

U.S. EPA – Region 5 Review of Wisconsin DNR Enforcement Program  
Federal Fiscal Year 2004

September 27, 2006

**A. EXECUTIVE SUMMARY**

**Background**

The United States Environmental Protection Agency (EPA) Office of Enforcement and Compliance Assurance (OECA), all ten EPA Regions, the Environmental Council of States (ECOS) Compliance Committee, and other state representatives have jointly developed a method to assess state performance in the enforcement and compliance assurance program. This report reflects the review by EPA's Region 5 of the Wisconsin Department of Natural Resources' (WDNR) compliance and enforcement program utilizing the State Review Framework. This review has been a collaborative effort between the Region and State and captures both successes of the state's program as well as any identified areas that need improvement. Future reviews will look at performance as a comparison to the level documented in this baseline review.

The purpose of the State Review Framework assessment is to provide consistency in the level of core enforcement activity and thus in environmental protection and public health across the country. It provides a consistent tool for Regions to use in overseeing state enforcement programs, and provides the basis for a consistent mechanism for EPA Regions to provide flexibility to states which can demonstrate an adequate core program.

The review consists of 12 critical elements which compare actual compliance and enforcement practices in the Clean Air Act (CAA) Stationary Sources Program, the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) program, and the Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste program with EPA policies and guidance. The 12 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 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 definitions of a minimum level of performance.

**Process Followed in the Review**

Region 5's evaluation of WDNR's core enforcement programs was conducted by staff from the Region's Air, RCRA, and Water enforcement programs using the Framework described above. Part of the review consisted of analyzing FFY 2004 data ("data metrics") regarding WDNR's enforcement programs which came from EPA's Integrated

Data for Enforcement Analysis (IDEA) program. During the remainder of the review, EPA staff reviewed WDNR inspection and case files that were identified to provide a stratified random sample of inspections and case files for FFY 2004. The file reviews occurred during December 2005 and January 2006. Air reviewed 19 files, RCRA reviewed 32 files, and the Water program reviewed 32 files. The Evaluation Details section of this report contains findings of the review for each program and areas of concern - with a full explanation of these concerns along with recommendations for resolution.

### **Information Regarding WDNR**

WDNR has a decentralized organization, consisting of a Central office located in Madison, five Regional offices located throughout the state, and multiple Area offices located within each Region. Inspections and initial enforcement response are handled predominantly at the Regional level. Escalated enforcement responses are referred to the Central office. The Central office also serves to develop related policies, provide oversight of Regional and Area Offices and maintain the State's program databases.

### **Overall Findings and Recommendations**

In many areas, EPA has found that WDNR conducts an enforcement and compliance program throughout the state that follows established national and state policy. EPA has noticed that WDNR particularly has the following strengths:

- In the Air program progress has been made since the review year in regard to implementing the CMS and improving database entry procedures. Although there is more improvement needed, the Air program has been working cooperatively with EPA and has acquired knowledgeable staff dedicated to data issues.
- In the Water program, WDNR has recently updated its Enforcement System as well as its inspection strategy, which are key accomplishments. Also, inspection coverage exceeds both national expectations and the national average.

EPA has found that improvement is needed, however, in certain program areas. Listed below are the report's main recommendations:

- WDNR would benefit from a more consistent documentation process in regard to enforcement files for all the reviewed programs. In some cases, information was missing and the files incomplete. For example, at times one could not determine what ultimately became of a case (was it closed out? was it referred to the Attorney General?).
- Inspection reports for all reviewed programs should fully explain the scope of the inspections as well as findings and observations.
- The gravity and economic benefit portions of penalties need to be fully documented for all the reviewed programs. It is not apparent whether or not the economic benefit and gravity portions of penalties were recovered. In some cases, it was not clear how the initial penalty calculations were translated into the values in the final orders or decrees. In several instances, the state indicated that

calculations had been performed but documentation was not made available to EPA staff.

- WDNR should determine why HPV (Air) and SNC (RCRA) identification is low and come up with a plan and/or training by which to improve identification.
- Policies should be clarified and followed in all WDNR offices. EPA found cases within both the Air and RCRA areas in which either policies did not exist, or there were issues as to which policy applied. In some cases, the Madison office and outlying districts did not have a common understanding as to which policy governed a particular part of the Air or RCRA programs. In other cases, policy was clear but not followed for various reasons. EPA notes that this is not an issue for the Bureau of Water.
- WDNR should consistently follow timely and appropriate policy in terms of data entry and enforcement. Although it is not a requirement of EPA, WDNR may want to consider seeking administrative penalty authority as a tool to help in timely and appropriate enforcement.

### **WDNR Overarching Response to Recommendations on Penalty Calculations**

The following is text submitted by WDNR to EPA in response to recommendations on penalty calculations:

One issue that has been raised in each of the specific program reviews is the calculation and documentation of penalties. To address this issue, it may be helpful to explain more about how WDNR manages violations of environmental protection laws and develops penalty recommendations. WDNR does not have enforcement staff assigned to each specific environmental program. Our Environmental Enforcement Specialists (12.5 FTE) and Environmental Wardens (7 FTE) provide civil and criminal enforcement support to all environmental programs within WDNR's purview. For civil cases, issuing Notices of Violation, conducting Enforcement Conferences and the drafting of administrative orders and requests for prosecution are all coordinated through the Environmental Enforcement Specialist. In addition to having specialized enforcement skills, the Enforcement Specialist also plays an important role in ensuring that enforcement actions are handled consistently and with consideration for the resolution of multi-program issues that may exist at a facility.

WDNR does not have a formal matrix which calculates benefit and gravity. Our Air program does regularly utilize EPA's BEN program, but otherwise, the Department does not typically specify the amount requested under each of these components but our penalty recommendations do reflect the consideration of a number of factors such as:

- Any economic or other benefits derived from the violation.
- The actual or potential impacts to human health or the environment
- The nature or toxicity of the pollutant.
- The cause, number and duration of violations.
- The degree of willful or negligent conduct.
- The compliance history of the facility.

- The criminal or civil record of those involved.
- The presence, absence, timeliness and degree of preventative or corrective actions taken by the defendant.
- The need for court-ordered relief for restitution, management plan implementation, cost recovery, etc.
- The degree of penalty necessary to provide an adequate deterrent..
- The presence or absence of other mitigating circumstances.
- Judgments obtained in similar cases.

Requests for prosecution, including the penalty recommendation are closely scrutinized by technical, enforcement and management staff at the Regional level. Once approved by the Region, they are reviewed by WDNR Central Office regulatory, legal, enforcement and administrative staff for ultimate approval by the Secretary. The review process is designed to ensure that our actions are legally sound, consistent with similar actions and appropriate for the circumstances surrounding the violation.

When a case reaches the Wisconsin Department of Justice (WDOJ) it is reviewed by the Attorney assigned to the case. In cases where significant economic benefits are suspected the WDOJ has utilized the services of experts in this field to further develop and support the State's position.

