

**U.S. EPA Region 2
State Review Program Framework – Pilot Phase FY 2004
Review of New Jersey Department of Environmental Protection FY2003 Enforcement and Compliance Programs**

EXECUTIVE SUMMARY

Overall Picture

This report documents the findings and recommendations of EPA's review of the New Jersey Department of Environmental Protection's (NJDEP's) compliance monitoring and enforcement program based on the State Review Framework. The EPA Office of Enforcement and Compliance Assurance (OECA), all ten EPA Regions, the Environmental Council of States (ECOS) Compliance Committee and state representatives from each of the ten regions jointly developed the framework to assess state performance in enforcement and compliance assurance. The report examines 12 elements of NJDEP's compliance and enforcement program including; inspection implementation, enforcement activity, commitments in annual agreements and data integrity. The report also includes a detailed write-up for element 13 which was provided by NJDEP. The items in element 13 demonstrate NJDEP's innovative approaches to compliance and enforcement and are meant to supplement the output metrics examined in the state review.

NJDEP has a strong compliance and enforcement program. In most instances, NJDEP exceeded the national average for inspection coverage, identifying and addressing significant violators.

The report includes recommendations for improvement in several areas, the most significant of which is data entry into EPA's data systems. NJDEP maintains its own department-wide business enterprise software, the New Jersey Environmental Management System (NJEMS). In many instances, we found the data in NJEMS to be more complete and reflective of NJ's efforts than the data in the EPA's databases. EPA is concerned about the extent to which the data in the NJEMS system did not match the data in EPA's databases. Additionally, NJDEP has a desire to more fully develop its expertise with regard to economic benefit calculations. EPA and NJDEP look forward to working together on these items.

State's Enforcement Priorities (Information Provided by NJDEP)

Over the past three years, Commissioner Bradley M. Campbell has made strengthening enforcement one of his top priorities for the NJDEP. NJDEP has added resources to its enforcement program in recent years and is constantly endeavoring to find innovative ways to increase compliance with an increasing number and range of new state and federal environmental requirements. NJDEP has committed to focusing its resources on long-neglected urban communities and workers and on efforts to better target enforcement efforts where there is significant non-compliance and the greatest public health and environmental impact. With sector or area wide "sweeps," NJDEP is breaking the pattern of returning over and over again to the same list of major facilities. While maintaining a strong enforcement presence is one priority, it is not the only strategy NJDEP relies on to achieve its mission of environmental protection. A far more preferable strategy is to ensure compliance with environmental laws and to prevent pollution from occurring in the first place. NJDEP has been working with the regulated community to expand its compliance assistance work and to identify incentives that encourage compliance with environmental laws. NJDEP has also greatly improved its web presence to communicate as much information as possible about compliance goals.

NJ's Compliance and Enforcement program has become fully functional in using and recording its activities in the NJEMS enterprise data system. It has decentralized enforcement activities, requiring inspectors to handle their cases from discovery to close. Inspectors "produce" all of

their work including inspection reports, notices of violations and penalty orders in NJEMS. This means that there is no separate data entry function for this work and has resulted in inspectors feeding the database system with inspection results and generating their own enforcement actions to ensure complete and timely data. NJDEP documents its work in NJEMS using one set of standard terms, one set of screens, one set of standard operating procedures, and one reporting method.

NJDEP's NJEMS system allows NJDEP to analyze compliance trends down to the specific regulatory citation. Further, NJEMS stores violation specific data such as location, discovery date and method, compliance due and achieved dates, severity, action taken, and responsible party. This allows NJDEP to look for patterns of noncompliance. NJDEP has also standardized enforcement actions to ensure that facilities receive consistent enforceable documents from the department. It built standard screens for recording environmental incidents reported to the department. This allows for reporting on incident trends, like the number of odor complaints in a geographic location. It also records NJDEP's response to those complaints and allows the person reporting the incident to monitor follow-up actions through web accessible reports. NJDEP is looking forward to "mining" the data in NJEMS even further to better direct its compliance and enforcement efforts.

Major Cases (Information Provided by NJDEP)

NJ's Compliance and Enforcement program has concluded many successful cases in the past several years. The following are summaries of some of the more high profile cases.

NJ Clean Water Enforcement Act: The NJDEP and the Attorney General's office reached twin settlements totaling \$1 million with AmerGen Energy Company, LLC, owner and operator of Oyster Creek Generating Station, to resolve criminal and civil actions stemming from a thermal discharge that violated the company's water pollution discharge permit and caused almost 6,000 fish to die from heat shock. More than two-thirds of AmerGen's \$1 million settlement payment funded environmental projects.

Clean Air Act, NJ Air Pollution Control Act: Representing a major clean air victory, Coastal Eagle Point Company signed a federal consent decree with NJDEP and EPA to settle multiple state and federal air pollution violations. Coastal was required to invest \$3 to \$7 million to upgrade the plants environmental controls by 2008 to significantly lower emissions in the future, fund a \$1-million beneficial environment project designed to eliminate diesel emissions from idling trucks at the Paulsboro Travel Center and pay a \$1.25 million fine.

NJ Air Pollution Control Act, NJ Clean Water Enforcement Act: The NJDEP reached twin settlements totaling approximately \$1.4 million with Atlantic States Cast Iron Pipe to resolve multiple violations of the Air Pollution Control and Water Pollution Control Acts. Under the agreement the company must reduce air emissions of volatile organic compounds by 350 tons annually and install a new stormwater collection and reuse system and close three of four outfall pipes that discharge into the Delaware River.

Freshwater Wetlands Protection Act: A 22-acre tract of environmentally sensitive wetlands will be restored to their predisturbance conditions as part of a settlement agreement with A.R. DeMarco Enterprises. The wetlands were converted into cranberry bogs without the appropriate permits required under the Freshwater Wetlands Protection Act. The company must also pay the state a fine of \$400,000.

RCRA: The NJDEP reached a settlement with Octagon Process, Inc. totaling \$100,000 to settle violations of state laws regulating the handling, storage and disposal of hazardous substances. Octagon Process created a significant threat to public health and the environment by keeping old,

expired chemicals that had exceeded their shelf life and were no longer useable. Approximately 47,000 pounds of hazardous wastes and 55,000 pounds of non-hazardous waste were removed from the facility to an approved hazardous waste treatment, storage and disposal facility.

Any Overarching Issues among the Enforcement Programs Reviewed

While NJDEP has a strong enforcement program, deficiencies in data entry were noted in all three program areas.

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

CAA

Inspection Activities - The level of inspection activity undertaken by the NJDEP is indicative of a strong compliance/enforcement program and well above the national average in most areas, including inspections at majors, SM80s, and Synthetic Minors. This finding is supported by the information in both AIRs and NJEMS. However, NJDEP has not input all of the requisite inspection data into EPA's AIRS system in a timely manner as required by the Compliance Monitoring Strategy and as agreed to in the New Jersey Performance Partnership Agreement. While NJDEP's performance is strong (i.e., above the national average for majors and Synthetic Minors), the data NJ enters in AIRS are not completely indicative of NJDEP's actual performance due to these data gaps. If the data in NJEMS are reviewed, NJ's performance is even stronger.

According to AIRS, 106 Title V annual certifications were due for review in FY 2003. 86 of the certifications due were entered into AIRS. Of those received, 74 were reviewed and entered into AIRS (86.0%). While this is well above the national average of 73.8%, it is not consistent with the information in NJEMS. According to the NJEMS, 164 sources had a Title V certification due in FY 2003. Of these, 18 did not submit their annual certification or had their Title V permits terminated or were shutdown. Of the 146 annual certifications that were received, NJDEP has reviewed 129 (88.4%) certifications.

