Region 1 identified issues in the calculation of penalties, economic benefit or multi-day penalties. NOAVs were not used when accounting for history of non-compliance, and unrelated penalties were grouped together.

Using Midway Oil as an example, violations such as failure to have a hazardous waste training program and receiving hazardous waste from other generators would warrant the calculation of economic benefit.

VT ANR rules allow grouping of violations. However, grouping violations that are very different contradicts VT ANR's statute regarding the requirement that VT ANR take into consideration the deterrent effect of the penalty. In fact, taking too broad a view on grouping violations, as in Midway Oil (i.e., failure to maintain a contingency plan and failure to train), may restrict VT ANR's ability to create a deterrent effect.

Multi-day penalties were not calculated for the above cases. Violations such as training and failure to do inspections usually warrant multi-day penalties. These types of violations were part of the above-referenced enforcement cases. VT ANR considers that the "length of time" section of its penalty calculation work-sheet captures the effect of a continuing violation. VT ANR is currently working on a policy that would clarify when violations would warrant a multi-day penalty.

When considering history of non-compliance, VT ANR only considers violations associated with formal actions. NOAVs issued are not considered. While counting NOAVs toward the penalty appears discretionary by statute, Region 1 suggests that VT ANR consider prior violations cited in NOAVs as part of the history of non-compliance in penalty calculations. Region 1 understands that in some instances, old NOAVs may be questionable (e.g., violations regarding the definition of solid waste). However, for many violations based on observation (e.g., container labeling, failure to conduct inspections, failure to train, etc.) which the company has admitted by correcting the problem, the history of non-compliance should be considered while calculating penalties.

It appears that considering Economic Benefit is mandatory under VT ANR's statute, but collection of economic benefit is discretionary under the rule. Regardless whether it is mandatory or discretionary, Region 1 feels that it is critical that penalties exceed the cost of compliance to deter facilities from violating environmental requirements. Region 1 understands that one result of VT ANR's current reorganization process and evaluation will be development of a new economic benefit model.

While Region 1 has identified issues in VT ANR's penalty calculations, VT ANR's "Environmental Administrative Penalty Form" is an excellent tool that VT ANR has developed to drive quality and consistency, and to facilitate documentation of penalty rationale for inspectors. Penalties are an effective tool to deter non-compliance, especially with dwindling resources.

**CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:**

Region 1 reviewed VT ANR's Chapter 20 Environmental Administrative Penalty Rules and VT ANR's Environmental Penalty Form. The Region also reviewed 8 inspection files and 12 enforcement files during the review. Inspection documentation was reviewed for all files, including enforcement files. Files were randomly selected for RCRA activities conducted in each of VT ANR's State office.

**RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:**

1) VT ANR should develop or use a manual similar to EPA's Estimating Costs for the Economic Benefits of RCRA Noncompliance and use a BEN model to calculate the actual economic benefit. VT ANR should submit revised economic benefit tools by September 30, 2008.

2) Develop and submit multi-day penalty policy guidance by September 30, 2008.

3) Develop and submit a guidance to clarify when violations cited in NOAVs will be used to account for history of non-compliance by September 30, 2008.

**8) The degree to which penalties in final enforcement actions include economic benefit and gravity in accordance with applicable penalty policies.**

**FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)**

**Metric 8A** is a "no activity" indicator and shows that VT ANR collected penalties in FY2006 in the RCRA program.

**Metric 8B** shows the percentage of formal actions and final formal actions with penalties. It shows that VT ANR collects penalties in 50% of its RCRA actions. This is above the national average for formal actions and above ½ the national average for final formal actions.

VT ANR routinely holds enforcement conferences with potential violators before issuing any higher-level enforcement action. In most cases, there is no initial action. VT ANR issues a letter scheduling a conference to discuss the penalty. A final order (assurance of discontinuance) may be issued as a result of the enforcement conference. VT ANR typically will reduce the gravity portion of the penalty by 25% to provide consistency in the settlement process and avoid lengthy penalty negotiations. VT ANR believes that this process saves time and provides a level playing field for all companies no matter the level of the companies' resources. VT ANR stated that not all companies receive the 25% reduction and that some companies may receive more than the 25% reduction. Depending on mitigating factors, or how egregious the violations are, there could be no reduction or there could more than a 25% initial reduction. VT ANR's penalty reduction process is consistent with Appendix 1 of its Compliance Policy. In the Midway Oil Case, the penalty was reduced by 25% plus a reduction for other mitigating reasons. VT ANR then allowed a \$1 for \$1 reduction for SEP costs expended resulting in a \$0 final

cash penalty. Region 1 does not believe that SEPs should result in mitigation of 100% of a penalty. VT ANR has developed a new SEP policy that will eliminate SEPs mitigating 100% of the penalty with the exception of special consideration for government entities.

The additional mitigating reasons to reduce the penalty stated in the case above were hand written in the file that made it difficult to understand. Region 1 feels that information like this should be clear upon review and any interpretation as to the content should not be from not being able to read the document.

**CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:**

Region 1 reviewed VT ANR's Chapter 20 Environmental Administrative Penalty Rules, VT ANR's Environmental Penalty Form and VT ANR's SEP Policy. Region 1 also reviewed 8 inspection files and 12 enforcement files during the review. Inspection documentation was reviewed for all files, including enforcement files. Files were randomly selected for RCRA activities conducted in each of VT ANR's State office.

**RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:**

1) By September 30, 2008, develop a standard template (memorandum) for mitigating penalties to be inserted in the file that is typed-written.

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

**9) The degree to which enforcement commitments in the PPA/PPG/categorical grants are met and any products or projects are completed.**

**FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)**

In FY2006, VT ANR's PPA Compliance Strategy commitments included conducting inspections, compliance assistance and reporting to the national database.

In VT ANR's FY06 PPA, VT ANR agreed to conduct 50 total inspections. VT ANR only conducted 39 inspections. VT ANR informed Region 1 that its RCRA enforcement program had lost 2 FTEs in fiscal year 2006 and that is what had accounted for its not meeting the FY 06 overall inspection commitment. These vacancies may make it difficult for VT ANR to meet its RCRA commitments in the future. The vacancies currently represent approximately 20-25% reduction in staffing.

VT ANR successfully conducted outreach to CEGs through a series of interactive workshops. VT ANR conducted a total of nine workshops. The workshops centered on universal waste, used oil and waste determination. VT ANR has provided a table of measurable results of the workshops showing dates, attendees, class surveys, satisfactory measurement, information shared and who attended.

**CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:**

The information used to evaluate this element included the Compliance Strategy to the Performance Partnership Agreement, and the RCRAInfo database.

**RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:**

1) Region 1 recommends that VT ANR fill the vacant RCRA compliance positions so it can meet its PPA commitments.

**Section 4: Review of Data Integrity**

**10) The degree to which the Minimum Data Requirements are timely.**

**FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)**

**Metric 10A** shows the percentage of facilities flagged in RCRA Info as SNC more than 60 days after the SNC designation was made. For VT ANR this metric is 0.

During the records review at the State office, VT ANR informed Region 1 that the inspectors are responsible for entering most of the data. Region 1 found data for the most part to be complete and entered in a timely manner. Of the 20 files reviewed, Region 1 found four cases that did not have part of the information reported on time (Bradford Oil, Matrix Chem., MEI MacDermid Equipment Inc., and EHM Production). Region 1 found there was no return-to-compliance date for the above mentioned four cases.

**CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:**

Information reviewed included the Region 1 data metrics and EPA's RCRAInfo database. The information was also corroborated by file reviews.

**RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:**

1) VT ANR should develop a policy to ensure that minimum data requirements, such as return to compliance dates, are included in their files and submit the policy to Region I by September 30, 2008

**11) The degree to which the Minimum Data Requirements are accurate.**

**FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)**

**Metric 11A** shows the number of sites which are determined SNC on the day of formal action and the number of sites which are determined SNC within a week of formal action. There were three discrepancies observed during the file review. They are as follows: RCRAInfo had a facility listed as SQG, but the inspection noted that it was an LQG

(Exxon Mobil); RCRAInfo had a facility listed as CG, but the inspection file noted it as LQG (Matrix Chem.); RCRAInfo shows a return to compliance date of 11/08/06, but the response letter was stamped 11/19/06 (Safety Kleen). All other information reviewed, including dates of inspections, violation determination date, enforcement and return to compliance dates, violations and enforcement type were consistent with information in the files.

**Metric 11B** shows the number of sites in violation greater than 3 years. Review of the OTIS spread sheet shows that there are currently 96 violations not closed out. The State of Vermont stated that these open violations consist of some current open cases and old, stale cases. Vermont stated that they try to close out these old violations when possible but lack of resources dictate how often they can close them out.

**CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:**

Information reviewed included the EPA data metrics and RCRAInfo database. The information was also corroborated by file reviews. Each file reviewed was compared to the RCRAInfo report for that facility to verify accuracy of information.

**RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:**

1) By September 30, 2008, VT ANR should report to Region 1 on progress resolving the 96 old “open” violations and updating RCRAInfo. EPA will provide training on RCRAInfo data entry for VT ANR by September 30, 2008.

12) **The degree to which the Minimum Data Requirement are complete.**

**FINDINGS (INCLUDING SUCCESSFUL PERFORMANCE AND AREAS FOR IMPROVEMENT)**

VT ANR is completing each of the minimum data elements as set out nationally. With some exceptions for accuracy and timeliness, VT ANR data is mostly complete.

**CITATION OF INFORMATION REVIEWED FOR THIS ELEMENT:**

Information reviewed included the EPA data metrics and EPA’s RCRAInfo database.

**RECOMMENDATIONS IF CORRECTIVE ACTION IS NEEDED:**

None