The degree of detail contained in WDNR's penalty calculations reflects the severity and/or financial benefit resulting from the violation. We welcome suggestions from EPA on ways to further enhance our methods, but we ask that such discussions be included in the upcoming ENPPA process. Also, given the many variables associated with the level of penalties actually assessed by the court system and WDNR's limited staff resources, we further ask that any revisions implemented allow for greater efficiency in calculation and the flexibility to tailor the effort to the significance of the violation and in consideration of other appropriate factors summarized above.

### **EPA and WDNR Follow-Up to the State Review Report**

EPA and WDNR will work together in future months to ensure that specific actions mentioned throughout the report in response to recommendations are carried out. In response to remaining recommendations, EPA and WDNR will hold discussions in order to come to joint resolution of these issues. Many actions will specifically be negotiated as part of the EnPPA mid-year correction period coming in January or February of 2007. EPA requests that others occur in less formal ways over the remaining months of CY 2006.

## **B. EVALUATION DETAILS**

### **Program Evaluated: NPDES**

#### **Information Sources Included in the Review:**

1. Selected Inspection Files (see attached list);
2. Selected Case Files (see attached list);
3. Data from Permit and Compliance System (PCS) and Online Tracking Information System (OTIS), as summarized in the *CWA Framework Metric Results*, August 5, 2004 version.
4. Data in PCS as of February 28, 2006
5. Wisconsin System for Wastewater, Applications, Monitoring, and Permits (SWAMP) Database as of January 11, 2006
6. Enforcement Strategy (ES) for the Wisconsin Department of Natural Resources Water Pollution Control Program – July 2004
7. Enforcement Management Strategy for the Wisconsin Department of Natural Resources Water Pollution Control Program, June 28, 1994
8. Memo “*Guidance for Issuing NOC/NOV for Sewer Overflow Events*” by Al Shea, April 15, 2002.
9. WPDES Inspection Strategy April 10, 2003.
10. WPDES Inspection Strategy, Update #2, November 8, 2004.
11. E-mail dated January 12, 2006 from Ronda Conner to Steven Sisbach, subject: Total Citations and fines for 10/01/03-9/30/04.
12. Website: [www.doj.state.wi.us/news](http://www.doj.state.wi.us/news), January 9, 2006

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**Period Covered:** Federal Fiscal Year 2004

#### **Introduction:**

The file reviews were conducted January 10-11, 2006. Files were selected with the objective of obtaining a universe of 35-40 files, one third of which are indicative of inspections performed in FFY 2004, two thirds of which are indicative of enforcement cases pursued in FFY 2004. Preliminary file selection was made from lists the State

provided of inspections performed in FFY 2004 and cases concluded in FFY 2004, as State databases contain more complete records of these universes, particularly for minors and for stormwater actions, than does PCS. Recognizing that some inspections will result in enforcement actions, an equal number of files were randomly selected from both the list of enforcement cases and the inspection list, to approach the 1:3 ratio. Initially, R5 identified more than 40 files, in case WDNR had difficulties in obtaining a few of them (for example, if the case selected is currently in trial or preparing for trial, we would not expect WDNR to make that file available), in order to end up with a final list of at least 35 files to review.

Files selected were selected to provide a stratified random sample. Stratification was needed to ensure that all districts were represented, and to ensure a representative mix of cases (e.g., municipal, industrial, wet weather, majors, minors). Within each stratum, cases were randomly chosen except where noted below.

Case Files were identified using the "Case log ES Actions and Violations" list provided by WDNR for all but the stormwater related files. Resulting files offered a balanced variety of cases, including industrial, municipal, wet weather, major and minor facilities, and a variety of enforcement responses, except that no concluded cases resulting from DOJ referrals were included. For these, follow up with WDNR was needed, with the result that several judicial conclusions were added to the list. For stormwater, a spreadsheet from the WDNR stormwater data base was provided. The database commingled enforcement actions and inspections, so the stormwater case files were identified separately.

For inspection files, R5 worked from a list of 476 non-stormwater inspections provided by WDNR. The chosen set of files appeared to adequately represent a variety of permittees, with the exception of CAFOs. These did not appear to be well-represented, so a number of CAFO inspections listed, but not captured by random selection, was added.

The universe against which the review metrics were established includes information for 130 major permittees, 699 minor permittees with DMRs and 668 minor permittees with no DMR reporting. The state has discretion in determining whether or not to enter much of the data for these latter two categories of permittees into the national database, PCS. Consequently, unlike the Air and RCRA programs, many of the data elements for the water program are annotated as "informational only" and as discussed more fully in various portions of the following report, may not be representative of the actual WDNR NPDES program.

### ***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).**

**Findings:** Nationally, EPA has set an expectation that 100% of a state's majors are inspected each year, but will allow a trade off of two minor inspections for each major which is not inspected, as long as a minimum of 70% of the majors are inspected. U.S. EPA also sets an additional goal that states inspect at least 20% of their minors each year. Data in *Information Source 3* indicate that in FFY 2004, Wisconsin exceeded both the national expectations and the national average, with an inspection rate of 84.6% for majors and a 33.8 % rate for minors. The reviewers note that many highway construction stormwater inspections are performed by the Wisconsin Department of Transportation (WDOT); these do not appear to be included in the WDNR data systems nor PCS, and therefore the inspection rate for minors may actually be greater than reported. WDNR also has a Memorandum of Understanding with the Wisconsin Department of Commerce (WDCOMM) to perform stormwater inspections at construction sites. Though no evidence of WDCOMM inspections was found during the file review, these too could possibly increase the inspection rate for minors. Wisconsin reports several enhancements anticipated for its stormwater construction program. First, the State is in the process of revising its universal development code, such that when a company applies for coverage under that code, the application would constitute application for coverage under Wisconsin's general permit for stormwater construction sites. The State reports that extensive training of local authorities, regarding stormwater construction requirements, has also occurred. Finally, the WDNR has announced its intention to perform a number of construction inspections at sites co-regulated by WDCOMM in the latter part of 2006. U.S. EPA intends to also conduct such inspections. The three agencies intend to meet subsequent to these inspections to discuss findings and agree to follow-up actions as needed.

Finally, EPA notes that the WDNR has developed a comprehensive strategy that outlines the Agency's expectations for the types and frequencies of inspections for various categories of permittees. The strategy provides a level of detail that goes well beyond the minimum expectations outlined by EPA. EPA believes that a strategy of this sort is a "best practice" that should be considered for adoption by other states.

**Citation of information reviewed for this criterion:** Information sources 3, 4, 9, and 10.

**Recommendations and Actions:** EPA's Office of Water draft program guidance for 2007 had proposed including reporting of (and commitments to perform) stormwater and CAFO inspections. Though these requirements ultimately were not included in the 2007 Guidance, it is likely they will be included in the Guidance for 2008. In anticipation of those requirements, EPA asks that by July 2007 WDNR submit a plan for ensuring that inspections performed on its behalf by WDOT and WCOMM are planned and accounted for in the EnPPA negotiation process, properly recorded in PCS, and made available to EPA to the extent requested in subsequent reviews.