NJDEP's inspection reports are "check-list" type in nature. These checklists are generated by the inspector based on the permit conditions that have been entered into NJEMS. The compliance verification depends on how the permits are written and assumes that the permit includes all requirements and conditions applicable to the facility. EPA is concerned that if the permits are incomplete, the resultant inspection checklists used to conduct inspections may also be incomplete (unless otherwise supplemented with additional information/requirements supplied by the inspector prior to the inspection) leading to incomplete/inadequate compliance determinations. NJDEP has indicated that its policy is for all applicable requirements for any facility to be reviewed, even if those requirements are not included in the permit or the permit compliance checklist. In some instances, the inspection checklists EPA reviewed indicated that the federal regulation was not even applicable, and thus, those facilities were likely not inspected for compliance for those program areas. EPA recommends that the inspection reports generated and stored electronically must be checked to ensure that they cover all applicable regulations. The inspectors should look at all applicable air programs at a source not only those included in the permit.

CWA — According to PCS, the state of New Jersey in FY03 inspected 88.7% of all the majors, which is greater than the national average of 70.5% of all majors inspected. However, NJEMS shows that 100% of all the majors were inspected in FY03. NJ has been inspecting its majors at least once every state fiscal year for decades. While NJDEP's performance is strong, (above the national average for majors), the data NJ

enters in PCS are not completely indicative of NJDEP's actual performance due to these data gaps.

RCRA — No issues were identified.

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

CAA

Identification of HPVs - NJDEP does an excellent job identifying High Priority Violations (HPV). The discovery rate in New Jersey, based on FCEs completed at major sources in FY 2003 is 56.5%. This figure is significantly higher than the national average of 10.3%. The HPV discovery rate in New Jersey, based on the universe of major sources in FY 2003 is 19.9% versus a national average of 5.4%. Both figures indicate that NJDEP is inspecting and identifying sources that have high priority violations in accordance with the Compliance Monitoring Strategy and the New Jersey Performance Partnership Agreement.

Addressing HPVs - NJDEP does an excellent job of addressing violations in a timely manner. In FY 2003, out of 84 high priority violations discovered at both major sources and SM-80s, only 5 HPVs exceeded the 270-day timeliness threshold for receiving an addressing action. This equates to a rate of 6.0 %, which is far below the national average of 60%.

Penalties - While the penalties assessed were in accordance with the penalty matrix contained in New Jersey's regulations, none of the files EPA reviewed warranted a penalty with an economic benefit component. As such, EPA was not able to definitively state at this time whether NJDEP is including economic benefit in its penalty calculations. However, it is EPA's understanding that NJDEP would welcome an opportunity to further its expertise in calculating and documenting economic benefit penalties.

CWA

Identification of SNCs - In general, all Significant Non-compliance (SNC) were accurately identified and reported to the EPA national database (PCS) in a timely manner. In addition, New Jersey is a national leader in this category with a very low level of 1.3% of the state's active majors universe (159 facilities) in significant non-compliance. This figure is significantly below the national average of 8.3% , and the recommended 2% level.

Addressing SNCs/Penalties - NJDEP enforcement actions were considered to be 'timely and appropriate' and followed the penalty policy protocol established. However, EPA's CWA Framework Metric Results reported that 0% of enforcement actions taken in NJ carried a penalty compared to the national average of 55%. EPA and NJ recognized this as a data discrepancy since NJ's Clean Water Enforcement Act mandates penalties for all SNCs. During the review, EPA and NJ determined that the reason for this discrepancy was that NJDEP was inputting the penalty information into PCS but not in the proper field. EPA and NJDEP have already taken steps to address this data gap.

RCRA

Identification of SNCs - The RCRAInfo database identified 37 SNC cases with determination dates in FY2003, while a list derived from NJEMS for the same period identified 61 SNCs. This indicates that the State did not enter 24 SNCs into RCRAInfo. Similarly, of the ten SV cases reviewed, two cases should have been designated in RCRAInfo as SNCs. (Note that the NJDEP did issue formal enforcement actions with

penalties for these cases.)

Addressing SNCs/Penalties - Generally, SNCs were addressed with formal enforcement actions in a timely and appropriate manner. Based on RCRAInfo, there were 12 Final Orders that did not include penalties. However, NJDEP has indicated that all its Final Orders entered into in FY 2003 included penalties.

While the penalties assessed were in accordance with the penalty matrix contained in New Jersey's regulations, none of the files reviewed warranted a penalty with an economic benefit component. As such, we are not able to definitively state at this time whether NJDEP is including economic benefit in its penalty calculations.

Commitments in Annual Agreements

No major issues identified.

Data Integrity

CAA/CWA/RCRA — Discrepancies exist between information contained in the AIRS, PCS and RCRAInfo databases and information either obtained during the file reviews or supplied by the NJDEP from their NJEMS system.

FORM A - EVALUATION FORM

Date: November 30, 2004

Program Evaluated: CAA

Information Sources Included in the Review: AIRS, New Jersey Environmental Management System (NJEMS), Source files, and Open Public Records Act (OPRA) website.

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

Findings:

Inspections at Major sources: The New Jersey Performance Partnership Agreement (NJPPA): Fiscal Years 2002 - 2004 specified the frequency of Compliance Monitoring Strategy (CMS) activities including that Full Compliance Evaluations (FCEs) shall be consistent with the negotiated and agreed to CMS plan, which requires an FCE at major sources every two years. The universe of major sources is those with an EPA or State classification code in AIRS for major sources. According to AIRs, in FY 2002-2003, NJDEP completed FCEs at 77.0 % (301/391) of the major sources in the State. Combined with EPA, a total of 82.1 % (321/391) of the major sources were inspected. Although 100% of the major sources in New Jersey did not receive an FCE (the goal of CMS), the 82.1% that did receive an FCE is well above the national average of 66.7%.

Based upon information contained in NJEMS, NJDEP completed FCEs at approximately 92% (331/360) of the sources currently identified as major sources in their NJEMS system. The universe of major sources identified in NJEMS is smaller than the universe of major sources identified in AIRS. NJDEP believes that the universe of major sources in AIRS is greater than what actually exists—thus, explaining in part the less than 100% coverage rate they achieved for major sources. In addition, NJDEP believes that not all FCEs conducted were actually reported in AIRS.

Inspections at Synthetic Minor (80 percent of major source level)–(SM80s): The universe of SM-80s is those sources with an EPA or State classification code in AIRS for synthetic minors with a CMS Source Code for SM-80s. The CMS requires that FCEs must be conducted at each SM80 once every five years. The NJPPA specifies 20% FCE completion rate per year at these sources. The CMS policy has been in effect since FY 2002; therefore, by the end of FY 2003 at least 40% of the universe of SM-80s should have received an FCE. According to AIRS, in New Jersey, the FCE/inspection coverage was 45.7% (105/230) for NJDEP alone and 48.7 % (112/230) combined with EPA. These figures are above NJDEP's commitment for SM80s. When compared to the national average (51.5% combined), these numbers are slightly lower.

According to NJEMS, 259 SM-80s are currently in operation in New Jersey. This universe is higher than what is reported in AIRS. NJDEP needs to reconcile this difference. Per NJEMS, NJDEP completed a total of 196 FCEs (75.7%) in FY 2002 and FY 2003. This coverage rate is well above the 40% NJDEP committed to in the NJPPA and well above the national average of 51.5%.

