

STATE REVIEW FRAMEWORK Report

Vermont Department of Environmental Conservation

Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act Implementation in Federal Fiscal Year 2011

**U.S. Environmental Protection Agency
New England Region 1**

FINAL 9.24.13

Executive Summary

Introduction

EPA Region 1 (EPA) enforcement staff conducted a State Review Framework (SRF) oversight review of the Vermont Department of Environmental Conservation's (DEC) Clean Air Act (CAA) Stationary Source, Clean Water Act National Pollutant Discharge Elimination System (CWA-NPDES), and Resource Conservation and Recovery Act (RCRA) Subtitle C programs. The review covered compliance and enforcement activity in fiscal year 2011.

SRF findings are based on file metrics derived from file reviews, data metrics, and conversations with program staff.

Priority Issues to Address

The following are the top priority issues affecting the state's program performance:

- **Data completeness and accuracy under CAA, CWA, and RCRA.** EPA Region 1 advised the DEC CWA program to hold off on addressing these issues until DEC's transfer from PCS to the ICIS-NPDES data system in late 2012. EPA recommends in the findings below for DEC to enter all required data, and EPA will monitor progress through periodic data reviews and calls with DEC.
- **Compliance monitoring report quality and timeliness, and accuracy of violation determinations under CAA.** DEC's CMRs often lacked the documentation necessary to determine facility compliance, and as a result, its violation determinations were often inaccurate. EPA Region 1 will hold quarterly conference calls with DEC and review CMRs until it addresses this issue.
- **Inspection coverage under CAA and RCRA.** DEC did not meet inspection commitments for CAA majors and SM-80s, or RCRA TSDFs and LQGs. EPA Region 1 is recommending new compliance monitoring strategies, adherence to inspection commitments, and filling personnel vacancies to address these issues, and will monitor progress until they are resolved.

Major Clean Air Act Stationary Source Program Findings

- Over the past several years, DEC lost a number of staff in the CAA program, including an inspector and supervisor. This personnel shortage has affected the program's ability to identify and respond to compliance problems. EPA understands that DEC has recently filled the supervisor position, but it is critically important that DEC backfill the inspector vacancies quickly.
- DEC and EPA Region 1 need to discuss a) developing a new Vermont-specific Air Compliance Monitoring Strategy (CMS); and b) ensuring Compliance Monitoring Reports and inspection files accurately document compliance status and determine whether or not follow-up enforcement is merited.
- Vermont did not consistently document differences between initial and final penalties assessed. When DEC takes formal enforcement action, it needs to document consideration of economic benefit in all penalty calculations and any differences between initial and final penalties assessed.

Major Clean Water Act-NPDES Program Findings

- Despite DEC's willingness to build data reporting capacity, EPA did not recommend this because DEC was using the Permit Compliance System (PCS) to report CWA data to EPA, and PCS was scheduled for retirement. As a result, during the review year, DEC was not yet reporting the minimum CWA data required by EPA. EPA migrated DEC's data from PCS to ICIS-NPDES in late 2012. DEC is building capacity to expand its reporting to ICIS-NPDES by the end of calendar year 2013.
- In FY 2011, EPA's CWA Compliance Monitoring Strategy (CMS) allowed flexibility for inspections. EPA Region 1 agreed under the CMS that Vermont could sample 60 percent of its Significant Industrial User universe that year. Vermont met this commitment. Since 2011, EPA has amended the CWA CMS to comply with 40 CFR 403.10(e). The CMS now requires states such as Vermont that directly oversee their pre-treatment programs to inspect 100 percent of their Significant Industrial Users each year.

Major RCRA Subtitle C Program Findings

- DEC did not calculate or adequately document economic benefit for its penalty cases. Additionally, DEC did not adequately explain how the final penalty amounts were determined for its settled cases or identify where the specific reductions were made for each violation and why. EPA previously identified DEC's failure to calculate economic benefit during the FY 2006 SRF. DEC changed its penalty calculation form as a result of the FY 2006 review, to include a specific line item for economic benefit calculation. EPA determined in this review that DEC has not consistently implemented this change.
- DEC did not complete the 20 percent LQG inspection coverage required by the RCRA Compliance Monitoring Strategy (CMS). DEC should achieve this coverage or submit an Alternate CMS to EPA for review and approval.
- Many cases identified in RCRAInfo as long-standing secondary violations had been resolved but never updated in the database. DEC should run RCRARep reports for all facilities with open violations to determine whether the facilities have returned to compliance. Then DEC should correct the open violation backlog by addressing 10 facilities per month until it corrects compliance information for each of these facilities.
- Violation and SNC counts were incomplete compared with the case files, SNC evaluation and informal action dates in RCRAInfo conflicted with dates in files, return-to-compliance dates were inconsistent, and intra-agency referrals were entered as AG referrals. Vermont should run the RCRARep data quality reports and detailed reports to ensure that RCRAInfo agrees with the information contained in the State files.

Major Follow-Up Actions

EPA Region 1 will track recommendations and actions identified from the SRF review in the SRF Tracker.

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State Review Framework

I. Background on the State Review Framework

The State Review Framework (SRF) is designed to ensure that the Environmental Protection Agency (EPA) conducts nationally consistent oversight. It reviews the following local, state, and EPA compliance and enforcement programs:

- Clean Air Act Stationary Source
- Clean Water Act National Pollutant Discharge Elimination System
- Resource Conservation and Recovery Act Subtitle C

Reviews cover these program areas:

- Data — completeness, timeliness, and quality
- Compliance monitoring — inspection coverage, inspection quality, identification of violations, meeting commitments
- Enforcement actions — appropriateness and timeliness, returning facilities to compliance
- Penalties — calculation, assessment, and collection

Reviews are conducted in three phases:

- Analyzing information from the national data systems
- Reviewing a limited set of state files
- Development of findings and recommendations

Consultation is also built into the process. This ensures that EPA and the state understand the causes of issues and seek agreement on actions needed to address them.

SRF reports are designed to capture the information and agreements developed during the review process in order to facilitate program improvements. EPA also uses the information in the reports to develop a better understanding of enforcement and compliance nationwide, and to identify any issues that require a national response.

Reports provide factual information. They do not include determinations of overall program adequacy, nor are they used to compare or rank state programs.

Each state's programs are reviewed once every four-five years. The first round of SRF reviews began in FY 2004. The third round of reviews began in FY 2012 and will continue through FY 2017.

II. SRF Review Process

Review period:

Federal Fiscal Year 2011 (October 1, 2010 – September 30, 2011)

Key dates:

- On-site file reviews conducted:
 - September 10 – 15, 2011 – RCRA files
 - November 5 and 6, 2012 – Air files
 - December 3, 2012 – Water files
 - January 7, 2013 – Air files
 - January 15, 2013 – RCRA files
 - January, 2013 – Vermont sent Water files via email
- Draft report sent to state: May 16, 2013.
- Report finalized: September 24, 2013

Communication with the state:

Because of the loss of the Region 1 SRF coordinator, EPA did not hold the typical kick-off meeting. EPA staff made several trips to review files, and Vermont provided scanned copies of documents via email.

State and EPA regional lead contacts for review:

Clean Air Act: Abdi Mohamoud, Steve Rapp

Clean Water Act: Denny Dart, Andrew Spejewski

Resource Conservation and Recovery Act: Ken Rota, Donald MacLeod, MaryJane O'Donnell

III. SRF Findings

Findings represent EPA's conclusions regarding state performance, and may be based on:

- Initial findings made during the data and/or file reviews
- Annual data metric reviews conducted since the state's Round 2 SRF review
- Follow-up conversations with state agency personnel
- Additional information collected to determine an issue's severity and root causes
- Review of previous SRF reports, MOAs, and other data sources

There are four types of findings:

Good Practice: Activities, processes, or policies that the SRF metrics show are being implemented at the level of Meets Expectations, **and** are innovative and noteworthy, **and** can serve as models for other states. The explanation must discuss these innovative and noteworthy activities in detail. Furthermore, the state should be able to maintain high performance.

Meets Expectations: Describes a situation where either: a) no performance deficiencies are identified, or b) single or infrequent deficiencies are identified that do not constitute a pattern **or** problem. Generally, states are meeting expectations when falling between 91 to 100 percent of a national goal. The state is expected to maintain high performance.

Area for State Attention: The state has single or infrequent deficiencies that constitute a minor pattern or problem that does not pose a risk to human health or the environment. Generally, performance requires state attention when the state falls between 85 to 90 percent of a national goal. The state should correct these issues without additional EPA oversight. The state is expected to improve and achieve high performance. EPA may make recommendations to improve performance but they will not be monitored for completion.

Area for State Improvement: Activities, processes, or policies that SRF data and/or file metrics show as major problems requiring EPA oversight. These will generally be significant recurrent issues. However, there may be instances where single or infrequent cases reflect a major problem, particularly in instances where the total number of facilities under consideration is small. Generally, performance requires state improvement when the state falls below 85 percent of a national goal. Recommendations are required to address the root causes of these problems, and they must have well-defined timelines and milestones for completion. Recommendations will be monitored in the SRF Tracker.

Clean Air Act Findings - VT

Element 1 — Data Completeness: Completeness of Minimum Data Requirements.

Finding 1-1

Area for State Improvement

Description

Both the data analysis and file review indicate that during the review year, Vermont's reporting to the national database of a number of minimum data requirements was not complete.

Explanation

Vermont's reporting was not complete for the following MDRs:

File review and review of Vermont's (VT's) inspection targeting model indicates that this count is not complete or accurate in the national database, the Air Facility System (AFS). At least one SM80 was not listed in AFS as an SM80. At least one facility has become an SM and two are now believed to be true minors. At least three facilities are listed as SMs but after review of the permits, should be SM80s.

Although 4 minor sources were targeted in VT's CMS for FY11, VT did not record any CMS minors in AFS.

Based on the file review, it appears that there was one formal enforcement action that should have been recorded in AFS in FY11.

Given that VT's FY11 CMS plan targeted majors, SM80s, SMs, and minors, the federally reportable data should have reflected the 27 SMs and 4 minors included in VT's inspection plan for FY11.

Given that VT's FY11 CMS plan targeted majors, SM80s, SMs, and minors, the federally reportable data should reflect any and all enforcement actions issued that involve the sources in the CMS plan.

Based on the file review, it appears that VT issued 3 NOAVs in 2011 but only reported 2.

Based on the file review, it appears that one facility stopped an initial compliance test and never completed it. The failure to complete this test should have been recorded as a stack test failure in AFS.

Relevant metrics — all values reflect those reported to AFS

1a2 — Number of Active Synthetic Minors (Tier I): 76

1a4 — Number of Active CMS Minors and Facilities with Unknown Classification (Not counted in metric 1a3) that are Federally Reportable (Tier I): 0

1a6 — Tier II minors and others (formal enforcement): 0

1c1 — Number of Tier I Facilities with an FCE (Facility Count): 34 (state), 1 (EPA)

- 1c2 — Number of FCEs at Tier I Facilities (Activity Count): 34 (state), 1 (EPA)
- 1d1 — Number of Tier I Facilities with Noncompliance Identified (Facility Count): 5 (state), 1 (EPA)
- 1e1 — Number of Informal Enforcement Actions Issued to Tier I Facilities (Activity Count): 2 (state), 0 (EPA)
- 1i2 — Number of Stack Tests with Failing Results: 0
- 2b — Accurate MDR data in AFS:
 - Vermont: 21/25 = 84%
 - National Goal: 100%

State response

The Air Pollution Control Division (“APCD”) will review its list of sources and correct any discrepancies between CMS and facility classification codes as well as the source identification codes in our ITS. The Compliance Section will begin to regularly inquire with the Permit Section if any changes to permits have occurred that would require a coding change. Additional efforts will be made to ensure the proper recording of compliance and enforcement related actions into AFS.

Recommendation

By September 30, 2013, VT should make the following changes:

- Review its list of sources and ensure that the CMS codes match the facility classification codes as well as the source identification codes used in the state's inspection targeting model. Where facilities are found that should be classified as SM80 but were previously considered minor or SM, they should be coded as SM80 (CMS code of “S”) and added to VT's CMS. These sources should be inspected once every 5 years at a minimum. Alternatively, VT could revise the permits if the facilities could take a tighter limit on HAPs and therefore do not need to be an SM80. If facilities are no longer major or SM80, VT should change the AFS classification codes and inform EPA of the changes. EPA Region 1 will then change the CMS codes.
- Record in AFS any violations, informal enforcement, or formal enforcement actions for all Tier I and Tier II FRVs.
- Record all stopped compliance tests as stack test failures.

For the next 12 months, on a quarterly basis, VT and EPA should meet face-to-face or hold a conference call to check if all MDRs have been entered in AFS. VT and EPA will also discuss these data items on their monthly teleconference calls and/or face-to-face meetings. EPA will close this action item once it confirms that Vermont has sustained complete data entry of the MDRs.

Element 2 — Data Accuracy: Accuracy of Minimum Data Requirements.

Finding 2-1 Area for State Improvement

Description Both the data metric and file reviews indicate that there were inaccuracies in several minimum data requirements reported to AFS.

Explanation In addition to the incomplete reporting of MDRs cited above in the discussion of Finding 1-1, Vermont did not accurately report a number of MDRs to the national database, AFS, including:

AFS shows that there was at least one major source in FY11 that was missing the CMS category code. Further, there were at least three facilities that have taken permit restrictions and are no longer classified as major sources but still had CMS codes of “A.”

The file review indicated that four files reviewed had one or more minimum data requirements (MDRs) that were not reported to AFS, including NOAVs, a stack test failure, formal enforcement actions at facilities in the CMS, etc. Similarly, a few of the files reviewed contained very minor data inaccuracies, such as street name.

Relevant metrics

1a2 — Number of Active Synthetic Minors (Tier I): 76

1a4 — Number of Active CMS Minors and Facilities with Unknown Classification (Not counted in metric 1a3) that are Federally Reportable (Tier I): 0

1a6 — Tier II minors and others (formal enforcement): 0

1c1 — Number of Tier I Facilities with an FCE (Facility Count): 34 (state), 1 (EPA)

1c2 — Number of FCEs at Tier I Facilities (Activity Count): 34 (state), 1 (EPA)

1d1 — Number of Tier I Facilities with Noncompliance Identified (Facility Count): 5 (state), 1 (EPA)

1e1 — Number of Informal Enforcement Actions Issued to Tier I Facilities (Activity Count): 2 (state), 0 (EPA)

1i2 — Number of Stack Tests with Failing Results: 0

2a — Major Sources Missing CMS Source Category Code: 1

2b — Accurate MDR data in AFS:

- Vermont: 21/25 = 84%
- National Goal: 100%

State response

The APCD recognizes this deficiency and will review the facility classification source identification codes in our ITS to ensure that they match the CMS codes. Vermont will also take the appropriate steps to ensure proper MDR reporting to AFS, including implementation of regularly scheduled dialogue between the supervisor and AFS Manager as suggested.

Recommendation

In addition to the recommendations listed in Finding 1-1, from the date of the finalization of the SRF report until September 30, 2014, VT should:

- Ensure that the AFS manager checks with the supervisor at least monthly to find out if there have been actions/MDRs that have occurred that require entry in AFS.
- Discuss with EPA any questions related to the data on the regularly scheduled monthly teleconference call between the two agencies.
- On a quarterly basis, VT and EPA should meet or hold a conference call to check if all MDRs have been entered accurately in AFS.

Element 3 — Timeliness of Data Entry: Timely entry of Minimum Data Requirements.

Finding 3-1 Area for State Improvement

Description Vermont's compliance monitoring and stack test related MDR data were not reported to AFS in a timely manner.

Explanation 86% (43/50) of compliance monitoring MDRs entered within 60 days. The national average was 79% and the national goal is 100%. VT was above the national goal for this metric.

54.5% (6/11) of stack test MDRs were entered within 60 days. The national average was 76% and the national goal is 100%. VT was below the national goal.

0% (0/3) of enforcement related MDRs were entered within 60 days. The national average is 76% and the national goal is 100%. VT was below the national goal.

Although below the goal of 100%, VT's timely reporting of compliance monitoring activities was better than the national average. Regarding enforcement-related MDRs, VT did not enter at least three actions in AFS in a timely manner which is well below the national average and national goal. During the review period, VT did not identify any HPVs.

It is worth noting that in FY11 VT's office in Waterbury was severely damaged by Tropical Storm Irene causing significant disruption in their operations. During the last quarter of the federal fiscal year, the AFS manager was forced to work remotely but did not have access to AFS. Therefore, it appears that some of the data entry delays were related to the storm. However, some stack test data should have been entered prior to the storm and was not entered in a timely manner.

Relevant metrics

3b1 — Compliance monitoring MDRs entered within 60 days

- Vermont: 43/50 = 86%
- National Goal: 100%
- National Average: 78.6%

3b2 — Stack test MDRs were entered within 60 days

- Vermont: 6/11 = 54.5%
- National Goal: 100%
- National Average: 75.5%

3b3 — Enforcement related MDRs were entered within 60 days

- Vermont: 0/3 = 0%
- National Goal: 100%
- National Average: 78.6%

State response

The APCD has shown improvements in the timeliness of reporting compliance monitoring and stack test related MDR data into AFS since the last SRF. The APCD will continue to improve this process focusing on stack testing and enforcement related MDRs and additional improvements to compliance monitoring MDRs. Regular meetings between the Supervisor and the AFS manager will occur to improve the timeliness of AFS entries.

Recommendation

From the date of the finalization of the SRF report until September 30, 2014, VT should:

- Ensure that the AFS manager checks with the supervisor at least monthly to find out if there have been actions/MDRs that have occurred that require entry in AFS.
- Discuss with EPA any questions related to the data on the regularly scheduled monthly teleconference call between the two agencies.
- On a quarterly basis, VT and EPA should meet or hold a conference call to check if all MDRs have been entered in AFS in a timely manner.

Element 4 — Completion of Commitments: Meeting all enforcement and compliance commitments made in state/EPA agreements.

Finding 4-1 Area for State Attention

Description VT did not fully meet its inspection and data entry commitments as described in its compliance monitoring plan for FY11. However, Tropical Storm Irene caused significant disruption in VT's operations in the 4th quarter. VT DEC's offices flooded and employees were displaced for several months. This appears to have prevented VT's inspectors from completing the remaining inspections planned for FY11.

Explanation According to VT's compliance monitoring plan for FY11, VT committed to inspect 48 sources: 11 majors, 6 SM80s, 27 SMs, and 4 minors. VT completed compliance evaluations of 42 (88%) of the targeted sources, including: 8 majors (73%), 5 SM80s (83%), 25 SMs (93%), and 3 minors (75%). At least one FCE at a major source was not completed until FY12.

VT completed 5 of 6 (83%) of its CAA compliance and enforcement-related commitments during FY11. In late FY11, however, Tropical Storm Irene caused significant disruption in VT's operations in the 4th quarter and they were unable to meet the 60 day reporting requirement for some data entries.

EPA notes that although VT DEC completed most of its planned inspections during the review year, over the past several years and continuing during FY13, VT DEC has lost a significant number of staff in the Clean Air Act enforcement program, including one inspector and one supervisor (2 out of 4 people in the program). These losses are in addition to a historical vacancy in the program that was noted in SRF Round 1 but never filled. EPA is concerned that unless VT backfills these vacancies quickly, DEC will not be able to maintain a minimum field presence necessary to implement its CMS.

Relevant metrics

4a1 — Planned evaluations completed: Title V Major FCEs: 8/11 = 72.7%

4a2 — Planned evaluations completed: SM-80 FCEs: 5/6 = 83.3%

4a3 — Planned evaluations completed: Synthetic Minor FCEs: 25/27 = 92.6%

4a4 — Planned evaluations completed: Other Minor FCEs: 3/4 = 75%

4b – Planned commitments completed: CAA compliance and enforcement commitments other than CMS commitments: 5/6 = 83.3%

All metrics cited under this element have national goals of 100 percent.

State response

The APCD is appreciative that the EPA recognizes that Tropical Storm Irene negatively affected our ability to complete the required inspections in FY11. Reduced staffing resources may have also played a role in the APCD being unable to fulfill its requirements. The APCD has begun the process to fill the vacant position and is hopeful that the additional FTE will help correct deficiencies in data entry, reporting times and completion of planned inspections.

Recommendation

In order to maintain a minimum field presence necessary to implement its CMS as well as staff to meet its data management, and HPV commitments, it is critical that VT DEC take action to fill the inspector and supervisor vacancies as soon as possible but no later than January 1, 2014.

Element 5 — Inspection Coverage: Completion of planned inspections.

Finding 5-1 Area for State Improvement

Description Although Vermont completed most of the compliance evaluations required by its CMS over the review period, a number of facilities were not inspected within the required timeframes.

Explanation According to AFS, it appears that VT inspected 8 of 11 (73%) majors and 7 of 11 (64%) SM80s by the end of 2011 according to the assigned minimum inspection frequencies of its CMS. However one of the 11 major sources listed in AFS was closed during FY11. Therefore, in FY11, VT completed inspections of 8 of the 10 (80%) targeted active majors. In addition, at least one FCE at a major source was not completed until FY12.

Regarding SM80s, although AFS indicates that VT had 11 SM80s that should have been inspected by the end of FY11, 2 of the facilities are listed in VT's inspection targeting model as true minors and one facility is listed as SM. Therefore, it appears that VT inspected 7 of 8 (88%) SM80s that were required to be inspected by the end of FY11.

It is worth noting that since 1992, VT has used an inspection targeting model to develop its CMS. The model ranks sources and targets inspections at SMs and minors, as well as majors and SM80s, in exchange for inspection frequencies longer than the default of every two years for a number of major sources. In FY11, VT completed 25 of the 27 (93%) SMs included in VT's inspection plan. Similarly, VT completed 3 of the 4 (75%) minors included in its FY11 inspection plan.

EPA is concerned that the use of the inspection targeting model in the development of VT's CMS has not provided VT with a sufficient ranking mechanism to ensure that all of the SM80s and majors are targeted for inspection within their assigned frequencies. This issue was discussed in the Round 1 SRF. This model is outdated and requires manual adjustment to yield the desired results. Therefore, rather than attempting to adjust manually the model results each year, VT should instead revise its CMS. The current CMS guidance provides a number of additional flexibilities that VT could use in developing a state-specific CMS that would allow VT achieve its goals and still meet the minimum inspection requirements.

Although VT DEC completed most of its planned inspections during the review year, over the past several years and continuing during FY13, VT DEC has lost a significant number of staff in its Clean Air Act compliance monitoring and enforcement program. This includes the loss of one inspector and one supervisor (2 out of 4 people in the program). These losses are in addition to a historical vacancy in the program that was noted in SRF Round 1 but never filled. EPA is concerned that unless VT backfills these vacancies quickly, DEC will not be able to maintain a

minimum field presence necessary to implement its CMS and adequately run a Clean Air Act compliance monitoring and enforcement program.