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

**Findings:** WDNR has an electronic database, SWAMP, which contains a wide variety of information relating to NPDES permittees. Information on most inspections is required to be included in this database. (Exceptions include stormwater inspections performed by WDNR for which the State maintains a separate database. It does not appear, however, that stormwater inspections performed by the WDCOMM and WDOT under MOUs with WDNR are maintained in this, or in any database accessible by WDNR). The inspection strategy in effect during the time period covered by this review (Information Source 9) requires that federal form 3560 be completed and entered into the SWAMP database for each inspection. In many cases, the form 3560 could not be located by file reviewers. WDNR notes that an update to the strategy in November 2004 (Information Source 10) removes the requirement for the form 3560.

Inspection reports in the SWAMP database and hard copy files varied from exceedingly complete and detailed to very cursory and brief. Two inspections completed by game wardens in response to complaints were among those that were most complete and detailed. In eight of sixteen files, reviewers found that the inspection reports were “brief” or superficial. Four of these were recorded as compliance evaluation inspections CEIs, and were “substantial compliance determinations.” A substantial compliance determination is required by State law, and is needed before a permit can be reissued. The State has developed a checklist for completing the substantial compliance determinations, and these checklists were found in all cases. However supporting narrative that describes the actual review that occurred was missing or cursory. In no case was sampling performed in conjunction with these inspections. Similarly, two Concentrated Animal Feed Operations (CAFO) inspections were reviewed. These also were supported by completed checklists, but narrative reports supporting the conclusions included in the checklists were missing in one case, and brief in the other. Generally, inspection reports responding to complaints and spills were the most complete in terms of purpose of the inspection, factors reviewed and findings.

Finally, a number of the site visits at two facilities appeared not to be inspections, but rather facility contacts of the type described in the State’s Inspection Strategy as contacts not to be considered as inspections. We found, however, that these were recorded as inspections only in State databases, and were not recorded as inspections in PCS.

EPA is unable to draw general conclusions as to the quality of the inspections performed for two reasons. First, in most cases the inspection reports did not provide sufficient detail to permit such an evaluation. Secondly, EPA has not

performed any oversight inspections in Wisconsin in recent years. Such inspections are critical to an evaluation of the quality of the state inspections. As a result, EPA plans to conduct a series of such inspections in 2006 or 2007, to supplement this evaluation. It is further recommended that those oversight inspections focus on State “substantial compliance” CEIs and state CAFO CEIs for which limited narrative documentation of the inspections could be found.

EPA is not aware of the protocols that Wisconsin employs to provide quality assurance checks on the quality of the inspection reports and the data in the SWAMP and stormwater databases. Of particular interest to EPA are steps the State takes to ensure that activities that are reported as inspections are actually defined as inspections under the state’s inspection strategy, and that inspection reports are complete and provided to the permittee. In particular, guidance contained in the inspection strategy relating to content of inspection reports does not appear sufficient to ensure that complete reports are written in all cases, and does not appear to require that a report of the inspection be provided to the permittee.

**Citation of information reviewed for this criterion:** Information sources 1, 4, 5, 9, 10

**Recommendations and Actions:** 1) EPA perform 6 oversight inspections in Wisconsin by the end of FFY 2008. 2) WDNR issue a memo to staff by December 31, 2006, describing expectations for the content of inspection reports and their provision to permittees, and incorporate this guidance into the next update of the State’s inspection Strategy. WDNR incorporate related performance expectations into the performance standards for Regional managers, the next time those standards are revised. 3) WDNR include provisions for entering data on CAFO and stormwater inspections into ICIS-NPDES, as part of their ICIS NPDES conversion plan. The date for this developing this plan will be established once the revised PCS Policy Statement is issued by EPA.

WDNR agrees that documentation and record-keeping of “inspections” and other permit compliance reviews is not always thorough and complete, nor is there consistency across the state. To that effect, WDNR plans to update its Enforcement Handbook with documentation guidance by the end of September 2007.

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

**Findings:** Of the 16 files reviewed, for which inspections were recorded in the data systems, and for which inspection reports were found, the time taken for report completion ranged from the same day to more than 240 days after the inspection was performed. The median was 13 days. Neither the State inspection strategy nor the state’s enforcement management systems/enforcement handbooks

establish a deadline for these reports. In several cases file reviewers were not able to discern the actual date of inspection, because either a report was not found or the report date preceded the referenced inspection date.

**Citation of information reviewed for this criterion:** Information sources 1 and 5

**Recommendations and Actions:** Inspection reports were routinely completed in an acceptable time period. The few occasions where reports were late were atypical, and often a result of extenuating circumstances (for example, state of the art lab analyses were needed before one inspection report could be completed). The Q/A protocols discussed in element 2 should be sufficient to address minor findings relating to lack of or inconsistencies in the dates of inspections and reports.

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

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

**Findings:** Unlike the Air and RCRA programs, most of the significant violations are reported to EPA by the permittee. Only those violations which are detected by the state during inspection of major permittees are required to be reported to EPA by the state. In all instances reviewed, violations which resulted in enforcement response were self-reported by permittees, or were for minor permittees or general permittees for which such reporting is not required. In no case did reviewers disagree with the state determination of SNC.

EPA has recently clarified its expectations for reporting single event violations, and future reviews of this element will include an assessment of the states' performance against these revised expectations.

**Citation of information reviewed for this criterion:** 1, 2 and 4

**Recommendations and Actions:** None

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

**Findings:** In all cases reviewed, the enforcement actions were appropriate, and consistent with the criteria provided in the State Enforcement Strategies (ES) (Information Sources 6 and 7. Information Source 6 was in effect the last three months of the review period; information source 7 the first 9 months. ). In one case the complying action was either insufficient or was not taken. This resulted in a second enforcement action. In two cases, the files contained documentation that the violations had subsequently been resolved. In four cases, compliance was

not required until a future date, so such documentation was not available. However, in the remaining five cases, though there is no evidence of further violations, there is no evidence that the case has been closed out. EPA could find no requirement in the applicable ES for documenting the close out of enforcement actions.

**Citation of information reviewed for this criterion:** Information sources 1, 2, 5, 6, and 7

**Recommendations and Actions:** We recommend that WDNR amend its ES to specify the procedures and documentation needed for closing out of enforcement actions.

WDNR agrees that formal "close-out" of enforcement actions is appropriate. Currently, there is inconsistency among the WDNR Regions in documenting formal close-outs in the "Casetrack" data system. This issue will be addressed within the EE program and further guidance developed for case close-out.

**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:** Reviewers found that enforcement actions were appropriate, as evaluated against the applicable State ES, in all cases reviewed. Actions were found to be timely in 50% of the cases, when evaluated against guidance in the applicable state ES; in 60% of the cases where action was not timely, there were extenuating circumstances (for example, there was need to do additional monitoring to document the gravity of the violation before the action could proceed). A further indicator of whether or not timely and appropriate enforcement is occurring is the resulting SNC rate. Data contained in information source 3 reveal that the State assures an excellent SNC rate for majors, having an annual rate of 6.2 % in FFY 2004 as opposed to a national average of 17.9%. In addition the state's active exceptions list (major facilities with SNC unaddressed for more than two quarters) was 0.8% of the universe in FFY 2004 compared to a national average of 3%.

A best practice noted in Wisconsin is its recently developed Goals Document. This document presents overall environmental goals, and related information such as subordinant performance measures, status on meeting those measures, and related success stories. Updates are provided to the Region on a quarterly basis. One performance measure which will also be reflected in performance agreements in 2007 is an expectation that responses to 95% of permit exceedances will be responded to within 90 days.