Inspections at Synthetic Minor sources: States are not required by the CMS policy to conduct a specific number of FCEs/inspections at synthetic minors and the NJPPA does not specify a percentage either. During the period FY-99 to FY-03, NJDEP inspected 38.3% of the universe of synthetic minors. By comparison, the national average is 64.3% coverage for this same period.

Title V Annual Compliance Certifications received and reviewed: According to AIRS, 106 Title V annual certifications were due for review in FY 2003. 86 of the certifications due were entered into AIRS. Of those received, 74 were reviewed and entered into AIRS (86.0%). According to NJEMS, 164 sources had a Title V certification due in FY 2003. Of these, 18 did not submit their annual certification or had their Title V permits terminated or were shutdown. For the sources that did not submit their Title V certifications, NJDEP has either taken enforcement action against them or are in the process of doing so (relative to the late ones that EPA identified to NJDEP during our audit.). Of the 146 annual certifications that were received, NJDEP has reviewed 129 (88.4%) certifications. This is above the national average of 73.8%.

Sources with Unknown Compliance Status Designations: The AIRs generates an unknown compliance status for CMS sources when either an FCE was not done within 2 calendar years or an FCE was completed but was not entered into AIRS. As of November 2004, AIRS reported 87 facilities with a system-generated “unknown” EPA or State compliance status. However, based on NJEMS, the number of facilities with an unknown compliance status is 41. NJDEP explained that relative to the other 46 facilities, 2 were inspected and input into AIRS by EPA and are not in NJEMS (NJDEP will inspect these facilities to determine their classification and compliance status), 10 facilities have data errors (inaccurate classification or duplicate facilities), and 34 facilities are lacking the FCEs in AIRS. Of the 41 facilities that have not had an FCE within the last two years, 28 have had an FCE within the past two state fiscal years (7/1/2002 to 6/30/2004). The remaining 13 facilities have not had an FCE within the past two state fiscal years, but are scheduled for an FCE in the current fiscal year. EPA is also aware of 60 additional major sources that lack a CMS source code in AIRS (some of which might also be of unknown status). NJDEP is working with EPA to accurately identify appropriate CMS Source Codes for these sources.

Citation of information reviewed for this criterion: Data contained in AIRS and the CAA Stationary Source Compliance Monitoring Strategy, April 25, 2001, staff interview

Recommendations: The level of inspection activity undertaken by the NJDEP is indicative of a strong compliance/enforcement program. This finding is supported by the information in NJEMs. However, NJDEP has not inputted all of the requisite data into EPA’s AIRS system in a timely manner as required by the CMS and as agreed to in the NJPPA. NJDEP must proceed expeditiously in reconciling the data in AIRS with NJEMS.

NJDEP must also reconcile the discrepancies between the data contained in AIRS and NJEMS related to the number of Title V annual certifications reviewed and entered.

NJDEP is already taking steps to address the data issues identified above. NJDEP has, in the NJDEP Central Regional Office, already hired an additional Information Systems person who will be solely responsible for AIRS entry. In the Northern Regional Office, NJDEP will have additional staff available for AIRS entry, effective January 2005. Finally, NJDEP is spending more funds and deploying more resources towards correcting and maintaining the AIRS data across the State. NJDEP is also requesting funding through an EPA Network Challenge Grant to modify NJEMS so that information can be automatically uploaded from NJEMS into AIRS.

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

Findings:

All inspection and compliance related activities are tracked through NJEMS. As NJDEP moves toward a “paper-less” office, more and more documents are being stored electronically. As a result, hard copies of the inspection reports are not always in the file, and many of them are only available electronically. The inspection reports are “check-list” type in nature. These checklists are generated by the inspector based on the permit conditions that have been entered into NJEMS. The compliance verification depends on how the permits are written and if they have all the conditions applicable to the facility. If the permits are incomplete, the resultant inspection checklists used to conduct inspections may also be incomplete (unless otherwise supplemented with additional information/requirements supplied by the inspector prior to the inspection) leading to incomplete/inadequate compliance determinations. If the inspector fails to supplement the permit generated inspection checklist for requirements not contained in the permit (e.g., if there are no conditions for an applicable federal program in the NJDEP permit), the inspector will fail to document compliance with that particular federal program. For instance, 2 of the 21 files reviewed did not have all the applicable federal programs identified on the checklist. In some instances, the inspection checklists indicated that the federal regulation was not even applicable, and thus these requirements were never inspected for compliance for those program areas. Case in point, for one of the sources, a landfill, the inspector indicated on the inspection checklist that the MACT was not applicable. Upon reviewing the files, there was correspondence with the NJDEP that clearly stated the source is subject to the applicable federal program.

Citation of information reviewed for this criterion: Source files and NJEMS

Recommendations: The inspection reports generated and stored electronically must be checked to ensure that they cover all applicable regulations. The inspectors should look at all applicable air programs at a source not only those included in the permit. NJDEP has indicated that its policy is that all applicable requirements for any facility are to be reviewed, even if those requirements are not included in the permit or the permit compliance checklist. EPA would urge NJDEP to document any additional requirements that have been reviewed which did not appear on the inspection checklist for future compliance and enforcement purposes. EPA also recommends that NJDEP ensure training is provided to new inspectors on the importance of evaluating all applicable air program requirements.

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

Findings: In most cases the inspection reports, including the finding of violations, are completed in a timely manner. Once the reports are forwarded to the supervisors through NJEMS, they review them and lock them in the system so that no further changes can be made by anybody.

Citation of information reviewed for this criterion: Source files and NJEMS

Recommendations: None.

Section 2: Review of State Enforcement Activity

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

Findings: The High Priority Violations (HPV) discovery rate in New Jersey, based on FCEs completed at major sources in FY 2003 is 56.5%. This figure is significantly higher when compared with the rest of the country (10.3%). The HPV discovery rate in New Jersey, based on the universe of major sources in FY 2003 is 19.9% versus a national average of 5.4%. Both figures indicate that NJDEP is inspecting and identifying sources that have high priority violations in accordance with the CMS and the NJPPA. Also, NJDEP has instituted a standard operating procedure, implemented in July 2004, for identifying HPVs. Supervisors review all issues of noncompliance and supporting documentation in order to determine whether the violations should be listed as a HPV. The supervisor establishes deadlines for each HPV; that are entered into NJEMS; in accordance with the EPA's HPV policy. The inspectors are instructed to adhere to these deadlines as much as possible, however, due to the nature of NJEMS these deadlines can be changed by the inspector if the situation warrants, which could potentially compromise compliance with the procedures for pursuing HPVs. These situations should be minimized as much as possible. Where changes are made by the inspector, the supervisor should be informed of these changes.

Citation of information reviewed for this criterion: Source files, AIRS, interviews with supervisors and NJEMS

Recommendations: Ensure inspectors adhere to NJDEP timeliness policies for addressing violations and make sure follow-up is tracked appropriately. NJDEP and EPA agreed to provide refresher training for NJDEP inspectors on the HPV policy.

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

Findings: Generally, the compliance orders issued by NJDEP have specific requirements and appropriate schedules for the source to return to compliance. However, there were a few instances when follow-up on the enforcement action was insufficient and/or were delayed. In two cases, NJDEP failed to follow-up with a compliance schedule after a notice of violation was issued. NJDEP informed us that the inspector on this case left the

Department, delaying follow-up for several years. This case has now been addressed and a compliance order was issued in November 2004. In the second case, the facility (a state-owned entity) was reported to be out of compliance for the same violations a year after the first compliance order was issued. NJDEP issued a second administrative order and has since referred this case to the AG's office.

