

State Program Review Framework Pilot Phase EXECUTIVE SUMMARY

Introduction

The EPA Office of Enforcement and Compliance Assurance (OECA), all ten EPA Regions, the Environmental Council of States (ECOS) Compliance Committee and state representatives have jointly developed a new method to assess state performance in the enforcement and compliance assurance program. In Region III the Maryland Department of the Environment (MDE) graciously agreed to pilot the State Program Review Framework. The Region would like to thank MDE for volunteering to participate in this review as well as acknowledge their cooperation in making this a success.

The purpose of the assessment is to provide a consistent mechanism for EPA Regions, together with their states, to ensure agreed upon minimum performance levels and provide a consistent level of environmental and public health protection across our Nation.

In short, the assessment consists of 13 questions comparing actual compliance and enforcement practices with U.S. EPA policies and guidance. The 13 evaluation areas posed by this framework are consistent with evaluation areas delineated in the 1986 guidance memorandum signed by Jim Barnes entitled "*Revised Policy Framework for State/EPA Enforcement Agreements.*" Additionally the framework utilizes existing program guidance, such as our EPA national enforcement response policies, compliance monitoring policies, and civil penalty policies or similar state policies (where in use and consistent with national policy) to evaluate state performance and to help guide our definitions of a minimum level of performance.

Overall Picture (2-3 key issues for RA/Director's attention)

Region III's evaluation of MDE's Air, RCRA and Water enforcement programs were conducted by staff from the Region's Air, RCRA and Water enforcement programs using the framework described above. In this pilot exercise, the 13th element of the framework was optional. MDE chose to conduct an audit of their compliance assistance program and has submitted a report on the effectiveness of this program.

**State Review Framework
Maryland Air Program**

Element 1 - The Degree to which a State program had completed the universe of planned inspections (addressing core requirements and federal, State, and regional priorities).

Clean Air Act Source Universe	Number of Sources in Universe in FY03
Universe of Major Sources (Title V)	159 ¹
Universe of Synthetic Minor 80% Sources	125
Universe of Synthetic Minor Sources	142
Total Number of Sources	308
Number of inspection files for review	15 + 3 additional major sources

Data Metrics

		National Average or Total	MD
Metric a	% CAA Major Full Compliance Evaluation (FCE) Coverage in last two complete fiscal years.	66%	100% ²
Metric b	% CAA Synthetic Minor 80% sources (SM-80) FCE Coverage in last five completed fiscal years. State.	51%	111/125=89%
Metric c	% Inspection coverage - Synthetic Minors - 5 years. State.	64%	123/142=87%
Metric d	% Review of Self-certifications completed.	74%	100%
Metric e	Number of facilities with unknown compliance status in US.	3,093	0

Findings:

¹Original metric listed 166 major sources, but this was based on the FY04 CMS. Actual universe in FY03 was 159.

²Original metric of 96.4 percent was based on comparing the FY04 CMS against FCEs completed in FY03. However, the FY04 universe includes seventeen new sources that were not listed in the FY03 CMS and excludes other sources that were listed in the FY03 CMS but not counted in the original metric. For example, three sources listed as “major” when EPA retrieved data for this metric from AFS subsequently were changed to minor class in FY04. Finally, one synthetic minor source was listed in AFS as not having been inspected in FY02 or ‘03, but MDE subsequently reported in AFS that an FCE had been performed there in FY02.

CMS commitments exceed national minimum suggested frequency of one FCE every two years for major sources, one FCE every five years for SM-80 sources, and one FCE every three years for mega-sites, i.e., MDE commits to complete an FCE at every major source once a year and at every 80-percent synthetic minor source (SM-80) every two years. MDE had no mega-sites in FY03.

All MDE's FCEs include on-site visits. This frequency well exceeds the minimum frequency that is recommended in the CMS of one on-site visit every five years, provided that the state may effectively complete an FCE using self-reported information.

Actual FCE coverage exceeds national average of 66.7 percent for major sources and 51.5 percent for SM-80 sources.

FCE coverage of 87 percent for all synthetic minor sources in Maryland exceeds national average of 64 percent.

Citation of information reviewed for this criterion: CAA Stationary Source Compliance Monitoring Strategy, April 25, 2001.

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

Clean Air Act Source Universe Information	Number of Sources in Universe in FY03
Full Compliance Evaluations	159 major + 111 SM-80 =270 FCEs
Partial Compliance Evaluations	NA
Total Number of Evaluations	270
Number of inspection files for review	15 + 3 additional major sources = 18

For most files reviewed, FCE reports are very well organized and comprehensive. For sources with Title V permits (one major source reviewed had still not been issued a Title V permit), each permit condition is delineated and evaluated. Title V annual certifications are either included with the FCE or the report references where the Title V certification review may be found. Every FCE report reviewed included documentation of Method 9 readings.

No summary of violations discovered was provided in any of the FY03 files reviewed. Where violations were found, the cover page of the report usually indicated a result code of "48" ("gather information"), but the reader must review the entire file to find the specific violation discovered.

The FCE report for one major source where a Title V permit had not yet been issued was notably less well organized than the other FCEs reviewed. Although an operating permit had been issued, the permit conditions were not listed and no enforcement history was found in the FCE

report.

Of the three FCE reports reviewed for synthetic minor sources the general and facility information was somewhat lacking at one source³.

Citation of information reviewed for this criterion: EPA reviewed

- S four HPV files,
- S four major source files where violations were found but the violation was not listed as an HPV,
- S one synthetic minor file where violations were found but the violation was not listed as an HPV,
- S two synthetic minor files where no violations were found, plus
- S three major source files where no violation was found.

For the most part, sources within each category were randomly selected. In addition to the above 15 files which were selected for review in accordance with the minimum State Review Framework Protocol, the Team reviewed FCEs for three more major sources where no violations were found. The Team opted to review these additional files to further check the comprehensiveness of MDE's FCE reports.

The Evaluation Team reviewed FCEs performed in FY03 as well as FCEs associated with the selected HPVs identified in FY03 (a few of these FCEs had been performed in FY02). Additionally, to evaluate timely and appropriate enforcement, FY04 files were reviewed where FCEs in FY03 resulted in violations being found.

Recommendations: Findings from inspections would be easier to identify if each evaluation report included a summary of violations found or a statement that no violations were observed. It is important to make the findings clear so that subsequent inspectors may be aware of previous problems found at a facility.

MDE should evaluate the codes entered as "results" into AFS when violations are discovered. Specifically, "gather information" is not a results code that indicates that a violation has occurred.

³ Duron, Inc.

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

Clean Air Act Source Universe Information	Number of Sources in Universe in FY03
Full Compliance Evaluations	159 major + 111 SM-80 = 270 FCEs
Partial Compliance Evaluations	NA
Total Number of Evaluations	270
Number of inspection files for review	15+3 additional major sources = 18

MDE reviewed all Title V certifications received in FY03.⁴ Results appear to be entered properly.

Results of all stack tests appear to be entered properly.

For all files reviewed by the Evaluation Team, the FCE reports were completed within 30 days after the actual inspection, based on comparing inspection dates and dates FCEs were entered into AFS.

From reading the FY03 FCE reports, one cannot identify when the report was finalized. MDE reported that the date the FCE is entered in AFS is the date the FCE report was completed. Nonetheless, in the opinion of the Evaluation Team, it is unreasonable to assume that data is immediately entered into AFS following a state determination that a report is final.

Citation of information reviewed for this criterion: EPA reviewed:

- ▶ four HPV files,
- ▶ five major source files where violations were found but the violations were not listed as HPVs,
- ▶ one synthetic minor source file where a violation was found but the violation was not listed as an HPV,
- ▶ two synthetic minor files where no violations were found, plus
- ▶ three major source files where no violation were found.

For the most part, sources were randomly selected. FCEs performed in FY03 were reviewed as well as FCEs associated with the four selected HPV

⁴ OTIS Management Report, dated 10/27/04, lists 116 Title V annual certifications received and 116 annual certifications reviewed by MDE in FY03.

files (two of these FCEs had been performed in FY02). Additionally, to evaluate timely and appropriate enforcement that may have continued into the next year, FY04 files were reviewed where FCEs in FY03 resulted in violations being found.

Recommendations: The Evaluation Team strongly recommends that MDE insert a date on the FCE report to indicate when the report became final. Beginning in 2004, MDE supervisors sign and date all evaluation reports. This new procedure is commendable because it better ensures and documents the supervisor’s role in MDE’s findings for each evaluation report, plus it shows when that determination was made. Documentation of these milestones is important because the CMS Policy establishes a timeline for completion of FCEs at major and SM-80 sources. Furthermore, the Timely & Appropriate Policy specifies a timeline for when enforcement actions should be taken to address HPVs. The new procedures are expected to better conform with those policies.

Element 4 - Degree to which violations are reported to EPA and national database in a timely manner. (e.g. significant noncompliance and high priority violations)

Clean Air Act Source Universe information	Number of Sources in Universe in FY03
New High Priority Violations	6 MDE-lead + 3 EPA-lead ⁵
Number of inspection files for review	18 files, including 4 HPV files + 6 non-HPV files where violations were found

		National Average	MD
Metric a	HPV Discovery Rate - (per PCE/FCE coverage at majors)	10.3%	9/159 = 5.8%
Metric b	HPV Discovery Rate (per facility universe - major)	5.4%	9/159 = 5.8%
Metric c	No activity indicator		6 MDE- lead HPVs
Metric d	Number of HPV determinations that are reported to EPA within 45 days		5 MDE-lead ⁶
Metric e	Number of HPV determinations that are accurately reported		6 MDE- lead

⁵ MDE Lead - Sherwin Williams, S&S Graphics, Covanta Power Pacific, Owens Corning/Trumbull Asphalt, R. Paul Smith Allegheny Energy, NASA
 EPA- Lead - Brown’s Station Road Landfill, R. Paul Smith Allegheny Energy, Mirant Morgantown

⁶ The date reported for one MDE-lead HPV is 57 days after Day 0.

Metric 4A - When comparing HPVs discovered to the major facility universe , the combined⁷ HPV Discovery Rate, 5.8 percent, is approximately equivalent to the national average of 5.4 percent, (i.e., 5.8 percent of all the major sources in Maryland were found to be HPVs in FY03).

Metric 4B - When comparing HPVs discovered to the number of FCEs completed (FCE coverage) at major sources in FY03, the combined HPV Discovery Rate is approximately one-half the national average of 10.3 percent. Because MDE completed FCEs at 100 percent of its major sources in FY03 and less than 50 percent of the FCEs were completed across the country that year, Maryland's metric appears to be half the national average. From this perspective, one may think that perhaps the additional resources that MDE devotes to FCEs does not produce sufficient results (i.e., more HPVs discovered). However, MDE managers have indicated that it is very possible that compliance has improved over the years due to MDE's frequent presence at its most significant emission sources.

MDE reported that the Manager of the Air Quality Compliance Program and the Division supervisors together review each violation to determine if any rise to the level of an HPV. Of the files reviewed where violations were found, all that appeared to rise to the level of an HPV had been reported to EPA.

In FY03, MDE reported its HPVs to EPA an average of seven days after Day 0. Reporting time ranged from negative nine days (where potential HPVs were reported before the final HPV determination was made) to 57⁸ days after Day 0.

In FY03, documentation was not found, in the files reviewed, of the date that the supervisor approved FCE findings nor the date that MDE internally determined that a potential HPV exists. This shortcoming appears to have been corrected in FY04 where FCE reports do include dated supervisors' signatures.

AFS records do not accurately depict compliance status related to HPVs nor to most other violations found in FY03.

Of the five major source non-HPV files reviewed which showed violations, no documentation was found documenting whether or when MDE evaluated the violation against HPV criteria.

Citation of information reviewed for this criterion: The Timely & Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs), June 23, 1999.

Recommendations:

MDE initiated new protocols in 2004 whereby supervisors sign and date FCE reports.

Compliance status for all sources that are in violation should be indicated in AFS as one of the

⁷Rate includes state-lead as well as EPA-lead HPVs

⁸ One source was reported more than 45 days after Day 0.

following: 1, 5, 6, 7, B, or W. Federal guidance is needed on how state and local agencies should report compliance in AFS when a source returns to compliance within 30 days. At a minimum, however, any violator that has not returned to compliance within 30 days should be listed in AFS as out of compliance.

MDE has agreed to change the compliance status for all future HPVs to a code or codes that indicates noncompliance until resolution of the HPV.