Relevant metrics

1a2 — Number of Active Synthetic Minors (Tier I): 76

1a4 — Number of Active CMS Minors and Facilities with Unknown Classification (Not counted in metric 1a3) that are Federally Reportable (Tier I): 0

5a — FCE Coverage Major:

- Vermont: 8/11 = 72.7%
- National Goal = 100%
- National Average: 90%

5b — FCE Coverage SM-80:

- Vermont: 7/11 = 63.6%
- National Goal = 100%
- National Average: 90.6%

5c — FCE Coverage Synthetic Minors (non SM-80): 0/0

5d — FCE Coverage Minors: 0/0

State response

The APCD will explore the available CMS flexibilities and its resources to determine if a revised CMS plan is possible. While the APCD understands the EPA's concerns with the ITS system, the resources may not be available to make this change for the upcoming FY2014 inspection development. The APCD is hopeful of being able to fill the current vacancy in the near future and that FTE will assist in completing planned inspections.

Recommendation

By September 30, 2013, VT and EPA should meet to develop the FY2014 VT-specific CMS to ensure that major sources and SM 80s are inspected at least as frequently as indicated by their frequencies indicated in AFS and consistent with the CAA CMS Policy. By January 1, 2014, Vermont should submit a new CMS Plan for EPA approval.

In order to maintain a minimum field presence necessary to implement its CMS and adequately run a Clean Air Act compliance monitoring and enforcement program, it is critical that VT DEC take action to fill the inspector and supervisor vacancies as soon as possible but no later than January 1, 2014.

Element 5 — Inspection Coverage: Completion of planned inspections.

Finding 5-2 Meets Expectations

Description VT reviewed 15 of 16 (94%) of the Title V annual certifications during the review year.

Explanation One of VT's strengths is that it reviews all of the T5 permit annual certifications.

Relevant metrics 5e — Review of Title V Annual Compliance Certifications Completed:

- Vermont: 15/16 = 93.8%
- National Goal = 100%
- National Average: 72.5%

State response No state response.

Recommendation None.

Element 6 — Quality of Inspection Reports: Proper and accurate documentation of observations and timely report completion.

Finding 6-1 Area for State Improvement

Description VT’s inspection reports generally cover the basic elements of a compliance monitoring report. However, most files/reports reviewed did not contain sufficient information to determine compliance with all applicable regulations and permit terms.

Explanation Of the 25 files selected by the file selection tool, 23 contained compliance monitoring reports (CMRs). In all 23 of the CMRs, VT generally documented the elements listed in Chapter IX of the CMS. Although none of the compliance monitoring reports explicitly stated that the reports were for a “full compliance evaluation” (FCE), VT’s position is that all of their targeted inspections are FCEs and therefore there is no need to differentiate.

However, 19 of the 23 (83%) of the CMRs reviewed had at least one permit condition (not including "standard conditions" and/or "stack height") for which the inspector noted that compliance was “not determined.” For most of these, EPA did not find any other information in the file to indicate whether or not the inspector had followed up to make a determination about the outstanding conditions. This indicates that there was not sufficient information in the report or the file to determine if VT performed a FCE. This type of compliance monitoring may be more accurately classified as a “partial compliance evaluation” (PCE).

EPA found and discussed this issue with VT during the Round 1 SRF. EPA recognizes that it might not be possible or sensible to review all of the records at a facility during the time of the on-site inspection. 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. EPA recognizes that compliance evaluations are often performed in several discrete activities throughout the year. However, those separate activities must be documented in the file and then as an FCE in AFS when the information is determined to be complete. EPA is concerned that the chronic staffing shortage may be affecting the quality of the FCEs themselves if the inspectors are feeling pressured to quickly complete one FCE so they can conduct another.

Relevant metrics

6a — Documentation of FCE elements: Percentage of FCEs in the files reviewed that meet the definition of a FCE per the CMS policy

- Vermont: $4/23 = 17.4\%$
- National Goal = 100%

State response

Since the last SRF, the APCD has made adjustments to its Compliance Monitoring Reports to improve their comprehensiveness and detail. Vermont will take additional steps to better ascertain permit compliance. If compliance cannot be determined in the field, the APCD will follow up with the facility and ensure that the follow up is well documented in the file. The APCD plans to fill the vacant inspector position soon, providing additional resources for inspections.

Recommendation

From the date of the finalization of the SRF report until September 30, 2014, on a quarterly basis, VT and EPA should meet or hold a conference call to review a randomly selected sampling of 1 – 3 CMRs and/or inspection files to ensure that the reports and/or files adequately evaluate compliance with all applicable regulations and permit terms. EPA will close this action item once it observes adequate performance over a sustained period.

Element 6 — Quality of Inspection Reports: Proper and accurate documentation of observations and timely report completion.

Finding 6-2 Area for State Improvement

Description Most of the inspection reports and files lacked sufficient documentation to determine compliance with all applicable regulations and permit terms. Additionally, the majority of the inspection reports reviewed were finalized more than 3 months after the inspection.

Explanation Of the 28 files reviewed, 25 were chosen with the SRF file selection tool and 3 as supplemental files (cases based on open burning complaints). As discussed in Finding 6-1 above, of the 23 files with CMRs, 19 (83 %) had at least one permit condition (not including "standard conditions" and/or "stack height") for which compliance was "not determined" and information was not found in the file to indicate that the inspector had followed up to make a determination about the outstanding conditions. In several cases, the missing information was an indication that the facility had not complied with its permit (e.g., where the company had failed to keep records of fuel use or sulfur content).

Additionally, most of the inspection reports took an excessive amount of time to finalize. Of the CMRs reviewed, approximately 10% were finalized more than 8 months (240 days) after the inspection, more than half were finalized more than 90 days after the inspection, and almost three quarters took more than 30 days to finalize. In order to ensure that the inspector accurately and fully recollects the details of the inspection, reports should be finalized as soon as possible, typically within 30 days but not more than 90 days. The delays appear to have prevented VT from taking follow-up enforcement actions, formal or informal, in a timely manner in accordance with national policy. For example, according to EPA's current Timely and Appropriate Enforcement Response to High Priority Violators ("the HPV policy"), the state must determine if a violation occurred within 45 days of discovery of the violation, or within 90 days where additional time is needed to review follow up information.

EPA raised this issue during the SRF Round 1. VT has indicated that the length of time for writing the inspection reports was related to resource pressures that the inspection staff faced. Over the past several years and continuing during FY13, VT DEC has experienced a significant loss of staff, including one inspector and one supervisor (2 out of 4 people). EPA is very concerned that the vacancies have strained the VT DEC air division's ability to perform all of the required compliance monitoring and enforcement-related activities, including documenting inspection results in a timely manner.

Relevant metrics

6b - Compliance Monitoring Reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility: Percentage of CMRs or facility files reviewed that provide sufficient documentation to determine facility compliance:

- Vermont: 13/28 = 46.4%
- National Goal = 100%

State response

The APCD will begin a system of notices to inspectors informing them of when both the 30 and 90 day report deadlines approach for completed inspections. As previously mentioned additional follow up with facilities will be undertaken by inspectors and properly documented in the facility files.

Recommendation

By September 30, 2013, VT should institute a system to ensure that the majority of compliance monitoring reports are completed and finalized in a timely manner. Specifically, VT should finalize inspection reports within 30 days of the inspection but no longer than 90 days after the inspection. If waiting for supplemental information, rather than delaying the CMR, the inspector should write and finalize the report as soon as practicable after the field work. The inspector can always later develop a memo to the file concerning the supplemental information. From the date of the finalization of the SRF report until September 30, 2014, on a quarterly basis, VT and EPA should meet or hold a conference call to review the timeliness of a randomly selected sampling of 1 – 3 CMRs and/or inspection files. EPA will close this action item once it observes adequate performance over a sustained period.

By January 1, 2014, it is critical that VT DEC take action to begin the process of backfilling the inspector and supervisor vacancies.

Element 7 — Identification of Alleged Violations: Compliance determinations accurately made and promptly reported in national database based on inspection reports and other compliance monitoring information.

Finding 7-1 Area for State Improvement

Description Of the files reviewed, only 57% of the compliance monitoring reports reviewed accurately determined the compliance status of the facility.

Explanation Of the 28 files reviewed, 16 (57%) were found to contain accurate compliance determinations. Of the files reviewed, 14 or 28 (50%) appeared to show that the inspector had found issues serious enough that a formal enforcement action was warranted.

As noted in the discussion of Finding 6-2 above, more than 80% of the inspection reports reviewed had at least one permit condition (not including "standard conditions" and/or "stack height") for which the inspector noted that compliance was "not determined" and information was not found in the file to indicate that the inspector had followed up to make a determination about the outstanding conditions. Yet, the CMRs indicated that the facility was generally "in compliance" and no follow up was recommended. This seems to indicate that there was not sufficient information in the report and file to determine whether or not the facility was complying with all applicable requirements. However, in 12 cases, the missing information was an indication that the facility had not complied with its permit, yet VT had not taken any enforcement action in response.

Based on the review of the files, it appears that VT's inspectors are finding violations of applicable permit terms and regulations, including violations that are related to excess emissions, such as: pollution control equipment problems/failure, stack test failures, failure to calculate rolling emission totals, etc. In several cases, the file indicates that VT provided significant compliance assistance, but did not issue a notice of violation or formal action even when the facility continued to be out of compliance for several months or years. These findings and general lack of enforcement activity over the past several years appear to indicate reluctance at the Air Office of VT DEC to follow state or national enforcement response policies when violations are found. This may be related to the chronic staffing shortage which may be resulting in a reluctance to pursue follow-up enforcement in order to avoid additional workload.

Although VT DEC has been working on a new system for issuing streamlined penalty orders for minor violations where compliance is readily achievable, VT must pursue appropriate follow-up enforcement of all types of violations.

Relevant metrics

7a — Accuracy of compliance determinations:

- Vermont: $16/28 = 57.1\%$
- National Goal = 100%

State response

The APCD Compliance Section has faced many resource limitations and staff turnover in recent years. The APCD Compliance Section has a new supervisor and is working through the process of filling the vacant inspector position. The APCD feels that the additional resources will provide a greater opportunity to properly enforce permits, while continuing to work with facilities in situation where compliance assistance is prudent.

Recommendation

From the date of the finalization of the SRF report until September 30, 2014, on a quarterly basis, VT and EPA should meet or hold a conference call to review a randomly selected sampling of 1 - 3 CMRs and/or inspection files to ensure that the reports and/or files accurately document compliance at the time of the determination and indicate whether or not follow up enforcement is merited. EPA will close this action item once it observes adequate performance over a sustained period.

Element 7 — Identification of Alleged Violations: Compliance determinations accurately made and promptly reported in national database based on inspection reports and other compliance monitoring information.

Finding 7-2 Area for State Improvement

Description Alleged violations were not reported promptly or correctly in the national database.

Explanation Neither (0%) of the 2 Tier I facilities to which AFS indicates that VT issued informal enforcement actions (NOAVs) in FY11 had a compliance status of either “in violation” or “meeting schedule.” This is well below the national average of 62% and the national goal of 100%. This indicates that where informal enforcement actions have been taken by VT, VT may not be entering the appropriate compliance status code in all required fields of AFS.

Although metric 1i2 indicates that there were zero (0) failed stack tests, the file review indicated that there was an initial stack test at a SM80 that was stopped and never completed which indicates a failed stack test. VT issued a NOAV in 2011 which was recorded in AFS but did not enter the stack test or compliance status codes in AFS. VT’s 0% on this metric is well below the national average of 54% and the national goal of 100%.

VT did not identify any HPVs during the review period.

Relevant metrics 7b1 — Alleged Violations Reported Per Informal Enforcement Action (Tier I only):

- Vermont: 0/2 = 62.2%
- National Goal = 100%
- National Average: 52.6%

7b2 — Alleged Violations Reported Per Failed Stack Tests: 0/0

7b3 — Alleged Violations Reported Per HPV Identified: 0/0

State response Minor violations may be resolved before it is possible to be recorded in AFS, so violation correction timing may have played a part in the AFS reporting discrepancies. However, the APCD welcomes a monthly discussion with the EPA to ensure improved AFS coding.

Recommendation From the date of the finalization of the SRF report until September 30, 2014, on a quarterly basis, VT and EPA should meet or hold a conference call to review enforcement actions that have been taken by VT, and to ensure that VT has entered the compliance status code of “in violation” or “meeting schedule” in AFS. EPA will close this action item once it observes adequate performance over a sustained period.

Element 8 — Identification of SNC and HPV: Accurate identification of significant noncompliance and high-priority violations, and timely entry into the national database.

Finding 8-1 Area for State Attention

Description VT found zero (0) HPVs in the major source universe during the review period. During the past 5 years since the last SRF combined, VT has indicated that only one major source case was determined to be HPV.

Explanation During the file review, EPA reviewed 13 files that contained a recent or historical finding of non-compliance determination. Of the 13 files reviewed, 12 (92%) of the files appeared to determine accurately whether or not the violations were HPV.

However, VT’s rate of HPV discovery for its major source universe is extremely low (0%) and lower than the national average (4%). Because VT’s universe of major sources is so small, it is difficult to make statistical comparisons of VT’s program with national averages and goals or with other states with significantly larger source universes. Nonetheless, during the past 5 years since the last SRF, VT has identified only 1 major source violation as an HPV. EPA discussed this issue with VT in SRF Round 1. EPA remains concerned that, as discussed in previous findings, VT is not taking enforcement actions where they appear to be merited.

Based upon the file review, it appears that for at least one case there was an initial stack test at an SM80 that was stopped and the facility never retested. VT issued an NOAV and should have classified the facility as an HPV after the facility chronically failed to retest in a timely manner. In several other case files reviewed, VT’s inspection reports indicated that there were repeat violations at SM or SM80 facilities that could have been considered HPVs, e.g., for chronic noncompliance with conditions related to the pollutants for which the facility is synthetic minor.

Relevant metrics

8a — HPV Discovery Rate Per Major Facility Universe:

- Vermont: $0/15 = 0\%$
- National Average: 3.9%

8b — HPV Reporting Indicator at Majors with Failed Stack Tests: 0/0

8c — Accuracy of HPV determinations:

- Vermont: $12/13 = 92.3\%$
- National Goal = 100%

State response

The APCD welcomes monthly reviews of violations for potential HPVs and will aim to improve AFS reporting for HPVs and all other violations in a timely manner.

Recommendation

On monthly conference calls or meetings, VT and EPA should discuss any violations that are potential HPVs, including SM80s and SMs, and ensure that if VT detects a potential HPV, VT will enter the HPV information in AFS in a timely manner and in accordance with the HPV policy.

Element 9 — Enforcement Actions Promote Return to Compliance: Enforcement actions include required corrective action that will return facilities to compliance in specified timeframe.

Finding 9-1 Meets Expectations

Description In 7 of 7 (100%) files reviewed where VT took a formal enforcement action during the review period, EPA determined that the orders required corrective action that will return facilities to compliance in specified timeframe.

Explanation VT reported only 1 federally reportable formal enforcement action that was executed during the review period. However, EPA reviewed 3 files where the formal enforcement action was taken prior to the review year and 3 supplemental enforcement files from 2011. All 7 of the enforcement actions included requirements for corrective 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 and the AODs contained schedules of compliance, where applicable.

Relevant metrics 9a — Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified time frame

- Vermont: 7/7 = 100%
- National Goal = 100%

State response No state response.

Recommendation None.

Element 10 — Timely and Appropriate Action: Timely and appropriate enforcement action in accordance with policy relating to specific media.

Finding 10-1 Area for State Improvement

Description VT has not taken timely action to resolve HPVs.

Explanation According to the HPV policy, States must address HPVs within 270 days of discovery of the violation (“day zero”). During the review period, VT addressed 0% of its current HPVs within 270 days, significantly lower than the national average (64%). In fact, VT took 602 days to address and 713 days to resolve its only HPV.

EPA raised this issue in SRF Round 1. As discussed then and above in metric 8, 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’s program with national averages. It is also difficult to draw conclusions about VT’s response based on FY11 information alone. Therefore, EPA also looked at the length of time from “day zero” until HPVs were addressed and resolved for all of the HPV data going back to 1998. These data confirm that VT has historically identified relatively few HPVs and, that the time taken to address HPVs has been consistently greater than 270 days.

Relevant metrics 10a — HPV cases which meet the timeliness goal of the HPV Policy:

- Vermont: 0/1 = 0%
- National Goal = 100%

State response The APCD again appreciates EPA’s acknowledgement of the size of its source universe and that statistical comparisons for this Element do not fully represent Vermont’s compliance and enforcement efforts. While the APCD cannot control the frequency of HPV violations, we can ensure that all violations are thoroughly reviewed and identified as HPVs if appropriate and take additional measures to properly address the violation within 270 days.

Recommendation From the date of the finalization of the SRF report until September 30, 2014, on a monthly basis, VT and EPA should meet or hold a conference call to check to review any new HPVs and ensure that VT is addressing the violation within 270 days of day zero. EPA will close this action item once it observes adequate performance over a sustained period.

Element 10 — Timely and Appropriate Action: Timely and appropriate enforcement action in accordance with policy relating to specific media.

Finding 10-2 Area for State Attention

Description For the one HPV reviewed during the review period, VT resolved the HPV with an appropriate formal enforcement action. However, the penalty amount in this case was very low.

Explanation During FY11, VT resolved the HPV through an AOD that returned the facility to compliance and collected a penalty. However, the penalty collected in this case was very low (\$1,500). Even considering the penalty (\$6,000) prior to the inclusion of a supplemental environmental project (SEP), the penalty appears to be below the level necessary to achieve deterrence. However, EPA was not able to review the enforcement file for this case due to damage from Tropical Storm Irene to VT's legal office. Therefore, EPA could not analyze the penalty calculation to determine if the penalty was calculated using state or federal policy.

Relevant metrics 10b — Appropriate enforcement responses for HPVs:

- Vermont: 1/1 = 100%
- National Goal = 100%

State response The APCD works closely with by the DEC's Compliance & Enforcement Division regarding penalties and appropriate corrective actions. DEC appreciates EPA's understanding regarding the file lost to flood damage.

Recommendation From the date of the finalization of the SRF report until September 30, 2014, on a quarterly basis, VT and EPA should meet or hold a conference call to review the penalty calculation of any new HPVs.

Element 11 — Penalty Calculation Method: Documentation of gravity and economic benefit in initial penalty calculations using BEN model or other method to produce results consistent with national policy and guidance.

Finding 11-1 Area for State Improvement

Description VT had only one formal enforcement action reported to AFS during FY11. The enforcement file was not available due to flooding of VT DEC's offices that destroyed the enforcement file. During the file review, EPA also reviewed other unreported or historical formal enforcement actions and found inconsistent documentation of economic benefit consideration.

Explanation Because the enforcement file for the one reported formal enforcement action that VT took in FY11 was not available, EPA reviewed several other unreported or historical formal enforcement actions. These supplemental files included 3 additional formal enforcement actions for minor source open burning cases that VT took in 2011 that were not reported in AFS. In all 3 of the 3 enforcement files reviewed, VT 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. However, only one of the files indicated that economic benefit was considered.

As part of the file review, EPA also found 3 other historical formal enforcement actions that were taken in prior years. Only 1 of the 3 files contained VT's settlement worksheet that showed that gravity was considered but it did not indicate whether or not economic benefit was considered. For the other 2 cases, only the inspection files were available and, they did not contain documentation of penalty calculations or follow up actions.

EPA raised this issue in SRF Round 1. From discussions with VT, EPA understands that VT routinely uses a standard case settlement form to calculate penalties, including both gravity and economic benefit. Further, EPA understands that it is VT's standard practice to always consider and attempt to include discernible and provable economic benefit. However, all four penalty calculation worksheets reviewed were not filled out in a consistent manner. However, EPA recognizes that, particularly for violations at very small sources or short duration violations, economic benefit might not be significant or easily calculated.

Relevant metrics 11a — Penalty calculations reviewed that consider and include gravity and economic benefit:

- Vermont: 1/4 = 25%
- National Goal = 100%

State response

State Response: Vermont does consider economic benefit in all enforcement matters. In very small matters it is often very difficult or impossible to determine economic benefit. This is especially true in small open burning cases where all that is left is a burn ring or an empty burn barrel and debris. In these cases it is impossible to know how much material was burned so we cannot with any degree of accuracy determine the actual economic benefit. Further, EPA models are not helpful in these small cases and expending scarce prosecutor time to try to recoup \$2 for each bag of trash burned is not a wise use of those scarce resources.

It is DEC's view that the minor open burning cases discussed above should not be considered as part of the SRF review. The fact that Vermont has a small universe of regulated facilities should not result in EPA broadening the review to such minor open burning violations. DEC asks that the report remove references to these small open burning cases.

[EPA Region 1 Response: EPA appreciates Vermont's concerns with EPA broadening the SRF to include small source (e.g., open burning) cases in the review of formal enforcement actions. As in other states with small universes of regulated emissions sources, in any given year, the pool of federally reportable formal enforcement actions available for review may not meet the minimum review criteria of the SRF. In such situations, the SRF directs EPA to review supplemental files, even though they may fall outside of the scope of the general SRF design of examining federally reportable actions. For this reason, EPA Region 1 reviewed examples of Vermont's enforcement actions that were not normally reviewed, such as open burning cases. EPA recognizes and agrees that it may be difficult to determine a precise economic benefit, particularly in cases involving small sources of air pollution. Further, EPA appreciates that in such cases the state may decide that the economic benefit was "de minimis." However, because this issue was raised in the previous SRF, and Vermont did appear to consider economic benefit in one of the open burning cases, EPA continues to recommend that, in the future, Vermont document consistently that economic benefit was considered on its Initial Violation Environmental Administrative Penalty Forms. Even in cases where the benefit is considered to be de minimis, EPA recommends that such be indicated on the form.]

Recommendation

On a quarterly basis, VT and EPA should meet or hold a conference call to ensure that consideration of economic benefit is documented consistently in all penalty calculations, e.g., through VT's Initial Violation Environmental Administrative Penalty Form. EPA will close this action item once it observes adequate performance over a sustained period.

Element 12 — Final Penalty Assessment and Collection: Differences between initial and final penalty and collection of final penalty documented in file.

Finding 12-1 Area for State Attention

Description Based on the files reviewed, it appears that VT was not consistently documenting the differences between initial and final penalties assessed.

Explanation For the review period, VT had only one formal enforcement action reported to AFS and as described above, the enforcement file was not available due to the damage caused by Tropical Storm Irene to numerous paper enforcement files at VT DEC's offices in 2011. Based on documentation in the inspection file and monthly HPV teleconference notes with VT, however, EPA is assured that the penalty in this case was collected. However, without the enforcement file, EPA was unable to determine if VT's enforcement file contained documentation and a rationale regarding any difference between the initial and final penalty amounts.

Of the other four files reviewed where penalty calculation worksheets were found, two contained documentation and a rationale regarding any difference between the initial and final penalty amounts. However, without the complete enforcement case files, it is not possible to determine if VT had properly documented differences between initial and final penalty amounts.