Citation of information reviewed for this criterion: AIRS, NJEMS and interviews with State personnel.

Recommendations: Ensure the complying actions conform with enforcement response policies, which require timely and appropriate actions. Accurately report compliance status for each air program pollutant in AIRS. Per the enforcement response policies, NJDEP has the option of referring cases to EPA for action, as appropriate.

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

Findings: NJDEP does an excellent job of addressing violations in a timely manner. They usually take timely enforcement action once a violation is determined and the compliance orders usually include penalties. In FY 2003, out of 84 high priority violations discovered at both major sources and SM-80s, 5 HPVs exceeded the 270 day timeliness threshold for receiving an addressing action. This equates to a rate of 6.0 %, which is well below the national average of 60%. There are currently no NJDEP lead facilities on the Watch List for exceeding the timeliness threshold. The main reason why some of the sources end up on the Watch List in New Jersey is due to the lack of a resolving action within a four year time period (CAA Watch List Criteria 1c). Once a case is referred to the Department of Law for civil enforcement, it takes a long time for the cases to reach resolution including payment of penalty.

Citation of information reviewed for this criterion: AIRS, source files and staff interviews

Recommendations: None.

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

Findings: Where penalties were assessed for violations, a penalty calculation sheet was reviewed in the file documents. The penalties assessed were in accordance with the penalty matrix contained in New Jersey's regulations.

Citation of information reviewed for this criterion: Source files and staff interviews

Recommendations: None

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

Findings: For the 21 files reviewed, none of the cases warranted a penalty with an economic benefit component. Gravity-based penalties were determined based on the State penalty regulations. For HPVs that have received a formal enforcement action, the

State assessed a penalty in 95.5% of the cases compared to a national average of 76.8%. This is well above the national average.

Citation of information reviewed for this criterion: AIRS and NJEMS

Recommendations: When warranted, NJDEP should factor into their penalty the economic benefit accrued by the facility due to noncompliance.

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

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

Findings: The New Jersey Environmental Performance Partnership Agreement: Fiscal Years 2002-2004 required NJDEP to submit a plan and guidance to implement a new Title V compliance certification process. NJDEP successfully submitted the plan and it is being circulated among appropriate parties for concurrence and finalization. The PPA also required NJDEP to submit a two year (10/1/01-9/30/03) CMS plan, which they did. Findings did show that not all compliance evaluation and enforcement information is being input into AIRS, which is required by the PPA.

Citation of information reviewed for this criterion: The New Jersey Environmental Performance Partnership Agreement: Fiscal Years 2002-2004 and AIRS

Recommendations: NJDEP should reconcile the information contained in NJEMS with that contained in the AIRS database. NJDEP and EPA will continue to explore methods/avenues to establish a mechanism for electronic interface between NJEMS and AIRS.

Section 4: Review of Database Integrity

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

Findings: NJDEP currently enters most MDRs into AIRS in a timely manner. However, as noted before, some MDRs are not timely and accurately being input to AIRS.

Citation of information reviewed for this criterion: AIRS and staff interviews

Recommendations: NJ must ensure 100% of MDRs are timely and accurately entered into AIRs in accordance with the current ICR.

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

Findings: A total of 21 files were reviewed for this pilot. Based on a review of the AIRS data and 25 MDRs for each source. The “Action Pollutant” was not included because it is not a MDR and is not included in the CMS Policy. We determined that approximately 11.4% (60/525) of the MDRs were missing or inaccurate. The most frequent MDRs that were missing included: inspections, CMS source category and inspection frequency, applicable federal programs and enforcement actions.

Stack tests are conducted by facilities and submitted to NJDEP for review, who then report the results (pass/fail) to AIRS. Of the stack tests that were reported in AIRS, 100% included a pass/fail indicator in the results code. Based on information we received from NJDEP, if a facility fails to submit stack test results, enforcement actions are taken against them.

Citation of information reviewed for this criterion: AIRS and staff interviews

Recommendations: NJDEP must ensure that all MDRs are entered for each reportable activity on a timely basis. In response to the review, the state has updated many of the records in AIRS that were lacking MDRs.

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

Findings: As previously mentioned, MDRs are not always timely and accurately reported to AIRS. This is documented by comparing the data in AIRS with the data in NJEMS. Throughout the audit process the numbers for the below data metrics have varied (AIRS is constantly being updated). Therefore, the data are not necessarily the most up to date. Also contributing to possible discrepancies with the data is the use of the online OTIS Management Reports, which are refreshed monthly. Discrepancies also exist between the Title V Operating Permits System and AIRS. The following information reflects the information found in AIRS and NJEMS.

Title V Universe: According to AIRS, 277 sources in New Jersey are subject to the CAA Title V regulations (sources in AIRS with Title V air program codes). Based on information received from NJDEP, once a Title V permit is issued, the Title V air program code is applied to the facility in AIRS. According to NJEMS, 237 sources have had a Title V permit issued and 105 are still pending (total of 342 facilities). According to NJDEP staff, 355 major sources are located in New Jersey. In AIRS, 285 sources have a CMS Source code for major sources and 362 have been classified as majors (with a State Classification Code). An additional 29 sources (for a total of 391 sources) have been classified by the EPA as major sources. Also, a discrepancy exists between AIRS and the Title V Operating Permits System (TOPS). According to TOPS, there are 407 Title V sources in New Jersey and 312 Title V permits issued.

State agrees with facility count: The 1,444 major, synthetic minor and NESHAP minors count was deemed accurate by NJDEP.

Subprogram Universe: on hold per EPA HQ

FCE Counts Complete: 173 FCEs were conducted in FY 2003 at major sources and SM-80s according to the Extended CAA Management Reports. According to NJEMS, 240

FCEs were conducted in FY 2003 at major sources and SM-80s.

Violation Counts Complete: The CAA OTIS Management Report, which pulls data from AIRS, lists 65 facilities with violations. The data was pulled from AIRS on 11/13/2004. According to NJEMS, 467 violations were discovered in FY2003 (based on current facility classification).

Notice of Violation Counts Complete: The CAA OTIS Management Report lists 103 State Notices of Violation. According to NJEMS, 115 Notices of Violations were issued to facilities in New Jersey in FY 2003.

HPV Counts Complete: AIRS lists 78 individual HPVs (a facility may have more than one HPV) at major sources identified in FY 2003. This number is fairly close to the 77 identified by NJEMS.

Formal Action Counts Complete: The CAA OTIS Management Report indicates 311 formal enforcement actions were issued in FY 2003. NJEMS indicates 352 formal enforcement actions were issued in New Jersey in FY 2003 (246 at major sources and 106 at synthetic minors). This is based on the facility's current classification as a major or synthetic minor source.

Assessed Penalties Complete: 278 formal actions included assessed penalties for a total of \$3,724,200 in penalties assessed. NJDEP staff agreed that this number was accurate.

Number of Major Sources Missing CMS Policy Applicability: 60 major sources continue to lack a CMS Policy Applicability code in AIRS. Without a CMS category and frequency, these sources are not included in the AIRS generated unknown compliance status.

Citation of information reviewed for this criterion: AIRS, CAA Extended Management Report (10/1/2004), OTIS CAA OTIS Management Report (10/29/2004) and staff interview

Recommendations: The data in AIRS needs to be maintained and comparable to what is maintained in NJEMS. Efforts should be made to reconcile the data in the two databases. Additionally, EPA and NJDEP will continue to explore methods/avenues to establish a mechanism for interface between NJEMS and AIRS, so that data can be electronically uploaded to AIRS from NJEMS.