**Citation of information reviewed for this criterion:** Information sources 1, 2, 5, 6, and 7

**Recommendations and Actions:** None. Findings do not warrant follow-up action.

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

**Findings:** According to information summarized in Information Source 3, the state concluded no formal enforcement actions and assessed no penalties in FFY 2004. However, a review of the State Attorney General Web page indicates that thirteen cases were concluded and penalties assessed, for cases which appear to be NPDES – related. Because the web notices did not include permit numbers, and because in certain cases the description of the violations was a bit obscure, we cannot conclude that all these cases were NPDES cases; however it appears likely that most were. None of these cases and penalties are recorded in PCS. The current PCS Policy requires that enforcement actions be recorded in PCS for major facilities. We believe that at least four of these cases involved majors.

Of the files reviewed, there was no evidence that BEN and gravity had been calculated. WDNR believes that certain enforcement files may have been missing which may have provided documentation relating to penalty deliberations. EPA could find no evidence in policy documents provided that WDNR requires calculation of BEN and gravity.

**Citation of information reviewed for this criterion:** Information sources 3 and 12

**Recommendations and Actions:** 1) WDNR enter WENDB data for enforcement actions housed in CASETRACK into PCS beginning October 1, 2005. 2) By January 1, 2007, revise the state ES (or issue supplemental policy memorandum) to require that BEN and gravity factors be included in calculating proposed penalties.

**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:** Because EPA was unable to find any documentation of BEN and gravity calculations, EPA is unable to assess this element.

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

**Recommendations and Actions:** See recommendation for element 7

***Section 3: Review of Performance Partnership Agreement or State/U.S. 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:** WDNR completed a self-assessment, which was reviewed by EPA in October 2004. The self-assessment documented that all NPDES compliance and enforcement commitments had been met or exceeded. In addition, a joint evaluation which occurred in May 2005 found no areas that needed improvement, and highlighted several significant accomplishments of the NPDES Compliance and Enforcement program.

**Citation of information reviewed for this criterion:** State self-assessment dated 2004, Joint Evaluation Report

**Recommendations and Actions:** None

*Section 4: Review of Database Integrity*

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

**Findings:** WDNR is an indirect user of PCS, relying primarily on their SWAMP database to manage the WPDES program. As described above, no single event violations were found, so EPA has no basis to determine whether or not such violations would be entered in a timely fashion. EPA notes that PCS does not reveal that any formal enforcement actions occurred in FFY 2004 (See information source 3). Such actions are required to be entered into PCS. However, as noted in element 7, based upon EPA's review of the Wisconsin Attorney General's office webpage, it is believed that enforcement actions for several major permittees were concluded in FFY 2004, and should have been recorded in PCS.

**Citation of information reviewed for this criterion:** Information sources 3 and 12

**Recommendations and Actions:** See Element 7, recommendation 1.

WDNR agrees that additional discussion concerning the entry of data to the federal PCS (new system to be called ICIS-NPDES) data system is an appropriate discussion for EnPPA negotiations.

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

**Findings:** The data to be evaluated under this section are the degree to which enforcement actions are linked in PCS to the violations they address. As

discussed in Element 10 above, there were no recorded enforcement actions in PCS for FFY 2004. Therefore, EPA is unable to assess this element.

**Citation of information reviewed for this criterion:** Information source 3.

**Recommendations and Actions:** See Element 7, recommendation 1.

WDNR agrees that additional discussion concerning the entry of data to the federal PCS (new system to be called ICIS-NPDES) data system is an appropriate discussion for EnPPA negotiations.

**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:** The State was able to maintain an entry rate for major DMRs at an impressive 100%. This exceeds the national goal of a 95% entry rate, and is well above the national average of 93.4%. Of modest concern is the entry rate for limits for majors, at 93.8%, well above the national average of 85.7%, but below the national goal of 95%. WDNR believes that this statistic may be in error as the SWAMP database system is also a permit drafting tool, and once a permit is developed, the permit limits should automatically be recorded in SWAMP, and transferred to PCS.

Also of modest concern is the rate of manual override of major SNC which was at 20% in 2004 as compared to the national average of 18.2%.

Wisconsin also notes that data for majors relating to compliance schedule/permit schedule violations, though currently required data elements in PCS, are not transferred from SWAMP to PCS. Finally, though not currently required, the rate of entry of data relating to minors is very low compared to the national average, with limits being entered for only 1.5 % of the minors, as opposed to a national average of 44.8%.

**Citation of information reviewed for this criterion:** Information source 3.

**Recommendations and Actions:** Once the revised PCS policy statement is developed (currently expected by December 2006) EPA will need to work with WDNR to develop a plan to transition from PCS to ICIS-NPDES. It is recommended that the above issues be addressed in the development of that plan. In addition, EPA will continue to monitor the State QNCR to ensure that all manual overrides are appropriate.



Introduction: The State Framework Review for Wisconsin's implementation of the compliance and enforcement provisions of the Clean Air Act (CAA) consisted of a data metrics review and on-site reviews of WDNR's air compliance and enforcement program files for randomly selected CAA sources. The Region 5 CAA Team consisted of two evaluators who conducted on-site reviews of WDNR's air compliance and enforcement program at WDNR's central office in Madison, Wisconsin. Important contributions were made by other individuals in EPA Region 5.

The State Framework Review File Selection Protocol required the CAA Team to select at least 15 files from the universe of nearly 300 Clean Air Act inspections performed by WDNR during FFY 2004. Several considerations guided the CAA Team.

For administrative purposes, Wisconsin is divided up into five distinct geographical regions. Using a stratified sampling technique, the CAA Team prorated the number of files selected in each Region number based on the number of inspections in each region in 2004 to assure that each region was adequately represented. In order to have a sufficient sample for each region, the Team selected 20 files rather than 15. The larger sample size was also required to assure that close to 50 percent of the files included enforcement activity as required by the Protocol.

The stratified file selection process reflected the following criteria:

1. The selection process was random within each stratification (no more than one source per county, if possible).
2. About half of the sample included about minor/synthetic minor/area sources, and the other half major/Title 5 sources.
3. About half of the files contained enforcement activity.
4. The files reviewed were well distributed geographically both between regions and within the regions.

The CAA Team did not reject any enforcement files for consideration based on the type of enforcement activity, such as whether the case involved injunctive relief. In Madison, the CAA Team dropped one of the selected files due to time constraints and because it closely resembled another source already selected in that county. The CAA Team reviewed 19 files representing activities at all of WDNR's regional offices. Of the 19 files reviewed, about 68 percent represented major sources, and 35 percent represented synthetic minor sources. This is similar to the ratio of major to synthetic minor sources inspected in FFY 2004, which is 57 percent and 39 percent, respectively. Also, nine of the files involved some sort of enforcement action, and 13 of them were for major sources. The files selected by these criteria are summarized in the following table.