Relevant metrics 12a — Documentation of difference between initial and final penalty and rationale:

- Vermont: 2/4 = 50%
- National Goal = 100%

State response Thank you for mentioning the file lost to flooding. As noted DEC cannot provide EPA with information from that file since it no longer exists. As regards the other files examined DEC should not be criticized for a failure when the file was destroyed by flooding. DEC asked EPA to postpone the SRF review to a subsequent year specifically to avoid problems such as this but that request was denied by OECA Headquarters staff.

Recommendation On a quarterly basis, VT and EPA should meet or hold a conference call to ensure that case officers consistently document the differences between initial and final penalties assessed.

Element 12 — Final Penalty Assessment and Collection: Differences between initial and final penalty and collection of final penalty documented in file.

Finding 12-1 Meets Expectations

Description For all of penalty actions concluded in FY11, VT documented that the penalty was collected.

Explanation Although the review period was FY11, VT had only one formal enforcement action reported to AFS during that period and, as discussed above, the enforcement case file was not available. Based on documentation in the inspection file and monthly HPV teleconference notes with VT, however, EPA is assured that the penalty was collected in this case. Similarly, for the other 3 formal enforcement actions reviewed as part of the file review, all (100%) documented that the penalty was collected or that the company was on a schedule of payments and meeting the schedule.

Relevant metrics 12b — Penalties collected:

- Vermont: 6/6 = 100%
- National Goal = 100%

State response While it is not always possible to collect all outstanding penalties DEC makes it a priority to try to do so. DEC has taken further legal action including filing a contempt petition with the court. Further, DEC has contracted with outside collection counsel to pursue unpaid penalties and cases are referred to this attorney as appropriate. Finally, DEC has made use of other collection tools including the Vermont Tax Offset Program whereby DEC would receive any tax refund a violator may be entitled to in order to satisfy an outstanding penalty.

Recommendation None.

Clean Water Act Findings - VT

Element 1 — Data Completeness: Completeness of Minimum Data Requirements.

Finding 1-1 **Unrated**

Description The state has never had a system to batch upload inspections, enforcement actions, single event violations (SEVs) or penalties from the state data systems into PCS.

Explanation For many years, Vermont has had the capacity to batch upload permit limits and DMR data for its majors to the Permit Compliance System (PCS). Region 1 has supported the state by entering traditional NPDES inspections into PCS.

Despite willingness on the part of the state, EPA did not recommend investment in the capacity to batch report additional data because PCS was scheduled for retirement. As a result, the FY11 data analysis shows that during the review year, Vermont's reporting to the national database of a number of minimum data requirements was not complete.

Vermont's data migrated from PCS to ICIS-NPDES over the last several months and is building the capacity, with a grant from EPA, to expand its reporting to ICIS-NPDES by the end of calendar year 2013.

Vermont is currently working with Windsor Solutions to build capacity to report required data to ICIS-NPDES.

Relevant Metrics

1a1 — Number of active NPDES *major* facilities with individual permits: 31

1a3 — Number of active NPDES *non-major* facilities with individual permits: 0 (reported), 143 (actual)

1a4 — Number of active NPDES *non-major* facilities with general permits: unknown universe. Vermont did not report non-major facilities in PCS during the review year.

1b1 — Permit Limits Rate for Major Facilities:

- Vermont: $31/31 = 100\%$
- National Goal $\geq 95\%$
- National Average = 98.6%

1b2 — DMR Entry Rate for Major Facilities:

- Vermont: $440/440 = 100\%$
- National Goal $\geq 95\%$
- National Average = 98.6%

1b3 — Number of Major Facilities with Manual Override of RNC/SNC to Compliant Status: 0

1c1 — Permit Limits Rate for Non-Major Facilities

- Vermont: $14/151 = 9.3\%$
- National Average = 66.1%

1c2 — DMR Entry Rate for Non-Major Facilities

- Vermont: $12/72 = 16.7\%$
- National Average = 72.6%

1e1 — Facilities with Informal Actions: none reported

1e2 — Total Number of Informal Actions at CWA NPDES Facilities: none reported

1f1 — Facilities with Formal Actions: none reported

1f2 — Total Number of Formal Actions at CWA NPDES Facilities: none reported

1g1 — Number of Enforcement Actions with Penalties: none reported

1g2 — Total Penalties Assessed: none reported

State Response

The Program and EPA have been working closely to resolve the remaining issues related to the PCS to ISIS transition. Although the Program is now able to directly enter and transmit data to ISIS, programming bugs remain problematic in that there appears to still be issues with incomplete transmission of data resulting in numerous facilities being listed as being in non-compliance when they actually are not.

Recommendation

By December 31, 2013, Vermont should develop and test the capacity to upload or direct enter all required data to ICIS-NPDES.

From the date of finalization of this SRF report until September 30, 2014, on a quarterly basis, Vermont and EPA should meet face-to-face or hold a conference call to assess progress on data reporting.

As required by the December 28, 2007 *ICIS Addendum to the Appendix of the 1985 Permit Compliance System (PCS) Statement*. Vermont will need to report to ICIS-NPDES:

- facility and permit elements and discharge monitoring report data for majors and non-majors;
- narrative conditions for majors and 92-500 minors (those built with EPA grant money);
- limits and limit sets for majors;
- permitted features for majors;
- inspections;
- Pretreatment Significant Industrial User (SIU) inspections and sampling events;
- SIU Progress Reports
- formal and informal enforcement actions;
- penalties for all enforcement actions reported;
- single event violations; and
- any other required elements specified in the December 28, 2007 ICIS Addendum.

Element 2 — Data Accuracy: Accuracy of Minimum Data Requirements.

Finding 2-1 Meets Expectations

Description For those data elements reported to PCS, the data appeared to be accurate.

Explanation For FY11, PCS reflected all active Major individual and general permits and included the permit limits, discharge data, and permit schedule violations for Majors.

Relevant metrics 2a1 — Number of formal enforcement actions taken against major facilities with enforcement violation codes entered and the enforcement action is linked to the violation(s) that the action(s) addresses: 0

2b — Files reviewed where data are accurately reflected in the national data system: 32/32 = 100%. National Goal = 100%. Thirty-two of the files reviewed were majors, and the facility information, permit limits, and discharge monitoring report (DMR) data was accurately reflected in the data system for these files. None of the non-major files reviewed were reflected in the data system.

State response No state response.

Recommendation None.

Element 3 — Timeliness of Data Entry: Timely entry of Minimum Data Requirements.

Finding 3-1 **Meets Expectations**

Description For those data elements reported to PCS, the data were entered on time.

Explanation For FY11, PCS reflected all active Major individual and general permits and included the permit limits, discharge data, and permit schedules for Majors.

Relevant metrics 3a — Timely entry of mandatory data: Percentage of files reviewed where mandatory data are entered in the national data system in a timely manner:

- Vermont: 17/21 = 92%
- National Goal = 100%

Four of twenty-one files reviewed by EPA were majors which showed non-receipt violations. Even if these violations were due to late data entry, the timeliness exceeded 90%.

State response No state response.

Recommendation None.

Element 4 — Completion of Commitments: Meeting all enforcement and compliance commitments made in state/EPA agreements.

Finding 4-1 Area for State Improvement

Description

While Vermont met its Compliance Monitoring Strategy (CMS) commitment to EPA for sampling and inspections of its pre-treatment Significant Industrial Users (SIUs), in future, Vermont will need to inspect and sample 100% of its SIU universe and report required pre-treatment information to the federal data system.

Explanation

Pre-treatment: Because Vermont is classified as a 40 CFR 403.10(e) state and oversees its Significant Industrial Users directly, Vermont is required by regulation to inspect and sample all of its SIUs each year. This requirement is reiterated in the 2011 Performance Partnership Agreement Priorities and Commitments List negotiated between Vermont and EPA Region 1.

In the 2012 *State of Vermont Industrial Pre-treatment Report*, Vermont reported 43 significant industrial users (SIUs). Vermont conducted sampling at only 14 SIUs in FY11, though they conducted inspections or visits at the full universe of SIUs in FY11. Vermont did not report any of the pre-treatment inspections or sampling events in the federal data system.

In addition, the October 31, 1985 *Permit Compliance System Policy Guide* and the December 28, 2007 *ICIS Addendum to the appendix of the 1985 Permit Compliance System Statement* require states such as Vermont that directly oversee the SIUs to report all SIU inspections to the national data system.

Relevant Metrics

4a1 — Pretreatment compliance inspections and audits: 0/0. These are not required for Vermont because the state implements the pre-treatment program.

4a2 — Significant Industrial User inspections for SIUs discharging to non-authorized POTWs. Vermont should inspect and sample its 24 SIUs each year. Under the Compliance Monitoring Strategy, EPA agreed to a 60% inspection rate in FY11. Sampling 14/43 = 32%

4a3 — State oversight of SIU inspections by approved POTWs: Not required because Vermont implements the program.

4a4 — Major CSO inspections: No major CSOs in Vermont.

4a5 — SSO inspections: Vermont looks at collection system performance when conducting municipal POTW inspections. The CMS has no numeric goal for SSO inspections.

4a6 — Phase I MS4 audits or inspections: Vermont has no Phase I MS4s.

4a7 — Phase II MS4 audits or inspections: Vermont did not have a Phase II MS4 permit in FY11.

4a8 — Industrial stormwater inspections: 10%. Vermont met its commitment to EPA of inspecting 10% of the known universe.

4a9 — Phase I and Phase II stormwater construction inspections: 10%. Vermont met its commitment to EPA of inspecting 10% of the known universe.

4a10 — Number of inspections of large and medium NPDES-permitted CAFOs. None of the CAFOs in Vermont have NPDES permits.

4a11 — Number of inspections of non-permitted CAFOs: 25/25 = 100%. Vermont met its CMS commitment of 25 inspections.

4b — Non-inspection commitments completed:

State Response

The Program has agreed that it will conduct sampling inspections on 100% of the SIU permittees in the next, and subsequent, fiscal years.

Recommendations

Starting in 2014, Vermont needs to conduct sampling inspections at all of its pre-treatment Significant Industrial Users each year and report these to the ICIS-NPDES federal data system.

The Region will close this action item once it observes adequate performance over a sustained period.

Element 5 — Inspection Coverage: Completion of planned inspections

Finding 5-1

Meets Expectations

Description

Completion of inspection commitments to EPA

Explanation

Vermont met the inspection goals it set under EPA's *National Pollutant Discharge Elimination System Compliance Monitoring Strategy for the Core Program and Wet Weather Sources* (issued October 17, 2007), available at <http://www.epa.gov/oecaerth/resources/policies/monitoring/cwa/npdescms.pdf>.

Relevant Metrics

5a1 -- Inspection Coverage – NPDES Majors:

- Vermont: $8/31 = 25.8\%$ (value reported to PCS)
- National Average = 56.8%
- Commitment: 50%

5b1 -- Inspection Coverage – NPDES Non-Majors:

- Vermont: $6/151 = 4\%$ (value reported to PCS)
- Commitment: 100% over five years

5b2 – Inspection Coverage – NPDES General Permits = 10% (industrial and construction general permits):

- Vermont: $0/2 = 0\%$ (value reported to PCS)
- Commitment: 10% of industrial and 5% of construction general permit universe.

State Response

No state response.

Recommendation

None.

Element 6 — Quality of Inspection Reports: Proper and accurate documentation of observations and timely report completion.

Finding 6-1 Area for State Attention

Description Vermont’s water inspection reports were found to be complete and provided sufficient documentation to lead to accurate compliance determinations, though some reports lacked facility address.

Multiple inspection reports were completed later than 30 days after the inspection.

Explanation Inspection reports were adequate for assessing compliance. Four reports included a mailing address for the operators but had no physical address listed for the facility; this is a very minor omission for waste treatment plants, but could be more important for other types of facilities. The mailing address was the only information missing from reports.

Five of fourteen reports were completed more than 30 days after the inspection. Two of these were completed within 40 days, but two others took over 150 days to be completed. 85% of reports were completed within 60 days of the inspection.

Relevant metrics 6a — % of inspection reports reviewed that are complete and sufficient to determine compliance:

- Vermont: 10/14 = 71%
- National Goal = 100%

6b — % of inspection reports reviewed that are timely:

- Vermont: 9/14 = 64% [85% were complete within 60 days]
- National Goal = 100%

State Response Facility physical addresses will be included in all future inspection reports.

The Section Chief has directed staff that it is imperative that inspection reports are completed and mailed within 30 days of the inspection. That action will, out of necessity, result in a delay of other Program workload activities, but the Section Chief considers timely inspection reports to be one of the staff’s highest priorities.

Recommendation

By September 30, 2013, Vermont should change the format of inspection reports (both CEI and Performance Audits) to include the facility's physical address.

By September 30, 2013, Vermont should determine whether additional measures are warranted to track timely completion of reports. If more than 30 days are required for comprehensive reports, Vermont may develop a state inspection documentation timeliness policy that allows more time.

Element 7 — Identification of Alleged Violations: Compliance determinations accurately made and promptly reported in national database based on inspection reports and other compliance monitoring information.

Finding 7-1 Meets Expectations

Description Compliance determinations are accurately made.

Explanation All of the inspection files reviewed by EPA were for publicly owned treatment plants. Inspections did not identify any Single Event Violations (SEVs) independent of the discharge monitoring reports. The inspection reports included a review of discharge monitoring reports. One inspection identified a violation also reflected in the DMRs. In this case, Vermont took formal action. Several other reports identified minor issues and Vermont sent letters to the facilities to address the minor issues highlighted in inspection reports. EPA's view is that informal action was appropriate for these violations.

Relevant metrics 7a1 — Number of single-event violations at active majors: 0

7a2 — Number of single-event violations at active non-majors: 0

7b — Compliance schedule violations: 2

7c — Permit schedule violations: 5

7d — % major facilities in noncompliance:

- Vermont: 31/31 = 100%
- National Average = 71.2%
-

7e — Accuracy of compliance determinations: 14/14 =100%

State response No state response.

Recommendation None.

Element 8 — Identification of SNC and HPV: Accurate identification of significant noncompliance and high-priority violations, and timely entry into the national database.

Finding 8-1 Meets Expectations

Description EPA did not identify any Significant Non-Compliance (SNC) in the file review. According to the data metric analysis, 11.40% of the NPDES majors were in SNC during the review year.

Explanation Vermont enters all major source discharge monitoring report (DMR) data into the federal data system. During FY11, there were four traditional major facilities in SNC, according to the data system. None of the enforcement cases reviewed by EPA had violations that met the definition of Wet Weather SNC.

Relevant metrics 8a1 — Major Facilities in SNC: 4
8a2 — Percent of Major Facilities in SNC

- Vermont: $4/35 = 11.4\%$
- National Average: 22.3%

State response No state response.

Recommendation None.

Element 9 — Enforcement Actions Promote Return to Compliance: Enforcement actions include required corrective action that will return facilities to compliance in specified timeframe.

Finding 9-1 Meets Expectations

Description In all of the FY11 water enforcement actions reviewed, the file documented return to compliance.

Explanation In 6 of 6 (100%) files reviewed where Vermont took a formal enforcement action during the review period, EPA determined that the orders required corrective action that will return facilities to compliance in an appropriate specified timeframe.

According to the data system, four facilities were in SNC during the review year. In all cases, the violations were due to non-receipt of data or reports required by the permit. Vermont resolved these violations without enforcement because Tropical Storm Irene caused late submittal or late data entry by Vermont.

Relevant metrics 9a – % of enforcement responses that have returned or will return a source in violation to compliance:

- Vermont: 6/6 = 100%
- National Goal = 100%

State response No state response.

Recommendation None.

Element 10 — Timely and Appropriate Action: Timely and appropriate enforcement action in accordance with policy relating to specific media.

Finding 10-1 Meets Expectations

Description Timely and appropriate enforcement actions are taken.

Explanation EPA reviewed six formal enforcement actions. Vermont took all six cases in a timely manner and required prompt action to bring the facilities into compliance.

Relevant metrics 10a — % major facilities with timely action:

- Vermont: 0/0
- National Goal $\leq 2\%$
- National Average = 17.5%

10b — % of enforcement responses reviewed that address violations that are taken in a taken in a timely manner: 6/6 = 100%

State response No state response.

Recommendation None.

Element 11 — Penalty Calculation Method: Documentation of gravity and economic benefit in initial penalty calculations using BEN model or other method to produce results consistent with national policy and guidance.

Finding 11-1 Area for State Attention

Description Penalty calculations generally considered and included appropriate gravity and economic benefit, though no economic benefit was calculated for one penalty.

Explanation All enforcement actions included penalty calculations using a standard penalty calculation form, which includes a calculation based on standard elements and an opportunity to adjust for particular circumstances. All but one action included both gravity and economic benefit considerations. One file did not include an economic benefit calculation or justification for not considering economic benefit.

Reductions from the calculated penalty are documented in a separate settlement form (see element 12 below).

Relevant metrics 11a — % of penalty calculations that consider and include, where appropriate, gravity and economic benefit: 4/5 = 80%. National Goal = 100%.

State response The Program will coordinate with CED attorneys to assure that the requested consideration and documentation of economic benefit is included in all future enforcement actions.

Recommendation By September 30, 2013, Vermont should consistently document its consideration of economic benefit, even where there is little or no economic benefit to collect.

Element 12 — Final Penalty Assessment and Collection: Differences between initial and final penalty and collection of final penalty documented in file.

Finding 12-1 Meets Expectations

Description Vermont documented the differences between initial and final penalty and documented that the penalty was collected.

Explanation Four penalty case files reviewed by EPA documented the difference and rationale for any differences between the initial and final assessed penalty; these were documented in a standard Settlement Form. The case attorney completed a Settlement Form for the fourth case during the review.

All six enforcement actions with penalties documented the collection of the penalty

Relevant metrics 12a - % of penalties reviewed that document the difference and rationale between the initial and final assessed penalty: $4/4 = 100\%$
12b - % of enforcement actions with penalties that document collection of penalty: $6/6 = 100\%$

National goals for 12a and 12b are 100%.

State response No state response.

Recommendation None.

Resource Conservation and Recovery Act Findings - VT

Program Overview Comments: The performance of the HW Program during the evaluation period was negatively impacted by staff turnover/vacancies and the flooding of state offices caused by Tropical Storm Irene. For roughly one-half of FFY11, the program did not have any full-time inspectors. For the remainder of the year, two new inspectors were in training. Flooding caused the Program to be unable to conduct normal business for almost six weeks at the end (closeout period) of the year. DEC believes that these issues should be more prominently noted in the report. [EPA Region 1 agrees with this comment.]

Element 1 — Data Completeness: Completeness of Minimum Data Requirements.

Finding 1-1 Area for State Attention

Description Twenty-five (25) files were selected and reviewed to determine the completeness of minimum data requirements. Vermont’s inspection counts, formal action counts and total dollar penalty counts were accurate according to the file review metrics and the Preliminary Data Analysis. Vermont’s site universe counts for LQGs and SQGs were more current than RCRAInfo. The minimum data requirements for the violation and SNC counts were incomplete.

Explanation Vermont enters all inspection and enforcement activities into RCRAInfo. Five (5) of the twenty-five (25) files reviewed had incomplete or missing data (25%). A SNY evaluation for Safety Kleen Corporation (EPA ID number VTD001080126) was not entered. A Notice of Alleged Violation (NOAV) issued to UVM (EPA ID number VTD000636563) did not include a violation count for missing inspection records identified in the file. An NOAV for Kennametal Inc. did not include a violation count for marking the words “Hazardous Waste” on a container. A letter issued to McIntyre Services LLC (VTD988367413) identifying a waste oil labeling violation count was not entered in RCRAInfo. And, Vermont Marble (VTR000514950) did not include violation counts for an open oil container and an open and unlabeled box container universal waste (batteries and mercury bulbs) in RCRAInfo or the follow-up letter to the facility.

Relevant metrics

- 1a2 — Number of active LQGs: 42
- 1a3 — Number of active SQGs: 326
- 1b1 — Number of sites inspected: 45
- 1b2 — Number of inspections: 45
- 1c1 — Number of sites with new violations during review year: 37
- 1c2 — Number of sites in violation at any time during review year: 95
- 1d1 — Number of sites with informal enforcement actions: 29
- 1d2 — Number of informal enforcement actions: 29
- 1e1 — Number of sites with new SNC during review year: 3
- 1e2 — Number of sites in SNC regardless of determination date: 7
- 1f1 — Number of sites with formal enforcement actions: 3
- 1f2 — Number of formal enforcement actions: 3
- 2b — Accurate entry of mandatory data:
 - Vermont: $14/24 = 58.3\%$
 - National Goal = 100%

State Response: The HW program disagrees that an SNY evaluation should have been entered for the Safety-Kleen facility (NOTE: The EPA ID number attributed to Safety-Kleen in the second paragraph on page 38 is incorrect – it should be VTD000791699.) While SNY was the inspector’s initial recommendation, upon review the supervisor decided that the violations did not merit SNY distinction and this was documented in the decision document.

[EPA Region 1 Response: EPA’s evaluation indicates that Safety Kleen (whose ID# should be identified as VTD000791699) should have been identified as an SNC due to inventory violations. However, informal action was appropriate based on the circumstances identified by the program manager.]

State response

State Response: Identification of Safety-Kleen as an SNC. RCRAInfo system documentation (see RCRAInfo Help/Nationally Defined Universes/Enforcement Programmatic Universes/Significant Non-Complier) clearly states which types of enforcement actions are considered to have “addressed” a SNC determination and the informal Notice of Alleged Violation, known as enforcement type = 120, does not “address” a SNC determination. Had we identified Safety-Kleen as an SNC and then issued an informal enforcement action, this Safety-Kleen facility would have been flagged on the Watch List as an un-addressed SNC. The state program manager was fully aware of this distinction and intentionally did not identify Safety-Kleen as an SNC for this reason.

[EPA Region 1 Response: Region 1 agrees that the Safety-Kleen SNC determination would have resulted in the facility’s inclusion on the Watch List. The Watch List is an oversight tool used by EPA to identify facilities that are Chronic SNCs with no enforcement action or Long-term SNCs

with no final administrative or civil action. Facilities identified on the Watch List are reviewed by EPA to determine the status of these facilities and to ensure that timely and appropriate enforcement actions are taken by the State.

Watch List Standard Operating Procedures require Region 1 to provide facility status codes for all active facilities identified on the List. Watch List Facility Status Code “2a” is used to identify Watch List facilities where a management decision is made to resolve a violation without the need for a formal enforcement action (and also determined appropriate by EPA). In the case of Safety-Kleen, Region 1 would have used Watch List Facility Status Code “2a” and included a written explanation of the circumstances (e.g., management justification language contained in Vermont’s Enforcement Decision Document) to ensure the removal of Safety-Kleen from the Watch List.]

State Response: In response to the Recommendation and the Routine running of RCRARep reports. It is unclear which RCRARep data quality reports and RCRARep detailed reports EPA is referring to. These errors are not so much data errors as discrepancies between the documented inspection findings and what was cited in the correspondence with the facility. VT is implementing measures to ensure that all violations are entered into RCRAInfo.

[EPA Region 1 Response: Region 1 agrees with this comment.]