FORM A - EVALUATION FORM

Date: October 4 - 7, 2004

Program Evaluated: NPDES

Information Sources Included in the Review: File Reviews of NJDEP files in Central File Room located in Trenton, NJ

EPA Evaluator: Philip Li Phone: (212) 637-3920
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State Contact: Gene Callahan Phone: (609) 984-5855

Section 1: Review of State Inspection Implementation

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

Findings:

According to PCS, NJDEP inspected 88.7% of all the majors, which is greater than the national average of 70.5% of all majors inspected. However, NJEMS shows that 100% of all the majors were inspected in FY03. This information was not carried over to PCS due to resource limitations in NJDEP's Central Office. Steps have been taken to update PCS. In addition, since New Jersey is an indirect user of PCS, data quality will improve upon completion of the EPA headquarters Interim Data Exchange Format (IDEF) project.

While EPA is developing the newer system to replace PCS, States are modernizing their existing NPDES support methods through developing or upgrading their own systems in advance of ICIS-NPDES delivery. These state modernization programs are being hampered by the technical limitations of legacy PCS from both a data base and information interface perspective. In response to these challenges, a new interface which will allow communication between the newer states system with the legacy PCS and the ICIS-NPDES systems must be developed. NJ was the first state selected to develop the IDEF interface with a grant from EPA.

The IDEF project is at the last phase of the project. NJDEP is in the production testing mode. There are still some technical problems that need to be resolved. The project is scheduled to be in production mode by February 2005.

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

Recommendations: Region 2 and NJDEP will continue to work with HQ to complete the IDEF project.

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

Findings:

For the majority of inspections, the inspection reports were completed within a timely fashion. Where appropriate, all inspection reports did have a violation determination and enforcement response, where applicable.

Documentation of compliance monitoring and enforcement activity-NJEMS and hardcopy files was well represented. There were one or two instances of activity in NJEMS without a document in the hard copy files. More specifically, certain files were missing follow-up letters from the permittee in response to Notices of Violations (NOV). This could be attributed to problems in the transmittal of the document from field offices to the main office, or document filing errors. All missing hard copy documents were provided within hours of the EPA reviewer's request.

Citation of information reviewed for this criterion: NJDEP Central File Library File Review

Recommendations: EPA recognizes that inspection reports are completed in NJEMS. Although the format of inspection reports may be consistent, the data found in the reports may not be. EPA recommends that NJDEP ensure that the completion of inspection reports be consistent from inspector to inspector. Additionally, NJDEP should consider reviewing its administrative practices for transmittal of hard copies from the three regional offices to the central file.

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

Findings:

According to New Jersey's protocol, on-line inspection reports should be completed within 30 days of the inspection. These deadlines are automatically calculated in NJEMS. When an inspection report is not completed within 30 days, it is deemed 'late' and reminders are sent to the inspector and reviewing supervisor to complete the inspection report.

For the majority of the files reviewed, inspection reports were completed in a timely manner. In one instance, a violation was identified during an inspection and, although the inspection report was not completed within 30 days, a Notice of Violation was sent out before the inspection report was completed.

Citation of information reviewed for this criterion: Gene Callahan, NJDEP and review of files in NJDEP Central Library Files

Recommendations: None

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

Findings:

Violators, identified by PCS, through NJEMS, as SNC, are used to develop the quarterly non-compliance report. Under the NJ Water Pollution Control Act (WPCA) and NJ Clean Water Enforcement Act (CWEA), any exceedence classified as serious mandates the imposition of mandatory minimum penalties for certain violations. The state definition of a serious violation is more stringent than the EPA definition of SNC, therefore, all Significant Non-compliance (SNC) is accurately identified and reported to the EPA, in a timely and accurate manner.

Citation of information reviewed for this criterion: New Jersey Water Pollution Control Act (WPCA), New Jersey Clean Water Enforcement Act (CWEA)

Recommendations: None

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

Findings:

Of the twenty (20) files that were reviewed, five major facilities were found to have some degree of non-compliance. Of the five facilities, four had final enforcement actions with end dates. One facility had a draft enforcement action pending.

Citation of information reviewed for this criterion: New Jersey Water Pollution Control Act (WPCA), New Jersey Clean Water Enforcement Act (CWEA)

Recommendations: None

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

Findings:

All NJDEP enforcement actions were considered to be ‘timely and appropriate’ and followed the State penalty policy protocol established. For example, a Judicial Consent Order (JCO) was executed by NJDEP and the City of Paterson on April 22, 2002. The JCO requires Paterson to adhere to a schedule to construct Solids/Floatables Control measures, to update and implement a CSO Pollution Prevention Plan and an Operation and Maintenance Plan. In settlement of violations of the WPCA and to address economic benefit it derived from delaying compliance, Paterson also agreed to pay a total penalty of \$379,169.

In addition, New Jersey is a national leader in this category with a very low level of 1.3% of the state’s active majors universe (159 facilities) in significant non-compliance. This figure is significantly below the national average of 8.3% , and the recommended 2% level.

Citation of information reviewed for this criterion: New Jersey Water Pollution Control Act (WPCA), New Jersey Clean Water Enforcement Act (CWEA)

Recommendations: None

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

Findings:

In determining penalty calculations, NJDEP prepares a 'penalty determination rationale' (assessed penalty with minimum required penalties). Of the twenty files reviewed, five facilities were found with penalties assessed (four final, one draft). It was observed that NJDEP's penalty calculations included gravity and economic benefit components utilizing NJ WPCA's civil administrative penalty determination matrix which encompasses both conduct and seriousness of the violation.

According to EPA's CWA Framework Metric Results, 0% of enforcement actions taken in NJ carried a penalty compared to the national average of 55%. EPA and NJDEP have already taken steps to correct this indicator, NJDEP was inputting the penalty information into PCS but not in the proper field.

Citation of information reviewed for this criterion: New Jersey Water Pollution Control Act

Recommendations: NJDEP has agreed to enter the penalty data directly to PCS in the appropriate data fields.

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

Findings:

It was observed that NJDEP's penalty calculations included gravity and economic benefit components utilizing NJ WPCA's civil administrative penalty determination matrix which encompasses both conduct and seriousness of the violation. Of the four final penalty actions reviewed, all final settlements included a penalty that contained a gravity component, and three of the final settlements included an economic benefit component. In the one final settlement that did not include an economic benefit component, the penalty rational worksheet for the case outlined that economic benefit was not imposed due to the respondent's commitment to the implementation of plant and system improvement.

Citation of information reviewed for this criterion: New Jersey Water Pollution Control Act

Recommendations: EPA recommends that, in all cases, the economic benefit of non-compliance be recovered in order to remove any economic gain by a violating party.

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

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

Findings:

All enforcement commitments in the Performance Partnership Agreement (e.g. Significant Non-compliance Action Program (SNAP), timely and appropriate enforcement actions, and inspections), between EPA and New Jersey were accomplished in a timely and complete manner.

Citation of information reviewed for this criterion: NJDEP PPA

Recommendations: None

Section 4: Review of Database Integrity

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

Findings:

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

Citation of information reviewed for this criterion: PCS/NJEMS

Recommendations: None

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

Findings:

For the files reviewed, all minimum data requirements were entered accurately.