Region	Major Source Files Selected	Synthetic Minor Sources Selected	Total Files Reviewed	Enforcement Files
Northeast	3	1	4	2
Northern	2	0	2	1
South Central	2	2	4	2
Southeast	3	2	5	3
West Central	3	1	4	2
Totals	13	6	19	10

Because the files were dispersed geographically, the CAA Team asked WDNR to deliver the regional files to the central office in Madison. When this proved infeasible, WDNR suggested that the central office enforcement and permit files contained nearly all of what would be needed. The team decided to review these files in lieu of the official regional files. WDNR agreed to provide the missing information should important information prove to be missing.

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

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

##### Findings:

*Inspections at major sources:* The 2003-2005 Partnership Agreement (EnPPA) between EPA Region 5 and WDNR specifies the frequency of conducting full compliance evaluations (FCEs) in Wisconsin. Our data metrics review indicates there is a universe of 674 to 677 major sources in Wisconsin during the FFY 2004-2006 time period. For FFY 2004, WDNR agreed to inspect Wisconsin's 100 largest emitters every 2 years, and all other majors once every 5 years (20 percent per year). According to EPA's Air Facility Subset (AFS) database, which identifies the universe of major sources in Wisconsin, the state inspected 296, or 43 percent of its major sources over FFY 2003 and 2004. This effort is less than the national average of 75.7 percent for the time period and fell short of EPA's CMS policy requiring that all major Title V sources be inspected at least once every two years. Still, it meets the EnPPA commitment described above.

In February 2004, Wisconsin's Joint Legislative Audit Committee concluded that WDNR has been falling behind in its annual major source inspections, dropping to 276 inspections in SFY 2003, substantially lower than the 470 inspections in SFY 1995.

As a result of an audit of WDNR's Title V permitting program, and the Notice of Deficiency issued by EPA on March 4, 2004, WDNR committed to issuing all of its pending Title V permits to Part 70 sources by December 31, 2004. The required increased level of effort allowed WDNR to meet this commitment, but at

the cost of reduced compliance inspections. Later, in its August 18, 2005, response to the Notice of Deficiency, WDNR committed to redirect staff to compliance assistance, compliance assurance, and enforcement activities during the later part of the FFY 2005-2008 period. WDNR also projected it could fully implement the CMS policy in FFY 2007.

By May 2006, WDNR informed EPA that continued resource issues would prevent WDNR from fully implementing CMS by FFY 2007. WDNR indicated that it would still increase its compliance inspection effort over the FFY 2006 level and would submit a list of planned source inspections. WDNR submitted this list on September 18, 2006. We note that WDNR is committed to inspecting half of its majors in FFY 2007, which represents a significant improvement in its inspection resources for major sources. The latest estimate of the universe of majors is 595 sources.

*Inspections of synthetic minor sources:* Our data metrics review indicates there is a universe of 1117 synthetic minor sources in Wisconsin. WDNR's CMS plan requires that FCEs be conducted at each synthetic minor facility (including SM-80s, for which emissions are capped at 80 to 99 percent of major source thresholds) once every 5 years. Currently, WDNR does not track synthetic minors separately from SM-80s. According to the data metrics review, WDNR evaluated about 25 percent of its synthetic minors (including the SM-80s) in FFY 2004. This performance exceeds the goal contained in WDNR's CMS plan, but is less than the national average of 69 percent.

*Title V Annual Compliance Certifications received and reviewed:* As discussed above, Wisconsin has 677 major sources. These sources, after receiving Title V permits, are required to submit annual certifications to WDNR for review. EPA did not require WDNR through the memorandum of understanding (MOU) process to enter these reviews into AFS in FFY 2004, and thus none were entered by WDNR. Many of the certifications were reviewed and entered by Region 5. Although Air Management Division (AMD) staff interviews and our review of the data metrics indicate that certifications were in fact submitted to Region 5 and/or the state, the number of Title V sources that failed to submit certifications was not known during the review process. This is because EPA had reviewed files in Madison rather than the regional offices. Beginning in SFY 2006, WDNR began entering certification reviews into AFS pursuant to the latest MOU negotiated between WDNR and Region 5. EPA believes that WDNR is now reviewing all compliance certifications and is reporting them in AFS. The data metrics review shows, for example, that WDNR reviewed 41.8 percent of the 440 certifications it received in FFY 2005 and 100 percent of the 479 certifications received to date in FFY 2006.

*Sources with unknown compliance status designations:* AFS indicates that 139 sources in Wisconsin have an unknown compliance status. This compares to 2,427 sources nationally that are considered "unknown." Comparing Wisconsin's

statistic to the number of sources identified in its inventory (about 1794), we found that approximately 7.7 percent of these sources are classified as unknowns. Region 5 is working with WDNR at the staff level on a regular basis through monthly conference calls and other communications to better match the inventory in AFS to the state inventory, and believes progress has been made.

Citation of information reviewed for this criterion: Wisconsin EnPPA, EPA's CMS policy, WDNR's CMS Strategy, AFS database, EPA Notice of Deficiency, Wisconsin's Joint Legislative Audit Committee report on WDNR's air management programs.

Recommendations and Actions: As discussed above, WDNR made the commitment in its CMS Plan for SFY 2006-2007 that it would begin to shift resources from permitting to compliance and enforcement. We strongly recommend continued implementation of this strategy by increasing the number of FCEs dedicated to compliance and enforcement. Since WDNR has limited resources, we recommend that WDNR work in close partnership with EPA to develop a strategy with milestones for increased FCEs in FFY 2006-2007. EPA recommends that every effort be made by WDNR to increase its inspection effort as much as is practical, and specifically, to submit a list of planned source inspections by September 30, 2006, and a strategy with milestones by an agreed upon date.

For FFY 2006, WDNR stated it will inspect asphalt plants and rock crushing facilities that have never been inspected. This will reduce the number of facilities that have an "unknown" compliance status. EPA recommends that the WDNR follow up on this commitment as much as practicable, and report progress by an agreed upon date.

WDNR has agreed to look at the issue in the context of a revised EnPPA agreement. Although WDNR previously agreed to inspect asphalt plants and rock crushers, it is now asserting that there is insufficient funding to inspect many synthetic minors, and that most of the asphalt plants and rock crushers are portable and move frequently, and operate intermittently, thus making it "extremely difficult" to perform full compliance evaluations. WDNR also wishes to remove some from the inventory and to work with EPA to develop an alternative compliance strategy for these sources. EPA looks forward to discussing potential solutions with the State. The EnPPA process would be an appropriate vehicle for managing this activity, although we may use the Memorandum of Agreement or a less formal arrangement if appropriate.

Since EPA's review of WDNR's files did not verify that Title V compliance certifications were reviewed in FFY 2004, it is important that WDNR assure that all Title V compliance certifications are reviewed as part of the FCE activities, and that it conduct appropriate follow-up enforcement for any Title V sources not submitting certifications.

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

Findings: The 19 FCEs reviewed from selected files were generally adequate for identifying the source's compliance status. There were some minor exceptions. Specifically, one source's boiler was not evaluated since it was not operating. It was not clear in the report whether or not the boiler was shut down only temporarily, and in need of an evaluation. Also, one inspector indicated in his report that the "company is doing a good job." This kind of comment is not an objective assessment of a facility's compliance status. In yet another report, the inspector noted that he was not certified to take visible emission readings according to EPA's Method 9. In summary, of the 19 files EPA reviewed, 3 contained apparently incomplete FCEs, and 12 required some degree of post-file review follow-up by EPA that required AMD to consult with the regional offices. EPA believes that this follow-up was required because the central office was missing specific pieces of information that could be found in the regional office files.