To ensure that all violations that rise to the level of an HPV are evaluated against the HPV criteria, MDE should better document HPV determinations whenever a violation is determined.

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

Clean Air Act Source Universe Information	Number of Enforcement Actions
State formal enforcement actions	27 total, of which 5 ⁹ address HPVs
State informal enforcement actions	NA
Total number of enforcement actions	27 total, of which 5 address HPVs
Number of enforcement files for review	10

All files reviewed documented facilities' return to compliance where violations were found.

Only one formal enforcement action included an action that was similar to a compliance schedule. This was to transfer NOx credits, which is considered similar to a penalty but not counted in the above metric. All other records that were reviewed showed that the source had returned to compliance before the formal enforcement action was finalized. In these instances where no legally enforceable compliance schedule was included, the Evaluation Team could not determine if MDE's enforcement responses caused the returns to compliance or whether the sources would have returned to compliance on their own. This is not viewed as a vulnerability, since a rapid return to compliance is the main objective of the compliance monitoring program, but more a problem related to measuring performance.

Citation of information reviewed for this criterion: EPA reviewed the following files that indicated violations:

S 4 HPV files

⁹ MDE addressed the following HPVs in FY03: Unilever, Constellation Gould, Covanta Power Pacific, Sherwin Williams, and R. Paul Smith Allegheny Power

- S 5 major source files, including one delisted HPV - non-HPV
- S 1 SM source file - non-HPV

Element 6 - The degree to which a state takes timely and appropriate enforcement actions, in accordance with policy related to specific media.

Clean Air Act Source Universe Information	Number of Enforcement Actions
State formal enforcement actions	5 HPVs addressed by MDE in FY03 ¹⁰
State informal enforcement actions	NA
Total number of enforcement actons	5 by MDE at HPVs
Number of enforcement files for review	10

Data Metric

		National Average	MD
Metric a	Timely action taken to address HPV Results in Declining Watch List facilities.	23.4%	No sources on Watch List ¹¹
Metric b	% of HPVs that were unaddressed as of 9/30/03 or were addressed in FY03 but had exceeded the 270-day timeliness threshold.	60%	50% combined, 50% state-only ¹²
Metric c	Percentage of HPVs addressed or resolved appropriately.		100% state-lead HPVs ¹³

¹⁰ Original metric lists 27 formal enforcement actions complete, which includes minor sources and other non-HPVs. However, the above chart focuses on HPVs, consistent with the T&A Policy.

¹¹ Original metric listed 7.1%, but the one Watch List facility was subsequently delisted as an HPV.

¹² Original metric listed 53%, but actual ratio for combined is 7/14 and for state-only is 4/8, as of 8/31/04.

¹³ All state-lead HPVs that were addressed in FY03 were addressed appropriatedly.

The universe of HPVs that were either addressed in FY03 or unaddressed as of 9/30/03¹⁴ were:

<u>MDE-lead</u>	<u>EPA-lead</u>
▶ Constellation Gould	▶ Brown's Station Road Landfill
▶ Covanta	▶ Mirant Chalk Point
▶ NASA	▶ Mirant Dickerson
▶ Unilever	▶ Mirant Morgantown (Day Zero
▶ Owens Corning Asphalt	5/20/02)
▶ S&S Graphics	▶ Mirant Morgantown (Day Zero
▶ Sherwin Williams	8/20/03)
▶ R. Paul Smith (Day Zero	▶ R. Paul Smith (Day Zero 12/20/02)
5/15/03)	

MDE addressed five HPVs in FY03.

Using the data of Watch List sources that were listed when the Watch List went into effect in 2004, only one Maryland source was listed as a Watch List source¹⁵ (see Metric 6a). That source¹⁶ was ultimately delisted as an HPV.

The percentage of Maryland HPVs that exceed the 270-day threshold (Metric 6b) is less than the national average. There were seven HPVs sources unaddressed for more than 270 days or were unaddressed as of 9/30/03. Please note that, in FY03, the HPV Policy specified that HPVs should be addressed within 270 days but the final Watch List did not exist. All but one EPA-lead source has been addressed.

One state-lead HPV was delisted from the HPV list in 2004 because questions arose regarding federal enforceability of Maryland's SIP as it pertained to the violation discovered. Because the HPV Policy specifies that HPVs must be violations that are federally-enforceable, EPA and MDE agreed that the HPV should be delisted. Nonetheless, both EPA and MDE continue to believe that the source violated the Clean Air Act, and MDE is pursuing legislative changes to ensure that the potential problem with Maryland's SIP is remedied.

Several files reviewed showed violations addressed informally rather than with formal enforcement actions. Out of 35 state NOV's issued to major and synthetic minor sources in

¹⁴Please note that one state-lead HPV, Mirant-Morgantown, and one federal-lead HPV, Reich's Ford Landfill, were included in the original metric, but these were recently delisted as HPVs. Also, the above lists does not include addressed but still unresolved HPVs.

¹⁵ Mirant-Morgantown, state-lead

¹⁶ Mirant-Morgantown, state-lead

FY03¹⁷, only seven formal actions followed those NOV's in FY03, and only three of these formal actions resulted in penalties¹⁸ (a fourth formal action resulted in NOx credit transfer and two other HPVs from violations discovered in prior years were addressed in FY03).

Of the six files reviewed that did not include HPVs, one¹⁹ violation appeared to rise to the level of an HPV but was not listed as an HPV. When the Team brought this file to the attention of MDE, MDE managers explained clearly why the source was not considered an HPV. Whereas the explanation provided was clear and convincing, no documentation of this decision was found in the files.

In one instance involving a synthetic minor source²⁰, one violation was noted in the FCE report but not cited in the NOV that was issued for other violations found during the inspection.

Citation of information reviewed for this criterion: The Timely & Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs), June 23, 1999.

¹⁷The 35 NOV's issued in FY03, according to AFS, are:

- | | |
|---|--|
| ▶ US Naval Academy - 5/8/03 | ▶ Flanigan P & Son - 11/4/02 |
| ▶ Renaissance Mark -9/24/03 | ▶ Duron - 2/20/03 |
| ▶ Naval Surface Warfare - 2/13/03 | ▶ Laidlaw - 6/12/03 |
| ▶ Mirant Morgantown - 12/03/02 | ▶ Fort George Meade - 9/11/03 |
| ▶ Eastalco Aluminum - 1/23/03 | ▶ Johns Hopkins University (24-510-01272) - 1/6/03 |
| ▶ Essroc Materials - 11/26/02, 3/27/03, 8/04/03 | ▶ Millenium Organic - 1/28/03 |
| ▶ Lehigh Portland Cement - 2/12/03 | ▶ Mercy Hospital - 12/04/02 |
| ▶ Mettiki Coal - 12/16/02 | ▶ LaSaffre Yeast - 11/01/02 |
| ▶ Owens Corning - 3/21/03 | ▶ Wheelabrator - 11/22/02 |
| ▶ Smith Lithograph - 9/29/03 | ▶ Johns Hopkins University (24-510-00077)- 7/24/03 |
| ▶ Covanta Power Pacific - 3/19/03 | ▶ Phoenix Services - 11/26/02, 3/7/03, 4/28/03 |
| ▶ NASA Space Flight Center - 2/20/03, 10/9/02 | ▶ Sherwin-Williams - 12/11/02 |
| ▶ S&S Graphics - 2/27/03 | ▶ Grace, W. R. - 8/22/03 |
| ▶ R. Paul Smith - 3/31/03 | ▶ Constellation Energy - 1/28/03 |
| ▶ Mack Trucks - 5/20/03 | ▶ Berlin Town Power Plant - 3/13/03 |

¹⁸ Covanta Order on 7/30/03 resulted in a penalty of \$18,000

R. Paul Smith Order on 6/17/03 resulted in no penalty (NOx credits were transferred in lieu of penalty.)

Berlin Town Power Plant Order on 6/19/03 has no penalties listed in AFS.

Constellation Energy NOV dated 1/28/03 has no penalties linked in AFS

Sherwin-Williams Order on 8/20/03 resulted in \$7,000 penalties.

Wheelabrator Order on 2/12/03 resulted in \$17,500 penalties.

Johns Hopkins Order on 8/29/03 has no penalties listed in AFS.

Duron Order on 1/7/03 has no penalties listed in AFS.

¹⁹ Mack Trucks

²⁰ Failure by Duron to calculate monthly premise-wide VOC and HAP emissions on raw material usage.

EPA reviewed the following files that indicated violations:

- S 4 HPV files
- S 5 major source files, including one delisted HPV - non-HPV
- S 1 SM source file - non-HPV.

Recommendations:

MDE should continue to pursue legislative changes needed to ensure that the authority resides in the MDE to enforce NSR violations, and with federal approval, so that EPA may enforce NSR violations in Maryland. Once Maryland’s statutory authority is clarified regarding NSR, Maryland should amend its SIP accordingly and EPA should propose approval (if appropriate) of Maryland’s revised SIP.

MDE should consider procedures to ensure that all violations are reviewed to determine if they meet HPV criteria and to document MDE’s HPV determinations for all major and SM found to be in violation.

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

Clean Air Act Source Universe Information	Number of Enforcement Actions
State formal enforcement actions	9 at major and SM sources ²¹
State informal enforcement actions	not reported in AFS
Total number of enforcement actions	9
Number of enforcement files for review	10

Metric a	Percentage of formal enforcement actions that include calculation for gravity and economic benefit.	100%
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All four files reviewed, where penalties were assessed as part of a formal enforcement action, included worksheets that documented initial penalty calculations. The worksheets are considered enforcement confidential and therefore are not available to the public.

²¹ Covanta, Sherwin-Williams, Wheelabrator, R. Paul Smith, Unilever, Constellation Gould, Berlin Town Power, Johns Hopkins, Duron. Original metric lists 27, but this value includes minor sources.

MDE should be recognized for its efforts to document penalty assessments, and especially to include economic benefit in its draft worksheets. Even where NOx allowances were transferred in lieu of a penalty for one HPV reviewed, MDE ran the BEN model. MDE's efforts to be consistent with EPA's Penalty Policy by calculating economic benefit is particularly notable in light of statutory limitations in MDE's authority to consider economic benefit in assessing penalties.

The basis for the penalty figures in some of the worksheets did not appear to be clear to the reviewers. However, once MDE managers explained how these worksheets were completed, the rationale for the figures in the worksheets was much more clear. Improved documentation of initial penalty calculations would improve MDE's accountability that penalties are being assessed fairly and consistently.

MDE's authority to include economic benefit in its penalty assessments is limited by Maryland law. Environment Article, § 2-610.1, Annotated Code of Maryland authorizes MDE to assess penalties in consideration of seven specific factors, none of which includes the economic benefit of noncompliance.

In all four files reviewed where penalties were assessed, the economic benefit portion of the assessed penalty was a notably small percentage of the overall assessed penalty. Specifically, the highest economic benefit compared to the overall assessed penalty was 1.6 percent²². Also, in one file, the economic benefit shown on the worksheet was about 25 percent less than that documented in a separate "Ben Calculations Assumptions" page that was in the file. Whereas the Evaluation Team did not rerun the BEN model to confirm the results, it is possible that the figures entered into the BEN model are too low, resulting in a low final economic benefit output from BEN.

Citation of information reviewed for this criterion:

- EPA Clean Air Act Stationary Source Civil Penalty Policy (1991)
- Maryland Department of Environment Air and Radiation Management Administration Enforcement Response Plan (April 1, 1994)
- Md. Code Ann., §2-610.1 (1991) (Civil Fines and Penalties)
- The Timely & Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs), June 23, 1999.
- See #6, above, for a description of files reviewed that indicated violations.

Recommendations:

MDE's authority assessing civil penalties should be broadened to consider economic benefit. Since Maryland law specifically sets forth the factors that may be considered in assessing civil

²² Penalties ranged from \$42 compared to a total assessed penalty of \$54,042 (.1 percent) to \$1530 compared to a total assessed penalty of \$96,530 (1.6 percent)

penalties, implementation of this recommendation may warrant state legislation.

MDE should identify why the economic benefit component of penalties assessed is so low relative to the total penalty. Specifically, MDE should look at figures input to the BEN model to determine if the methodology employed biases the economic benefit to be low.