Please see answer to No. 10

Citation of information reviewed for this criterion:

Recommendations: None

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

Findings:

It is significant to note that the CWA Framework Metric Results/data statistics prepared by EPA headquarters, in part acquired from the PCS data base, were somewhat different than that of NJDEP's NJEMS system. Required data for all NPDES majors is maintained in the PCS database, however, New Jersey does not presently input all data for minors into the PCS database because there is no interface between NJEMS and PCS. This problem will be corrected upon implementation of the IDEF project.

Citation of information reviewed for this criterion:

Recommendations: The Environmental Protection Agency, in response to the Federal Water Pollution Control Act of 1972, developed the National Pollution Discharge Elimination System to support the agency's efforts to eliminate the discharge of pollutants into navigable waters of the United States. Under provisions of statute, individual states are empowered to administer their own NPDES programs, with transfer of NPDES data to the EPA. The EPA uses the Permit Compliance System (PCS) to support its NPDES responsibilities. States have the option to use either PCS or their own systems. Under either approach, States must move NPDES data to PCS.

To keep up with the new data base technology, EPA is expanding the newer Oracle-based system, ICIS, to include the NPDES replacing the legacy PCS. The ultimate goal of this re-engineering or system modernization is to develop a new technology system that supports user requirements as well as the NPDES program.

While EPA is developing the newer system to replace PCS, States are modernizing their existing NPDES support methods through developing or upgrading their own systems in advance of ICIS-NPDES delivery. These state modernization programs are being hampered by the technical limitations of legacy PCS from both a data base and information interface perspective. In response to these challenges, a new interface which will allow communication between the newer states system with the legacy PCS and the ICIS-NPDES systems must be developed. NJ was the first state selected to develop the Interim Data Exchange Format (IDEF) interface with grant from EPA.

The IDEF project is at last phrase of the project. OEI and NJDEP is in the production testing mode. There is still some technical problems need to be resolved. The project is scheduled to be in production mode by February 2005. EPA and NJDEP will continue to work with HQ to complete the IDEF project.

FORM A - EVALUATION FORM

Date: November 10, 2004

Program Evaluated: RCRA

EPA Evaluator: Joel Golumbek, Chief, RCB-HWCS

NJDEP Contact: Michael Hastry, Chief, Bureau of Hazardous Waste Compliance and Enforcement

Background:

A RCRA program file review of NJDEP Secondary Violator (SV) and non-violation (NV) cases was conducted at the State's northern field office in Parsipanny on October 6, 2004. Six (6) NV cases (two from each of the three field offices) and ten (10) SV cases (three each from the southern and central field offices, and four from the northern field office) were reviewed. These cases were chosen from a list generated from the RCRAInfo database that indicates that 596 inspections were conducted during State Fiscal Year 2003 which did not result in violations, and 65 inspections were conducted which were designated as SV cases. The number of files reviewed and the specific data collected during this file review was based on the State Review Framework file review protocol for RCRA/Subtitle C program evaluations.

In addition to the NV and SV cases, forty (40) state-designated Significant Non-Compliers (SNC) case files were reviewed at the NJDEP's Central Field Office in Robbinsville on September 30 and October 1, 2003. This review was done prior to the development of the State Review Framework and Appendices. These SNC cases were reviewed for timeliness, appropriate penalty determinations, justification in penalty reduction, and to denote any open cases for which there have been no settlement. Cases reviewed were those for which inspections were conducted during the calendar year 2002, and data gathered regarding these cases was obtained using the New Jersey Environmental Management System (NJEMS) database rather than by paper file review.

SECTION 1: REVIEW OF STATE INSPECTION IMPLEMENTATION

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

According to RCRAInfo data, the NJDEP conducted the following RCRA Compliance Evaluation Inspections (CEIs) during State Fiscal Year 2003 (see table below). The commitments are contained in the Performance Partnership Agreement (PPA) and are based on the estimated size of the Large Quantity Generator (LQG) and Small Quantity Generator (SQG) universes; for this report, these universe count estimates were made by the NJDEP based on biennial reporting and manifest information, respectively. The State Fiscal Year 2003 commitment for the other categories of inspections are based on statutory inspection frequencies and the universe of handlers in each of the categories.

CATEGORY	RCRAInfo COUNT	SFY03 COMMITMENT
Large Quantity Generators (LQGs)	117*	15% of LQG Universe (135)
Small Quantity Generators (SQGs)	133**	10% of SQG Universe (61)
Treatment Storage Facilities (TSDFs)	25***	All of TSDF Universe except for one*
Land Disposal Facilities (LDFs)	1	All active LDFs which is 1
Incinerators/BIFs	4	All which is 4

*LQG universe of 899 based on 2001 BRS data

**SQG universe of 615 based on 2003 manifest data

*** NJDEP inspected 25 of the 27 TSDF universe over a 2-year period (2002-2003); of the remaining two, one was inspected by the EPA, and one facility which is no longer in operation (although RCRAInfo indicated that it was still in operation)

According to the LQG universe as identified in the Biannual Report System database, NJDEP has completed inspections of approximately 60 percent of LQGs during the FY 1999-2003 period as opposed to the goal of 100% inspection coverage.

Citation of information reviewed for this criterion:

Recommendations: None. NJDEP redirected resources from inspecting 100 percent of its LQGs, to what it and EPA Region 2 believe are equally high priority handlers, including possible permit evaders/illegal operators, and SQGs which have never been inspected. Region 2 has had discussions with OECA regarding this approach and this request is under consideration.

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

Findings:

The NJDEP utilizes separate inspection checklists for Large Quantity Generators, Small Quantity Generators, Conditionally Exempt Small Quantity Generators, and other types of facilities. Each checklist is segmented to denote specific regulatory requirements for manifest, pre-transport, record keeping and reporting, container management, preparedness and prevention, etc. The checklists also denote state-only generator requirements. Except for state-only requirements, each citation is made with reference to federal (CFR 40) regulations; for each citation, the checklist allows the inspector to designate whether or not a facility is in compliance, out of compliance, or if there are potential violations. The checklist also allows the inspector to include comments or results for each citation.

In addition to checklists, inspection reports also include a narrative sufficient to give the reader a general description of facility operations, hazardous waste generation and management activities, and descriptions of any violations that may have been observed. Checklists and narratives are word-processing documents, and are electronically stored in the State's compliance/enforcement database, NJEMS.

For all NV and SV case files reviewed, inspection reports included a detailed checklist and an adequate narrative. For two SV cases, additional documentation, such as photographs and sampling analysis results, were also contained in the file.

For SNC cases, a review of case files was originally conducted prior to the establishment of the State Review Framework Protocol. However, during the October 2003 file review, the inspection reports associated with these SNCs were accessed through NJEMS and it was determined that these inspection reports contained complete inspection findings and identified the violations.

Citation of information reviewed for this criterion:

Recommendations: None

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

Findings:

It cannot be determined from a review of case files whether or not inspection reports were completed or submitted in a timely manner. However, given that violation determinations for SV cases, as shown by the dates of field NOV issuance, were usually made on the *same date* as the inspection, it can be inferred that completion of inspection reports are also done in a timely manner.

Citation of information reviewed for this criterion:

Recommendations: None

SECTION 2: REVIEW OF STATE ENFORCEMENT ACTIVITY

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

Findings:

The State reports RCRA inspections and any subsequent enforcement actions to the EPA by entering these data into EPA's RCRAInfo database system.

The RCRAInfo database identified 37 SNC cases with determination dates in FY2003, while a list derived from NJEMS for the same period identified 61 SNCs. This indicates that the State failed to enter 24 SNCs into RCRAInfo. Similarly, of the ten SV cases reviewed, two cases should have been designated in RCRAInfo as SNCs. (Note that the

NJDEP did issue formal enforcement actions with penalties for these cases.)