Recommendation

By September 30, 2013, VT should ensure that all inspection and enforcement-related activities are entered into RCRAInfo in a timely manner. VT is encouraged to run the RCRARep data quality reports and RCRARep detailed reports on a regular basis (e.g., monthly/quarterly) to ensure that RCRAInfo and the information contained in the State data files agree. EPA RCRAInfo coordinators are available to help the state with data questions/issues.

Element 1 — Data Completeness: Completeness of Minimum Data Requirements.

Finding 1-2

Good Practice

Description

Completeness of site universe counts

Explanation

VT assesses a Hazardous Waste Generation Registration fee and requires all LQGs and SQGs to submit a signed certification of their generator status on an annual basis to document their handler status. In 2012, the annual certification was extended to include Conditional Exempt Small Quantity Generators. VT provided a list that identified thirty-four (34) active LQGs for FY11 (excluding generators that were also TSDFs). A review of VT's list found one discrepancy involving Northeastern Vermont Regional Hospital (EPA ID no. VTD085574978). VT stated that this facility was not an LQG during FY11. A review of the handler notification section of RCRAInfo determined that this facility had notified as an LQG in 2010 and 2012 and had no information on-file to verify or otherwise confirm that this facility was in a "non-LQG" status in 2011. Despite this one inconsistency, VT's annual Hazardous Waste Generation fee is a good practice.

Relevant metrics

1a2 — Number of active LQGs: 42

1a3 — Number of active SQGs: 326

State response

No state response.

Recommendation

None

Element 2 — Data Accuracy: Accuracy of Minimum Data Requirements.

Finding 2-1 Area for State Improvement

Description This element is a review indicator that identifies the degree to which data reported in the national system in FY11 is accurately entered and maintained for sites with secondary violations (SVs) that were open for more than 240 days and were not returned to compliance or re-designated as being in significant noncompliance (SNC). Metric 2a identified forty-four (44) facilities as long-standing violators with secondary violations that have been open for more than 240 days and had not been re-designated as SNCs.

Explanation Discussions with the VT determined that only six (6) of the forty-four (44) facilities identified with long-standing secondary violators were accurate and still considered “open cases” for an accuracy rate of 13.6% (6/44). VT stated that the majority of the open violations were database cleanup issues and were the result of staff turnover (two occurrences in the past five (5) years) combined with the addition of new inspectors who were in the process of being trained and are not familiar with the compliance status for these prior cases. One (1) of the forty-four (44) facilities, Flex-a-Seal (VTR000003384) was reviewed as part of the random file selection for FY11. EPA’s review of the Flex-a-Seal file confirmed that the outstanding secondary violation had been corrected but was not updated in RCRAInfo.

Relevant metrics 2a — Long-standing secondary violators: 44

State response State Response: The HW Program agrees with the recommendation and agrees to start this work in October.

[EPA Region 1 Response: EPA Region 1 agrees with this comment.]

Recommendation By October 31, 2013, VT will run RCRAREP reports for the thirty-eight (38) facilities with open violations and will reduce the open violation backlog by addressing open violations for at least ten (10) facilities per month for consecutive months until the compliance information for each outstanding violation has been corrected.

Element 2 — Data Accuracy: Accuracy of Minimum Data Requirements.

Finding 2-2 Area for State Improvement

Description Twenty-four (24) files were reviewed to determine the degree to which data reported in the national system in FY11 is accurately entered and maintained. Data for fourteen (14) of the twenty-four (24) files reviewed was accurately reflected for an accuracy rate of 58.3% (14/24).

Explanation Types of missing or inaccurate data identified in the fourteen (14) files included: SNC evaluation dates not entered into RCRAInfo (identified in Element 1), SNC evaluation dates entered in RCRAInfo that conflicted with SNC dates identified in the files, Informal action dates in RCRAInfo that conflicted with dates identified in the files, Violation counts identified in the files but not entered in the national data system, inconsistent return-to-compliance dates and intra-agency referrals (RCRAInfo code 862) entered as AG referrals (RCRAInfo code 410).

Relevant metrics 2b — Accurate entry of mandatory data:

- Vermont: 14/24 = 58.3%
- National Goal = 100%

State response State Response: The HW Program standard for which date to use as a return to compliance date is the date that the letter was signed as the RTC date. If there is no date on the letter we use the date received. Program staff will review this standard.

[EPA Region 1 Response: EPA Region 1 agrees that this follow-up action is appropriate.]

State Response: As in 1.1 above, the HW Program disagrees with EPA's assessment that Safety-Kleen should have been a SNC.

[EPA Region 1 Response: See EPA Region 1 Responses provided under Element 1.]

Recommendation By October 1, 2013, VT shall identify (or develop a policy) for determining the Return to Compliance Date to be used (e.g., signed certification date from the facility, US Postal date stamp marked on the envelope, VT receipt date stamped on the envelope/correspondence, the date VT reviews the certification or the date VT issues a compliance letter.)

EPA will provide VT with a list of the inaccurate data identified from the file review and VT shall correct the information in RCRAInfo.

Element 3 — Timeliness of Data Entry: Timely entry of Minimum Data Requirements.

Finding 3-1

Meets Expectations

Description

This element is a program goal (100%) and determines whether mandatory data identified in the facility file is entered into the national data system in a timely manner. VT entered 96% (23/24 files) of its mandatory data in a timely manner.

Explanation

VT entered 95.8% of its mandatory data in a timely manner (23/24 files). One (1) SNC evaluation for Safety Kleen, EPA ID no. VTD000791699 was identified in the case file but not entered into the national data system.

Relevant metrics

3a — Timely entry of mandatory data:

- Vermont: 23/24 = 95.8%
- National Goal = 100%

State response

State Response: The HW Program disagrees that Safety-Kleen should have been identified as a SNC as described in comments under 1.1. For this element the HW Program believes that it met the goal at a 96% level.

[EPA Region 1 Response: See EPA Region 1 Responses provided under Element 1.]

Recommendation

None. The missing SNC evaluation will be corrected per Element 1 recommendations.

Element 4 — Completion of Commitments: Meeting all enforcement and compliance commitments made in state/EPA agreements.

Finding Meets Expectations

Description The metric is a goal metric that measures the planned non-inspection commitments completed in the review year and any planned inspections under an Alternate Compliance Monitoring Strategy.

Explanation VT did not have an Alternate Compliance Monitoring Strategy for FY11 and met non-inspection PPA commitments identified regarding training and reporting.

Relevant metrics 4a — Planned non-inspection commitments completed: $2/2 = 100\%$ (2011 PPA Priorities and Commitments List, Items 113 and 135)

State response No state response.

Recommendation None

Element 5 — Inspection Coverage: Completion of planned inspections

Finding 5 -1 Area for State Improvement

Description This metric is a goal metric and evaluates the inspection coverage for operating TSDFs (once every two years), annual LQG inspections (20% of the Biennial Report Universe), 5-year LQG inspection coverage (100% of LQGs), 5-year SQG inspection coverage (no goal – informational only) and 5-year inspection coverage at other sites (CESQGs, Transporters, Non-notifiers and sites not covered by metrics 5a-5e3).

Explanation VT provided EPA with a printout of LQG facilities from the national database (RCRAInfo) that were identified as LQG facilities in FY11. The total number of generators identified in the national database was forty-three (43). VT identified four (4) LQGs and five (5) TSDFs that could not be counted against the 20% inspection coverage rate due to non-generator status and double-counting issues associated with the TSDFs (e.g., a CEI conducted at a TSDF can only count towards coverage for the TSDF requirements). EPA’s review of this list determined that one (1) of the non-generators identified by VT had LQG status bringing the total number of LQGs to thirty-five (35). VT’s 20% LQG inspection commitment was seven (7) LQG inspections, not nine (9).

Based on these readjustments, VT was only required to conduct seven (7) LQG inspections to meet its 20% LQG commitment. VT completed four (4) LQG inspections for an annual inspection coverage rate of 11.4% (4/7). VT requested Region 1’s assistance to complete the remaining three (3) LQG inspections to meet the 20% LQG universe inspection commitment.

A review of the types of facilities targeted by VT in FY11 determined that a disproportionate number of inspections were conducted at service stations and auto repair facilities in lieu of inspections at LQG and SQG facilities and was a major contributing factor to VT’s failure to inspect 20% of its LQG universe without EPA assistance. VT did not have an approved Alternative Compliance Monitoring Strategy (“ACMS”) in place to substitute non-LQG handlers for the mandatory 20% LQG commitment. A review of VT’s 5-year LQG inspection average determined that VT’s readjusted long-term coverage rate was 77.1% (27/35).

In FY11, VT had inspected 23% of its SQG universe over the past five years. This percentage was more than double the national average of 11%. During the same 5-year period, VT had conducted 170 inspections at CESQGs, 7 transporter inspections, 2 non-notifier inspections and 40 other inspections not covered by metrics 5a-5e3.

In August 2011, Tropical Storm Irene caused massive flooding in Vermont, displacing and destroying VT’s offices located in Waterbury, Vermont. As a direct result of this natural disaster, VT was not able to complete its final TSDF commitment that was schedule for the 4th quarter.

However, the magnitude and circumstances surrounding this natural disaster are such that Region 1 considered this event to be an extenuating circumstance and determined that Vermont met its TSDF commitment for FY11.

Relevant metrics

5a — Two-year inspection coverage for operating TSDFs

- Vermont: $3/5 = 60\%$
- National Goal = 100%
- National Average = 89.4%

5b — Annual inspection coverage for LQGs

- Vermont: $4/46 = 11.4\%$
- National Goal = 20%
- National Average = 22.6%

5c — Five-year inspection coverage for LQGs

- Vermont: $27/46 = 58.7\%$
- National Goal = 100%
- National Average = 62.9%

5d — Five-year inspection coverage for SQGs

- Vermont: $75/326 = 23\%$
- National Average = 11%

State response

State Response: For this element it is reported that the HW Program had failed to conduct the required percentage of inspections at LQGs. The reviewer did not count inspections at LQGs conducted by Region 1 EPA toward our percentage. When planning VT LQG inspections with Region 1, the HW Program was led to believe that those inspections would count toward our required percentage. The HW Program only referred these inspections because of that assumption. Had the HW Program known the inspections would not count toward our required percentage, the Program would have either conducted the inspections at these facilities or selected other LQGs for inspection. Therefore the HW Program disagrees that this area needs improvement.

[EPA Region 1 Response: Vermont was required to inspect 20% of its LQG universe (seven inspections), but VT completed four inspections and the Region conducted three. We understand that DEC may have believed the three inspections conducted by EPA would have counted toward the 20% commitment, but as discussed on page 16 of the RCRA Compliance Strategy, the Region's contribution should constitute only a small portion of the Vermont 20% obligation (i.e., 10% of the 20% obligation). In this case EPA's contribution toward the 20% obligation should not exceed one inspection.

The Region assisted with inspection coverage as the state was experiencing

a significant staffing shortfall. For the future, at the beginning of each Fiscal Year, the Region and Vermont should establish a clear understanding of which EPA inspections, if any, count toward the 20% LQG inspection requirement.]

State Response: In addition, the HW Program does not believe it is appropriate for EPA to reflect upon the types of facilities outside of LQGs that were targeted for inspection. The HW Program targeted SQGs that had never been inspected as a focus area, and many of these happen to be vehicle/equipment sector facilities. Many of these facilities were notified as SQGs but were shown through inspection to be CEGs. The HW Program believes that EPA's reflection on this is inappropriate given that we believe we met the LQG and TSD requirements for inspection and therefore have discretion as to what other facilities to inspect towards our annual inspection goal. The HW Program would like to see the reference to these inspections removed from the report.

[EPA Region 1 Response: EPA certainly sees value in inspecting the SQG and CEG universe as significant problems can be uncovered. However, these inspections should not be conducted at the expense of the LQG universe.]

Recommendation

By September 30, 2014, VT shall complete the 20% LQG coverage rate or submit an Alternate Compliance Monitoring Strategy to EPA for review and approval by October 31, 2013. Region 1 will close this action once adequate performance (e.g., 20% LQG coverage or completion of an approved Alternate Compliance Monitoring Strategy) is demonstrated over a sustained period.

Element 6 — Quality of Inspection Reports: Proper and accurate documentation of observations and timely report completion.

Finding **Area for State Improvement**

Description This element is a program goal (100%) to determine whether inspection reports are complete, sufficient to determine compliance and completed in a timely manner.

Explanation Twenty-four (24) inspection files were reviewed to determine if VT’s inspection reports were completed in a timely manner and whether adequate documentation was provided in the reports to determine compliance. One (1) file, R A LaRosa Environmental Lab, EPA Id no. VTD988375283, was excluded since this case was handled directly by the Vermont Attorney General and not VT.

EPA’s review of Vermont’s files found that the timeliness of VT’s inspection reports could not be determined since inspection reports were not dated upon completion. VT inspectors should sign and date all final inspection reports. Written inspection reports were found in approximately seventy one (71%) percent of the files reviewed (17/24). Only six (6) of these inspection reports (25%) were actually dated or had the report completion date identified in the Enforcement Decision Document.

Six (6) of the files reviewed used electronic checklists in lieu of a written inspection report. EPA’s review of the electronic checklists determined that the bulk of the inspection information was entered in the Source Description and Closing Conference worksheets. Other supporting information was entered in other worksheets, as appropriate. These worksheets collected information such as photographs, documentation of wastes in storage, etc. It was not possible for EPA to determine when all the relevant information observed in the worksheets was input.

To determine the timeliness of VT’s completion of inspection reports and checklists that were not dated, EPA devised two methods to determine the approximate number of days to complete the inspection reports where no completion date was identified on the report. Where an Enforcement Decision Document was prepared and signed by the VT management, EPA calculated the number of elapsed days using the date of the initial inspection (Day 0) to the date the Enforcement Decision Document was signed by management. Inspections reports are typically completed when the Enforcement Decision Document is prepared.

Where no management signature and date were found on the EDD, EPA used the date the enforcement action was issued as the report completion date and calculated the number of elapsed days between the date of the initial inspection and the resulting action.

EPA compared the calculated number of days from the two methods described above and compared the result to the 150-day benchmark to determine the timeliness of Vermont's inspection report.

Two (2) files contained insufficient information to determine the length of time required to complete the report. Superior Technical Ceramics Corporation, EPA ID no. VTD981073752, had a written inspection report but was not dated. Foley Services, EPA ID no. VT019125590, was an electronic checklist with the Source Description worksheet filled out. Neither facility had observed violations so no additional information could be used to determine a potential report completion date.

EPA's review of the sixteen (16) remaining files determined that two (2) files, UVM, EPA ID no. VTD000636439, and Energizer Battery Manufacturing, EPA ID no. VTD002065654, appeared to exceed the 150-day timeline. UVM took 191 days to complete the inspection report and determine the violations based on the March 3, 2011 date identified in the Enforcement Decision Document. Energizer Battery took a maximum of 330 days based on the December 9, 2011 Notice of Violation issued to the facility. This report may have been completed in less than 150 days, but no information was found to document this. The remaining fourteen (14) inspection reports were completed in less than 150 days for a 91% report completion rate (22/24) where alternate documentation was found which meets the SRF requirements.

In general, VT's inspection reports sufficiently document inspection observations and include checklists, narratives and photographic evidence that allow a reader who is not familiar with a facility to understand the observations made. VT's "inspection reports" consisted of either actual written reports or electronic checklists in lieu of a separate written inspection reports.

The electronic checklist was an Excel spreadsheet that contained individually tabbed "sheets." The tabbed sheets contained various checklists such as SQG, CESQG, Partial Inspection Checklist, Full CEI, Universal Waste, Waste Oil, etc. to determine the facility's compliance with a particular requirement. The tabbed sheets were also marked and labeled to identify the "WasteStreams," "Wastes in Storage," "closeConf," "Source Description," etc. VT inspectors could complete these tabs and add additional information, as needed.

The "Source Description" sheet was used most often to document the inspection observations and findings. Handwritten inspection field notes were generally not found in the files. VT stated that field notes were discarded once they were transcribed to the inspection report or the electronic inspection checklist. VT stated that the written report or electronic checklist became the official record after the transcription process was completed.

VT's written inspection reports were detailed and written in a narrative form that documented the inspection process from the presentation of credentials, description of the manufacturing process and associated waste actives and general observation, record review and closing conference. Written inspection reports typically accompanied "paper" inspection checklists.

Vermont also has an excellent electronic inspection checklist. These checklists contain all the required elements for an inspection. The checklists are designed such that the elements for the record review are clearly identified on the checklist and a narrative description of the inspection, from the opening interview, source description, inspection observations and closing conference can be recorded. The narrative description of the inspections varied in detail on the electronic inspection checklist but, in general, contained sufficient information to determine compliance.

EPA's review of VT's inspection reports identified six (6) instances in five (5) files (29.2%) where facilities had potential waste identification/RCRA compliance issues where further documentation should be obtained. The facilities (and potential issues) are as follows:

Energizer Battery Manufacturing, EPA ID No. VTD002065654, Lithium Batteries (Waste Determination - reactivity)/Trash Compactor (RCRA Air Emissions for wastes containing VOCs);

Foley Services, EPA ID No. VTD019125540 (Status of waste oil identified on Notification of Hazardous Waste Activity form);

Durgin Cleaners, EPA ID No. VTD9810664 (Unpermitted Treatment/Disposal - Solvent-contaminated water);

MacIntyre Services LLC, EPA ID No. VTD988367413 (Conditional Exclusion Criteria – Shipment of waste gasoline/fuel mixtures as non-hazardous waste); and

Woodbury Auto (EPA ID No., VTD988367454 (Waste Determination – TCLP metal analyses for waste paint and paint filters).

Relevant metrics 6a — Inspection reports complete and sufficient to determine compliance: 19/24 = 79.2%

6b — Timeliness of inspection report completion: 22/24 = 91.7%

Both 6a and 6b have national goals of 100 percent.

State response State Response: The HW Program met the expectation of sufficient information in 22 of 24 cases; the expectation for timeliness in 22 of 24 cases, and had 5 of 24 cases flagged as “potential” compliance issues (while it may not be clear, we do not believe that a potential issue equals an actual issue. So this number may in fact be smaller). In addition, the report noted the quality of VT’s electronic checklist as an inspection tool.

The HW Program does not agree with the recommendation that VT scan and keep handwritten field notes. The DEC Transitory Record Schedule identifies notes taken by inspectors for their own purposes as transitory, and therefore may be discarded after they have served their purpose or become obsolete (e.g., summarized in another document). We do not believe we should implement a practice that is in direct contravention to this Record Schedule.

[EPA Region 1 Response: EPA has used handwritten inspector notes to refresh inspector recollection and as evidence at trial. As Vermont does not appear to have a similar need for these, the recommendation has been deleted.]

State Response: In addition, the report identified six instances at five facilities which had potential waste identification compliance issues. The HW Program disagrees with EPA’s conclusion that the wastes mentioned were not identified in the Foley’s, Durgin’s and MacIntyre Services inspections.

[EPA Region 1 Response: After further discussion with the VT HW Program staff, EPA agrees that the documentation provided for the Foley Services inspection report is sufficient. Without further documentation from the state that the wastes were identified for the two remaining inspection reports, EPA is not inclined to make further changes to the Report at this time.]

Recommendation By October 1, 2013, written and electronic inspection reports should be signed and dated by inspectors upon completion.

Element 7 — Identification of Alleged Violations: Compliance determinations accurately made and promptly reported in national database based on inspection reports and other compliance monitoring information.

Finding **Area for State Improvement**

Description This metric is a program goal (100%) and determines the percentage of inspections reviewed that led to accurate compliance determinations and the percentage of sites with a CEI or FCI where one or more potential violations were found.

Explanation VT’s Hazardous Waste Management Program Compliance Procedure (“VHWMPCP”) (Revision of May 17, 2006) identifies the preparation of an Enforcement Decision Document (“EDD”) as a part of its compliance determination process. The EDD is a post-inspection activity that identifies basic facility information, inspection information, potential violations/violation history compliance information, violator classification, recommended enforcement response and management approval or modifications. The EDD documents the types of violations found, the compliance determination (e.g., significant violator/secondary violator), and the recommended enforcement response.

Twenty-four (24) files were selected to review the EDDs and determine whether proper compliance determinations were conducted. One (1) file, the R A LaRosa Environmental Lab, EPA ID no. VTD988375283, was not included in this review since the case was handled directly by the Vermont Attorney General’s Office and not part of this review.

EPA’s review of VT’s files found only seven (7) completed Enforcement Decision Documents. Five (5) case files reviewed had no EDDs prepared where enforcement actions had been taken. The remaining case files had EDDs that were not complete and missing a variety of information such as the identification of violations, violator status classification, inspector recommendations, inspector signatures, recommended enforcement responses, written justification language or written justification language that was inconsistent with the VHWMPCP or did not explain the potential harm to human health or the environment when justifying the appropriate enforcement response.

EPA evaluated the inspection reports, checklists, enforcement decision documents and evidence collected from the inspections for violations and potential violations and compared this evaluation against the compliance determinations/enforcement actions/follow up actions taken by VT. EPA’s review of VT’s inspection reports identified six (6) isolated instances in five (5) files where facilities had potential waste identification/RCRA compliance issues for certain activities conducted at these facilities but insufficient documentation to determine whether the violation actually existed or not. These six (6) instances are addressed in Element 6 as

documentation issues. VT accurately identified other potential violations at the five (5) facilities identified in Element 6 and accurately identified potential violations for 100% of the remaining inspections conducted.

In general, VT does an excellent job at identifying violations from its inspections and is a programmatic strength but needs to complete their EDDs to document the compliance determination process. VT has a high RCRA violation identification rate and identifies violations at 77.8 % of the inspections it conducted in FY11. VT's violation identification rate is more than twice the national average of 33%.

Relevant metrics

7a — Accurate compliance determinations:

- Vermont: 18/18 = 100%
- National Goal = 100%

7b — Violations found during inspections:

- Vermont: 35/45 = 77.8%
- National Average = 32.5%

State response

State Response: The HW Program believes that the recommendation that we apply the use of decision documents to all cases is inappropriate. The HW Program will develop a system for noting when an inspection report is completed either on the enforcement decision document or other electronic inspection documentation.

[EPA Region 1 Response: EPA is very supportive of Vermont's use of Enforcement Decision Documents as a tool to memorialize the recommended enforcement action, and understands that VT DEC does not currently complete an EDD for all cases. However, when the EDD tool is used, all of the requested information should be included in the document to help to ensure that it is being used as intended.]

Recommendation

By October 1, 2013, VT should fully complete its Enforcement Decision Documents to identify all violations and link the enforcement justifications to potential for harm to human health and the environment.

Also, by December 31, 2013, VT should complete the design of an electronic inspection documentation system.

Element 8 — Identification of SNC and HPV: Degree to which the state accurately identifies significant noncompliance/high-priority violations within 150 days and enters this information into the national database.