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

Clean Air Act Source Universe Information	Number of Enforcement Actions
State formal enforcement actions	27 total, 9 at major and SM sources
State informal enforcement actions	not reported
Total number of enforcement actions	27 total, 9 at major and SM sources
Number of enforcement files for review	Clean Air Act Source Universe Information

		National Average or Total	MD
Metric a	Penalties Normally Included with Formal Enforcement Actions at HPVs	76.8%	80% ²³
Metric b	No activity indicator - actions	5 states had no EAs	27 EAs
Metric c	No activity indicator - penalties	\$53,437,499	\$160,250
Metric d	Number of final enforcement settlements using appropriate penalties.	-	All 5 state-lead HPVs

Four out of five of MDE's HPV's addressed in FY03 included penalties, which exceeds the national average of 76.8 percent. MDE's fifth HPV was addressed by transfer of NOx allowances valued at \$50,000. MDE's files show that MDE did calculate the economic value of the transfer, but AFS does not provide a field where this type of economic value may be reported.

Where penalties are assessed, initial penalty calculations are documented in the files reviewed (see #7, above). Nonetheless, documentation of the basis for deriving final penalties was found in none of the files.

Citation of information reviewed for this criterion:

- ▶ EPA Clean Air Act Stationary Source Civil Penalty Policy (1991)
- ▶ Maryland Department of Environment Air and Radiation Management Administration Enforcement Response Plan (April 1, 1994)
- ▶ Md. Code Ann., §2-610.1 (1991) (Civil Fines and Penalties)

²³Original metric for 8a was 62.5%, but this was incorrect.

- ▶ The Timely & Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs), June 23, 1999.
- ▶ See #6, above, for a description of files reviewed that indicated violations.

Recommendations:

EPA’s 2003 draft National Guidance for Reporting Penalty to AFS should be revised as soon as possible. One issue that should be considered in the next revision is whether changes to AFS are viable which would enable a state to report the economic benefit of transferring NOx allowances, as well as Supplemental Environmental Projects.

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

Clean Air Act Source Universe Information	Number of Agreements
Performance Partnership Agreements	NA
Performance Partnership Grants	NA
PPA/PPGs	NA
Categorical Grants (SEAs)	1 STAG Grant under CAA §105
Other applicable agreements (enforcement agreements, etc.)	NA
Total number of agreements	1
Number of agreements reviewed	1

Metric a	State agreements (PPA/PPG/SEA, etc.) contain enforcement and compliance commitments that are met.	All compliance monitoring and enforcement commitments were accomplished.
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MDE’s FY03 § 105 grant lists the following compliance monitoring and enforcement commitments:

- S By 11/30/02, identify in AFS all sources to be inspected
- S Submit by 7/1/03 a Two-Year Compliance Monitoring Plan
- S Submit by 4/30/03 and 10/29/03 a Semi-Annual Report

- S Report specified data elements into AFS within 30 days of completion
- S Participate in quarterly T&A conference calls
- S Identify to EPA all sources subject to the T&A Policy
- S Provide copies of noncompliance determinations for major sources and SM sources identified as HPVs and follow-up enforcement actions, penalty amounts and dates paid
- S Resolve actions consistent with the T&A Policy.

EPA's Mid-Year Report indicates that MDE's success in being one of the first states to link HPVs in AFS demonstrated an improvement in efficiency in maintaining AFS and in ensuring that the data in AFS is current. The Report further indicates that MDE was successful in addressing HPVs in accordance with the timelines set forth in the T&A Policy, and sometimes with even shorter time frames. MDE met all its inspection and reporting commitments.

Citation of information reviewed for this criterion:

- ▶ MDE's Section 105 grant
- ▶ EPA's Section 105 Mid-Year Grant Report for FY03 (compliance monitoring and enforcement portions only)
- ▶ Grant monitoring files maintained by the EPA State Liaison Officer.

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

Clean Air Act Source Universe Information	Number of Sources in Universe
Full Compliance Evaluations	234
Total Number of Evaluations	234
Number of inspection files for review	18

Data Metric

Metric a	HPV being entered in a timely manner (normally 45 days from inspection/file review).	Very timely for state-lead HPVs
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File Review Metric

Metric r	Regions should evaluate what is maintained in AFS by the State and ensure that all minimum data required fields are properly tracked and entered according to accepted schedules.	All state FCEs are entered within 45 days
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Minimum Data Requirements represent the minimum amount of data that EPA believes is necessary to manage the national air stationary source compliance monitoring and enforcement program. FCEs, results of stack tests, results of Title V annual certification reviews, and compliance status are some examples of the 26 Minimum Data Requirements.

For all sources in AFS that were reviewed, MDE entered all FCEs within 45 days of completion of the FCE.

In one instance where a series of PCEs comprised an FCE, the first PCE conducted during the CMS year was listed as an FCE, instead of the last PCE. Thus, the FCE is listed in AFS many months before the last PCE that comprised the FCE was completed.

Initially, Metric 1 indicated that 21 sources had not been inspected in accordance with the FY03 CMS Plan. EPA then used AFS to identify the dates these FCEs were conducted to the dates the FCEs were entered into AFS. Also, one file was elected for a closer analysis because the original FCE file provided to EPA appeared to be missing a lot of information. For that file, EPA compared the dates of PCEs and FCEs in AFS to the actual dates of the PCEs and FCEs.

Recommendations: When several PCEs together comprise one FCE, MDE should enter the final PCE for the CMS year (not the first PCE) in AFS as an FCE. Except for the last PCE (which should be listed as an FCE), all PCEs that comprise the FCE should be entered into AFS as PCEs so that AFS may accurately show state efforts to comply with the CMS Policy. Please note that entry of PCEs into AFS is not a Minimum Data Requirement at this time and further guidance is needed from EPA on exactly what types of activities should be input as PCEs.

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

Clean Air Act Source Universe Information	Number of Sources in Universe
Full Compliance Evaluations	234
Partial Compliance Evaluations	not reported
Total Number of Evaluations	234
Number of inspection files for review	18

Data Metric

Metric a	Response to FS data errors from Integrated Error Correction Process (IECP) averages less than 60 days	
Metric b	Violation/noncompliance data are accurate. Major sources only.	17 sources with HPVs ²⁴ /6 listed in noncompliance. Most violators are not listed as out of compliance
Metric c	Stack Test Results	100%

File Review Metric

Metric d	Accuracy of minimum data requirements	6 out of 18 files reviewed and compared to AFS showed minor errors in AFS
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Most of the 26 Minimum Data Requirements for each source were observed to be accurate in AFS, when compared against the files and as the metrics from AFS were analyzed. Most errors that were found through file review were minor errors and possibly not errors at all.

Results of all 72 stack tests reviewed in FY03 appear to be entered accurately.

Seventeen major sources were unresolved HPVs for some period in FY03 but only five HPVs and one non-HPV are listed in the metric as out of compliance. Of those five HPVs, three²⁵ are federal-lead. Thus, only two major sources with state-lead HPVs in 2003 were listed in AFS²⁶ as out of compliance. EPA's Guidance very clearly states that all HPVs should be listed in AFS as out of compliance until the HPV is resolved. Neither of the two state-lead HPVs listed in AFS as out of compliance in FY03 were assigned "noncompliance" codes for the entire period that the source was an HPV.

²⁴Original metric lists 18 sources with HPVs, but one federal-lead HPV on that list was subsequently delisted.

²⁵Mirant Chalk Point, Mirant Morgantown, and Mirant Dickerson. Two additional federal-lead HPVs, Reich's Ford Landfill and Brown Station Road Landfill, should have been listed in noncompliance in 2003 but were not because the HPV was not identified until 9/04 or later. Reich's Ford was subsequently delisted.

²⁶NASA and R. Paul Smith

Only one source²⁷ that is not an HPV is listed out of compliance in 2003, even though MDE issued 25 NOV^s²⁸ to a total of 21 major and/or synthetic minor sources that were not HPVs in 2003.

Whereas “compliance status” (discussed above) is a Minimum Data Requirement, entry into AFS of the data element entitled “results” for each FCE and PCE is not a Minimum Data Requirement. Nonetheless, Region III encourages its states to enter a results code for each inspection entered into AFS. In two instances²⁹ where MDE issued NOV^s as a result of PCEs performed, the results of those PCEs are listed as “gathering information” instead of with a result code that indicates that a violation was discovered. One of these two violations became an HPV and the other one, while not an HPV, is considered a substantial violation. Please note that “compliance status” appears in AFS to be correct for both of these sources during the periods covered by the NOV^s.

In some instances where several PCEs comprised an FCE, it appears that MDE listed the date of the FCE as the date of the first PCE, rather than the final PCE that makes the FCE “complete,” as prescribed in the CMS Policy.

Results of FCEs at many Area MACT Sources were entered, in FY03, as “gathering information.”³⁰ When EPA inquired about the use of this code, MDE responded that this code was used when any kind of problem was found during an FCE at an Area Source, rather than using a results code that indicates a violation. Consequently, the compliance rate generated from

²⁷ AES Warrior Run

²⁸ MDE issued NOV^s for the major and synthetic minor sources listed below, excluding HPVs listed in 2003.

US Naval Academy - 5/8/03	Renaissance Mark - 9/24/03
Naval Surface Warfare Center - 2/13/03	Flanigan & Son - 11/4/02
Essroc Materials - 11/26/02, 3/27/03, 8/4/03	Duron - 2/20/03
Lehigh Portland Cement - 2/12/03	Mettiki Coal Corporation - 12/16/02
Smith Lithograph - 9/29/03	Laidlaw - 6/12/03
Mack Trucks - 5/20/03	Berlin Town Power Plant - 3/13/03
Constellation Energy - Gould 1/28/03	WR Grace - 8/22/03
Johns Hopkins University - 7/24/03	Wheelabrator Baltimore - 11/22/02
LeSaffre Yeast - 11/1/02	Mercy Hospital - 12/4/02
Johns Hopkins University - 1/6/03	Fort George Meade - 9/11/03
Phoenix Services Company - 11/26/02, 3/7/03, 4/28/03	

²⁹ R. Paul Smith Allegheny Energy, Mirant Morgantown, and ISG

³⁰ Results code “48”

AFS for Area MACT Sources is not precise.

In March of 2002, Region III accepted the argument put forward by MDE, that their “*Notice of Proposed Penalty*” was equivalent to an addressing action in AFS. This argument was accepted and this procedure was followed throughout all of FY03. It wasn’t until August of 2004 that Region III reexamined the definition of an “addressing action” for the State of Maryland and concluded – after consultation with EPA headquarters – that its earlier acceptance of MDE’s *Notice of Proposed Penalty* as a formal addressing action was less than precise. Consequently, Region III reversed its earlier position and advised MDE that their “*Notice of Assessed Penalty*” must be substituted as the formal addressing action. (All “*Notices of Proposed Penalty*” issued by MDE are followed by a “*Notice of Assessed Penalty*.”) State officials accepted the FY04 interpretation and have since changed the manner in determining the addressing date. Consequently, the timeliness of addressing actions in FY03 are actually longer than originally reported in AFS. Since Region III was in error in accepting the position that MDE had been advancing in March of 2002, and since the issue has since been corrected, Region III will not attempt to go back in history and make changes to the actual addressing dates for these 17 facilities.

When penalties are negotiated and reduced from the original assessed amounts, MDE reported that the assessed penalty is changed in AFS to the collected penalty. This approach is not consistent with the guidance provided from Region III. Region III has regional fields available, and has required these be completed as part of the Section 105 grant, to enter the original (assessed) penalty and then the penalty collected. However, it should be noted that the MDR for “penalties” only includes the amount assessed and not the amount collected.

One of the four HPV files reviewed³¹ included an assessed penalty of \$28,000, whereas the assessed penalty amount in AFS was listed as \$21,500

The date of one NOV listed in AFS³² appeared to be inaccurate.

One PCE³³ performed as a follow-up inspection to verify return to compliance is not listed in AFS. While entry of PCEs is not a Minimum Data Requirement at this time, EPA has proposed that PCEs become a Minimum Data Requirement in the forthcoming Information Collection Request renewal.

³¹ Unilever

³² Sherwin-Williams NOV dated 1/3/03 is listed in AFS as issued 12/11/02.

³³ Method 9 observation conducted on 12/16/02 at Wheelabrator.

One PCE³⁴ listed in AFS was not found in the files provided for that source.

The addresses for three sources³⁵ in AFS did not match those in the files.

The facility name for one source³⁶ in AFS did not match that in the file.