Citation of information reviewed for this criterion:

Recommendations: NJDEP must ensure that all SNCs are entered into RCRAInfo in a timely manner.

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

Findings:

Enforcement response in the form of NOCAPAs (formal enforcement actions with penalties) and/or Notice of Violations (NOV) were issued in all SV cases. Notice of Violations (NOV) are issued to facilities at the time of inspection. In addition to citing regulations (referencing both state and federal citations), NOVs include a section directing the facility to take specific corrective actions (submittals and actions, as denoted by the inspector) to be submitted by a specific date or within a certain number of calendar days. The form directs the facility to submit a written explanation of corrective measure to achieve compliance.

Citation of information reviewed for this criterion:

Recommendations: None

6. Degree to which the State takes enforcement actions... in a timely and appropriate manner

Findings:

Enforcement actions for SVs were taken within 150 days for all cases reviewed; in fact, for many SV cases, field NOVs were issued on the same date as the inspection. The additional issuances of NOCAPAs for seven of the ten SV cases reviewed were also taken within 150 days of inspection. Enforcement action for all but three of the SNC cases were issued within 180 days of the initial evaluation. Therefore, in the majority of cases, enforcement actions were timely.

All SNCs were addressed with formal enforcement actions (NOCAPAs). Based on RCRAInfo, there were 12 Final Orders that did not include penalties. However, NJDEP has indicated that all its Final Orders entered into in FY 2003 included penalties. Therefore, it appears that the problem is the lack of reporting of all penalties in RCRAInfo .

Citation of information reviewed for this criterion:

Recommendations: NJDEP needs to improve the reporting of penalty data to RCRAInfo.

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

Findings:

None of the files reviewed warranted a penalty with an economic benefit component. As such, we are not able to definitively state at this time whether NJDEP is including economic benefit in its penalty calculations.

Of the 16 cases which were deemed to be actual SNC cases, 13 were determined to have appropriate proposed penalties, two were considered to be lower than potentially appropriate, and one we could not make a determination owing to lack of information. The other “SNC” cases reported by the NJDEP were not considered SNCs by EPA Region 2; they were primarily failure to label containers with accumulation start dates. The NJDEP considers these SNCs, but EPA Region 2 does not and would have issued NOV's only.

In one of the cases where the proposed penalty was not deemed appropriate, a \$15,000.00 penalty was assessed for the shipment of “7 loads” of D002 hazardous wastes as non-hazardous waste over a period of about two years. The NOCAPA cites only that the facility did not make a hazardous waste determination, and does not offer information regarding specific quantities of hazardous wastes that were shipped off-site as non-hazardous waste. However, a similar case cited “12 shipments” of hazardous waste as non-hazardous waste with a proposed penalty of \$109,991.00. Additional violations should have been cited in the former case, and associated gravity penalties assessed, including offering hazardous waste to transporters and receiving facilities that have not received an EPA identification number, and for not utilizing hazardous waste manifests.

In the other case, the inspection report stated that approximately 80 containers were either unlabeled, rusted or “severely rusted”, their contents “unknown”, had missing accumulation start dates, and/or indicated “signs of past spill or leakage.” The NOCAPA cited seven violations, including not making hazardous waste determinations, and failing to use containers of sound integrity. The proposed penalty of \$27,000.00 does not reflect the severity and duration of the violations, including the potential for harm, since many of these drums, including those stated to be “unknown” or corroded, were being stored outdoors on a “storage pad”. The proposed penalty should have been higher, particularly given that the same violations, resulting in the issuance of a NOCAPA, were found during a RCRA inspection of the facility in April 2000.

Citation of information reviewed for this criterion:

Recommendations: EPA and NJDEP will meet to discuss appropriate penalty mitigation with regard to RCRA cases. NJDEP should factor into their penalty the economic benefit accrued by the facility due to noncompliance.

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

Findings:

None of the files reviewed warranted a penalty with an economic benefit component. As such, we are not able to definitively state at this time whether NJDEP is including economic benefit in its penalty calculations.

EPA reviewed 11 Final Orders and 16 Complaints. Our review concluded that 7 of the

11 Final Orders and 13 of the 16 Complaints had appropriate penalties (proposed and final). This equates to approximately 75% (20 of 27 cases) having appropriate penalties.

With respect to penalty settlements, for those cases where a penalty was assessed and a reduction in penalty occurred, justification in reduction in penalty is denoted in NJEMS as a “Settlement Conference Summary” or as a “comment” document in Word format. In one case, justification for a 37% reduction of the \$27,000 penalty to \$17,000.00 cited only that “this settlement was reached in order to avoid further delay and expense.”

As indicated above, justification in penalty reduction included “to avoid further expense and delay”, “because the facility was in full compliance in a timely fashion”, and that it “came into compliance in a relatively short time.” It would be appropriate to apply a twenty percent reduction when the company fully cooperates during settlement discussions, settlement is actively expedited, and the facility quickly comes into compliance soon after the inspection. Any further reductions is only justified if new information given by the facility has shown that the violations were found to either be inaccurate or incorrect, or that the facility has proven an inability to pay the proposed penalty, or the seriousness of the violation(s) was not as great as originally assessed.

Citation of information reviewed for this criterion:

Recommendations: EPA and NJDEP will meet to discuss appropriate penalty mitigation with regard to RCRA cases. NJDEP should factor into their penalty the economic benefit accrued by the facility due to noncompliance

SECTION 3: REVIEW OF PERFORMANCE PARTNERSHIP AGREEMENT OR STATE/EPA AGREEMENT

9. Enforcement commitments in the PPA/SEA, if they exist, are met.

Findings:

As described in detail in Element 1, above, except for Large Quantity Generators, the NJDEP has met or exceeded all inspection commitments.

Citation of information reviewed for this criterion:

Recommendations: None.

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

Findings:

Overall, inspections, violations, return-to-compliance (RTC) dates, and complaints are being entered into the RCRAInfo database in a timely, accurate, and complete manner. However, some discrepancies between information contained in RCRAInfo and those either obtained during the file review (and delineated in the above elements) or those supplied by the NJDEP, indicate that not all information is being entered into RCRAInfo.

As described in Element 4, the RCRAInfo database identified 37 SNC cases with determination dates in FY2003; however, a list derived from NJEMS for the same period identified 61 SNCs, demonstrating that the State did not enter 24 SNCs into RCRAInfo. Also, based on a RCRAInfo data pull, settled penalties during SFY2003 totaled \$ 246,614, while the NJDEP specified that penalties collected actually totaled \$ 486,869, indicating that penalty information is not being completely entered into RCRAInfo. This discrepancy may be partially due to the fact that RCRAInfo, during an initial EPA data pull, specified that there were 56 Final Orders during this period, while a subsequent data pull, after the NJDEP entered additional Final Orders, showed a total of 83 Final Orders.

A recent RCRAInfo Report indicated a total penalty very close to the \$486,000.

There were 12 Final Orders in RCRAInfo that did not have penalties associated with them. The NJDEP had indicated that all Final Orders in FY 2003 had penalties. Therefore, it appears that NJDEP had still not entered all penalties into RCRAInfo.

Finally, although the vast majority of SNCs and SVs had RTC dates entered in RCRAInfo, there were 27 cases that still showed no return-to-compliance (RTC) dates three or more years after the inspection. NJDEP indicated that there were no cases in this category based on data contained in NJEMS. This indicates that, in a number of cases, RTC dates are not being entered into RCRAInfo

Citation of information reviewed for this criterion:

Recommendations: NJDEP needs to enter required data into RCRAInfo.