WDNR uses a shared template for its compliance monitoring reports (CMRs) to assure that all elements of the review are covered, thus satisfying EPA's CMS policy. Generally, WDNR did a commendable job by developing the standard format and assuring that inspectors prepare CMRs that meet certain expectations for the level of effort required to conduct a complete FCE. Although a useful tool, the CMR template is inadequate for CMS purposes because it does not include certain items required in CMS guidance. Specifically, the template does not indicate megasites (there may not be any such sites currently designated in Wisconsin), it does not clearly require the listing of all applicable regulations, it does not prompt a description of on-site compliance assistance and any steps taken by the source to come into compliance, nor does it prompt a description of any findings or recommendations relayed to the facility by WDNR inspectors.

WDNR's requirements for FCEs were detailed in a memorandum prepared by its Compliance and Enforcement Core Team, dated May 1, 2002. Still, we are concerned that staff may not be fully trained to assure that on-site reviews are thorough. For example, the format used by WDNR could allow for inspectors to conduct an on-site records review or walk-through in a cursory fashion.

WDNR compliance staff in the regional offices routinely reviewed compliance certifications submitted to WDNR by Title V sources. These reviews were not reported to AFS in FFY 2004 due to State resource constraints, so the database reports that there were no reviews. This is not accurate. However, because WDNR did not report the data, our data metrics review did not indicate how many compliance certifications were actually reviewed. This problem was addressed by

WDNR in FFY 2005, as the certification reviews are now being entered into a State database by regional staff, and subsequently reported to AFS.

Citation of information reviewed for this criterion: CMRs located in central office files, WDNR guidance, “Full Compliance Evaluation – May 2002 Revision,” EPA guidance, “CAA Stationary Source Compliance Monitoring Strategy,” April 25, 2001.

Recommendations and Actions: Inspectors should be certified to take Method 9 readings as needed during FCEs, as required by EPA’s CMS guidance. In response, WDNR indicates it has reinstated this requirement in FY 2006. EPA requests that WDNR maintain its Method 9 training program.

WDNR is open to reviewing the CMR template, but wishes to defer discussion of this matter until a future date due to other pressing priorities. WDNR considers the EnPPA process to be an appropriate vehicle to address this recommendation. EPA agrees, but does not want to defer this indefinitely. EPA does not view this as a resource-intensive activity for WDNR, which could be resolved in a more informal way.

The CMR template, while quite adequate in many respects, should be revised as described in the findings above by an agreed-upon date. Inspectors need to provide sufficient details in writing the CMRs to allow supervisors and other interested parties to be able to ascertain how reviews and other activities were conducted during an on-site inspection. This effort at documentation would go beyond simply stating “I reviewed the records,” but rather, a description of which records were reviewed and the findings of that review. WDNR should review its training procedures and individualized training plans, assure that all inspectors have met training requirements, and address opportunities for refresher training prior to implementing the FFY 2007 CMS plan. WDNR considers the EnPPA process to be the appropriate vehicle for addressing this recommendation.

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

Findings: After conducting our review of 19 compliance and enforcement files, we determined that WDNR completed 16 CMRs in a timely manner (within 60 days as required by CMS guidance) that did not cause enforcement or reporting delays. The reports we reviewed were typically written within 30 to 60 days after the on-site inspection, although two CMRs were dated more than 60 days after the on-site inspection. One of the reviewed compliance monitoring reports did not have a date indicating when the FCE was completed, suggesting that a third CMR may not have been timely. Some reports were written within several days of an on-site inspection. FCEs included a review of various compliance-related documents submitted to WDNR by the source. In the case of Title V sources, this activity included a review of compliance certifications. We presume that it is

WDNR's practice to conclude a FCE by conducting the on-site inspection and CMR. In the normal course of events, this would happen before or concurrent with any enforcement steps taken by WDNR. The reports adequately described any identified violations in order to provide a basis for appropriate enforcement action.

Two of the files included stack test information. EPA's review did not detect specific instances of a delayed evaluation of stack test results by WDNR or delayed reporting of stack test related High Priority Violators (HPVs) as a result of untimely CMRs.

Citation of information reviewed for this criterion: CMS Policy, HPV Policy, WDNR Air Management Division memo, "High Priority Violation (HPV) Non-referral Review Process," dated May 8, 2003, reviewed case files.

Recommendations and Actions: Although reports are normally prepared and submitted electronically, we recommend that WDNR assure all reports are clearly dated and signed by both staff and supervisors. WDNR asserts that the FCE reports residing in the regional offices are always signed and dated by both compliance staff and their supervisors. No further action on this point is required, other than to maintain current procedures.

Particularly for FCEs that detect violations, we recommend that WDNR remind its inspectors by September 30, 2006, to write their CMR reports as soon as practicable so that inspections may be reported into AFS within 60 days. Late CMRs may lead to delays in follow-up enforcement action, and reporting HPVs to EPA.

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

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

Findings: According to the data metrics review, AFS reports that Wisconsin has an HPV discovery rate of 7.6 percent. The national average in FFY 2004 was 10.6 percent. WDNR regional offices use a checklist for identifying HPVs and communicating this decision to the AMD. The Regions and AMD review the merits of the case and make a recommendation about an appropriate response. The results of this discussion are presented to the EPA during monthly conference calls. This procedure is set forth in an internal WDNR memorandum dated May 8, 2003. Also, WDNR agreed in the MOU executed in 2000 to report new HPVs within 2 weeks of making the determinations.

Of the 19 files we reviewed, 10 involved sources where violations were detected by the state. Of these, three violators did not appear to meet HPV criteria set forth in the EPA policy. EPA discovered that the non-HPV violators had violations

related to odors, or were minor sources. The file review did not find any violators that were misclassified as non-HPVs. The HPVs were usually reported within 30 days according to T&A timeliness criteria, except as noted when reviewing two files.

As of April of 2005, WDNR no longer submits HPV evaluation forms to Region 5 unless specifically requested. HPV forms are prepared by WDNR regional offices and copied to Madison. More recently WDNR began the practice of keeping the copies on file in Madison. Since May of 2005, however, Region 5 has reduced its oversight with WDNR updating AFS directly; evaluation forms no longer come to Region 5 for data entry. EPA reviewed WDNR's use of HPV evaluation forms. These forms correctly identify the criteria by which detected violations are determined to be HPVs, although EPA noted a form that was not fully completed for a particular HPV evaluation. In this instance, the source was determined to be an HPV. EPA did not find any specific examples of cases that were incorrectly classified as non-HPVs.

EPA continues to hold conference calls with the WDNR on the first Thursday of each month. This is the regular schedule unless a call is cancelled or postponed by the State. In these calls, WDNR staff is asked if new HPV cases have been identified. This is the only contact between agencies regarding new HPVs. HPV approval in WDNR goes through a specific process which includes completion of an HPV evaluation form by the WDNR regional office that identifies the violation, its statutes, and when and how it was found. HPV evaluations must go through the WDNR Regional Environmental Enforcement Specialist who signs off on the Notice of Violation to the source. All violations go through this process whether or not they are determined HPVs.