Citation of information reviewed for this criterion: EPA reviewed the following files that indicated violations:

- < 4 HPV files
- < 5 major source files, including one delisted HPV - non-HPV
- < 1 SM source file - non-HPV.

For the metric data, EPA reviewed the following in AFS for FY2003:

- < total HPVs,
- < compliance data for all sources
- < NOVs issued

Recommendations:

Compliance status is a minimum data requirement. MDE should enter into AFS a code which indicates noncompliance for all violating sources and maintain that facility as out of compliance until the violation is resolved. Once a source has agreed to a compliance schedule and is complying with that schedule, MDE may enter a compliance status of "5" which means the source is meeting its compliance schedule.

Entry of Results of FCEs into AFS is not a minimum data requirement³⁷. However, Region III recommends that MDE use the Results data element in AFS to document the results of FCEs, to help ensure that enforcement is timely and appropriate. Region III further recommends that MDE evaluate the results codes that it has been using, at major, synthetic minor, and area

³⁴ "Stage II Leak & Blockage" dated 10/3/02 at International Steel Group

³⁵-AFS lists the city for ISG as Baltimore, whereas the file lists the city name as Sparrows Point.

- AFS lists the address for P. Flanigan & Sons as that which appears to be the main office rather than the actual location of the plant.
- AFS lists the city for Schmidt Baking as Fullerton, whereas the file lists the city name as Baltimore.

³⁶ AFS lists the file named "Ogden Power Pacific" as "Covanta Power Pacific, Inc."

³⁷MDRs do include results for stack tests and Title V certification reviews.

sources in recent years to ensure that violations discovered are reported to Region III as appropriate.

MDE should list the last PCE, in a series of PCEs that comprise and FCE, as the FCE.

If violations are found during a PCE , an FCE, or an off-site file review, compliance status should be changed in AFS to reflect that a violation was found. In that instance, compliance status should be changed to “out of compliance” from the date of the violation discovery to the date returned to compliance.

As agreed recently between EPA and MDE, Maryland’s Notice of Assessed Penalty will be used as the “addressing action” instead of Maryland’s Notice of Proposed Penalty. Maryland’s Notice of Assessed Penalty is equivalent to a State Administrative Order as described in the Timely and Appropriate Policy.

It is likely that the problem related to MDE’s entry of the penalty amount that is associated with the Notice of Proposed Penalty will be resolved by MDE’s use of Notice of Assessed Penalty as the addressing action.

EPA’s Draft Penalty Guidance, dated June 24, 2003, should be revised and finalized to provide clear advice on how appealed penalties should be reported, which would ensure that states are consistently entering assessed penalty amounts into AFS.

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

Clean Air Act Source Universe	Number of Sources in Universe
Full Compliance Evaluations	234
Partial Compliance Evaluations	not reported
Total Number of Evaluations	234
Number of inspection files for review	18

Data Metrics

Metric a	Title V universe (permit in place or application received) is reflected in AFS.	167
Metric b	State agrees with facility count from AFS/OTIS for Major, SM-80, SM, NESHAP minor facilities	315 -state agrees
Metric c	Subprogram universe is accurate in AFS (MACT, NSR, etc.).	-
Metric d	Inspection Counts Complete	234

Metric e	Violation Counts Complete	7
Metric f	Notice of Violation Counts Complete	233 - all sources; 35 major and SM sources
Metric g	Unresolved HPV Counts Complete A+SM sources	21 ³⁸ HPVs, 19 sources

³⁸Original metric was 20 HPVs, but two HPVs were deleted since the data was retrieved, and three additional HPVs were not included in the original metric because they were at facilities already listed as HPVs.

Metric h	Formal Action Counts Complete	27, 5 @ HPVs
Metric i	Assessed Penalties Complete	5 out of 6 HPVs addressed had penalties ³⁹
Metric j	CMS Frequency Universe	3 major sources w/o CMS code

All Minimum Data Requirements entered by MDE appear to be complete. Results for all stack tests and annual certification reviews appear to be complete. In addition, many data elements that are not Minimum Data Requirements appear to be complete for Maryland. This is likely because MDE is a direct user of AFS and uses AFS as its primary air compliance monitoring tracking

³⁹Original metric lists 12 “actions with penalties” totalling \$160,250. However, the number presented in the above table refers only to HPVs, since that is the focus of the T&A Policy. Additionally, most dollar amounts listed in the metric do not reflect actual penalties assessed. Dollar amounts actually assessed are as follows:

- Unilever - \$8600
- Constellation Gould - \$30,000
- Covanta Power Pacific - \$18,000
- Sherwin Williams - \$7,000
- R. Paul Smith - 0 penalty but NOx credit transfer valued at \$50,000

system.

Compliance status is inaccurate and misleading, as discussed in #11.

Results of state FCEs at major and synthetic minor sources listed in AFS as completed in FY03 showed only two FCEs to have resulted in violations. MDE uses certain results codes that the Region may not be aware indicate that a violation was found (e.g., Code “67” for “AMA 19 issued”), so when the Region analyzes inspection results, the discovery of a violation may not be counted in those instances. Since MDE issued 35 NOVs at major and synthetic minor sources and a total of 15 major and synthetic minor sources were listed as state-lead HPVs at any point in FY03 (metric 12g), it appears that MDE underreported results that indicated discovery of a violation. Please note that, while entry into AFS of completion of FCEs is MDR, entry of results of FCEs is not⁴⁰.

Area MACT sources are not included in the FY03 CMS. The FY03 Section 105 grant requires that 20 percent of the identified universe of Area MACT Sources be included in the CMS and inspected each year. Although MDE did attempt, with limited success, to actually inspect 20 percent of its Area MACT Sources, no inspection plans for these minor sources were included in MDE’s FY03 or FY04 CMS Plans.

Citation of information reviewed for this criterion:

- CAA Stationary Source Compliance Monitoring Strategy, April 25, 2001
 - MDE’s Section 105 grant
- EPA’s Section 105 Mid-Year Grant Report for FY03 (compliance monitoring and enforcement portions only)
- Grant monitoring files maintained by the EPA State Liaison Officer.

Recommendations: For FY05, MDE should include, in its CMS, the Area MACT Sources that are planned to be inspected as part of the Region III Area Source MACT Strategy.

⁴⁰ MDRs do include results of stack tests and annual Title V certification reviews.

Maryland Compliance & Enforcement Evaluation (Resource Conversation and Recovery Act (RCRA) Program Media)

Introduction

The RCRA portion of the evaluation entailed reviewing 26 inspection/enforcement case files, primarily from federal fiscal year 2003. Region 3's RCRA Enforcement & Compliance Branch initially gathered data from RCRARep and Region VI's National Implementer and Shared Reports (accessed through RCRAInfo) to provide state specific information. EPA Headquarters later supplied data from IDEA, RCRAInfo, and OTIS for additional state specific and national average information. The information from the file reviews and data pulls were used to answer specific questions covering 12 topics or element areas regarding State inspection implementation; State enforcement activity; State Performance Partnership Agreement, and data integrity.

EPA Region 3 selected the following types of facilities for review: 12 Large Quantity Generators (LQGs) (one was also a storage facility and one was also a transporter); 9 Small Quantity Generators (SQGs); 3 Conditionally Exempt Small Quantity Generators (CESQGs); 1 Treatment, Storage and Disposal Facility; and one facility with no RCRA generator status. Table 1 lists the facility files reviewed and their status.

The files reviewed were not randomly selected. The facilities files selected for review included the universe of Significant Non-Compliers (SNCs) identified by the State for FY03; facilities in which the State had taken enforcement action; facilities in which multiple inspections were performed in FY03; and facilities in which the State had issued a penalty. After these facilities were identified (there were approximately 20 facilities which matched this criteria), the remaining facilities were randomly selected facilities inspected by the State during FY03. Therefore, a high percentage of the facility files that were selected for the review had a history of violations and would not be considered a "neutral" pull of the universe of Maryland facilities; further, findings cannot be extrapolated to the State program as a whole.

A separate review of the accuracy and operation of the different data retrieval mechanisms may be warranted. Upon comparing the data supplied from the various data retrieval mechanisms, many of the elements had discrepancies in value. Some of the discrepancies were small, only slight variations. This may have been caused from new data being entered since a previous pull. However, some of the differences were considerable. It is very challenging, if not impossible, to evaluate a State Program when the information, which is from the same database with different data retrieval mechanisms, does not appear consistent and accurate. For example, to determine if Maryland is inspecting 20% of its LQGs annually, it is necessary to have the current number of LQGs in the State. Based on data from both RCRARep and HQ, the results would vary significantly (RCRARep – 529 LQGs; OTIS & IDEA – 926 LQGs). Further examples of discrepancies between the different data retrieval systems are in Table 2. This is not meant to be an indictment of Maryland's RCRAInfo data quality, but rather, a concern about the ability to accurately generate reports from the national data systems with the

tools currently available.

Comparison of Selected Data from Different Data Retrieval Mechanisms

	RCRARep	Region VI's National Implementer and Shared Reports	HQ (OTIS, IDEA, or RCRAInfo)
Number of Active Facilities			933
Number of LQGs	529 (Run 6/30/04)		926
Number of SQGs	4792 (Run 6/30/04)		58
Number of Facilities Inspected/Evaluated from October 2002 – September 2003 (Combined)	151 (Run 6/17/04)	628 (Run 9/29/04)	151
Number of SNYs from October 2002 – September 2	2 (Run 6/21/04)	2 (Run 8/10/04)	0
Number of State Enforcement Actions	8 (Run 6/21/04)	0 (Run 9/29/04)	8
Total Assessed Penalties	\$21,000 (Run 7/2/04)	\$0 (Run 9/29/04)	\$0

Maryland Compliance & Enforcement Evaluation - RCRA

Element 1 - The Degree to which a State program had completed the universe of planned inspections (addressing core requirements and federal, State, and regional priorities).

Core Program - Inspect all active Treatment, Storage, and Disposal Facilities (TSDs) every two years		
Number of active TSDs	Number inspections FY02 - FY03	Percentage of active TSDs inspected FY02 - FY03
17	16	94%
Core Program - Inspect 20% of the Large Quantity Generators (LQGs) annually		
Number of active LQGs	Number inspected in FY03	Percentage of LQGs inspected FY03

529	133	25%
Core Program - Inspect all active Large Quantity Generators (LQGs) every five years		
Number of active LQGs	Number inspected FY99 - FY03	Percentage of active LQGs inspected FY99 - FY03
529	526	99.5%

See discussion under Element 9 regarding the degree to which the State met their grant work plan commitments.

Element 2 - Degree to which inspection reports and compliance reviews document

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inspection findings, including accurate description of what was observed to sufficiently identify violations.

Section VI.C.2 of the Maryland Program Description (May 31, 2004) states:

“While conducting site inspections, the enforcement officials use different checklists, including TSD facilities check list and Land Disposal Restriction checklist. Along with the checklist, the inspectors complete a Report of Observations, a Pollution Reduction Compliance report and a Site Complaint for if any violation is observed. A written inspection report will also be prepared to summarize inspection findings.”

Eighteen of 24 files reviewed contained adequate documentation of findings in the

inspection reports. However, in five instances this was not the case. In two of these cases, we could not find a written inspection report. In one case, there seems to be some inconsistency regarding how violations are characterized in the inspection report, although they all appear to be documented. In one instance, we found inconsistencies between field notes, inspection checklist, and the narrative regarding violations. In one instance, it appears that violations which were observed were not documented in the report as either violations or areas of concern. (In some instances, there was more than one inspection report reviewed in a given file, which is why we are reporting on files and not inspection reports.)

Files containing adequate documentation	19
Files not containing a written inspection report	2
Files containing inconsistencies between field notes, inspection checklist, and narrative (written inspection report)	3
Total number of files reviewed	24

Facility #3 is a non-generator of hazardous waste who obtained a provisional ID number for a one-time shipment of PCB waste. A review of the data system and the file indicate that an inspection was performed by the State in April, 2003. However, there are no field notes, inspection report, or other documentation available related to this inspection. MDE responded that it is possible that this inspection was entered in error into the RCRAInfo database.

MDE accompanied EPA on an inspection of Facility #5 in March, 2002. No State inspection report or associated field notes were found in the file. MDE responded that, as this was an EPA lead inspection, MDE inspectors may not always generate these documents. However, in this case, the inspector's review of the file indicated that an inspection report was documented. In addition, an Evaluation, Violation and Enforcement form was documented which listed the type of inspection as a CEI (should have been OTH).