Finding Area for State Improvement

Description VT did not identify SNCs in a timely manner (0% within 150 days) and failed to appropriately identify three (3) SNCs in FY11 for 3 of the 22 case files reviewed (13.6%). EPA identified three (3) additional SNCs for FY11 which represents 50% of the total SNCs that should have been identified. VT does enter SNC data into RCRAInfo when the final determinations are made, reviewed and approved by VT management for referral to VT's Compliance Enforcement Division. VT had a SNC identification rate of 6.2% for those SNCs that were identified which exceeds the national average of 2.1% for this Date Metric.

Explanation VT identified three (3) SNCs from inspections conducted during FY11 (Metric 1e1) and had a total of seven (7) facilities that were in SNC status during FY11 overall (Metric 1e2). One the seven facilities, LaRosa Environmental Laboratory, EPA ID No. VTD988375283, was handled directly by the Vermont Attorney General's Office from the inspection through enforcement but was entered in RCRAInfo by VT.

VT did not identify SNCs in a timely manner in FY11 (0% within 150 days). UVM Main Campus, EPA ID No. VTD000636449, was identified as a SNC one hundred eighty-five (185) days after the initial inspection. Vermonters Helping Vermonters was identified as a SNC three hundred fifty-three (353) days after the initial inspection, and LaRosa Environmental Lab (which was handled by the Vermont Attorney General's Office) was identified as an SNC one hundred sixty-six (166) days after the initial inspection in RCRAInfo.

In addition to the three (3) SNCs identified above, EPA identified three (3) additional SNCs that had not been identified as SNCs or had not been entered in RCRAInfo. Safety Kleen, EPA ID no. VTD000791699, had been identified as a SNC, had a completed Enforcement Decision Document in the file and was never entered into RCRAInfo. The Safety Kleen SNC determination is particularly noteworthy. The VT inspector evaluated the compliance status of this facility and, based on the repeat violations, correctly identified the facility as a Significant Non-complier. The VT inspector also correctly recommended formal enforcement. VT's management reviewed the EDD, concurred with the inspector's initial SNC determination but also, correctly, exercised enforcement discretion and determined that the appropriate enforcement action in this instance was a NOAV. Although the violations were repeat violations, VT management considered the quantity of waste, the type of waste involved (waste antifreeze) and, based on these considerations, determined that, for this particular instance, the violation did not pose a major potential for harm

and nor did the violation substantially deviate from the regulatory requirements and recommended an NOAV.

A review of both the Mt. Snow Ltd, EPA ID no. VTD0396968885, and Daylight Auto, EPA ID no. VTR000521062, files determined that both facilities were SNCs based on the information contained in the file that documented on-site releases (Daylight Auto) or repeat violations after a formal enforcement action had been issued (Mt. Snow Ltd.) VT's Hazardous Waste Management Program Compliance Procedure (revised May 17, 2006) classifies facilities as SNCs where actual exposure or substantial likelihood of exposure has occurred (Daylight Auto) or where a facility substantially deviates from the terms of permit, order or agreement (Mount Snow). Neither facility was identified as an SNC by VT.

Relevant metrics

1e1 — Number of sites with new SNC during review year: 3

1e2 — Number of sites in SNC regardless of determination date: 7

8a — SNC identification rate

- Vermont: $3/47 = 6.4\%$
- National Average = 2.1%

8b — Timeliness of SNC determinations:

- Vermont: $0/3 = 0\%$
- National Goal = 100%
- National Average = 81.7%

8c — Appropriate SNC determinations:

- Vermont: $19/22 = 86.4\%$
- National Goal = 100%

State response

State Response: We disagree that Safety-Kleen should have been identified as an SNC in RCRAInfo. While it was a repeat violation, we did not find that it met the threshold of SNC and did not find that a referral to the enforcement division was justified. It should not be identified as a SNC in this report.

[EPA Region 1 Response: See EPA Region 1 Responses provided under Element 1.]

Recommendation

By October 1, 2013, VT management should review the inspection reports and the completed EDDs required by Element 7 to ensure that appropriate SNC determinations and follow up responses are made.

Element 9 — Enforcement Actions Promote Return to Compliance: Enforcement actions include required corrective action that will return facilities to compliance in specified timeframe.

Finding Meets Expectations

Description This element is a program goal to determine whether enforcement actions have returned SNC facilities to compliance (100% goal) and measures the percentage of enforcement responses that have returned or will return secondary violators to compliance.

Explanation VT issues formal and informal actions that identify the violations, specify the corrective measures to be taken and specify the response timeframes.

VT identified four (4) significant non-compliers in FY11, UVM Main Campus, EPA ID no. VTD000636449, R A LaRosa Environmental Lab, EPA ID no. VTD988375283, Vermonters Helping Vermonters, EPA ID no. VTR000520833, and Safety Kleen Systems, Inc, VTD000791699, that were issued enforcement actions that identified the violations.

Three (3) of the four SNCs identified by VT in FY11 have returned to compliance. UVM Main Campus, EPA ID No. VTD000636449, signed an Assurance of Discontinuance that was filed with the Vermont Superior Court and returned to compliance. R A LaRosa Environmental Laboratory, VTD988375283, signed a Consent Order filed with the Superior Court by the VT Attorney General's Office and returned to compliance. Safety Kleen was issued a NOAV and returned to compliance. Vermonters Helping Vermonters, VTR000520833, is the only facility that received NOAVs and had not returned to compliance. This case was referred internally to VT's Compliance Enforcement Division.

Sixteen (16) of the case files reviewed contained informal enforcement actions. Approximately eighty-seven percent (87.5%) of these facilities (14/16) have returned to compliance. For the two (2) informal actions that did not return the facilities to compliance, one facility was identified as an SNC and referred to the Compliance Enforcement Division for formal enforcement (Vermonters Helping Vermonters). The second facility, Daylite Auto, involves an owner/operator who has refused attempts by VT to serve him with an enforcement action via certified mail. An NOAV was hand-delivered to the facility owner on 5/16/2012 by an Environmental Enforcement Officer from VT's Compliance Enforcement Division. The situation has been contentious between the facility/property owner and VT.

Relevant metrics

9a — Enforcement that returns SNC sites to compliance: $2/2 = 100\%$

9b — Enforcement that returns SNC sites to compliance: $14/16 = 87.5\%$

State response

State Response: To follow up on the comment concerning Vermonters Helping Vermonters. The entity in questions has filed for bankruptcy protection. The CED continues to be involved with the bankruptcy matter and is working to either bring the facility into compliance or force its closure. The filing of the bankruptcy petition has resulted in the significant slowdown in our ability to resolve this matter.

[EPA Region 1 Response: EPA agrees with the comment.]

Recommendation

None

Element 10 — Timely and Appropriate Action: Timely and appropriate enforcement action to address SNC and violations in accordance with policy relating to specific media.

Finding Area for State Improvement

Description This element is a goal metric that measures the percentage of enforcement actions taken in a timely manner to address SNCs (national goal 80%) and the percentage of enforcement actions that are appropriate (national goal 100%).

Explanation VT identified three new (3) SNCs in RCRAInfo during FY11 (Metric 1e1). The three facilities were UVM Main Campus, EPA ID no. VTD000636449, LaRosa Environmental Lab, EPA ID no. VTD988375283, and Vermonters Helping Vermonters, EPA ID no. VTR000520833, and had four (4) additional facilities, Vermont Railway, EPA ID nos. VTD43783992 and VTR000513580, Brown Enterprises Cleanup Site, EPA ID no. VTP000013748, and Brownell’s Auto Wrecking, EPA ID no. VTR000015420, that were identified in SNC status during FY11 regardless of the date of the initial inspection (Metric 1e2), for a total of seven (7) facilities, overall.

Of the seven (7) facilities identified, LaRosa Environmental Lab, EPA ID no. VTD988375283, was handled directly by the Vermont Attorney General’s Office from the date of inspection. The Vermont AGO also addressed the SNC violations with a formal enforcement within 360 days of the initial inspection (319 days) and was timely. The two (2) Vermont Railway cases were initially referred to the Vermont Attorney General’s Office on December 29, 2008 within 167 and 187 days of the initial inspection and considered to be “addressed” within 360 days.

Three (3) SNC facilities were addressed by formal enforcement after 360 days. UVM Main Campus was addressed in 584 days, Brown Enterprises was addressed in 612 days, and Brownell’s Auto Wrecking was addressed in 391 days.

The final SNC, Vermonters Helping Vermonters has not been referred to the VT Attorney General nor has not the SNC been addressed by a formal enforcement since the initial inspection was conducted.

VT addressed five of the six SNCs identified for an 83% rate (This excludes LaRosa Labs, which was handled directly by the Vermont Attorney General’s Office from inspection through enforcement.)

VT was only timely for two (2) SNCs which involved referrals to the Vermont Attorney General’s Office. Where VT initiated its own formal enforcement action, the average length of time to issue these actions was 517 days (UVM Main Campus – 584 days, Brown Enterprises – 612 days, Brownell’s Auto Wrecking – 391 days).

The length of time to issue the final enforcement action against the two (2) Vermont Railway facilities located in Burlington and Rutland, Vermont facilities were 842 and 862 days, respectively. (Note: the initial inspections occurred on different dates.) The final enforcement action was handled by the Vermont Attorney General's Office.

The remaining SNC, Vermonters Helping Vermonters was identified as a SNC three hundred fifty-four (354) days after the initial inspection and has not been addressed by a formal enforcement by the Compliance Enforcement Division or by a referral to the VT Attorney General since the initial inspection was conducted.

EPA did note that VT, as a general practice, issues informal NOAVs to facilities where violations are identified. All seven (7) SNC facilities identified in Metric 1e2 were issued NOAVs. Each of these NOAVs identified the violations VT found at each facility and requested each facility to provide a written response within thirty-five (35) days of receiving the NOAV. The average length of time to issue an NOAV was 56 days (UVM – Main Campus – 91 days, Vermont Railway (Burlington) 100 days, Brown Enterprises – 108 days, Brownell's Auto Wrecking – 36 days, Vermonters Helping Vermonters – 25 days, and Vermont Railway (Rutland) – 77 days.

EPA also reviewed the appropriateness of enforcement responses for SNC and secondary violators. In general, VT takes appropriate enforcement actions for both its SNCs and Secondary Violators.

EPA's review determined that 81% (17/21) of the enforcement actions were appropriate. The following enforcement actions were determined inappropriate for the reasons discussed below:

Mount Snow LTD (VTD039696855): A July 2010 inspection of this facility found repeat violations for waste determinations and missing inspections that resulted in an NOAV. Mount Snow had been issued a Consent Order and paid a \$95,000 penalty five (5) months earlier on March 5, 2010.

Vermont Marble (VTR000514950): An inspection conducted on 8/24/11 identified container management violations for used oil and universal wastes (mercury bulbs and batteries). VT issued a follow up letter to the facility on October 18, 2011 and stated that no violations were observed at the facility. A review of RCRAInfo found no violations entered for this inspection.

Vermonters Helping Vermonters (VTR000520833): Five (5) inspections were conducted at this facility and determined continued non-compliance from VT's original inspection conducted on August 9, 2010. VHV's failure to respond to NOAVs issued on September 2, 2010 and April 20, 2011 warranted an SNC designation and higher level enforcement.

Daylite Auto (VTR000521062): A review of the written inspection report determined that the facility was a non-notifier and had numerous containers of waste stored on-site, documented releases of used oil at the property and off-site transfers of waste oil to an unnamed local business for burning that the facility representative could not identify at the time of inspection. To date, the facility has not responded to the NOAV issued on September 11, 2011 (and returned to VT as undeliverable) or, more recently, to a hand-delivered NOAV on May 16, 2012 from VT's Compliance Enforcement Division.

The violations identified from both the inspection report and the NOAV document substantial deviation from the regulatory requirements, on-site releases to the environment and the undocumented offering and disposal of waste oil to an unknown local facility. Each of these items meets the SNC criteria identified in VT's Hazardous Waste Management Program Compliance Procedure (revised May 17, 2006). The VHWMPCP classifies facilities as SNCs where actual exposure or substantial likelihood of exposure has occurred. VT has not initiated any further action or follow-up against Daylite Auto since the hand-delivered NOAV on May 16, 2012.

The Long Standing Secondary Violator list was also analyzed to determine the status of facilities with "open" violations. A total of forty-four (44) facilities were identified on this list. A review of the data and discussions with VT staff regarding the status of each facility determined that only six (6) of the forty-four (44) facilities identified on this list were open cases for an 86% Return to Compliance Rate. The six (6) facilities identified by VT as non-compliant were: Environmental Products and Services, EPA ID nos. VTR000517839 and NYR000115733, S.B. Collins, EPA ID no. VTD982194193, Fairlee Marine, EPA ID no. VTR000500066, R Brown & Sons Inc., VTR000518357, and Little River Auto Sales, VTR000520973. VT is actively pursuing each non-compliant facility.

Relevant metrics

1d1 — Number of sites with informal enforcement actions: 29

2a — Long-standing secondary violators: 44

10a — Timely enforcement taken to address SNC:

- Vermont: 0/1 = 0%
- National Goal = 80%
- National Average = 81.8%

10b — Enforcement responses reviewed that address violations in a timely manner:

- Vermont: 17/21 = 81%
- National Goal = 100%

State response

State Response: This element is a goal metric that measures the percentage of enforcement actions taken in a timely manner to address SNCs (national goal 80%) and the percentage of enforcement actions that are appropriate (national goal 100%). The HW Program believes that these two metrics are very different, and that addressing them together is confusing, and therefore difficult to rebut. In general the Program feels it is unclear what events EPA is using to determine the timeliness of an enforcement action. The cases reviewed were all formal enforcement cases. Any formal enforcement case has many potential areas where delay may occur; these are often out of the control of the HW Program or the Compliance and Enforcement Division. We believe in general VT has taken timely and appropriate actions and should be rated higher.

[EPA Region 1 Response: This metric measures both the percentage of enforcement actions taken in a timely manner to address SNCs and the percentage of enforcement actions that are appropriate. EPA acknowledges that certain factors, such as the workload in the Attorney General's office, is beyond the control of the HW program and it may affect timeliness of an enforcement action.]

State Response: To follow up on the comment concerning Vermonters Helping Vermonters, the entity in question has filed for bankruptcy protection. The CED continues to be involved with the bankruptcy matter and is working to either bring the facility into compliance or force its closure. The filing of the bankruptcy petition has resulted in the significant slowdown in resolving this matter. There is not a need to "elevate" this matter to the AG's office. The CED has the authority and resources to resolve this violation. Lack of elevation should not be a factor included in the report.

[EPA Region 1 Response: EPA agrees with the state comment.]

Recommendation

EPA's recommendation for Finding 1-1 in Element 1, which encourages VT to run the RCRARep data quality reports and RCRARep detailed reports on a regular basis (e.g., monthly/quarterly) would address this issue and ensure that compliance information contained in the files is entered into RCRAInfo in a timely fashion so that the information contained in the State data files and RCRAInfo agree. EPA RCRAInfo coordinators are available to help the state with data questions/issues

Element 11 — Penalty Calculation Method: Documentation of gravity and economic benefit in initial penalty calculations using BEN model or other method to produce results consistent with national policy and guidance.

Finding Area for State Improvement

Description This element is a goal metric (national goal 100%) and determines whether penalty calculations consider and include gravity and economic benefit.

Explanation VT’s issues penalties pursuant to 10 V.S.A. Section 8016, Chapter 20 (Environmental Administrative Penalty Rules). These rules standardize administrative penalties assessed by establishing penalty classes and ranges for purposes of calculating a penalty. VT uses an Environmental Administrative Penalty Form (“EAPF”) to document its penalty calculations.

In FY11, two RCRA cases were filed that assessed penalties. These cases were Brownell’s Auto Wrecking, EPA ID no. VTR000015420, and Vermont Railway. Brownell was issued a compliance order and assessed a penalty of \$62,500. Vermont Railway was a judicial case that assessed a final penalty of \$70,000 and an additional \$50,000 towards a Supplemental Environmental Project for Vermont Railway’s Burlington and Rutland facilities.

A review of the Brownell penalty calculations determined the EAPF was not complete. Specifically, economic benefit was partially calculated for the avoided costs related to sampling, training and maintenance activities related to Brownell’s storm water violations and for the avoided costs for not filing a certification. The economic benefit for two of the alleged RCRA violations had the letters “TBD” (to be determined) marked on the EAPF and the words “negligible” and “too speculative” marked for the remaining two violations for the economic benefit line item. No further explanation was provided. VT did not use EPA’s economic benefit model to determine the current value of the estimated economic benefit.

EPA’s review of Vermont’s Initial Penalty Calculation worksheet also noted that Item 3, used to calculate whether a respondent knew or should have reason to know a violation existed, requires the inspector to assign a penalty score for a respondent’s knowledge of the requirements (Item 3a) and for a Respondent’s knowledge of the facts of the violation (Item 3b). After a score has been assigned to Section 3a and 3b, the inspector is directed to choose the “lower” number which arbitrarily reduces the penalty amount assessed for this criterion and effectively prevents a maximum penalty score of 15 (100% of penalty) from being assessed. There is no explanation provided for selecting the lower score. This case was handled by VT’s Compliance Enforcement Division.

The penalty calculations for Vermont Railway were also reviewed. This case was referred to the Vermont Attorney General's Office for enforcement. The initial penalty for this case was identified as \$147,500 on a penalty spreadsheet calculated by the VT. A review of the penalty calculation found no economic benefit calculations for any of the violations cited, including the long-term, unpermitted storage of hazardous wastes in railcars located at the facility.

Because of the small data set, EPA expanded its review of initial penalty assessments to include files in FY11 data set that were identified as SNC and assessed a penalty at the time of this review. UVM Main Campus, EPA ID no. VTD000636449, and R A LaRosa Environmental Laboratory, EPA ID no. VTD988375283, were two cases that were SNCs and assessed initial penalties.

The UVM Main Campus initial penalty calculated gravity and included an upward penalty adjustment for deterrence. A review of this file did not include any documentation that economic benefit was considered. This case was handled by VT's Compliance Enforcement Division.

The R A LaRosa Environmental Laboratory initial penalty calculated gravity but did not include a determination for economic benefit. This case was handled by the VT Attorney General's Office.

EPA identified the failure to calculate economic benefit during the FY06 State Review. As a result of that review, VT made changes to the penalty calculation form and included a specific line item for the calculation of economic benefit. This line item was not consistently used.

Relevant EPA guidance and policy: RCRA Civil Penalty Policy (2003); Oversight of State and Local Penalty Assessment; Revisions to the Policy Framework for State/EPA Enforcement Agreements (1993); Revised Policy Framework for State/EPA Enforcement Agreements (1986).

Relevant metrics

11a — Penalty calculations include gravity and economic benefit:

- Vermont: 0/5 = 0%
- National Goal = 100%

State response

State Response: Of the 5 cases reviewed 3 of them were prosecuted by the Vermont Attorney General's office. EPA should recognize that the Vermont Attorney General is an independently elected official and brings cases on behalf of the people of the state of Vermont. DEC works cooperatively with the Vermont AG's office but cases referred to them for prosecution and the subsequent penalties assessed are determined in their discretion and they have the final say on these penalties.

Of the two cases prosecuted by the CED (UVM & Brownell) CED did consider the existence of economic benefit. In the UVM matter it was determined that there was no economic benefit. The required internal inspections and audits were conducted by UVM staff but they simply failed to do them in compliance with the approved plan, it was determined that no money was saved by doing them in the way that they were completed. In the Brownell matter an effort was made to determine economic benefit but as noted it was either de minimis or it was not possible to accurately determine what the benefit was. In order for CED to include economic benefit we must be confident that we can prove to a Superior Court that Respondent reaped a benefit. Guessing or estimating is not deemed adequate; we must have facts that would support our economic benefit calculation. In both these matters the proof needed was not available.

[EPA Region 1 Response: EPA understands that the VT AG has the authority to calculate and negotiate penalties in cases referred by DEC. However, EPA encourages DEC to communicate to the AG's office the importance of documenting economic benefit and gravity in its cases.]

Recommendation

By October 1, 2013, VT management should ensure that the economic benefit is considered and documented in all cases and follow the economic benefit procedures previously identified in response to EPA's FY06 SRF findings. EPA will periodically review the economic benefit calculations until sustained performance has been achieved.

Element 12 — Final Penalty Assessment and Collection: Differences between initial and final penalty and collection of final penalty documented in file.

Finding Area for State Improvement

Description The element is a goal (100%) to determine the percentage of files that document the difference between the initial penalty assessment and the final penalty assessment to include the justification and rationale use.

Explanation The FY11 data set identified one (1) file, Vermont Railway Inc, where a final settlement occurred. This case was handled by the Vermont Attorney General's Office and consisted of a single filing for two (2) Vermont Railway facilities located in Burlington and Rutland, Vermont. A review of the initial penalties assessed for this case determined that penalties of \$49,750 and \$97,750 were assessed for the Burlington and Rutland facilities for a total penalty of \$147,750. The economic benefit was not calculated. The VT Attorney General's Office settled for \$70,000 in FY11. A review of the VT Attorney General's files found no documentation on file to explain the rationale for reducing the initial penalty by over 50%.

Because of the one (1) settled case, which was a judicial case, EPA expanded the scope of this review to include settlement actions involving SNCs that were identified from the FY11 data set. R A LaRosa Environmental Laboratory, EPA ID no. VTD988375283, UVM Main Campus, EPA ID no. VTD000636449, Brownell Auto Wrecking, EPA ID no. VTR000015420, and Vermonters Helping Vermonters were four (4) cases that were SNCs and had assessed final penalties at the time of this review.

The R A LaRosa Environmental Laboratory case was a penalty action that was handled by the Vermont Attorney General. A review of this case found a demand letter issued by the Attorney General's Office to the state lab on June 22, 2011. The letter identified the violations found and assessed an initial penalty of \$130,000. The initial penalty calculations did not include economic benefit. The Vermont Attorney General's Office settled this case for \$85,000 with an additional \$30,000 towards a Supplemental Environmental Project for a total settlement of \$115,000. No rationale or other justification was found to explain how the initial penalties were adjusted (including the rationale) to reach the final settlement amount. The initial demand letter stated that the \$130,000 could have been much higher had each violation been assessed separately.

UVM Main Campus was handled by VT's Compliance Enforcement Division. The initial penalty assessed was \$30,250 that consisted of a gravity component and upward deterrence adjustment (no economic benefit). The case was settled for \$19,660 with no rationale or justification to describe how the settlement factors identified were applied and how much the penalties were reduced for each factor and why.

Brownell's Auto Wrecking was handled by VT's Compliance Enforcement Division. The initial penalty assessed was \$62,500 that consisted of a gravity component and partial economic benefit component for avoided costs associated with the company's failure to obtain coverage for and comply with the Multi-Sector General Permit provisions.

Brownell settled for \$15,000. A review of the case file found letters from two accountants asserting Brownell has an inability to pay a penalty as a direct result of a fire that occurred at the property in 2008. The Final Settlement Form prepared by CED stated that the \$15,000 was based on the cooperation and immediate remediation of the property by the respondent (note: the respondent crushed vehicles on his property and was the cause of the contamination both on-site and off-site the property), the resolution of a majority of compliance issues during the "pendency" of the enforcement action, financial documentation concerning the respondent's ability to pay and an agreement by the programs on the settlement amount.