ELEMENT 13
Element 13

New Jersey believes that element 13 of the State Assessment Review serves two purposes. First it offers an opportunity to be recognized for efforts that go above and beyond the classic output metrics of elements 1-12. This means that there is a chance to be acknowledged as well as to share with others the lessons and experiences of positive endeavors.

Second we believe that element 13 offers potential paths to inform the evolution of the work behind the metrics of the first 12 elements. In other words it is a chance to examine alternatives to the shortcomings of output-based measurements which have been and continue to be the yardstick for state programs. Specifically it is hoped that today's element 13 metrics will gain the stature of, supplement or otherwise become part of one or more of the metrics in the other 12 elements in the future.

A. Effectiveness of Operations

- 1. Outcome-focused measures** - While there is no across the board policy yet that requires programs to record outcomes as with EPA's Case Conclusion, we have the capability to record both inspection and enforcement action related outcomes in our shared data system. The most consistent use of these features so far, while still experimental, occurs in our Land Use program. Preliminary data include information such as the following, although it has not been quality assured.

Measure	Years	Units	Area restored
Freshwater Wetlands	2001- present	sq. ft.	2,136,617
Transition Areas	2001- present	sq. ft.	898,722
Coastal Wetland	2002 - present	sq. ft.	351,849
Flood Hazard Area	2002 - present	sq. ft.	421,722
Total			3,808,910
Stream Corridor	2002 - present	Linear ft.	1,666

- 2. Compliance Rates** - NJ has participated with other states and the Environmental Compliance Consortium to evaluate the usefulness of compliance rates. While this tool is perhaps most effective when applied to targeting concepts, it might serve as a long-term program evaluation tool. Long term compliance rates should generally be expected to trend upward. Programs ought to be evaluated based on an upward trend or the ability to demonstrate causes for downward trends (such as new rules or initiatives to address suspected problem areas).

Overall Compliance Rates*

Program	2001	2002	2003
Air	76%	75%	65%
Hazardous Waste	79%	55%	71%
Water	86%	78%	83%

*Number of facilities with at least one violation divided by number of facilities with at least one compliance evaluation; as defined and standardized by the Environmental Compliance Consortium.

B. Innovations and Evolution

1. **Sweeps** - NJDEP has developed a mode of operation, termed a "Sweep" that lends itself to addressing specific environmental problems or geographic areas. These are conducted in ways that sharpen the Department's abilities to manage and use data as well as shifting from a media specific approach to a more holistic one. Rather than representing an additional workload, the majority of the inspections conducted in Sweeps serve to satisfy existing NEPPS agreements. The defining characteristics of a Sweep typically include:
 - i) Targeted to a problem and supported by data
 - ii) Carefully planned with stakeholder input
 - iii) Multi-program and/or multi-agency involvement with cross training or exposure
 - iv) Outreach to inform and educate those impacted/targeted as well as the press and the public
 - v) Results tracked and reported

"Sweeps" and similar initiatives conducted to date include:

Oct 2001 - Sept 2003 Marina Compliance Assistance Project
July 2002 Agriculture Worker Safety Initiative
July 2002 Hazardous Waste Generator [CESQG] Initiative
Oct 2002 TrashNet - a Solid and Hazardous Waste Enforcement Initiative
Oct 2002 Camden City Sweep
April 2003 Asbury Park Hazardous Waste Sweep
Sept 2003 Paterson City Sweep
Aug 2004 Diesel Truck Idling Initiative

Details on most of these can be found on the DEP's website at
<http://www.state.nj.us/dep/enforcement/initiatives.html>

2. **Targeting** - NJDEP has placed an emphasis on targeting its resources to areas of greatest concern. For example data from the Right to Know program has been used to focus resources on the highest emitters of toxic substances. Results of this targeted focus included significant reductions in the carcinogens hydrazine and styrene. The focus on top toxic emitters also fueled our efforts in joining with the EPA to renew the emphasis on refinery operations. Under a grant from the EPA both the Air program and the Hazardous Waste program are evaluating compliance rates across sections of their regulated universe of facilities. Low rates or other anomalies are being considered for focused attention.

C. Data and Information

1. **Data-centered organization** - In 1998 NJDEP's Compliance and Enforcement programs recorded most of their inspection results on paper forms. During the next six years, programs in ten different media areas were brought into the fold of an enterprise data system. This did more than digitize the results, it also exposed them to each other's work enabling a more holistic outlook, applied basic standards to ensure consistent responses, and made their work available to others such as permit and rule writers.
2. **Publication of data**- Presently the results of inspections and investigations, (including violative and non-violative observations, enforcement actions and penalties) performed by ten different media programs, is available in real time on the NJDEP web site at http://datamine.state.nj.us/dep/DEP_OPRA/. The availability of this data improves our standing with concerned citizens and helps us to satisfy our state's strong Open Public Records Act requirements with less diversion of resources from the core mission of the

Department.

D. Compliance Assistance, Communication & Outreach

1. Compliance Assistance- New Jersey's Compliance & Enforcement Division has for a long time recognized the need to help those regulated understand their obligations. Besides web-based information and informal assistance given during inspections, we offer several programs to promote compliance through assistance. Hazardous Waste has run a "Welcome Wagon" program since the early 1990's to review requirements with new program entrants, and Water Quality does the same function for new permit holders. Additionally we offer multi-media "Greenstart" inspections where small businesses can have a full multimedia review without threat of penalties as long as problems are quickly addressed. The totals below represent all types of compliance assistance efforts of this nature, which involved site visits. Data for this metric is not yet quality assured due to a lack of standardization and oversight, but does reflect significant real work efforts.

	Compliance Assistance Activities			
	2001	2002	2003	2004
Air	42	14	4	3
Haz Waste	71	74	25	49
Land Use	0	4	8	7
Solid Waste	0	3	2	2
Water Quality	186	116	149	186
Water Supply	4	4	35	31
Total	303	215	223	278

2. Improved Web Presence - For two years, the Compliance & Enforcement section of the NJDEP web pages <http://www.state.nj.us/dep/enforcement/> have been steadily improving in the content and layout of available information. Besides sharing with our stakeholders important information on the initiatives we undertake, we have steadily increased the amount of compliance assistance information including making inspector checklists available and posting training and reference material. In addition we have been careful to integrate ourselves with web offerings in other areas of the department, advancing collaboration and synergy.

3. Advisories - NJDEP Compliance & Enforcement has introduced a completely revolutionary concept for a regulatory oversight organization embodied in the Advisories. The revolutionary aspect of Advisories is that they represent a projection of concerns out in front of actions. Where classic enforcement philosophy would seek to capture the maximum number of violators in addressing a suspected cause of environmental harm, the advisory system represents the exact opposite. The advisories seek to express C&E thinking and concerns ahead of our actions in the hopes of effecting changes without the need to take action. This saves on DEP resources, affects changes sooner and is a welcomed opportunity by regulated business to avoid penalty by being proactive.

NJDEP has issued 20 Advisories since March 2003. These are distributed in targeted mailings where possible as well being sent to members of our listserve. We have over 800 registered members on the Advisory listserve, many of whom are key business sector advocates who are motivated to spread

the word more widely. We have worked hard to establish a system and procedure that produce concise and consistently formatted advisories to make the issues and desired outcomes easily understandable to stakeholders. Detailed information about our Advisory system, as well as the list of those issued is available online at <http://www.state.nj.us/dep/enforcement/advisories.html>