Facility #22 was inspected in April, 2003, in response to a citizen complaint of waste discharge to a ditch. While the complaint could not be substantiated, the inspection report goes into some detail about the requirements for container storage, satellite accumulation, and allowable storage times. While it appears that these were violations (or potential violations) discovered during the inspection, the narrative never specifically identified that waste was mismanaged, or the specifics of the mismanagement, either as a violation or area of concern. MDE responded that the Enforcement Division maintains that no violations were discovered during this inspection.

Facility #12 was inspected in July, 2002. Four problems were noted during the

inspection, although only one of these was listed in the “Violations and Enforcement” section of the inspection report; the other three were listed in the “Comments” section. As they all appear to be violations (waste not labeled as “Hazardous Waste”, greater than 55 gallons in the satellite accumulation area, and the condition of secondary containment not described on the weekly inspection logs), it’s not clear why they were not listed in the enforcement section. MDE responded that the Enforcement Division maintains that only one violation was discovered during this inspection.

Facility #14 was inspected in January, 2003. The reviewers found the narrative inspection report to be unclear, and not consistent with the inspection checklist. For instance, the narrative indicates that a manifest was missing signature and data, but the checklist indicates that manifests are satisfactory. The checklist identifies training as a problem, field notes indicate that training records for one employee was reviewed but does not indicate if a problem was observed, and the narrative doesn’t address the issue at all. A follow up inspection in March is documented in the file by a three sentence report indicating that the facility returned to compliance; it’s not clear that a site visit or inspection was performed at that time. MDE responded that the Enforcement Division maintains that manifests were satisfactory, although one was missing a signature. As a general comment, discrepancies between checklists and the narrative portion of the inspection report may be due to the general or non-specific nature of the checklist. For example, Section F.1 asks if the owner maintains personnel training records. Specific details in the narrative might be interpreted as violations, e.g., missing information or outdated information in one of the records.

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

All available information indicates that inspection reports are generally completed in a very timely fashion, often within a day of the field work. Inspection reports are not dated as to when they are written (and contain only the date of the inspection, i.e., field work), but notations by the supervisor reviewer, or a date the report was faxed to the facility, demonstrate

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their timely preparation. Where we could determine when the inspection report was prepared, 18 of 21 reports were prepared in a timely fashion.

In those three instances where we did not observe the timely preparation of the inspection report, the issue appears less that the report was prepared late, but rather than no report was prepared at all. This seems to happen in somewhat unusual circumstances, such as in Facility #5, which was an EPA lead inspection. MDE accompanied EPA on the inspection, but appears not to have written an inspection report. In another instance, Facility #3, a CEI appears to have been performed in April, 2003, but no notes were observed in the file, which did contain a RCRAInfo form. This facility obtained a provisional ID number for a one-time shipment of PCB waste, but otherwise the site is not a generator of hazardous waste. For Facility #2, two inspection reports were prepared, but there was a third inspection for which no

report was prepared. MDE Responded that the Enforcement Division maintains that no MDE “report” is required with an EPA “lead” inspection.

Number of files reviewed	Number where inspections reports were completed in a timely manner	Percentage where inspection reports were completed in a timely manner
21	18	86%

Element 4 - Degree to which violations are reported to EPA national database in a timely manner.

Maryland performed 160 inspections in FY03, with two (2) facilities identified in SNC status based on violations discovered during those inspections, for a rate of 0.0125 new SNCs per facility inspected. The national information shows 21,800 inspections performed by all States in FY03, and 501 new SNCs identified, for a rate of 0.02 SNCs per facility inspected.

	Maryland	National
SNCs identified in FY03	2	501
Inspections conducted in FY03	160	21,800
SNC per facility inspected	0.0125	0.02

Identification of violations in RCRAInfo:

Of the files reviewed where violations were identified, for 18 facilities the violations were accurately reflected in RCRAInfo, however, for 5 facilities this does not appear to be the

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case. In four of these instances, it appears that some, but not all, of the violations identified during the inspection were entered into RCRAInfo. In one instance, no violations were entered into the system, although it appears that the facility was in noncompliance. The reviewers acknowledge that instances of apparent violation which are observed in the field may in fact be compliant, after further investigation and information gathering, review of applicable regulations, exemptions, and exclusions related to the definition of hazardous waste, determination of generator status, and other relevant factors specific to RCRA regulations and related interpretive guidance.

Facilities with violations accurately reflected in RCRAInfo	18
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Facilities with violations not entered into RCRAInfo	6
Total number of facility files reviewed	23

Facility #11 did have violations recorded in the data system (spent solvent waste not labeled or dated; used oil drum labeled and moved indoors; satellite accumulation drum open and unlabeled; drum labeled “recyclable thinner”), but the inspector also observed that the facility was not disposing of still bottoms as hazardous waste and noted that spent thinner cannot be stored for more than 90 days before recycling. There is no violation identified in the data system related to improper disposal of hazardous waste, nor is there any violation in the system related to storage exceeding 90 days. MDE responded that this was a case handled by MDE’s Environmental Crimes Unit. Enforcement action entered 11/04.

Facility #22 inspection narrative suggests that the facility violated either the 90/180 day storage requirement or satellite accumulation regulations, although neither of these apparent violations is identified as such in the report or data system, nor are they listed as a “area of concern”. MDE responded that “area of concern” is a term not routinely utilized by MDE. The Enforcement Division maintains that there was no violation to be reported.

Facility #2 identifies one violation in RCRAInfo (storage of hazardous waste with no secondary containment). However, two/three other apparent violations are listed in the comment section of the inspection report which were not in the data system. Apparent violations not in the data system were containers not labeled as “hazardous waste” (listed constituents only), greater than 55 gallons of waste in the satellite accumulation area, and failure to describe the condition of the secondary containment area in the weekly inspection logs.

Facility #17 was inspected in January, 2002, with the report identifying a problem with aisle space, which was not entered into RCRAInfo. During a March, 2003 inspection,

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the facility was found to have exceeded the time frame for holding truck-to-truck transfers, but this violation was not entered into the data system. MDE responded that the Enforcement Division maintains that this violations was entered - see violation 36 in RCRAInfo last update 4/9/03.

Facility #14 was inspected in January, 2003. The reviewers found the narrative inspection report to be unclear, and not consistent with the inspection checklist. For instance, the narrative indicates that a manifest was missing signature and data, but the checklist indicates that manifests are satisfactory. The checklist identifies training as a problem, field notes indicate that training records for one employee was reviewed but does not indicate if a problem was observed, and the narrative doesn’t address the issue at all. The data system reflected a violation identified with regard to the contingency

plan. MDE responded that the Enforcement Division maintains that manifests were satisfactory, although one was missing a signature. As a general comments, discrepancies between checklists and the narrative portion of the inspection report may be due to the general or non-specific nature of the checklist. For example, Section F.1 asks if the owner maintains personnel training records. Specific details in the narrative might be interpreted as violations, e.g., missing information or outdated information in one of the records.

Determination and entry of SNC violations:

Significant Non-Compliers (SNCs) are defined in the Hazardous Waste Civil Enforcement Response Policy (December 2003) as “those violators that have caused actual exposure or a substantial likelihood of exposure to hazardous waste or hazardous waste constituents; are chronic or recalcitrant violators; or deviate substantially from the terms of a permit, order, agreement or from RCRA statutory or regulatory requirements.”

Section VI.D.3 of the Maryland Program Description (May 31, 2004) states:

“The selection of an appropriate enforcement response is an integral component of the State’s enforcement and compliance program. An appropriate response will achieve a timely return to compliance and serve as a deterrent to future non-compliance by eliminating any economic advantage received by the violator.”

“Due to the nature of their violations, a SNC is addressed through a formal enforcement response. This response mandates compliance and initiates a civil, criminal or administrative process which results in an enforcement agreement or order.”

“If a facility is found to be in violation but is not designated a SNC, it is designated a Secondary Violator (SV). An informal enforcement response is the minimally appropriate enforcement response for all SVs. An informal

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enforcement response consists of a recitation of the violation and a schedule for returning the facility to full compliance with all substantive and procedural requirements of applicable regulations, permits, and statutes. Violations which are corrected during the course of an inspection will be documented in the inspection report and the national data system.”

Of the files reviewed, three facilities were identified by the State as SNC violators, and this data was entered into RCRAInfo. One of these SNCs had been identified prior to FY03, one was designated based on a self-disclosed violation, and one was based on violations found during an inspection performed by MDE during FY03. However, in the reviewers’ opinion, there were four other facilities with violations which should have been designed as SNC, and

five other facilities which might be considered to be SNC. That is, there were four facilities which EPA would have identified as SNC, and we would expect that some (although not necessarily all) of these other five facilities should have been designated as SNC.

Number of reviewed files with State identified SNCs	3
Number of additional files with violations which should be considered SNCs	4
Number of additional files with violations, any of which could possibly be considered SNCs	5
Number of files appropriately not designated as SNC (This includes facilities with non-SNC violations, as well as facilities where no violations were found.)	17

Facilities which EPA believes were in Significant Noncompliance (SNC) but were not identified as such by the State:

Facility #11 was inspected in January, 2003, and numerous concerns were identified at that time. Numerous containers of hazardous waste were opened, unlabeled and/or undated. There were two unlabeled containers of used oil outside the building, and hazardous waste was stored on-site for greater than 90 days. The State reinspected the facility about a month later to assure that the problems had been corrected. No SNC was identified in the data system, even though much of the waste generated on site was being mismanaged. MDE responded that, as stated earlier, this is an ECU case.

Facility #24 was contacted in August, 2002 by MDE, informing them that they had not submitted their 2001 Biennial report. The letter asked the company to submit the required report to MDE within 30 days. In July, 2003, never having received the required report, MDE visited the site, explaining the requirements and forms for submitting Biennial reports. At that time, a site complaint was issued, requiring the

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submission of the overdue report within 30 days. As of the date of the file review (August, 2004), the report had not yet been submitted. We would consider the failure to comply with a site complaint to be a significant violation, and should have been identified as a SNC violation. MDE responded that the Enforcement Division disagrees with EPA, as the Division maintains that the violation does not fit the definition of a SNC.

Facility #6 was inspected in March, 2003. Several significant violations were noted - the storage pad had no secondary containment (it was under a roof, but the roof was leaking), none of the seven drums in the storage area were labeled or dated, there were no records of weekly inspection of the storage area, personnel handling hazardous waste had not been trained, the Biennial report had not been submitted. Another inspection

was conducted in May, 2003; the documentation regarding this second inspection is a short narrative stating that the facility had returned to compliance, and no further action is necessary. We feel that this facility substantially deviated from the storage requirements, and should have been identified as a SNC violation. MDE responded that the Enforcement Division disagrees with EPA, as the Division maintains that the violation does not fit the definition of a SNC. All violations were corrected in a timely manner.

Facility #2 was inspected in July, 2002. A number of concerns were identified at that time, including storage of containers outside secondary containment, greater than 55 gallons in a satellite accumulation area, and the failure to describe the condition of secondary containment in the weekly inspection logs. A site complaint was issued at that time, followed by an NOV with a penalty the following January. EPA normally considers a violation which is serious enough to be addressed by a penalty action to be a violation which should have been considered a SNC. MDE responds that the Enforcement Division disagrees with EPA, as the Division maintains that the violation does not fit the definition of a SNC. EPA was unable to determine (based upon a file review) why some of the "violations" encountered during the inspection were documented as comments and not as violations. The specific comments referred to the storage of R&D wastes, the volume of wastes stored within a satellite accumulation area and the documentation of the weekly inspection summaries. In each case, the facility may have violated the "letter of the law" however, each condition was very minor and just slightly out of compliance and warranted only compliance assistance. In addition, the inspector observed four 55-gallon drums containing D002 hazardous waste that were stored without secondary containment - a more serious violation of the regulations. In that case, a site complaint was issued along with a subsequent Notice of Violation. The facility eventually satisfied the requirements of the enforcement actions by providing additional secondary containment and paying the penalty.

A general response which MDE offered with regard to this section of the report is that the Enforcement Division maintains that SNC determinations **cannot** be made solely upon a

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file review. This determination is made by the inspector in the field who actually **observed** the violations in question. In these cases, the inspector determined that these were not SNCs.