The financial documentation submitted on behalf of Brownell's inability to pay a penalty consisted of two statements from accountants alleging that Brownell could not afford to pay the \$62,500 penalty. Tax returns for the respondent were provided but the information was not entered into EPA's Ability to Pay software to determine whether a financial situation actually existed for Brownell based on his tax records and whether the \$15,000 penalty was appropriate.

Vermonters Helping Vermonters was a case that involved an Administrative Order that assessed a penalty of \$10,500. The penalty was reduced to \$7,875 using the Standard Settlement Figure and further reduced to the proposed penalty to \$5,200 on the basis that the respondent obtained 2 of 3 permits which the respondent was already required to have (and cited for in the initial complaint) and for the respondent submitting an application for a third permit during the pendency of the enforcement action. Another factor cited for the reduction in VHV's penalty amount was concern over the respondent's ability to pay the penalty. No financial information or financial analyses was found to document potential ability to pay issues for this company. The last factor cited by VT was an assessment by the "programs" that additional mitigation of the penalty was warranted due "to the circumstances." No information was provided that identified what these circumstances were or why they were considered relevant and appropriate by the programs to further reduce the penalty. EPA's review of the cases settled by the Compliance Enforcement Division determined that CED does not provide adequate details that explain how its final settlement figure is calculated. CED does attach penalty settlement forms in the file. The settlement forms identify the Initial Penalty, the Standard Settlement Figure and a list of factors considered by CED in settlement of each case. However, there is no detailed narrative or rationale provided that explains how the various reduction factors

identified in the settlement forms were applied, what percentage reduction each factor accounted for in the final penalty, and why.

For all CED cases reviewed, EPA determined that the Standard Settlement Figure of twenty-five (25%) was not used as a “bottom line” settlement figure for purposes of immediately settling a case and, in reality, was used as a “starting point” from which to further reduce the assessed penalty for no reason other than the respondent had participated in the settlement process. All cases reviewed settled below the Standard Settlement Figure with the exception of the Vermont Attorney General’s case against LaRosa Lab which settled for 88% of the assessed penalty and within the standard settlement range.

EPA’s review of CED’s settlement process also determined that penalties were further reduced when a respondent complied with the regulations they were cited for and/or when a respondent made corrections “during pendency of the enforcement action” rather than waiting until final adjudication. EPA’s RCRA Civil Penalty Policy does allow minor adjustments to a particular violation (not the overall penalty) for “good faith” or cooperation by a respondent. The adjustment provided under the RCPP can be up to 10% of the specific violation amount provided the reduction is justified in writing.

Relevant EPA guidance and policy: RCRA Civil Penalty Policy (2003); Oversight of State and Local Penalty Assessment; Revisions to the Policy Framework for State/EPA Enforcement Agreements (1993); and Revised Policy Framework for State/EPA Enforcement Agreements (1986).

Relevant metrics

12a — Documentation on difference between initial and final penalty: 0/4 = 100%

12b — Penalties collected: 4/4 = 100%

Both 12a and 12b have national goals of 100%.

State response

State Response: First of all DEC does not understand why there is any mention of economic benefit in this element. It was fully discussed in element 11 and thus DEC believes that it should be cleansed from this section, as it is not relevant to the considerations contained in this element and tends to add confusion.

As noted above in response to element 11 the Vermont AG is an independently elected official. DEC cannot mandate that the AG's office include an explanation of why a penalty was reduced. The cases prosecuted by the AG's office should not be held against DEC in this evaluation. If such a consideration is proper DEC would have to re-think the cases sent to the AG's office for prosecution.

DEC is criticized for reducing the penalty below the standard 25% reducing for settlement. EPA seems to believe that DEC's initial penalty number is infallible and that any reduction is inappropriate. In fact CED calculates the penalty amount with program staff. When this is done CED does not have all the facts including mitigating information. This mitigating information often is not obtained until there are discussions with the Respondent. CED does include a settlement form explaining any reductions. CED agrees to more fully document the reasons for reducing a calculated penalty in the future.

On the ability to pay consideration CED has begun using a questionnaire obtained from EPA Region 1 to obtain more complete information to aid in the making of this determination. CED is again trying to use the ABLE model but has found that it is often not well suited to the scope of the enforcement actions in Vermont.

[EPA Region 1 Response: EPA understands that the VT AG has the authority to calculate and negotiate penalties in cases referred by DEC. However, EPA encourages DEC to communicate to the AG's office the importance of documenting the differences between initial and final penalty amounts in addition to documenting the collection of the final penalty check.]

Recommendation

By October 1, 2013, VT must provide more detailed explanation for the final penalty amounts and identify where the specific reductions were made for each violation and why. For cases involving potential ability to pay issues which involve a reduction to the penalty amount, Vermont should use EPA's ABLE software or another equivalent alternative to determine whether financial hardship exists. EPA will periodically review the penalty calculations until sustained performance has been achieved.

Appendix A: Data Metric Analysis

Attached below are the results of the SRF data metric analyses. All data metrics are analyzed prior to the on-site file review. This provides reviewers with essential advance knowledge of potential problems. It also guides the file selection process as these potential problems highlight areas for supplemental file review.

The initial findings are preliminary observations. They are used as a basis for further investigation during the file review and through dialogue with the state. Where applicable, this analysis evaluates state performance against the national goal and average. Final findings are developed only after evaluating the data alongside file review results and details from conversations with the state. Through this process, initial findings may be confirmed or modified. Final findings are presented in Section III of this report.

Clean Air Act

Metric ID	Metric Name	Metric Type	Agency	National Goal	National Average	Vermont	Count	Universe	Not Counted	Initial Finding	Explanation
1a1	Number of Active Major Facilities (Tier I)	Data Verification	State			15				Meets requirements.	
1a2	Number of Active Synthetic Minors (Tier I)	Data Verification	State			76				State improvement	Review of VT's inspection targeting model indicates that this count is not complete or accurate.
			EPA			76					
1a3	Number of Active NESHAP Part 61 Minors (Tier I)	Data Verification	State			4				Meets requirements.	
			EPA			4					
1a4	Number of Active CMS Minors and Facilities with Unknown Classification (Not counted in metric 1a3) that are Federally-Reportable (Tier I)	Data Verification	State			0				Supplemental review	Low number of minors. Investigate further.
			EPA			0					
1a5	Number of Active HPV Minors and Facilities with Unknown Classification (Not counted in metrics 1a3 or 1a4) that are Federally-Reportable (Tier I)	Data Verification	State			0				Supplemental review	Low number of minors. Investigate further.
			EPA			0					
1a6	Number of Active Minors and Facilities with Unknown Classification Subject to a Formal Enforcement Action (Not counted in metrics 1a3, 1a4 or 1a5) that are Federally-Reportable (Tier II)	Data Verification	State			0				Supplemental review	Low number of minors. Investigate further.
			EPA			0					

Clean Air Act (Cont.)

Metric ID	Metric Name	Metric Type	Agency	National Goal	National Average	Vermont	Count	Universe	Not Counted	Initial Finding	Explanation
1a1	Number of Active Major Facilities (Tier I)	Data Verification	State			15				Meets requirements.	
1a2	Number of Active Synthetic Minors (Tier I)	Data Verification	State			76				State improvement	Review of VT's inspection targeting model indicates that this count is not complete or accurate.
1b1	Number of Active Federally-Reportable NSPS (40 C.F.R. Part 60) Facilities	Data Verification	State			36				Meets requirements.	
			EPA			36					
1b2	Number of Active Federally-Reportable NESHAP (40 C.F.R. Part 61) Facilities	Data Verification	State			5				Meets requirements.	
			EPA			5					
1b3	Number of Active Federally-Reportable MACT (40 C.F.R. Part 63) Facilities	Data Verification	State			6				Meets requirements.	
			EPA			6					
1b4	Number of Active Federally-Reportable Title V Facilities	Data Verification	State			16				Meets requirements.	
			EPA			16					
1c1	Number of Tier I Facilities with an FCE (Facility Count)	Data Verification	State			34				State improvement	Given that VT's CMS plan targeted majors, SM80s, SMs, and minors, this number should reflect the 27 SMs and 4 minors included in VT's inspection plan for FY11.
			EPA			1					

Clean Air Act (Cont.)

Metric ID	Metric Name	Metric Type	Agency	National Goal	National Average	Vermont	Count	Universe	Not Counted	Initial Finding	Explanation
1c2	Number of FCEs at Tier I Facilities (Activity Count)	Data Verification	State			34				State improvement	Given that VT's CMS plan targeted majors, SM80s, SMs, and minors, this number should reflect the 27 SMs and 4 minors included in VT's inspection plan for FY11.
			EPA			1					
1c3	Number of Tier II Facilities with FCE (Facility Count)	Data Verification	State			0					
			EPA			0					
1c4	Number of FCEs at Tier II Facilities (Activity Count)	Data Verification	State			0					
			EPA			0					
1d1	Number of Tier I Facilities with Noncompliance Identified (Facility Count)	Data Verification	State			5				State improvement	Given that VT's CMS plan targets majors, SM80s, SMs, and minors, this number should reflect the non-compliance found because it was an inspection in the CMS for FY11.
			EPA			1					
1d2	Number of Tier II Facilities with Noncompliance Identified (Facility Count)	Data Verification	State			0					
			EPA			0					

Clean Air Act (Cont.)

Metric ID	Metric Name	Metric Type	Agency	National Goal	National Average	Vermont	Count	Universe	Not Counted	Initial Finding	Explanation
1e1	Number of Informal Enforcement Actions Issued to Tier I Facilities (Activity Count)	Data Verification	State			2				State improvement	VT issued 3 NOAVs but only reported 2 in 2011
			EPA			0					
1e2	Number of Tier I Facilities Subject to an Informal Enforcement Action (Facility Count)	Data Verification	State			2					
			EPA			0					
1f1	Number of HPVs Identified (Activity Count)	Data Verification	State			0				Supplemental review	Low HPV rate. Investigate in file review.
			EPA			0					
1f2	Number of Facilities with an HPV Identified (Facility Count)	Data Verification	State			0				Supplemental review	Low HPV rate. Investigate in file review.
			EPA			0					
1g1	Number of Formal Enforcement Actions Issued to Tier I Facilities (Activity Count)	Data Verification	State			1					
			EPA			1					
1g2	Number of Tier I Facilities Subject to a Formal Enforcement Action (Facility Count)	Data Verification	State			1					
			EPA			1					
1g3	Number of Formal Enforcement Actions Issued to Tier II Facilities (Activity Count)	Data Verification	State			0					
			EPA			0					

Clean Air Act (Cont.)

Metric ID	Metric Name	Metric Type	Agency	National Goal	National Average	Vermont	Count	Universe	Not Counted	Initial Finding	Explanation
1g4	Number of Tier II Facilities Subject to a Formal Enforcement Action (Facility Count)	Data Verification	State			0					
			EPA			0					
1h1	Total Amount of Assessed Penalties	Data Verification	State			\$1,500					
			EPA			\$123,840					
1h2	Number of Formal Enforcement Actions with an Assessed Penalty	Data Verification	State			1					
			EPA			1					
1i1	Number of Stack Tests with Passing Results	Data Verification	State			11					
			EPA			2					
1i2	Number of Stack Tests with Failing Results	Data Verification	State			0				State improvement	Based on the file review, it appears that one facility stopped an initial compliance test and never completed it.
			EPA			0					
1i3	Number of Stack Tests with Pending Results	Data Verification	State			0					
			EPA			3					
1i4	Number of Stack Tests with No Results Reported	Data Verification	State			0					
1i5	Number of Stack Tests Observed & Reviewed	Data Verification	State			11				Meets requirements.	
			EPA			5					
1i6	Number of Stack Tests Reviewed Only	Data Verification	State			0					

Clean Air Act (Cont.)

Metric ID	Metric Name	Metric Type	Agency	National Goal	National Average	Vermont	Count	Universe	Not Counted	Initial Finding	Explanation
			EPA			1					
1j	Number of Title V Annual Compliance Certifications Reviewed	Data Verification	State			16				Meets requirements.	
			EPA			0					
2a	Major Sources Missing CMS Source Category Code	Review Indicator	State			1				State improvement	One major source in FY11 was missing the CMS category code should be "A" for major source.
			EPA			1					
3a1	Timely Entry of HPV Determinations	Review Indicator	State			0				Meets requirements.	
			EPA			0					
3a2	Untimely Entry of HPV Determinations	Goal	State	0		0				Meets requirements.	
			EPA	0		0					
3b1	Timely Reporting of Compliance Monitoring Minimum Data Requirements	Goal	State	100%	78.6%	86%	43	50	7	State attention	86% (43/50) of compliance monitoring MDRs entered within 60 days.
			EPA	100%	73.4%	100%	1	1	0		
3b2	Timely Reporting of Stack Test Minimum Data Requirements	Goal	State	100%	75.5%	54.5%	6	11	5	State improvement	Some stack test data should have been entered prior to the storm but was not entered in a timely manner
			EPA	100%	85.7%	100%	6	6	0		

Clean Air Act (Cont.)

Metric ID	Metric Name	Metric Type	Agency	National Goal	National Average	Vermont	Count	Universe	Not Counted	Initial Finding	Explanation
3b3	Timely Reporting of Enforcement Minimum Data Requirements	Goal	State	100%	76.1%	0%	0	3	3	State improvement	VT did not enter the three actions in AFS in a timely manner which is below the national average and national goal
			EPA	100%	68.6%	100%	1	1	0		
5a	FCE Coverage Major	Goal	State	100%	90%	72.7%	8	11	3	State improvement	VT completed inspections of 8 of the 10 (80%) active majors
			EPA	100%	49.1%	0/0	0	0	0		
5b	FCE Coverage SM-80	Goal	State	100%	90.6%	63.6%	7	11	4	State attention	VT inspected 7 of 8 (88%) SM80s that were inspected by the end of FY11
			EPA	100%	0%	0/0	0	0	0		
5c	FCE Coverage Synthetic Minors (non SM-80)	Goal	State	100%	66.7%	0/0	0	0	0	Supplemental review	Low number of SMs. Investigate further.
			EPA	100%	0%	0/0	0	0	0		
5d	FCE Coverage Minors	Goal	State	100%	11.7%	0/0	0	0	0	Supplemental review	Low number of minors. Investigate further.
			EPA	100%	0%	0/0	0	0	0		
5e	Review of Title V Annual Compliance Certifications Completed	Goal	State	100%	72.5%	93.8%	15	16	1	Meets requirements.	
			EPA	100%	1%	0%	0	16	16		
7b1	Alleged Violations Reported Per Informal Enforcement Actions (Tier I only)	Goal	State	100%	62.2%	0%	0	2	2	State improvement	Neither of the Tier I facilities that VT issued informal enforcement actions in FY11 had a status of either "in violation" or "meeting schedule."
			EPA	100%	52.6%	0/0	0	0	0		

Clean Air Act (Cont.)

Metric ID	Metric Name	Metric Type	Agency	National Goal	National Average	Vermont	Count	Universe	Not Counted	Initial Finding	Explanation
7b2	Alleged Violations Reported Per Failed Stack Tests	Review Indicator	State		54%	0/0	0	0	0	State improvement	Although metric 1i2 indicates that there were zero (0) failed stack tests, the file review indicated that there was an initial stack test at a SM80 that was stopped and never completed which indicates a failed stack test.
			EPA		0%	0/0	0	0	0		
7b3	Alleged Violations Reported Per HPV Identified	Goal	State	100%	69.6%	0/0	0	0	0	Meets requirements.	
			EPA	100%	40.6%	0/0	0	0	0		
8a	HPV Discovery Rate Per Major Facility Universe	Review Indicator	State		3.9%	0%	0	15	15	Supplemental review	Low HPV rate. Investigate in file review.
			EPA		.4%	0%	0	15	15		
8b	HPV Reporting Indicator at Majors with Failed Stack Tests	Review Indicator	State		20.5%	0/0	0	0	0	Supplemental review	Low HPV rate. Investigate in file review.
			EPA		0%	0/0	0	0	0		
10a	HPV cases which meet the timeliness goal of the HPV Policy	Review Indicator	State		63.7%	0%	0	1	1	State improvement	VT addressed 0% of its current HPVs within 270 days
			EPA		48.6%	0/0	0	0	0		

Clean Water Act

Metric ID	Metric Name	Metric Type	Agency	National Goal	National Avg	Vermont	Count	Universe	Not Counted	Initial Findings	Analysis
1a1	Number of Active NPDES Majors with Individual Permits	Data Verification	State			31				Meets Expectations	
1a2	Number of Active NPDES Majors with General Permits	Data Verification	State			0				Meets Expectations	
1a3	Number of Active NPDES Non-Majors with Individual Permits	Data Verification	State			151				Meets Expectations	
1a4	Number of Active NPDES Non-Majors with General Permits	Data Verification	State			2				Unrated	Vermont recently began entering facility and permit data for non-major permits into ICIS-NPDES..
1b1	Permit Limits Rate for Major Facilities	Goal	State	>= 95%	98.6%	100%	31	31	0	Meets Expectations	
1b2	DMR Entry Rate for Major Facilities.	Goal	State	>= 95%	96.5%	100%	440	440	0	Meets Expectations	
1b3	Number of Major Facilities with a Manual Override of RNC/SNC to a Compliant Status	Data Verification	State			0				Meets Expectations	
1c1	Permit Limits Rate for Non-Major Facilities	Informational only	State		66.1%	9.3%	14	151	137	Informational only	Because Vermont did not enter non-major DMR data to PCS, this is not a reliable number.
1c2	DMR Entry Rate for Non-Major Facilities.	Informational only	State		72.6%	16.7%	12	72	60	Informational only	Because Vermont did not enter non-major DMR data to PCS, this is not a reliable number.
1e1	Facilities with Informal Actions	Data Verification	State			0				Unrated	Vermont issues informal actions and will need to enter these in ICIS.
1e2	Total Number of Informal Actions at CWA NPDES Facilities	Data Verification	State			0				Unrated	Vermont issues informal actions and will need to enter these in ICIS.
1f1	Facilities with Formal Actions	Data Verification	State			0				Unrated	

Clean Water Act

Metric ID	Metric Name	Metric Type	Agency	National Goal	National Avg	Vermont	Count	Universe	Not Counted	Initial Findings	Analysis
1f2	Total Number of Formal Actions at CWA NPDES Facilities	Data Verification	State			0				Unrated	Vermont will need to start entering formal enforcement actions in ICIS-NPDES .
1g1	Number of Enforcement Actions with Penalties	Data Verification	State			0				Unrated	Vermont will need to start entering penalties in ICIS-NPDES.
1g2	Total Penalties Assessed	Data Verification	State			\$0				Unrated	Vermont will need to start entering penalties in ICIS-NPDES.
2a1	Number of formal enforcement actions, taken against major facilities, with enforcement violation type codes entered.	Data Verification	State			0				Unrated	Vermont issues formal actions and will need to start entering these in ICIS-NPDES.
5a1	Inspection Coverage - NPDES Majors	Goal metric	State		54.4%	25.8%	8	31	23	Unrated	The Compliance Monitoring Strategy goal is to inspect 50% of the NPDES majors each year. The 25.8% major inspection number for Vermont is due to data error. Vermont will be responsible for entering all inspection data into ICIS either through direct entry or through data upload from a state system.
5b1	Inspection Coverage - NPDES Non-Majors	Goal metric	State		23.7%	4%	6	151	145	Unrated	Vermont completed the CMS goal of 20% coverage of non-majors but the inspections did not get into the federal data system. Now that Vermont's data has migrated to ICIS-NPDES, the state will be responsible to get all inspection data into ICIS either through direct entry or through data upload from a state data system.
5b2	Inspection Coverage - NPDES Non-Majors with General Permits	Goal metric	State		19.2%	0%	0	2	2	Unrated	Vermont will need to enter these inspections in ICIS-NPDES.

Clean Water Act

Metric ID	Metric Name	Metric Type	Agency	National Goal	National Avg	Vermont	Count	Universe	Not Counted	Initial Findings	Analysis
7a1	Number of Major Facilities with Single Event Violations	Data Verification	State			0				Unrated	Vermont has started to enter Single Event Violations (SEVs) in the data system.
7a2	Number of Non-Major Facilities with Single Event Violations	Informational only	State			0				Informational only	Vermont has started to enter Single Event Violations (SEVs) in the data system.
7b1	Compliance schedule violations	Data Verification	State			2				Meets Expectations	Required data element for majors and minors that have received EPA wastewater grant money (92-500s).
7c1	Permit schedule violations	Data Verification	State			5				Meets Expectations	Required data element for majors and minors that have received EPA wastewater grant money (92-500s).
7d1	Major Facilities in Noncompliance	Review Indicator	State		71.2%	100%	31	31	0	Meets Expectations	The majority of the violations were related to delays in data entry caused by Tropical Storm Irene.
7f1	Non-Major Facilities in Category 1 Noncompliance	Data Verification	State			0				Unrated	Vermont now has the capacity to enter non-major data in ICIS-NPDES.
7g1	Non-Major Facilities in Category 2 Noncompliance	Data Verification	State			1				Unrated	Vermont now has the capacity to enter non-major data in ICIS-NPDES.
7h1	Non-Major Facilities in Noncompliance	Informational only	State		47.5%	.7%	1	151	150	Informational only	Because Vermont did not enter or batch non-major DMR data to PCS in FY11, this is not a reliable number.
8a1	Major Facilities in SNC	Review indicator metric	State			4				Meets Expectations	SNC for these four facilities was due to non-receipt of Discharge Monitoring Reports.
8a2	Percent of Major Facilities in SNC	Review indicator metric	State		22.3%	11.40%	4	35	31	Meets Expectations	
10a1	Major facilities with Timely Action as Appropriate	Goal metric	State		15.4%	0/0	0	0	0	Unrated	Vermont issues timely actions and will need to start entering these actions in ICIS-NPDES.