Prior to 2005, Region 5 staff received copies of all enforcement actions, inspections and HPV evaluation forms. Questions on potential HPVs were asked at the conference calls. Receipt of this data ceased when WDNR took over responsibility for update and maintenance of their compliance and enforcement data to AFS. Currently, Region 5 only learns about new HPVs when the State reports them during the calls. EPA currently has no other mechanism with WDNR to identify potential HPVs. There are currently about 26 unaddressed HPVs listed in AFS for Wisconsin.

Citation of information reviewed for this criterion: Source files, AFS records, EPA policy entitled "The Timely and Appropriate (T&A) Enforcement Response to High Priority Violations (HPV)," and "Air Compliance and Enforcement Memorandum of Understanding Between the Wisconsin Department of Natural Resources and the United States Environmental Protection Agency-Region 5," issued on September 5, 2000.

Recommendations and Actions: EPA asks that WDNR staff report HPV cases promptly, pursuant to the MOU, by adding new cases to the HPV list without

waiting for enforcement actions. WDNR and EPA are in disagreement on this point; WDNR finds it “imperative to assure a violation meets HPV criteria before entering it as such in AFS to avoid entering erroneous data, and having erroneous data ‘bubble up’ through the EPA ECHO website.” EPA also recommends that WDNR provide more detailed explanations of progress toward resolution of the cases during monthly conference calls or in writing.

Also, EPA recommends that WDNR evaluate the HPV rate to determine any specific reasons it is lower than the national average (including a review of internal procedures at assure, for example, that violators are not misclassified) and let EPA know of the results of its evaluation by an agreed-upon date.

WDNR agrees that an effort to assure consistent use of its HPV evaluation form by state Air Program compliance staff would best address these issues.

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

Findings: WDNR notifies violating sources formally of such findings by means of Notices of Violations, issued by regional offices. Generally, sources responded well to WDNR findings of noncompliance. Although reported to EPA, some violations were resolved by the sources in a matter of days or weeks. In some files, the resolution was less clear. For example, we found No Further Action (NFA) letters in four HPV files, but there was no specific information in several instances documenting how, whether, or when, the sources fully returned to compliance. We were, however, able to obtain clarification by follow-up communication with AMD, which in turn, had discussed our questions with the regional offices. Reasons were:

1. After an NOV was issued, the source was able to prove that it had in fact not exceeded solvent usage limits.
2. A boiler was re-tested after making operational improvements. A NFA letter was issued with EPA concurrence. The source subsequently shut down.
3. The source was referred to DOJ and penalties assessed.
4. A NFA letter was issued after the source installed a required flow meter.

In at least two other cases, the companies had already achieved compliance, or were nearly in compliance (specifically, a PSD case where the WDNR was processing a PSD permit), so WDNR referred them to DOJ to seek the collection of civil penalties. In both cases, civil penalties were assessed in court judgments. According to Wisconsin’s Joint Legislative Audit Committee report on WDNR’s air management programs, WDNR has collected \$393,000 to \$2,833,800 annually from SFY 1999 to 2003, as summarized below.

State Fiscal Year	Amount of Penalties Collected
1999	\$977,500

2000	\$393,000
2001	\$2,833,800
2002	\$773,700

For the cases randomly chosen that involved referrals, there was no need for long-term schedules for injunctive relief, so we did not evaluate how the case resolutions addressed the return of the facilities to compliance in a specific time frame.

Citation of information reviewed for this criterion: Source files, AFS records, EPA policy entitled “The Timely and Appropriate (T&A) Enforcement Response to High Priority Violations (HPV),” Wisconsin’s Joint Legislative Audit Committee report on WDNR’s air management programs.

Recommendations and Actions: We recommend that WDNR review its procedures and documentation for its decisions to take No Further Actions, at least for HPV cases. We have found that case closeout information is not always contained in the AMD files in Madison and believe that documentation is needed in the Madison office to better ensure consistent case closeout procedures across the various WDNR regions. EPA recommends that the closeout letters contain information about why the case was closed out.

WDNR and EPA disagree on whether the close-out letters should contain the recommended information; however, the parties have already agreed to discuss the close-outs in greater detail during the monthly conference calls. This has just been implemented, although it will require the cooperation of regional offices as well as good coordination between the central office and EPA.

**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: Wisconsin inspectors conduct file reviews, inspections, and other FCE activities. The inspectors prepare a CMR as discussed in review element 2 above. Although all but two of the CMRs for the reviewed files were prepared in a timely fashion, it is not clear whether a delayed report would, in turn, delay any needed follow-up enforcement action. Should the inspector discover a violation, the WDNR regional office issues a Notice of Violation. EPA’s file review found one apparently late NOV issued over three months after the on-site inspection. The company often follows up with a meeting in WDNR offices. If appropriate, a WDNR enforcement officer located in the regional office pursues an enforcement case.

When WDNR considers it appropriate, the regional case is referred to the Wisconsin DOJ. The procedure for deciding whether to refer a case is set forth in an internal WDNR policy memorandum dated May 8, 2003. The policy describes

what staff and offices are involved in the decision, and how the decision is to be carried out in consideration of case merits and litigation risks. The policy includes an opportunity for EPA to make recommendations during monthly conference calls that may influence the state's decision on whether or not to refer the case. Referral packages are forwarded to AMD for review. AMD prepares civil penalty calculations using EPA's "Clean Air Act Stationary Source Civil Penalty Policy." The package is sent on to the Enforcement Investigations and Emergency Management for review and, subsequent to signature by the Secretary of WDNR, it is referred to the DOJ. If WDNR decides not to refer a case to DOJ, it has the option of referring it to EPA. The latter option has not been pursued for a number of years. Wisconsin's Joint Legislative Audit Committee report noted that WDNR consistently referred 17 to 20 cases per year to the DOJ in the SFY 2000-2003 time period.

Administrative enforcement authority in Wisconsin is limited in that WDNR cannot collect administrative civil penalties. However, WDNR has the ability to enter into consent orders without penalties, and may issue compliance orders requiring compliance "within a reasonable amount of time." (Section 285.83, Wisc. Stat.) EPA is not aware that this authority is routinely used by WDNR.

Enforcement actions are documented in AMD files. For three FCEs, where HPVs were found, the case file was closed out without enforcement action. WDNR's lack of administrative penalty assessment authority is, arguably, a substantial impediment to its ability to pursue enforcement in some situations. However, when WDNR decides to refer a case to DOJ, action can occur expeditiously and satisfactorily in some cases. For the Framework Review, EPA reviewed several files for sources referred to DOJ in order to collect a civil penalty. Of the four files reviewed, the time from dates of NOV issuance to referral dates were 2, 3, 8, and 9 months.