Facilities which might be considered in Significant Noncompliance:

Facility #8 was inspected in February, 2003, and violations were documented, including containers not regularly inspected, containers not marked, no adequate secondary containment. Another inspection was performed in March, 2003, at which time the facility was found to have returned to compliance. Depending on what percentage of the containers were mismanaged, and how far the labeling and containment problems deviated from the requirements of the regulations, these violations may have been SNC. MDE responded that the Enforcement Division disagrees with EPA, as the Division

maintains that the violation does not fit the definition of a SNC. All violations corrected in a timely manner.

Facility #12 was inspected in January, 2003. During that inspection, it was noted that the secondary containment was inadequate, and there were problems with training and the contingency plan. A Written Complaint was issued in response. The facility was reinspected in February, 2003, at which time the facility was found to have returned to compliance. Depending on the magnitude of the problems identified, these violations may have been SNC. MDE responded that the Enforcement Division disagrees with EPA, as the Division maintains that the violation does not fit the definition of a SNC.

Facility #22 was inspected in April, 2003, in response to a citizen complaint of discharge of waste plating stripper rinse solution to a ditch. While the complaint could not be substantiated, it appears that other potential violations were observed. The narrative suggests that a container of hazardous waste was being stored improperly (neither in a 90 day area, nor a satellite accumulation area, and also unlabeled/undated), and it potentially had been stored for greater than 90/180 days. Depending upon the details of the problems observed by the inspector, these violations may have been SNC. MDE responded that the Enforcement Division disagrees with EPA, as the Division maintains that the violation does not fit the definition of a SNC.

Facility #14 was inspected in January 2003. The reviewers found the narrative inspection report to be unclear, and not consistent with the inspection checklist. However, the violations were apparently serious enough to warrant a reinspection in March, 2003, to verify that the violations had been corrected. Depending upon the details of the problems observed by the inspector, these violations may have been SNC. MDE responded that the Enforcement Division disagrees with EPA, as the Division maintains that the violation does not fit the definition of a SNC. As a general comment, discrepancies between the checklists and the narrative portion of the inspection report may be due to the general or non-specific nature of the checklist. For example, Section F.1 asks if the owner maintains personnel training records. Specific details in the

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narrative might be interpreted as violations, e.g., missing information or outdated information in one of the records.

Facility #7 was inspected in March, 2003. The inspector identified six rooms containing unlabeled containers, with one of these containers open. Additionally, three rooms had insufficient secondary containment. Depending on the magnitude of the problems with the secondary containment and the percentage of the containers on site which were unlabeled, these violations may have been SNC. MDE responded that the Enforcement Division disagrees with EPA, as the Division maintains that the violation does not fit the definition of a SNC. Secondary containment was recommended at the points of generation - not required.

While MDE disagrees with some of the conclusions drawn by the review team regarding identification of specific violations, Maryland agrees to continue reviewing all evidence of violations gathered via inspections and identify all instances of facilities in violation, particularly focusing on SNC. Maryland agrees to enter all instances of noncompliance, including SNC designations, into the data system in a timely fashion.

Element 5 - The degree to which State enforcement actions include required corrective complying actions (injunctive relief) that will return facilities to compliance in a specified time frame.

It appears that this criteria was met to a high degree. Of seven facilities where injunctive relief was warranted, it was included in all seven actions. MDE responded that MDE may have a problem with the term “injunctive relief”. This term has a specific definition to MDE tied to the statute and its use as an indicator under Element 5 may not be appropriate.

Element 6 - The degree to which a State takes timely and appropriate enforcement actions, in accordance with policy related to specific media.

The March 15, 1996 Hazardous Waste Civil Enforcement Response Policy (1996 ERP) provides 300 days from the evaluation date (the first day of an inspection) for a final or consent order to be entered. This guidance was superceded by the December 2003 EPR, which became effective on February 15, 2004, which is after the pilot period of FY03. One difference between the two documents is that the 2003 ERP provides 360 days for the entry into a final or consent order with a violator. Both policies recognize that circumstances arise where the enforcement response times specified may be insufficient to prepare and initiate the appropriate enforcement response as set forth in the policy. The 2003 ERP specifies that when certain circumstances exist, up to 20% of the enforcement cases may exceed the standard response times. The circumstances as identified in the ERP are:

- Cases involving violations of two or more media
 - Cases involving more than one facility
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- Potential criminal conduct which is under investigation
 - National enforcement initiatives
 - Cases involving nationally significant issues (although this criteria is generally reserved for EPA enforcement responses)
 - Novel legal issues or defenses
 - Site abandonment
 - Additional sampling or information requests are required to confirm the violations
 - Need for outside technical experts

In nine instances where this was relevant, the timeliness criteria was not met one third of the time (33%). This exceeds the 20% standard for exceeding the standard response times.

MDE responded that the Enforcement Division questions the time from violation discovery to enforcement action, as it is not clear if Region III is starting or stopping the clock from an informal enforcement action, such as issuance of a site complaint.

Facility #15 self-disclosed violations to MDE on August 16, 2002. An NOV with a proposed penalty was issued on July 8, 2003, exceeding the time frame recommended by the ERP of 240 days for issuance of initial order. Settlement of the violations was reached on November 18, 2003, which exceeds the time frame recommended by the ERP of 360 days for the issuance of final order. MDE responded that the Enforcement Division disagrees with this determination. Upon receipt of the 8/16/02 letter from this facility, MDE initiated its own investigation (which took more than several months) to determine the accuracy of the information reported and uncover additional pertinent facts related to the case. It's erroneous to assume a violation of the timeliness criteria in this case.

Facility #9 was issued a Site Complaint on 7/16/03 for failure to submit the 2001 Biennial Report. Not clear when this violation was discovered, not clear if time frames were exceeded, although it appears that the response was not timely, as the Biennial Report was due 3/1/02. Report was said to have been submitted previously, and was resubmitted within a month of issuance of the Site Complaint.

MDE sent a letter to Facility #24 on August 14, 2002, asking for the 2001 Biennial Report (which was overdue) within 30 days - the violation must have been identified on this date at the latest. Getting no response, the facility was visited on July 17, 2003, at which time a Site Complaint was issued, requiring submission of the overdue report. This exceeds the 150 day time frame recommended by the ERP for issuance of a warning letter or other appropriate notification of violation. As of the date of the file review, no report had yet been received and no further enforcement action had been taken. This exceeds the 240 day time frame recommended by the ERP for return to compliance and issuance of unilateral or initial order, as appropriate.

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

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

Section VI.C.2 of the Maryland Program Description:

“If a penalty is thought to be warranted, there are statutory factors that must be considered as part of the decision-making process. These factors are discussion in §7-266 of the Environment Article, Annotated Code of Maryland.”

Section 7-266(b)(2) of Environmental Article, Annotated Code of Maryland:

“The penalty imposed on a person under this subsection shall be:

(ii) Assessed with consideration given to:

1. The willfulness of the violations, the extent to which the existence of the violation was known byt uncorrected by the violator, and the extent to which the violator exercised reasonable care;
2. Any actual harm to the environment or human health, including injury to or impairment of the use of the waters of this State or the natural resources of this State;
3. The cost of clean up and the cost of restoration of natural resources;
4. The nature and degree of injury to or interference with general wealth, health and property;
5. The extent to which the location of the violation, including location near waters of this State or areas of human population, creates the potential for hare to the environment or to human health or safety;
6. The available technology and economic reasonableness of controlling, reducing, or eliminating the violation;
7. The degree of hazard posed by the particular waste material or materials involved; and,
8. The extent to which the current violation is part of a recurrent pattern of the same or similar type of violation committed by the violator.”

Statutory factors contained in RCRA are listed in Section 3008(a)(3):

“Any penalty assessed in the order shall not exceed \$25,000 per day of noncompliance for each violation of a requirement of this subchapter. In assessing such a penalty, the Administrator shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.”

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No documentation was available in the files reviewed which identified a method which was used to calculate proposed or final penalties. MDE responded that penalties are determined by the MDE Penalty Policy, Enforcement Strategy Document, and their statute. MDE does not use a calculation table.

The team’s review of the files was unable to find supporting documentation related to the calculation of penalties imposed by the Waste Management Administration. The Waste Management Administration agrees to consider the implementation of a system for documenting penalties consistent within MDE. Penalties will be based on applicable penalty policies and/or the statutory factors as identified in Section 7-266 of the Environment Article, Annotated Code of Maryland.

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

The following inspections were accomplished by MDE in FY03, in accordance with their grant work plan:

Facility Type	Accomplished	Commitment
Federal TSD inspections (See NOTE below)	5	6
State and Local TSD inspections	3	3
Private TSDs not inspected during the previous year	4	4
Land Disposal Facilities not inspected during the last 3 years	3	3
Large Quantity Generators (LQGs) inspected	133	115
Small Quantity Generators (SQGs) inspected	13	no numeric commitment

(NOTE: EPA was to have done the sixth inspection as a federal lead inspection, but did not do so.)

The inspection commitments are met to a high degree. Other compliance and enforcement commitments are:

“The State will comply with the RCRA ERP, including classifying all facilities meeting the definition of a significant noncomplier (SNC), taking timely and appropriate enforcement actions, and entering all appropriate data into RCRAInfo in a timely and appropriate manner;

The State will insure the accuracy of the information in the Timely and Appropriate and SNC reports which the Region supplies monthly. The State will

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communicate monthly with Region III (via conference call or in writing) regarding the status of facilities on these reports;

The State will continue RCRAInfo data entry for compliance monitoring and enforcement (at a minimum monthly);

The State will participate in monthly conference calls.”

See the discussion under Element 4 regarding the degree to which the State has classified facilities meeting the definition of SNC, Element 6 regarding the degree to which the State has taken timely and appropriate enforcement action in response to violations, and Element 10 regarding the degree to which the State has entered data into RCRAInfo in a timely and appropriate manner.

Element 10/11/12 - The degree to which the minimum data requirements (nationally required data elements of the RCRA program) are timely, accurate, and complete.

Of the files reviewed, in 23 instances, the inspection reports in the files matched the inspection data in RCRAInfo. However, in three cases, this was not the case. Facility #3 had a CEI (dated 4/18/03) listed in RCRAInfo, however, no corresponding inspection report was found in the file (although there was a RCRAInfo data form in for that date). Facility #5 had an OTH (dated 3/5/02) listed in RCRAInfo, however, no corresponding inspection report was found in the file (this was the same date as an EPA-lead inspection was performed, in which the State inspector participated). Facility #2 had an OTH (dated 1/13/03) listed in RCRAInfo, however, no corresponding inspection report was found in the file; however, this is the date that an NOV was issued (the NOV is listed in the data system under enforcement actions).

Of the files reviewed, eight had enforcement actions in the files which matched the enforcement data in RCRAInfo. However, there were two files where this was not the case. Facility #10 is listed in RCRAInfo as having had a written complaint issued on 5/28/03, which is the same date as the inspection. We found no documentation in the file, aside from the inspection report itself, to support this data. Likewise, Facility #3 has a written complaint issued on 8/27/03 listed in RCRAInfo, with no formal action in the file aside from the inspection report. MDE responded that the Enforcement Division maintains that written informal is referenced in the report of observations for both facilities.

In addition to the file review, EPA compared the inspection information submitted as part of the FY03 grant work plan self-assessment with the inspection data available in RCRAInfo for State-performed inspections during FY03. Of 168 inspections listed on MDE's self-assessment, we did not find 10 in RCRAInfo. There were 168 inspections listed in RCRAInfo, but 11 of these we did not find on the State's self-reported list of inspections. Of these 11, five were EPA-lead inspections, and of those five, the State did not participate or accompany EPA on three of them.

Items Compared	Consistent	Inconsistent
Inspections in file compared to inspection records in RCRAInfo	23	3
Enforcement actions in file compared to enforcement records in RCRAInfo	8	2
Inspections listed in the State's FY03 grant self-assessment compared to State inspection records in RCRAInfo	158	10
Inspections listed in RCRAInfo as State-performed compared to the State's FY03 grant self-assessment	157	11

Below is further comparison of State records with RCRAInfo data, which gives some insights into data quality:

Number of facilities in violation for greater than three years	93
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	State records	RCRAInfo data
State NOV's issued	5	3
Other State enforcement actions	20	5
State penalties proposed	\$61,000	\$18,000
State final penalties	\$21,000	\$3,000

The State responded that their final penalties were \$24,500, with \$18,000 collected.