Resource Conservation and Recovery Act

Metric ID	Metric Name	Metric Type	Agency	National Goal	National Average	Vermont	Count	Universe	Not Counted	Initial Finding	Explanation
1a1	Number of operating TSDFs	Data Verification	State			5					
1a2	Number of active LQGs	Data Verification	State			42				Supplemental Review	Vermont stated that their LQG universe differed from the RCRA Info count. For purposes of the review and the Annual and 5-year coverage rates, the actual LQG universe for FY11 should be confirmed.
1a3	Number of active SQGs	Data Verification	State			326					
1a4	All other active sites	Data Verification	State			2923					
1a5	Number of BR LQGs	Data Verification	State			46					
1b1	Number of sites inspected	Data Verification	State			45					
1b2	Number of inspections	Data Verification	State			45					
1c1	Number of sites with new violations during review year	Data Verification	State			37					

Metric ID	Metric Name	Metric Type	Agency	National Goal	National Average	Vermont	Count	Universe	Not Counted	Initial Finding	Explanation
1c2	Number of sites in violation at any time during the review year regardless of determination date	Data Verification	State			95				Supplemental Review	A review of the data for the long-standing secondary violators will determine if the number of sites identified by this metric is the result of database cleanup/maintenance issues.
1d1	Number of sites with informal enforcement actions	Data Verification	State			29					
1d2	Number of informal enforcement actions	Data Verification	State			29					
1e1	Number of sites with new SNC during year	Data Verification	State			3					
1e2	Number of sites in SNC regardless of determination date	Data Verification	State			7					
1f1	Number of sites with formal enforcement actions	Data Verification	State			3					
1f2	Number of formal enforcement actions	Data Verification	State			3					
1g	Total dollar amount of final penalties	Data Verification	State			\$132,500					
1h	Number of final formal actions with penalty in last 1 FY	Data Verification	State			1					

Metric ID	Metric Name	Metric Type	Agency	National Goal	National Average	Vermont	Count	Universe	Not Counted	Initial Finding	Explanation
2a	Long-standing secondary violators	Review Indicator	State			44				Supplemental Review	A review of the violation determination date suggests that the bulk of the long-standing SV's is due to data maintenance/cleanup issues.
5a	Two-year inspection coverage for operating TSDFs	Goal	State	100%	89.4%	60%	3	5	2	Area for State Improvement	State performance was below 85% of the National Goal and National Average
5b	Annual inspection coverage for LQGs	Goal	State	20%	22.6%	8.7%	4	46	42	Area for State Improvement	State performance was below 85% of the National Goal and National Average
5c	Five-year inspection coverage for LQGs	Goal	State	100%	62.9%	58.7%	27	46	19	Area for State Attention	Although State performance was below 80% of the National Goal, the State performance was within 4% of the National Average.
5d	Five-year inspection coverage for active SQGs	Informational Only	State		11%	23%	75	326	251		There is no national expectation. It should be noted that Vermont's inspections of SQG is double the national average (~24% vs. ~12%)
5e1	Five-year inspection coverage at other sites (CESQGs)	Informational Only	State			170					
5e2	Five-year inspection coverage at other sites (Transporters)	Informational Only	State			7					

Metric ID	Metric Name	Metric Type	Agency	National Goal	National Average	Vermont	Count	Universe	Not Counted	Initial Finding	Explanation
5e3	Five-year inspection coverage at other sites (Non-notifiers)	Informational Only	State			2					
5e4	Five-year inspection coverage at other sites (not covered by metrics 5a-5e3)	Informational Only	State			40					
7b	Violations found during inspections	Review Indicator	State		32.5%	77.8%	35	45	10	Meets Expectation	Vermont identifies violations at twice the national average (~78% vs. ~33%)
8a	SNC identification rate	Review Indicator	State		2.1%	6.4%	3	47	44	Meets Expectation	Vermont's SNC identification rate is almost triple the national average (~6% to 2%).
8b	Timeliness of SNC determinations	Goal	State	100%	81.7%	0%	0	3	3	Area for State Improvement	State performance was below 85% of the National Goal and National Average
10a	Timely enforcement taken to address SNC	Review Indicator	State	80%	81.8%	0%	0	1	1	Area for State Improvement	State performance was below 85% of the National Goal and National Average

Appendix B: File Metric Analysis

This section presents file metric values with EPA's initial observations on program performance. Initial findings are developed by EPA at the conclusion of the file review. Initial findings are statements of fact about observed performance. They should indicate whether there is a potential issue and the nature of the issue. They are developed after comparing the data metrics to the file metrics and talking to the state. Final findings are presented above in the Findings section. Because of limited sample size, statistical comparisons among programs or across states cannot be made.

Clean Air Act File Metric Analysis

State: Vermont

Year Reviewed: FY 2011

CAA Metric #	CAA File Review Metric Description	Numer ator	Denomi nator	%	Goal	Initial Findings	Details
2b	Accurate MDR data in AFS: Percentage of files reviewed where MDR data are accurately reflected in AFS	21	25	84.0%	100%	State Improvement	The file review indicated that 4 of 25 files reviewed had one or more MDRs that were not reported to AFS, including NOAVs, a stack test failure, formal enforcement actions at facilities in the CMS, etc.
4a1	Planned evaluations completed: Title V Major FCEs	8	11	72.7%	100%	Meets Requirements	VT completed compliance evaluations of 42 (88%) of the 48 targeted sources in the CMS, including 9 of 11 majors (81%).
4a2	Planned evaluations completed: SM-80 FCEs	5	6	83.3%	100%	State Attention	VT completed compliance evaluations of 42 of 48 sources (88%) including 5 of 6 SM80s (83%).
4a3	Planned evaluations completed: Synthetic Minor FCEs	25	27	92.6%	100%	Meets Requirements	VT completed compliance evaluations of 42 of 48 (88%) of the targeted sources, including 25 of 27 SMs (93%).
4a4	Planned evaluations completed: Other Minor FCEs	3	4	75.0%	100%	State Attention	VT completed compliance evaluations of 42 of 48 (88%) of the targeted sources, including 3 of 4 minors (75%).
4a5	Planned evaluations completed: Title V Major PCEs	na	na	na	100%		
4a6	Planned evaluations completed: SM-80 PCEs	na	na	na	100%		
4a7	Planned evaluations completed: Synthetic Minor PCEs	na	0	na	100%		
4a8	Planned evaluations completed: Other Minor PCEs	na	0	na	100%		

CAA Metric #	CAA File Review Metric Description	Numerator	Denominator	%	Goal	Initial Findings	Details
4b	Planned commitments completed: CAA compliance and enforcement commitments other than CMS commitments	5	6	83.3%	100%	State Attention	VT completed 5 of 6 (83%) of its CAA compliance and enforcement-related commitments during FY11. In late FY11, however, Tropical Storm Irene caused significant disruption in VT's operations in the 4th quarter and they were unable to meet the 60 day reporting requirement for some data entries.
6a	Documentation of FCE elements: Percentage of FCEs in the files reviewed that meet the definition of a FCE per the CMS policy	4	23	17.4%	100%	State Improvement	19 of the 23 (83%) of the CMRs reviewed had at least one permit condition (not including "standard conditions" and/or "stack height") for which the inspector noted that compliance was "not determined."
6b	Compliance Monitoring Reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility: Percentage of CMRs or facility files reviewed that provide sufficient documentation to determine facility compliance	13	28	46.4%	100%	State Improvement	Of the 28 files reviewed, only 13 (46%) had sufficient documentation in the CMR or file to determine compliance. Additionally, most of the inspection reports took an excessive amount of time to finalize which may have prevented VT from taking enforcement actions in a timely manner.
7a	Accuracy of compliance determinations: Percentage of CMRs or facility files reviewed that led to accurate compliance determinations	16	28	57.1%	100%	State Improvement	Of the 28 files reviewed, 16 (57%) were found to contain accurate compliance determinations.
8c	Accuracy of HPV determinations: Percentage of violations in files reviewed that were accurately determined to be HPVs	12	13	92.3%	100%	State Attention	Of the 13 files reviewed that contained a recent or historical finding of non-compliance determination, 12 (92%) of the files appeared to determine accurately whether or not the violations were HPV. In several other case files reviewed, however, VT's inspection reports indicated that there were repeat violations at SM or SM80 facilities that could have been considered discretionary HPVs.

CAA Metric #	CAA File Review Metric Description	Numerator	Denominator	%	Goal	Initial Findings	Details
9a	Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified time frame: Percentage of formal enforcement responses reviewed that include required corrective actions that will return the facility to compliance in a specified time frame	7	7	100%	100%	Meets Requirements	
10a	Timely action taken to address HPVs: Percentage of HPV addressing actions that meet the timeliness standard in the HPV Policy	0	1	0.0%	100%	State Improvement	VT addressed 0% of its current HPVs within 270 days.
10b	Appropriate Enforcement Responses for HPVs: Percentage of enforcement responses for HPVs that appropriately address the violations	1	1	100%	100%	State Attention	For the one HPV reviewed during the review period, VT resolved the HPV with an appropriate formal enforcement action. However, the penalty amount in this case was very low.
11a	Penalty calculations reviewed that consider and include gravity and economic benefit: Percentage of penalty calculations reviewed that consider and include, where appropriate, gravity and economic benefit	1	4	25.0%	100%	State Improvement	Review of formal enforcement actions found inconsistent documentation of economic benefit.
12a	Documentation on difference between initial and final penalty and rationale: Percentage of penalties reviewed that document the difference between the initial and final assessed penalty, and the rationale for that difference	2	4	50.0%	100%	State Attention	Of the 4 files reviewed where penalty calculation worksheets were found and reviewed, 2 contained documentation and a rationale regarding any difference between the initial and final penalty amounts. However, without the complete enforcement case files, it was not possible to determine if VT had properly documented differences between initial and final penalty amounts.
12b	Penalties collected: Percentage of penalty files reviewed that document collection of penalty	6	6	100%	100%	Meets Expectations	

Clean Water Act File Metric Analysis

Year Reviewed: FY 2011

Metric	Name and Description	Numerator	Denominator	%	Goal	Initial Findings	Details
2b	Files reviewed where data are accurately reflected in the national data system	12	21	57%	100%	Unrated	Vermont only entered major data in PCS in 2011.
3a	Timely entry of mandatory data: Percentage of files reviewed where mandatory data are entered in the national data system in a timely manner	12	21	57%	100%	Unrated	Vermont only entered major data in PCS in 2011.
4a	Planned non-inspection commitments completed: Percentage of non-inspection commitments completed in the review year	0	0	N/A	N/A	Meets SRF Requirements	PPA commitments were limited to inspection coverage.
4b1	Planned inspections completed: Percentage of inspection commitments completed in the review year.	7	7	<50%	100%	Area for State Improvement	Vermont did not complete the required Pre-treatment Sampling Inspections
6a	Inspection reports complete and sufficient to determine compliance: Percentage of inspection reports reviewed that are complete and provide sufficient documentation to determine compliance	10	14	71%	N/A	Area for State Attention	Reports for POTWs did not include facility address, but included City address.
6b	Timeliness of inspection report completion: Percentage of inspection reports reviewed that are completed in a timely manner	9	14	64%	100%	Area of State Attention	
7e	Accurate compliance determinations: Percentage of inspection reports reviewed that led to accurate compliance determinations	14	14	100.0%	100%	Meets SRF requirement	

Metric	Name and Description	Numerator	Denominator	%	Goal	Initial Findings	Details
8b	Single-event violation(s) accurately identified as SNC or non-SNC	0	0	N/A	100%	Not Rated	Now that it has migrated to ICIS-NPDES, Vermont has started entering Single Event Violations. The state did not have the capacity in the review year.
8c		0	0	N/A	100%	Not Rated	Now that it has migrated to ICIS-NPDES, Vermont has started entering Single Event Violations. The state did not have the capacity in the review year.
9a	Percentage of enforcement responses that return or will return source in violation to compliance	6	6	100.0%	100%	Meets SRF requirement	
10b	Enforcement responses reviewed that address violations in a timely manner	6	6	100.0%	100%	Meets SRF requirement	
11a	Penalty calculations that consider and include gravity and economic benefit.	4	5	80%	100%	State Attention	Vermont should consistently document its consideration of economic benefit, even where there is little or no economic benefit to collect.
12a	Documentation of difference between initial and final penalty and rationale	4	4	100%	100%	Meets Expectations	
12b	Penalties collected	6	6	100%	100%	Meets Expectations	

Resource Conservation Recovery Act

Year Reviewed: FY 2011

Metric	Name and Description	Numerator	Denominator	%	Goal	Initial Findings	Details
2b	Accurate entry of mandatory data: Percentage of files reviewed where mandatory data are accurately reflected in the national data system	14	24	58.3%	100%	Area for Improvement	Inaccuracies were found in 58.3% of the files reviewed (14/24).
3a	Timely entry of mandatory data: Percentage of files reviewed where mandatory data are entered in the national data system in a timely manner	19	24	95.8%	100%	Meets SRF Requirements	Data was entered in a timely manner for 23/24 files reviewed.
4a	Planned non-inspection commitments completed: Percentage of non-inspection commitments completed in the review year	2	2	100.0%	100%	Meets SRF Requirements	VT submitted an EOY report and participated in RCRA meetings/training to meet these non-inspection commitments
4b1	Planned inspections completed: LQGs	7	7	100.0%	100%	Meets Requirements	Vermont provided information that identified the 34 LQGs as the regulated universe not 43. Vermont only conducted 4 inspections to meet 57% of the goal. At Vermont's request, EPA conducted an additional 3 LQG inspections to help VT meet the 20% LQG goal..
4b2	Planned inspections completed: SQGs	0	0	N/A	N/A		Vermont committed to 50 inspections total that included 2 TSDF and 7 LQG inspections.
4b3	Planned inspections completed: CESQGs	0	0	N/A	N/A		Vermont committed to 50 inspections total that included 2 TSDF and 7 LQG inspections.
4b4	Planned inspections completed: Transporters	0	0	N/A	N/A		Vermont committed to 50 inspections total that included 2 TSDF and 7 LQG inspections.

Metric	Name and Description	Numerator	Denominator	%	Goal	Initial Findings	Details
6a	Inspection reports complete and sufficient to determine compliance: Percentage of inspection reports reviewed that are complete and provide sufficient documentation to determine compliance	19	24	79.2%	N/A	Area for State Attention	Six (6) instances were in five (5) files contained potential RCRA issues that lacked sufficient documentation to confirm the compliance status.
6b	Timeliness of inspection report completion: Percentage of inspection reports reviewed that are completed in a timely manner	22	24	91.7%	100%	Area for State Attention	
7a	Accurate compliance determinations: Percentage of inspection reports reviewed that led to accurate compliance determinations	18	18	100.0%	100%	Meets SRF requirement	
8c	Appropriate SNC determinations: Percentage of files reviewed in which significant noncompliance (SNC) status was appropriately determined during the review year	19	22	86.4%	100%	Area for Attention	Three (3) facilities were not identified as SNCs out of twenty-two (22) files reviewed.
9a	Enforcement that returns SNC sites to compliance: Percentage of enforcement responses that have returned or will return a site in SNC to compliance	2	2	100.0%	100%	Meets SRF requirements	
9b	Enforcement that returns SV sites to compliance: Percentage of enforcement responses that have returned or will return a secondary violator to compliance	14	16	87.5%	100%	Meets SRF requirements	
10b	Appropriate enforcement taken to address violations: Percentage of files with enforcement responses that are appropriate to the violations	17	21	81.0%	100%	Needs State Attention	Four (4) of the enforcement actions taken by VT were not appropriate for the violations or history of violations/enforcement actions identified at these facilities.

Metric	Name and Description	Numerator	Denominator	%	Goal	Initial Findings	Details
11a	Penalty calculations include gravity and economic benefit: Percentage of reviewed penalty calculations that consider and include, where appropriate, gravity and economic benefit	0	5	0.0%	100%	Needs State Attention	Economic benefit calculations were not documented for RCRA cases.
12a	Documentation on difference between initial and final penalty: Percentage of penalties reviewed that document the difference between the initial and final assessed penalty, and the rationale for that difference	0	4	0.0%	100%	Needs State Attention	VT did not clearly document how the final penalties were calculated and the level of penalty reduction that was attributed to each rationale.
12b	Penalties collected: Percentage of files that document collection of penalty	4	4	100.0%	100%	Meets SRF requirements	

Appendix C: File Selection

Files are selected according to a standard protocol using a web-based file selection tool. These are designed to provide consistency and transparency to the process. Based on the description of the file selection process below, states should be able to recreate the results in the table.

Clean Air Act

Clean Air Act File Selection Process

Vermont's source universe is small with approximately 16 major stationary sources and 25 SM80s. Accordingly, EPA Region 1 (Region 1) used the file selection tool to choose 25 files for review in Round 3. Of the 25 files, Region 1 chose all of the files that were indicated as having a "violation," or either a "formal enforcement" or "informal enforcement" action. Region 1 chose 19 that were listed in the tool as having a "Full Compliance Evaluation," including 2 that also were listed in the tool as having informal enforcement actions. Region 1 chose all 6 of the files that the tool listed as showing a violation, including the one case for FY11 indicated by the tool as having a formal enforcement action.

Clean Air Act File Selection Table

Facility Name	ID Number	Universe	Full Compliance Evaluations	Violations	Informal Actions	Formal Actions	Penalties
Agrimark Inc.	5000100001	Major	3	0	0	0	0
Pike Industries Inc.	5000100005	Synthetic Minor	2	0	0	0	0
Southwestern Vermont Medical Center	5000300010	Synthetic Minor	0	1	0	0	0
Energizer Battery Manufacturing	5000300015	Synthetic Minor	2	0	0	0	0
Pike Industries Inc.	5000500003	Synthetic Minor	2	0	0	0	0
Suez/Ryegate Associates	5000500004	Major	4	0	0	0	0
Weidmann Electrical Technology	5000500006	Major	3	0	0	0	0
IBM Corporation	5000700012	Synthetic Minor	3	0	0	0	0
Global Company	5000700027	Synthetic Minor	2	0	0	0	0
Pike Industries Inc. - Plant 800	5000700035	Synthetic Minor	2	0	0	0	0
Whitcomb F.W. Construction Corp.	5000709001	Synthetic Minor	2	0	0	0	0
Ampersand Gilman Energy LLC	5000900002	Major	0	1	0	0	0
Ethan Allen Inc.	5000900004	Major	3	0	0	0	0
Pike Industries - Plant 801	5001100012	Synthetic Minor	2	0	0	0	0
PBM Nutritionals Inc.	5001100017	Synthetic Minor	2	0	0	0	0
Vermont Precision Tools	5001100027	Tier I Minor	0	1	0	0	0
Maple Mountain Woodworks	5001100029	Synthetic Minor	1	0	1	0	0
Copley Hospital	5001500005	Synthetic Minor	1	0	0	0	0
Ethan Allen Inc.	5001900004	Major	4	0	1	0	0
Fibermark Inc.	5002500004	Major	2	0	0	0	0
Putney Paper Company	5002500009	Major	2	0	0	0	0
Fulflex Inc./Moore Company	5002500013	Synthetic Minor	3	0	0	0	0
Okemo Mountain Resort	5002700013	Synthetic Minor	0	1	0	2	\$1,500
Precision Valley Finishing	5002700020	Tier I Minor	0	1	0	0	0
Vermont Machine Tool	5002700021	Tier I Minor	0	1	0	0	0

Clean Water Act

Clean Water Act File Selection Process

EPA Region 1 (Region 1) used the file selection tool to choose 42 files for review in Round 3. These included some inspection files, some enforcement files and a mix of major and minor sources. Fourteen of the total had been inspected, and 32 of the total had reported violations.

Clean Water Act File Selection Table

ID Number	Facility Name	Universe	Inspections	Violation	SNC
VT0000264	ENTERGYNUCLEAR VERMONT YANKEE ,LLC	Major	No	Yes	No
VT0000400	IBM CORPORATION	Major	No	Yes	No
VT0000469	ROCK-TENN COMPANY	Major	No	Yes	No
VT0100005	ALBURG VILLAGE W W T F	Non-Major	2	No	No
VT0100013	BELLOWSFALLS W W T F	Major	No	Yes	No
VT0100021	BENNINGTON STP	Major	No	Yes	No
VT0100064	BRATTLEBORO WPCP	Major	No	Yes	No
VT0100111	ESSEX JUNCTION MTP	Major	No	Yes	No
VT0100129	FAIR HAVEN W W T P	Major	No	Yes	No
VT0100145	LUDLOW VILLAGE W W T F	Major	2	Yes	No
VT0100153	BURLINGTON MAIN STP	Major	No	Yes	No
VT0100188	MIDDLEBURY W W T F	Major	No	Yes	No
VT0100196	MONTPELIER W W T F	Major	1	Yes	No
VT0100200	NEWPORT W W T F	Major	No	Yes	No
VT0100226	BURLINGTON NORTH END W W T F	Major	No	Yes	No
VT0100242	NORTHFIELD MTP	Major	No	Yes	No
VT0100269	POULTNEY MTP	Major	1	Yes	No
VT0100307	BURLINGTON RIVERSIDE W W T F	Major	No	Yes	No
VT0100323	ST ALBANS W W T F	Major	1	Yes	No
VT0100340	SHELDON M T P	Non-Major	1	No	No
VT0100358	SOUTH BURLINGTON MTP (BARTLETT	Major	1	Yes	SNC
VT0100366	SOUTH BURLINGTON AIRPORT PKWY	Major	No	Yes	SNC
VT0100374	SPRINGFIELD W W T F	Major	No	Yes	No
VT0100455	STOWE WW T F	Non-Major	1	Yes	No
VT0100501	SWANTONVILLAGE W W T F	Major	1	Yes	SNC

ID Number	Facility Name	Universe	Inspections	Violation	SNC
VT0100510	WINOOSKI WPCF	Major	No	Yes	No
VT0100579	ST. JOHNSBURY W W T F	Major	No	Yes	No
VT0100625	CANAAN MTP	Non-Major	2	No	No
VT0100714	WEST RUTLAND	Major	1	Yes	SNC
VT0100871	RUTLANDW W T F	Major	No	Yes	No
VT0100889	BARRE WW T F	Major	No	Yes	No
VT0100897	CASTLETON M T P	Major	0	Yes	No
VT0100919	WINDSOR W T F	Major	0	Yes	No
VT0100978	HARTFORD+QUECHEE SERVICE CORP	Non-Major	2	No	No
VT0101010	HARTFORD W W T F	Major	0	Yes	No
VT0101028	HINESBURG W W T F	Major	1	Yes	No
VT0101150	VILLAGEOF JEFFERSONVILLE	Non-Major	1	No	No

Resource Conservation Recovery Act

RCRA File Selection Process

A total of twenty-five (25) files were selected for review. This process involved running the SRF file selection tool and selecting the first twenty-four (24) files identified by a Vermont (VT) prefix. One (1) additional file was included after EPA HQ determined that an additional SQG should be selected to ensure an adequate number of files were selected for the review. Flex-a-Seal was the next SQG facility that appeared on file selection tool. After the twenty-five (25) files were selected, the facilities were sorted and resorted by the various categories to be reviewed for the SRF (e.g., inspections, informal actions, formal actions, penalties, violations, SNCs, etc). The first five (5) files were chosen for each category for review purposes.