ENFORCEMENT CONFIDENTIAL - File Review Targets for MD Pilot

#	Fac Name	ID	Gen. Status	Reason Inc
1	Greater Baltimore Medical Facility	MDD064874050	SQG	SNN - State penalty
2	W.L. Gore & Assoc.	MDD982704256	LQG	State penalty
3	PEPCO 1	MDP000004053	LQG	State SNC - no actions or insp
4	A1 Plating Co. Plant 1	MDD054909072	SQG	EPA penalty
5	CYTEC Fiberite Inc.	MDD003075942	TSD	EPA penalty
6	Metals & Residues Processing	MDD980551600	LQG	MD insp. - many viols.; 2 nd in
7	Medimmune Inc.	MDD985392992	LQG	MD insp. - viol.
8	Qiagen Sciences Inc.	MDR000506063	LQG	MD insp. - many viols.; 2 nd in
9	Eastern Plating Co. Inc.	MDD063215453	SQG	Two inspections

10	JA Nearing Co. Inc.	MDD069274272	SQG	State violation; written compl
11	Bayside Auto Body Inc.	MDD985385236	SQG	State violation - Two inspectio
12	Benmatt Industries	MDP000007397	CESQG	State violation - written comp
13	Formica Corporation	MDR000017681	LQG	State violation - written comp inspections
14	NIH NIAID Twinbook II	MDR000002014	SQG	State violation - Two inspectio
15	US Filter Recovery Services	MD985389816		State penalty
16	Sparrows Point Country Club Inc.	MDR000500405	CESQG	SNN - No violations
17	Clean Harbors Laurel LLC	MDD980554653	STR/LQG	Two inspections

#	Fac Name	ID	Gen. Status	Reason Included
18	Atlantic Lift Truck Inc.	MDD985407659	CESQG	Two inspections
19	Smith Aerospace Electric Systems	MDR000504515	SQG	Inspection performed on 4/16/03
20	VPI Film	MDD980692230	LQG/TRAN	Inspection performed on 10/30/02.
21	Transtech I	MDD980692230	LQG	Inspection performed on 9/4/03.
22	Ray Machine	MDR000521591	SQG	Inspection performed on 4/17/03.
23	Hagerstown Medical Lab	MDR000017459	LQG	Inspection performed on 3/27/03.
24	Baltimore Spice	MDD173468158	SQG	Inspection performed on 7/17/03.
25	AES Warrior Run	MDR000506873	LQG	Inspection performed on 3/6/03.
26	Joseph Smith & Sons	MDR000005819	SQG	Inspection performed on 8/12/03.

**State Review Framework
Maryland Water Program**

Element 1 - The Degree to which a State program had completed the universe of planned inspections (addressing core requirements and federal, State, and regional priorities).

CWA Source Universe Information	Number of Sources in Universe
NPDES – Active	94
NPDES Active standard Minors	499
Total Number of Sources	>5,000*
Number of inspection files for review	27**

* This number includes more than 4,800 construction sites. Maryland has issued NPDES permits to 10 CAFO facilities. MDE has also provided NPDES permit coverage to a diverse number of sources through the use of its general permitting authority.

** This number of files was selected using the OECA Project file review protocol of June 2, 2004, and looking at a distribution of sources of the traditional NPDES program (i.e. majors vs. traditional minors, inclusions of CAFO facility, inclusion of coal facility, inclusion of construction sites and MS4 facility due to wet weather concerns).

MDE completed inspections at 94.7% of NPDES major facilities and 61.3% of their minor facilities. MDE generates inspection findings on site at inspection. Maryland conducts inspections at all of its traditional NPDES major facilities. These facilities receive either a compliance sampling inspection (CSI) or a compliance evaluation inspection (CEI). However, 11 of Maryland’s major facilities **are** MS4 permittees for which a CSI or a CEI is not a suitable inspection. MD address MS4 compliance by reviewing annual report submittals and by holding quarterly meetings with the MS4 jurisdictions to discuss **the following:** TMDL development and implementation; tributary strategies; state highway permits; and biological, chemical and physical monitoring.

Maryland’s inspection coverage of NPDES standard minor permittees (state only) is 60.7% which is more than twice the national average for traditional minor facility inspection coverage. MD seeks to inspect each minor facility once ever two to three years.

Element 2 - Degree to which inspection reports and compliance reviews document inspection findings, including accurate description of what was

observed to sufficiently identify violations.

CWA Source Universe Information	Number of Sources in Universe
NPDES – Active	94
NPDES Active standard Minors	499
Total Number of Sources	>5,000*
Number of inspection files for review	27**

Maryland conducts inspections at all of its traditional NPDES major facilities. These facilities receive either a compliance sampling inspection (CSI) or a compliance evaluation inspection (CEI). **Eleven (11) of Maryland’s major NPDES facilities are MS4 permittees** for which a CSI or a CEI is not a suitable inspection. MD **addresses MS4 compliance** by reviewing annual report submittals and by holding quarterly meetings with the MS4 jurisdictions to discuss TMDL development and implementation, tributary strategies, state highway permits and biological, chemical and physical monitoring.

During the file review related to the OECA Framework Project, Region III reviewed 27 NPDES files. Of the 27 case files, ten (10) of the files were for major facilities. Each of the major facility files had inspection report documentation with the exception of one MS4 file. Of the other seventeen (17) minor facility files reviewed, sixteen (16) files had inspection documentation. Of the various files reviewed, twelve (12) had inspection reports which noted violation determinations. An additional eight (8) files contained documentation of enforcement not based on recent inspection findings (e.g, DMR violations, a complaint investigation).

MDE generates inspection findings on site at **inspections**. Through the use of electronic tools, MDE inspectors can provide inspection summaries to facilities at the conclusion of the inspection. MDE inspectors can also issue citations (e.g., NOV’s) on site. MDE inspectors download inspection reports weekly into the MDE inspection database.

Region III unrelated to this project conducted state oversight inspections in Maryland in June 2004. The role of the EPA inspector in the state oversight inspection exercise was not to make a compliance determination at the inspection facilities, but to observe the manner in which the inspection was conducted and determine the adequacy of the inspection procedures and practices and conformance to Maryland and EPA inspection guidance. In addition to the actual inspection **conducted**, the following inspection follow-up activities were also evaluated:

1. Sampling results
2. Inspection reports
3. Data entry of reports
4. Compliance findings/notification

The highlights of the oversight inspections include the conclusion that MDE inspection procedures are comparable to those of EPA. Also, file and inspection documentation is sufficiently adequate to accurately represent the activities performed during the inspection and captured the necessary information to assess compliance.

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

MD completes a timely write-up of inspections. Inspection reports are printed and given to facilities at the conclusion of site visits. Said reports are downloaded weekly from electronic tools (e.g., palm pilots and laptop computers) to Maryland's mainframe computer. Of the twenty-five (25) files with inspections, twenty-five (25) had issued timely inspection reports.

Element 4 - Degree to which violations are reported to EPA and national database in a timely manner. (E.g. significant noncompliance and high priority violations)

SNC determinations are being accurately reported. Effluent violations which meet the technical review criteria are being captured in PCS and subsequently on the watch list. The same is true of construction schedule and compliance schedule milestones. Enforcement responses, when necessary, are also captured in PCS.

The nature of **the SNC definition** in the NPDES program does not lead to frequent SNC determinations from inspection activity. This is due to the specific definitions of significant noncompliance used in the development of noncompliance reports for the NPDES program. For the files reviewed with violation determinations made and identified, Maryland had taken actions in sixteen (16) of the files reviewed. In **three** (3) files reviewed the facilities were returned to compliance by compliance assistance. Of the files reviewed seven (7) were no violation determination and one (1) was without a violation determination.

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

Of the twenty-seven (27) files reviewed, thirteen (13) contained violation determinations with a formal enforcement response, eleven (11) required injunctive relief. The remaining files either had references to compliance assistance to return the facility to compliance or a notation that the facility was compliant. For some of the more recent actions, resolution of the cited violations was underway (e.g, cases where compliance schedules have "achieve compliance" deadlines in the future, for example June 1, 2006).

Of the files reviewed, several had compliance schedules. Of 13 formal enforcement actions, six had compliance activities underway which were in compliance with enforcement schedules. The remainder was resolved or compliant.

State inspectors provide compliance assistance **during** inspections. They provide direction to facilities regarding how to address and prevent incidents of violations. Upon conclusion of the inspection, the MDE inspector provides a copy of the inspection report which can contain compliance recommendations. Sometimes this assistance leads to immediate changes in activities at a facility which can lead to immediate compliance.

MDE has also provided training to various facility operators so that they are aware of regulations

and requirements pertinent to their plant operations. For example, MDE sponsors pretreatment program training to pretreatment program operators at least twice per year.

Of the files reviewed, several had compliance schedules. Of 13 formal enforcement actions, six had compliance activities underway which were in compliance with enforcement schedules. The remainder was resolved or compliant. One file review contained a reference to a 2002 action which resolved the cited violation; said action is not one of the aforementioned referenced 13 actions.

Element 6 - The degree to which a state takes timely and appropriate enforcement actions, in accordance with policy related to specific media.

CWA Source Universe Information	Number of Enforcement Actions
State formal enforcement actions	<61
State informal enforcement actions	N/A
Total number of enforcement actions	
Number of enforcement files for review	27**

Maryland’s percentage of majors on the Watch List is 6.3% which is less than the national average. It is even lower when one considers the background of the facility listings on the April, May, June watch list. Of the six facilities on the watch list due to criteria 2a1 or 2a2, four are listed with explanations of data error. The data error in these cases is a function of **system** limitations in the generation of the watch list. For example, while PCS is able to identify and flag the magnitude of pH values, it does not capture, at least in the generation of the watch list, the duration periods which are relevant to pH under continuous monitoring requirements. The watch list generation process using PCS is also limited in its ability to capture and compute reported BOD values vs. flow dependent BOD limitations.

Maryland has initiated actions by opening discussions with permittees upon a finding of violation. Maryland often negotiates Consent Orders with permittees. Maryland state law imposes automatic penalties for certain types of violations and certain violations of certain pollutants. Thus, permittees have an incentive to open negotiations with the Maryland Department of the Environment to address effluent violations.

Maryland **actions assess civil penalties.** Maryland takes **enforcement** actions which incorporate stipulated penalties. Of the files reviewed with formal enforcement actions taken (13) , five of those files noted penalty assessments. During this review it was discovered that most of Maryland ‘s NPDES program penalty information is not being captured by PCS; Maryland has made a commitment to get civil penalty, administrative penalty and stipulated penalty information into PCS.

Of twenty-seven (27) files reviewed, fifteen (15) contained information on the status of the violation(s) at the time of the file review. **Of those 15 files, the reviewed state actions taken were deemed appropriate.** Either the violations were resolved or the facility was complying with

a schedule to resolve the violations. The aforementioned 15 files **include** all of the reviewed files which contain an enforcement action.

The balance of the files consists of the following:

- files where there the recent inspection was conducted in the month of August 2004;
- files where there was no violation determination; and
- files with existing pre-2003 enforcement actions.

The month of August 2004 was the month of the file review so certain information was not in the file at the time of the review.

MDE sends letters and NOV's (i.e., informal actions) to return facilities to compliance. Inspectors can address actions at the time of inspections through the issuance of **notices of violation and field** citations. Often **problems are addressed** on site at the **time** of the inspections. Typically, matters deemed SNC are addressed by formal actions.

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

The Code of Maryland contains eight penalty **factors**. The Annotated Code of Maryland has the following penalty calculation factors:

1. The willfulness of the violation, the extent to which the existence of the violation was known to but uncorrected by the violator, and the extent to which the violator exercised reasonable care;
2. Any actual harm to the environment or to human health, including injury to or impairment of the use of waters of the State or the natural resources of the State;
3. The cost of cleanup and the cost of restoration of natural resources;
4. The nature and degree of injury to or interference with general welfare, health and property;
5. The extent to which the location of the violation, including location near waters of this State or areas of human population, creates the potential for harm to the environment or to human health or safety;
6. The available technology and economic reasonableness of controlling, reducing, or eliminating the violation;
7. The degree of hazard posed by the particular pollutant or pollutants involved; and
8. The extent to which the current violation is part of a recurrent pattern of the same or similar type of violation committed by the violator.

Maryland state law does not specifically cite economic benefit as a penalty criterion. The Code of Maryland does specify similar, albeit not exact, penalty factors to the Clean Water Act.

Maryland penalty factor "6" with its consideration of available technology and economic reasonableness of controlling, reducing, or eliminating the violation is an economic benefit type consideration. In some cases the Maryland statute goes beyond the Clean Water Act by imposing a specific **mandatory penalty** for certain violations from certain facilities.

As to the case files reviewed, only six of twenty-seven (27) files were noted as having penalties. Those penalties were assessed using the State of Maryland's penalty factors. Only a few case

files had a penalty calculation **worksheet**, which is a confidential and deliberative process document, in the file. The Maryland Department of the Environment (MDE) does not have a written penalty policy. As previously stated, the State statute does not require the capture of economic benefit. Of those **case** files with or without penalties, the assessment is that an appropriate action response was taken **given the compliant or complying status of the facilities**.

The Maryland Department of the Environment uses a newsletter to publicize its actions. It used to be hard copy but now it is placed on the Department's website. The Department publishes actions with penalty citations greater than \$5,000.00. Maryland uses an invoice system for tracking penalties paid to the Department.

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

During fiscal year 2003 PCS reports only 33 actions by the State of Maryland and penalties in the amount of \$184,591. The Maryland Department of the Environment 2003 Annual Enforcement Report notes 121 actions and penalties in the amount of \$850,903. Maryland has committed to updating its penalty information in the Permits Compliance System (PCS). However, it should be noted that not all Maryland compliance and enforcement activity is captured in the PCS. **Also, some of the activities captured in the Maryland report are not NPDES program specific even though they address surface water discharges.**

Maryland assesses penalties in accordance with state law. Maryland does not have a written penalty policy. Maryland state law does not specifically cite economic benefit as a penalty criterion. The Code of Maryland does specify similar, albeit not exact, penalty factors to the Clean Water Act. **Maryland penalty factor "6" with its consideration of available technology and economic reasonableness of controlling, reducing, or eliminating the violation is an economic benefit type consideration.** In some cases the Maryland statute goes beyond the Clean Water Act by imposing a specific **mandatory penalty** for certain violations from certain facilities.

The data metric **8a** cites 13 enforcement actions. Region III PCS pulls and Maryland's 2003 annual report cite more enforcement actions. Region III's PCS retrieval cites 33 facilities with actions **with penalties** by the State of Maryland in fiscal year 2003. The discrepancy between the metric 8a and the PCS pull by Region III is discernable but as of this point is not yet fully explainable. Some of the difference is explainable by the fact that the Region III pull is capturing some administrative or stipulated penalty assessments by Maryland using administrative orders or notices of violation.

Metric 8b reports that only 15% of the formal enforcement actions contain penalties. The Region III pull notes that State of Maryland administrative orders contain stipulated penalty assessments which are not captured by metric 8a or metric 8b. Looking at the metric 8a universe of facilities and noting incidents where Maryland assessed a penalty or stipulated penalty via an administrative order metric 8b would increase to 30%.

Maryland state law does not specifically cite economic benefit as a penalty criterion. The Code

of Maryland does contain eight penalty factors which are similar to the penalty factors in the Clean Water Act. To some extent economic benefit is captured by Maryland's consideration of the willfulness of the violation, the extent to which the existence of the violation was known to but uncorrected by the violator, and the extent to which the violator exercised reasonable care when assessing a penalty.

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

MDE has traditionally **complied** with the compliance and enforcement requirements of State/EPA agreements.

MDE inspects facilities based on a standard schedule, complaints, grant requirements, and reported SNC follow-ups. MDE prioritizes inspections based on environmental harm and human health concerns.

MDE completed inspections at 94.7% of NPDES major facilities and 61.3% of their minor facilities. MDE generates inspection findings on site at inspection. Maryland conducts inspections at all of its traditional NPDES major facilities. These facilities receive either a compliance sampling inspection (CSI) or a compliance evaluation inspection (CEI).

Maryland's inspection coverage of NPDES standard minor permittees (state only) is 60.7% which is more than twice the national average for traditional minor facility inspection coverage. MD seeks to inspect each minor facility once every two to three years.

Element 10- The degree to which the minimum data requirements are timely.

MD is currently a direct user of PCS. DMR data entry for major NPDES facilities is 97% which exceeds the national average. Inspection and enforcement information is entered into PCS by MDE. Maryland has completed its pretreatment program inspection requirements for the past five (5) inspection years. The components of NPDES program SNC are captured by reviews of effluent information, construction schedule information, and enforcement action information. MDE has committed to improving its entry of penalty information.

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

Actions in the database are linked to the violations they address. Facility universe data and overall uploads from states/locals are producing accurate data.

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

Metric a	Active Facility Universe Counts Accurate for all NPDES permit types.	4400+/-
Metric b	Permit limits complete in PCS.	99
Metric c	Inspection Counts Complete	1059
Metric d	DMR entry for majors complete.	97%
Metric e	DMR entry for minors complete.	55%
Metric f	Notice of Violation Counts Complete	4
Metric g	SNC Counts Complete	26

Metric h	Formal Action Counts Complete	13
Metric i	Assessed penalties complete	n/a
Metric j	Inspection-related violations identified. No activity indicator.	See below

Metric a:

The facility universe is fluid in the NPDES program. With the incorporation and expanding permitting requirements on wet weather sources, the NPDES permitted universe in Region III has increased ten fold. This increase is also evident in the State of Maryland where the program has grown from approximately 95 major and 500 tradition minor sources to over 4400 NPDES permitted sources.

Metric b:

This metric is reflective of the traditional (vs. wet weather) NPDES program Permit limitation data is 99% complete.

Metric c:

Metric12c reports 1,059 inspections. This metric data pull generated in August 2004 does not include state reconnaissance inspections or storm water inspections which would more than double the inspection counts.

Metric d:

The DMR data entry for majors is 97% due to the fact that MS4 facilities are considered major NPDES permittees. However, it should be noted that MS4 facilities are not required to submit discharge monitoring reports. At least in Maryland, if not elsewhere, for MS4 facilities pollution controls consist of management programs and controls not effluent limitations at discharge outfalls like those at traditional NPDES major facilities.

Metric e:

Metric 12e reports the DMR data entry for minors as 55%. This metric incorporates many minor facility and general permit coverage facilities. Maryland confirms that this figure is accurate since approximately 700 facilities did not submit DMRs, most of whom were swimming pools with no discharge requirements.

Metric f:

Metric 12f reflects the information in PCS but not the activities of Maryland. Region III and Maryland have discussed the feasibility of Maryland entering informal action information into PCS. Due to resource limitations Maryland is not likely to enter informal notices of violation or letters of violation into PCS in the immediate future.

Metric g:

This figure is accurate.

Metric h:

This figure is accurate. See Sections 6 through 8 for more discussion and details.

Metric j:

PCS is not used as the tool to track notices of violation or violations discovered during inspections. Of the 27 files reviewed during the state file review each file contained documentation citing non-DMR violations i.e., violations discovered or observed during a facility inspection or site visit).

with a full explanation of these concerns along with recommendations for resolution. The following is a brief summary of several of the evaluation's key issues:

MDE's authority to include economic benefit in its penalty assessments is limited by Maryland law. Environment Article, § 2-610.1, Annotated Code of Maryland authorizes MDE to assess penalties in consideration of seven specific factors, none of which includes the economic benefit of noncompliance. At the Federal level, recovering the economic benefit of a violation(s) is considered an important factor to returning the company back into compliance and deterring future violations. Two of the three program reviews include a discussion regarding penalty assessment. However, the RCRA enforcement program lacked information in their files with regards to penalty calculations.

Identifying Significant Non-Compliance (SNC) in the RCRA program was another area of concern. Determining Significant Non-Compliance (SNC) presented several disagreements. There were four facilities which the review team determined to be SNC but not identified as such by MDE. Additionally, the review team identified five other cases where the potential existed for SNC determination.

MDE's position is that the Enforcement Division maintains that SNC determinations cannot be made solely upon a file review. This determination is made by the inspector in the field who actually observed the violations in question. While MDE disagrees with some of the conclusions drawn by the review team regarding identification of specific violations, MDE agrees to continue reviewing all evidence of violations gathered via inspections and identify all instance of facilities in violation, particularly focusing on SNC. MDE agrees to enter all instances of noncompliance including SNC designations into the data system in a timely fashion.

Inspection Implementation (Summarize findings and recommendations for Elements #1, 2 & 3)

CAA - CMS commitments greatly exceed national goal, i.e., MDE commits to complete an FCE at every major source once a year and at every 80-percent synthetic minor source (SM-80) every two years. MDE met 100 percent of this

traditional NPDES major facilities. These facilities receive either a compliance sampling inspection (CSI) or a compliance evaluation inspection (CEI).

Maryland's inspection coverage of NPDES standard minor permittees (state only) is 60.7% which is more than twice the national average for traditional minor facility inspection coverage. MD seeks to inspect each minor facility once every two to three years.

Enforcement Activity (Summarize findings and recommendations for Elements #4, 5, 6, 7 & 8)

CAA - The combined HPV Discovery rate, 5.6 percent, is approximately equivalent to the national average of 5.4 percent, when comparing HPVs discovered to the major facility universe. MDE completes FCEs at all its major sources every year, instead of every two years, which is the minimum required in the CMS. Because of this, MDE's HPV discovery rate, when comparing HPVs discovered to the FCE coverage at major sources, appears to be one-half the national average of 10.3 percent. However, that is simply a problem related to the metric itself. MDE managers have indicated that it is very possible that compliance has improved over the years due to MDE's frequent presence at its most significant emission sources. In FY03, MDE reported its HPVs to EPA an average of seven days after Day 0.

In each of the four HPV files reviewed, worksheets were found which showed calculations which referred to gravity and economic benefit. It appears that the BEN model was run for each penalty assessed. However, most files contained more than one penalty calculation worksheet, and often the worksheets showed different calculations. The rationale for the different amounts assessed in different worksheets was not evident until the Review Team asked MDE to explain the worksheets.

MDE should be recognized for its efforts to document penalty assessments, and especially to include economic benefit in its draft worksheets. MDE's files show efforts to be consistent with EPA's Penalty Policy by calculating the effect that consideration of economic benefit would have on the overall penalty. This is particularly notable in light of statutory limitations in MDE's authority to consider economic benefit in assessing penalties.

exceeding the standard response times.

No documentation was available in the files reviewed to identify a method used to calculate proposed or final penalties.

MDE and Region III's RCRA Enforcement Branch are not in agreement with the definition of "injunctive relief." An injunction is a specific legal action available to MDE. Injunctive relief at the Federal level refers to a corrective action to take place to bring a facility back into compliance. The review team found no problem with MDE addressing instances of ongoing violations and has determined that MDE meets the criteria of element 5.

CWA - The nature of SNC in the NPDES program does not lead to frequent SNC determinations from inspection activity. This is due to the specific definitions of significant noncompliance used in the development of noncompliance reports for the NPDES program.

MDE's water enforcement program takes actions which assess civil penalties and incorporate stipulated penalties. Of the files reviewed with formal enforcement actions taken (13), five of those files noted penalty assessments. During this review it was discovered that most of MDE's NPDES program penalty information is not being captured by PCS; Maryland has made a commitment to get civil penalty, administrative penalty and stipulated penalty information into PCS.

Maryland state law does not specifically cite economic benefit as a penalty criterion. The Code of Maryland does contain eight penalty factors which are similar to the penalty factors in the Clean Water Act. To some extent economic benefit is captured by MDE's consideration of the willfulness of the violation, the extent to which the existence of the violation was known to but uncorrected by the violator, and the extent to which the violator exercised reasonable care when assessing a penalty.

Annual Agreements (Summarize findings and recommendations for Element #9)

CAA

& 12)

CAA - All entries in AFS that were reviewed, with the exception of compliance status, appeared to be entered in a timely manner. Most AFS data reviewed appeared to be accurate with the most notable exceptions listed in the report.

RCRA - The RCRA program compared information in the RCRInfo data base to information in the file reviews and information submitted by the state. There were few inconsistencies in the inspection and enforcement data. However, there were significant discrepancies with the penalty information.

CWA - MD is currently a direct user of PCS. DMR data entry for major NPDES facilities is 97% which exceeds the national average. Inspection and enforcement information is entered into PCS by MDE. The components of NPDES program SNC are captured by reviews of effluent information, construction schedule information, and enforcement action information. MDE has committed to improving its entry of penalty information.

State's Enforcement Priorities (sectors, facilities, geographic areas)

Successes, Initiatives, Major Cases