RCRA File Selection Table

ID Number	Facility Name	Universe	Inspections	Violations	SNC	Informal	Formal	Penalty
VT5000000612	VT MARBLE POWER DIV OMYA INC FLORENCE	Other	1	3	0	0	0	0
VTD000636449	UNIV OF VERMONT MAIN CAMPUS	LQG	0	0	1	1	0	0
VTD000636563	UNIV OF VERMONT ENV SAFETY FACILITY	TSDf LQG Transporter	1	3	0	0	0	0
VTD000791699	SAFETY KLEEN SYSTEMS INC	TSDf LQG Transporter	0	0	0	1	0	0
VTD001080126	KENNAMETAL INC	LQG	1	7	0	1	0	0
VTD002065654	ENERGIZER BATTERY MFG INC	LQG	1	5	0	0	0	0
VTD019125590	FOLEY SVCS	CESQG	1	0	0	0	0	0
VTD037700465	VERMONT AEROSPACE MFG INC	LQG	1	6	0	1	0	0
VTD039696885	MOUNT SNOW LTD	SQG	0	0	0	1	0	0
VTD043783992	VERMONT RAILWAY INC	LQG	0	0	0	0	1	0
VTD981066418	DURGINS CLEANERS	CESQG	1	1	0	1	0	0
VTD981066475	MODERN CLEANERS & TAILORS	CESQG	1	3	0	1	0	0
VTD981073752	SUPERIOR TECHNICAL CERAMICS CORP	SQG	1	0	0	0	0	0
VTD988367413	MACINTYRE SERVICES LLC	CESQG	1	0	0	0	0	0
VTD988367454	WOODBURY AUTO	SQG	1	1	0	1	0	0
VTD988375283	R A LAROSA ENVIRONMENTAL LAB	CESQG	1	21	1	1	0	0
VTR000003384	FLEX A SEAL INC	SQG	1	4	0	0	0	0
VTR000015420	BROWNELLS AUTO WRECKING	CESQG	0	0	0	0	1	62500
VTR000513580	VERMONT RAILWAY INC	LQG	0	0	0	0	1	70000
VTR000514950	VT MARBLE POWER OMYA PROCTOR MAINT FACIL	Other	1	0	0	0	0	0
VTR000517458	PLASAN NORTH AMERICA	SQG	1	11	0	0	0	0
VTR000517839	ENVIRONMENTAL PRODUCTS & SVCS OF VT	Other	1	6	0	1	0	0
VTR000519165	PLASAN NORTH AMERICA	SQG	1	9	0	0	0	0
VTR000520833	VERMONTERS HELPING VERMONTERS	CESQG	0	5	1	1	0	0
VTR000521062	DAYLIGHT AUTO	Other	1	5	0	1	0	0
	- Random files selected for informal actions							
	- Random files selected for formal actions							
	- Random files selected for inspections							
	- Random files with violations/no enforcement							
	- Random SNCs							
	- Random files to make "5" "Other" inspections							
	- Random files to make "5" "SQG" inspections							
	- Additional Random File (SQG) per HQ File Review							

Appendix D: Status of Past SRF Recommendations

During the Round 1 SRF review of Vermont’s compliance and enforcement programs, EPA recommended actions to address issues found during the review. The following table contains all outstanding recommendations and completed and outstanding actions for Round 2. The statuses in this table are current as of March 6, 2012. For a complete and up-to-date list of recommendations from Round 1, visit the [SRF website](#).

Clean Air Act Past SRF Recommendations

<i>Status</i>	<i>Due Date</i>	<i>Media</i>	<i>E#</i>	<i>Element</i>	<i>Finding</i>	<i>Recommendation</i>
Completed	1/31/2008	CAA	E1	Insp Universe	Improve major source CMS data	VT ANR should ensure that all major stationary sources have a CMS indicator in AFS.
Completed	1/30/2008	CAA	E8	Penalties Collected	Documentation of penalty mitigation	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.
Completed	1/30/2008	CAA	E7	Penalty Calculations	Document decision to not collect economic benefit	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.
Completed	1/30/2008	CAA	E7	Penalty Calculations	Consider revising rule to make economic benefit calculation mandatory	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.
Completed	9/30/2008	CAA	E4	SNC Accuracy	Improve Timely Communication between state and region re:HPVs	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.

Status	Due Date	Media	E#	Element	Finding	Recommendation
Completed	9/30/2008	CAA	E6	Timely & Appropriate Actions	Imrpove timeliness of resolution of HPVs	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.
Completed	1/30/2008	CAA	E2	Violations ID'ed Appropriately	Improve inspection reports	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: * Identification of the specific emission units and applicable requirements evaluated at the source. * A brief description of which monitoring reports and compliance certifications the inspector reviewed before, during or after the onsite inspection. * A past enforcement history narrative or reference to compliance or enforcement-related documents contained in the facility file, if they exist.
Completed	1/30/2008	CAA	E3	Violations ID'ed Timely	Improve Inpsection Report timeliness	1) 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) VT ANR and Region 1 should meet to review and discuss the accuracy of the tracking of compliance evaluations performed after July 2007
Long Term Resolution	9/30/2009	CAA	E3	Violations ID'ed Timely	Fill Vacant Air Compliance Position	Region 1 recommends that VT ANR fill the vacant air compliance staff position

Clean Water Act Past SRF Recommendations

Status	Due Date	Media	E#	Element	Finding	Recommendation
Completed	9/25/2007	CWA	E10	Data Timely	Improve data entry procedures for inspections and SEVs	1) Region 1 and VT will meet on September 25, 2007 to review data entry procedures for inspections and single event violations.
Completed	12/31/2007	CWA	E10	Data Timely	Consider PCS/ICIS transitional issues	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.
Long Term Resolution	9/30/2009	CWA	E10	Data Timely	Plan for complying with ICIS-NPDES Policy Statement	Within three months of the finalization of the ICIS-NPDES Policy Statement, the VT ANR shall submit a plan for complying with the Policy.

RCRA Past SRF Recommendations

Round	Status	Due Date	Media	E#	Element	Finding	Recommendation
Round 2	Working	9/30/2007	RCRA	E12	Data Complete	Resolve and report old, open violations	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.
	Working	9/30/2008	RCRA	E10	Data Timely	Develop policy relating to minimum data requirements	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 1 by September 30, 2008
	Long Term Resolution	9/30/2009	RCRA	E9	Grant Commitments	Fill vacant RCRA compliance position	1) Region 1 recommends that VT ANR fill the vacant RCRA compliance positions so it can meet its PPA commitments.
	Working	9/30/2008	RCRA	E8	Penalties Collected	Develop standard language for penalty mitigation	1) By September 30, 2008, develop a standard template (memorandum) for mitigating penalties to be inserted in the file that is typed-written.
	Working	9/30/2008	RCRA	E7	Penalty Calculations	Develop Guidance relating to penalty calculation	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.

Round	Status	Due Date	Media	E#	Element	Finding	Recommendation
	Working	9/30/2008	RCRA	E5	Return to Compliance	Develop policy on NOAV notations	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.
	Working	9/30/2008	RCRA	E4	SNC Accuracy	Improve SNC identification and data entry accuracy	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 1 will provide VT ANR training on identifying and reporting SNCs.

Appendix E: Program Overview

Agency Structure

The Vermont Department of Environmental Conservation (“DEC”), along with the Department of Fish and Wildlife and the Department of Forests, Parks and Recreation, constitute the Vermont Agency of Natural Resources. Through its programs, the DEC manages water and air quality, regulates solid and hazardous wastes, and administers a number of voluntary pollution and waste reduction programs. DEC issues most of the state’s environmental permits and regulations and assures compliance.

Compliance & Enforcement Division

The **Compliance & Enforcement Division (CED)** enforces the environmental laws and regulations administered by the various regulatory programs within the departments located within the Agency of Natural Resources. It records and assigns potential environmental violations (citizen complaints) for investigation. CED also provides investigative services for the Natural Resources Board (the administrators of Act 250, Vermont's land use law).

The **Environmental Investigation Section** of CED is staffed by a Chief Environmental Enforcement Officer located in Montpelier (previously in Waterbury) and six Environmental Enforcement Officers (EEOs) located within designated geographical districts throughout the state. This section investigates alleged violations of any/all of Vermont's environmental rules, regulations, and statutes that are under the jurisdiction of DEC. Many of these investigations are subsequently referred to the Legal Section for formal enforcement actions.

The **Legal Section** of the CED is staffed by three attorneys, one of whom is also the Director of the Division. This unit pursues formal enforcement actions which may conclude in a negotiated settlement or, if contested, a trial before a judge of the Environmental Division of the Superior Court. These actions, whether settled or litigated, seek penalties, remediation and other conditions as necessary. CED also refers a number of major cases to the Attorney General or the U.S. Attorney's Office which may file and prosecute a civil action, or, if justified by the nature of the offense, a criminal charge. CED works cooperatively with the Environmental Protection Agency on cases that have significant violations. Lesser criminal offenses may also be referred to the State's Attorney in the county where the offense occurred.

The **Environmental Compliance Section** contains the Salvage Yard Unit which is staffed by an inspector who is responsible for licensing salvage yards and the regular, multi-media inspections of all of Vermont's salvage yards.

Clean Air Act [CAA] Enforcement Programs

The Vermont Air Pollution Control Division (APCD) of the Department of Environmental Conservation implements state and federal Clean Air Acts. As part of this implementation, the APCD monitors air quality and air pollution sources, proposes regulations to improve existing air quality, ensures compliance with the regulations, and issues permits to control pollution from sources of air contaminants across the state. Within the Division are five sections: Air Planning, Engineering Services, Field Services, Mobile Sources, and Technical Services. For purposes of the State Review Framework, the review team interacted with the Field Services Section.

Field Services: As the Division's compliance arm, staff members inspect commercial and other sources of air pollution to ensure that pollution control requirements are being met. Historically, the staff of this group have monitored the testing and operation of gasoline vapor recovery systems at service stations. This section also provides technical assistance, issues open burning permits and investigates air pollution-related citizen complaints.

Clean Water Act [CWA] Enforcement Programs

The Watershed Management Division has compliance and enforcement components and permit issuance responsibilities for public wastewater systems and industrial users covered by pre-treatment requirements, as well as precipitation-driven programs including stormwater and animal feeding operations.

Wastewater Management: This group performs oversight functions of municipally-owned wastewater treatment facilities, and of privately-owned treatment and pretreatment facilities. In addition to performing certification and training programs, periodic discharge sampling for permit compliance checks, and laboratory evaluations, this group also assists municipal officials in the proper budgeting of their wastewater facilities. This Section also manages the pre-treatment program and the inspection and enforcement data functions.

Stormwater Management: This group provides technical assistance and regulatory oversight to ensure that stormwater discharges are managed in a way that meets the requirements of the Vermont Water Quality Standards. The group conducts inspections and assures compliance with the Construction General Permit, Multisector General Permit and Municipal MS4 permit. This group also manages inspection and permitting of animal feeding operations.

Wetlands Section identifies significant wetlands and protects wetland functions and values through education, project review, and enforcement.

Resource Conservation and Recovery Act [RCRA] Hazardous Waste Enforcement Programs

The Waste Management Division oversees the use, treatment, and handling of hazardous and solid wastes. The Division performs emergency response for hazardous materials spills, issues permits for federal and state programs regulating hazardous wastes, solid wastes, and underground storage tanks, and manages cleanup at hazardous sites under state and federal authorities, including the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, also known as Superfund).

The **Management and Prevention Section** performs permitting and compliance inspections for hazardous waste facilities, including locations where wastes are generated, stored, treated, or disposed. Staff also performs hazardous waste planning activities.

Tropical Storm Irene

On August 28-29, 2011 Tropical Storm Irene struck Vermont. The storm dumped massive amounts of rain (up to 7 inches) in a short period of time resulting in widespread and devastating flooding. Damages include destroyed roads, bridges, and homes. For more information see: <http://www.anr.state.vt.us/anr/climatechange/irenebythenumbers.html>

One significant casualty of the flood was the Village of Waterbury which was home to the headquarters of the Vermont Agency of Natural Resources. The flood waters inundated the Agency's offices resulting in the loss of a massive number of paper files as well as computers. The damage caused by the flood resulted in the complete closure of the Waterbury office complex. As a result, ANR staff was without offices for several months until new space could be identified, leased and outfitted. This resulted in many employees being unable to undertake their regular job duties. This including conducting inspections, issuing permits and properly closing out end-of-year EPA obligations. As a consequence Vermont asked that it be granted a waiver of SRF3 so that a more representative year could be used for this review. EPA was unwilling to grant the requested waiver but Vermont was allowed an extension of time and was told that the impact of the flood would be considered as part of the review.

Vermont Enforcement Policies

- **Civil Penalty Policy** sets forth a process for calculating civil penalties in cases where a penalty is warranted.
- **Supplemental Environmental Project Policy** outlines criteria for projects that may serve in addition to a monetary penalty as the basis for the consensual settlement of an enforcement case.

Environmental Enforcement Procedures and Tools

Administrative Order (AO)

10 V.S.A. Section 8008 authorizes the Secretary to issue an Administrative Order (AO) when the Secretary determines that a violation exists. An AO includes a statement of facts which provide the basis for claiming the violation exists; an identification of the applicable statute, rule, permit, assurance or order; and if applicable, a directive that the respondent take actions necessary to achieve compliance, to abate potential or existing environmental or health hazards, and to restore the environment to the condition existing before the violation. An AO also includes a statement that the respondent has a right to a hearing; a description of the procedures for requesting a hearing; a statement that the AO is effective on receipt unless stayed on request for a hearing filed within 15 days; and a statement that unless the respondent requests a hearing, the AO becomes a judicial order when filed with and signed by the Environmental Court. An AO may also include a stop work order that directs the respondent to stop work until a permit is issued, compliance is achieved, a hazard is abated, or any combination of these tasks; a stay of the effective date or processing of a permit; and a proposed penalty or penalty structure.

Assurance of Discontinuance (AOD)

10 V.S.A. Section 8007 authorizes the Secretary to accept from a respondent an Assurance of Discontinuance (AOD) for a violation as an alternative to administrative or judicial proceedings. An AOD is a written settlement agreement, signed by the Secretary and the respondent, which specifies the statute(s) or regulation(s) alleged to have been violated. An AOD also includes a statement of the facts which provides the basis for claiming the violation exists and a description of the violation determined by the Secretary and an agreement by the respondent to perform specific actions to prevent, abate or alleviate environmental problems caused by the violation, or to restore the environment to its condition before the violation, including financial responsibility for such actions.

Civil Complaints

10 V.S.A. Section 8019 authorizes the Secretary to issue a Civil Complaint when the Secretary determines that a violation exists. A Civil Complaint identifies the applicable statute, regulation, permit or order; contains a description of the violation; identifies the minimum, maximum, and waiver penalty amounts for the applicable violation; and contains a section for pleading to the complaint. Proposed Civil Complaints are posted for public comment for 30 days.

Emergency Orders

10 V.S.A. Section 8009 authorizes the Secretary to issue an Emergency Administrative Order (EO) when a violation presents an immediate threat of substantial harm to the environment or an immediate threat to the public health; or an activity will or is likely to result in a violation which presents an immediate threat of substantial harm to the environment or an immediate threat to the public health; or an activity requiring a permit has been commenced and is continuing without a permit.

Supplemental Environmental Projects

10 V.S.A. §8007(b)(2) authorizes the Agency of Natural Resources to settle administrative enforcement actions through an Assurance of Discontinuance which may include a "contribution toward other projects related to the violation, which will enhance the natural resources of the area affected by the violation, or their use and enjoyment."

Penalties

Chapter 20: Environmental Administrative Penalty Rules allows for collection of penalties.

Data System Architecture/Reporting

As required by EPA, DEC reports the necessary compliance information into EPA's national data systems. RCRA program enters inspections and enforcement actions into RCRAInfo, the Air program enters their compliance information into the Air Facility System (AFS), and the Water program will begin entering their compliance and enforcement data into the Integrated Compliance Information System (ICIS) in 2013 through a batch upload process.

Field Tickets

Vermont's Environmental Enforcement Officers or EEOs have the authority to issue Vermont Civil Violation Complaints (tickets). The tickets are on the same form used for traffic offenses as well as by game wardens and police officers for fish and wildlife violations. Appeal of a ticket goes before the Judicial Bureau. Thus far the use of tickets has worked well for minor violations including open burning and solid waste dumping. The ticket process is efficient and does not necessitate the same level of involvement of enforcement attorney's limited resources as a non-ticket prosecution. This allows the attorneys to focus on the more serious violations handled through the administrative process. The schedule of fines imposed for these offenses, as set by the Judicial Bureau, runs from \$100 to \$500. For the calendar year 2010, 19 tickets were issued for a total of \$5,450 in fines.

In 2011, Vermont expanded the authority to issue tickets for violations of environmental laws, rules and permits. The new rule, which became effective in the spring of 2011 allows tickets to be issued in all media areas in which ANR has jurisdiction to take enforcement action. In total over 500 violations are listed for possible issuance of a ticket, with penalties ranging up to a maximum of \$3,000.¹

¹ **2010 REPORT TO THE LEGISLATURE REGARDING ACT 98 (1989) UNIFORM ENVIRONMENTAL ENFORCEMENT ACT** Agency of Natural Resources, Department of Environmental Conservation, Compliance & Enforcement Division

Appendix F: Correspondence

From: Dart, Denny
Sent: Thursday, May 16, 2013 3:35 PM
To: 'Kessler, Gary'; George.desch@state.vt.us; lynn.metcalfe@state.vt.us; 'mark.roy@state.vt.us'; LaFlamme, Pete; 'shepard.david@state.vt.us'; 'shepard.dave@state.vt.us'; 'Monks, Padraic'; Kelley, Ernie
Cc: Casella, Lucy; Rapp, Steve; Mohamoud, Abdi; O'Donnell, Mary Jane; Papetti, Lisa; Rota, Ken; Spejewski, Andrew; Silverman, Samuel; Studlien, Susan
Subject: RE: Vermont State Review Framework Report

Hello Gary, George, Lynn, Mark, Pete, Dave, Padraic and Ernie -

In the attached report, Region 1 has summarized findings and recommendations from our review of the Vermont Air, Water, and RCRA enforcement programs. We reviewed inspection and enforcement activity from federal fiscal year 2011 (October 1, 2010 through September 30, 2011.) Once you have had the opportunity to read, review and comment on the draft report, we propose a face to face meeting to answer your questions.

The Findings for each statutory program are divided into twelve elements, and each element has a section titled "State Response" where you can write a response that will become part of the published document. In addition, if you see errors, or want to make comments on the EPA portions of the document, please do so using the Change Tracker in Word that will mark changes in redline and strikeout. For any areas identified for improvement, we will work with you to address them in the most constructive manner possible.

To set up the meeting to discuss the draft report, please coordinate with Sam Silverman at 617-918-1731 or silverman.samuel@epa.gov.

Region 1 State Review Framework Team
Air SRF Round 3 review: Abdi Mohamoud and Steve Rapp
Water SRF Round 3 review: Andrew Spejewski and Denny Dart
RCRA SRF Round 3 review: Ken Rota and Mary Jane O'Donnell
SRF Round 3 coordination: Sam Silverman and Lucy Casella



Vermont Department of Environmental Conservation

Agency of Natural Resources

Commissioner's Office

One National Life Drive, Main 2 (phone) 802-828-1556
Montpelier, VT 05620-3520 (fax) 802-828-1551

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AUG 27 2013

August 22, 2013

OFFICE OF THE REGIONAL ADMINISTRATOR

Curt Spalding, Regional Administrator
U.S. Environmental Protection Agency, Region I
5 Post Office Square Suite 100
Boston, MA 02109-3912

RE: Vermont's Comments on the Draft State Review Framework Round 3 Report

Dear Administrator Spalding:

Enclosed please find the Vermont Department of Environmental Conservation's (DEC) comments on the May 15, 2013 draft State Review Framework (SRF) Round 3 Report for Federal Fiscal Year 2011. We understand that Vermont is the first state in Region I to be evaluated pursuant to the new SRF 3 guidelines and that during the evaluation process these guidelines were in a state of flux, and are still undergoing modification based on feedback EPA's Office of Enforcement & Compliance Assurance (OECA) has received from the Regions and states.

Vermont DEC appreciates the time and effort Region I staff expended in evaluating our delegated programs under the Clean Air Act, Clean Water Act/National Pollutant Discharge Elimination System, and Resource Conservation and Recovery Act. Vermont DEC is keenly aware of the burdensome nature of the ever-evolving SRF 3 review process, and thus we further appreciate the professionalism of your staff in working to complete this review.

Despite the hard work of Region I staff, Vermont DEC has a number of concerns with the SRF 3 process. Of greatest concern is OECA's failure to adequately differentiate between small and large states. The requirements of SRF 3 that were in effect during the review of Vermont's programs required that a fixed number of enforcement files be evaluated in each program. Because Vermont is a small state with a relatively small number of regulated facilities, and consequently a small number of enforcement actions against such facilities, the evaluation was inappropriately expanded to look at de minimus violations from non-regulated sources. A good example of this is in the Clean Air Act Program review where enforcement actions in small open trash burning cases were scrutinized. This is just one example of OECA forcing a one-size fits all approach to the SRF evaluation which skews the final results.

A second significant concern was the timing of this review during Federal Fiscal Year 2011. During August of 2011 Tropical Storm Irene struck Vermont resulting in devastating flooding that washed out roads, bridges, homes and offices. This was the worst flooding Vermont had experienced since the floods of 1927. The town of Waterbury was just one place that suffered significant damage. DEC offices were located in Waterbury, and as a result of the flooding DEC was permanently displaced from these offices. DEC records and equipment were destroyed by the floodwaters, and most DEC staff was unable to return to normal work duties until sometime in October. The inability of staff to access files and computers meant that scheduled inspections could not be done, and end of fiscal year closeouts by the delegated programs

To preserve, enhance, restore, and conserve Vermont's natural resources, and protect human health, for the benefit of this and future generations.

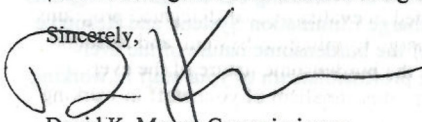
were not completed as they would be in a normal year. As a result of these extraordinary circumstances DEC requested that the SRF 3 review be postponed. The objective of the requested postponement was to provide the EPA Region I reviewers with a complete data set from a normal year that would most accurately reflected the high quality work done by DEC staff. DEC made this request to Region I staff who were inclined to grant an extension, but were overruled by EPA OECA Headquarters staff. Ultimately DEC went to OECA Headquarters staff to seek a postponement. In the end OECA denied DEC's request, and required Region I staff to complete the review as scheduled.

As EPA Region I staff is aware, a great deal of work is completed in the 4-6 weeks prior to the end of year closeout. In 2011 because of a natural disaster of a magnitude unseen in Vermont for nearly 100 years DEC was unable to do its normal closeout work. DEC appreciates Region I staff noting in the review that the evaluation was impacted by the flooding, it is DEC's position that many of the findings in the review do not reflect the work done by DEC programs in a normal year.

One area of criticism in the report relates to DEC staffing levels. Like the rest of the New England states Vermont was significantly impacted by the "Great Recession." As a consequence DEC experienced reductions in force (RIF) as well as freezes on hiring replacement staff due to retirements and departures. These impacts were still being felt during the Federal Fiscal Year 2011 evaluation period. More recently DEC has been able to refill some lost staff positions and as a result we expect to move closer to the staffing levels noted in the SRF Report.

Thank you for the opportunity to provide comments on the SRF report. DEC looks forward to working with EPA Region I staff on addressing our concerns noted above and in the enclosed response.

Sincerely,



David K. Mears, Commissioner
Vermont Department of Environmental Conservation

Curt,
Please thank
your staff for their hard
work on the report. We
appreciate the care and
renew and look forward
to collaborating on ways
to improve VT's
program.
Daniel