We found NFA letters in several files, but there was no information documenting how or whether the sources fully returned to compliance. This raised questions about whether the closeout was an appropriate action under the Timely and Appropriate policy. Subsequent to the on-site file review in Madison, we asked WDNR for additional information that may be located in regional files. WDNR responded with information that answered many of our questions. One facility had caused odor and fall-out nuisance, which was apparently resolved. Another facility had inadequate records to show compliance with emissions limits, but later demonstrated there were no emissions violations. A third facility performed a stack test documenting excess emissions, and after making improvements, demonstrated compliance through re-testing. WDNR uses several codes in AFS to report case resolutions. The codes address NFA letters, proposed permit or state implementation plan revisions that will lead to compliance, sources returned to compliance by WDNR without further action (without a NFA letter), and "enforcement action withdrawn" for those instances where WDNR alleged a violation and later found that the violation had not existed.

Citation of information reviewed for this criterion: Source files, AFS records, Timely & Appropriate Enforcement Response to High Priority Violations, WDNR flow process diagrams for compliance and enforcement, Wisconsin's Joint Legislative Audit Committee report on WDNR's air management programs.

Recommendations and Actions: As discussed above, we recommend that WDNR review its procedures and documentation for its decisions to take No Further Actions, at least for HPV cases and those involving stack testing. EPA asks that WDNR consider adding explanatory details in the body of the NFA letters. We have found that case closeout information is not always contained in the AMD files in Madison and believe that documentation is needed in the Madison office to better ensure consistent case closeout procedures across the various WDNR regions.

WDNR believes that monthly calls with EPA to discuss the Watch List cases and cases approaching Day 270 help address this problem. However, EPA believes that since the calls do not involve internal management procedures at WDNR, the issue is not addressed. As a result, EPA recommends that WDNR continue with its efforts to assure the necessary closeout documentation is maintained in Madison.

In the absence of administrative penalty authority, EPA recommends that WDNR review its referral process, including a look at whether cases should be referred to EPA. This review should logically include an update of WDNR's Environmental Enforcement Handbook as it pertains to Air Program enforcement, since it has not been revised for a number of years. We recommend that WDNR present its findings to EPA on an agreed-upon date.

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

Findings: The team reviewed four files in which cases were referred to the Wisconsin DOJ. In those cases, the civil penalty policy was calculated in accordance with the Civil Penalty Policy and included in the referral package. WDNR calculated an economic benefit component in two of the cases. In one case, for example, WDNR used the BEN model to calculate the economic benefit of delaying the installation of tank vapor controls. A copy of the penalty calculation is kept in a location separate from the case files, but was accessible for purposes of the Framework Review. The team did not note documentation for why economic benefit was not determined for two of the penalty calculations.

Citation of information reviewed for this criterion: EPA's Clean Air Act Stationary Source Civil Penalty Policy, Timely & Appropriate Enforcement Response to High Priority Violations, Central office files.

Recommendations and Actions: WDNR should document why it does not calculate an economic benefit component for any cases where it believes an economic benefit does not exist. In general, if economic benefit cannot be calculated, the file should include an explanation of this.

**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: Judicial results in the files reviewed were not clear. Judges used environmental criteria, but not necessarily the factors identified in Section 113 of the Clean Air Act. Although we had access to the WDNR staff calculations for civil penalty recommendations, we could not compare these calculations to the judicial decision. Also, the judges added surcharges for lab work and court fees, as required by state law. This is not necessarily a bad result, but penalty assessments are below the initial penalty calculation that was based on EPA's Civil Penalty Policy. As a consequence of the random file selection process, we did not review referred cases where there was an out of court settlement. WDNR had made available to us initial penalty calculations for the referred cases. In at least one case, there was a reference to zero economic benefit without a clear explanation as to why it could not be determined. WDNR does not track the collection of penalties, but EPA has asked WDNR to verify collections for the final Framework Review report.

Citation of information reviewed for this criterion: Central office files, and the "Clean Air Act Stationary Source Civil Penalty Policy," October 25, 1991.

Recommendations and Actions: Although we did not look at this specifically, for any settlements that occur outside of the court process, the settlement amount should be documented in WDNR files. We recommend for all cases a clear explanation of economic benefit, including a detailed explanation for why no economic benefit was appropriate or possible to calculate when making recommendations to the State Department of Justice.

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

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

Findings: The WDNR utilized the EnPPA process to support its grant process, with the EnPPA serving as the grant workplan. The EnPPA agreement for the July 1, 2003 to September 30, 2005 period did not contain specific compliance commitments other than to incorporate by reference the CMS policy and a commitment by WDNR to submit a CMS plan that would specify the state's inspection strategy. WDNR submitted a CMS plan that committed the state to

inspecting 100 of the largest-emitting and most toxic Title V sources on a 2-year cycle, and the balance of the Title V and synthetic minor sources on a five-year schedule. This was estimated to be in the range of 275 to 280 FCEs per year. As discussed above, the state completed inspected 43 percent of its major sources in FFY 2003-2004. This effort is less than the national average of 75.7 percent for the time period, and less than the annualized CMS requirement of 50 percent, but meets the EnPPA commitment.

Citation of information reviewed for this criterion: AFS database, and the “Environmental Performance Partnership Agreement between Wisconsin and U.S. EPA, Region 5,” 2003-2005.

Recommendations and Actions: Given that WDNR planned to fully implement the CMS in FFY 2007, and now is expected to fall short of this goal, EPA strongly recommends a mechanism be put in place to assure WDNR is following its CMS plans in the future. EPA and WDNR need to discuss the use of the EnPPA and other vehicles to address performance issues that arise with the CMS.

#### ***Section 4: Review of Database Integrity***

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

Findings: During FFY 2004, WDNR did not enter data directly into AFS. EPA relied on WDNR to submit various documents to its Region 5 office for review and input into AFS. Since FY 2004, WDNR has assigned staff and begun to enter data directly into AFS. Our review of the 19 selected files did not detect significant issues with data timeliness but for two exceptions. First, in several cases, AFS reported the source to be in violation in FFY 2004, even though the source returned to compliance several years earlier. In these cases, EPA was waiting for documentation prior to updating AFS to reflect the change in compliance status that occurred several years earlier.

Secondly, WDNR routinely delays the entering of new HPVs into AFS as a matter of policy. WDNR delays these entries so that the violating companies can be notified of the violation before it appears in EPA’s publicly accessible ECHO database. EPA disagrees with this policy and urges timelier database entries. Note that this delay could appear for other reasons. For example, when CMRs or NOV’s are not issued on a timely basis, WDNR’s reporting of HPVs to AFS would also be delayed.

Citation of information reviewed for this criterion: AFS database, Central office files, EPA guidance, “The Timely and Appropriate (T&A) Enforcement Response to High Priority Violations (HPV),” December 22, 1998.

Recommendations and Actions: EPA recommends that WDNR adhere to the T&A guidance timeframe for notifying the source of the violation within 60 days

and reporting the information to AFS and Region 5. WDNR should put a plan in place to address this by FFY 2007, when WDNR has assigned increased resources to meet enforcement commitments. Although WDNR is addressing the exception in the first Finding paragraph above by updating the source's compliance status in AFS on a quarterly basis and consulting with Region 5's data management staff regularly, we recommend that a written procedure be created to ensure updates will always happen in the future. We also recommend that WDNR amend its procedures as needed to assure CMRs be prepared and entered in CMS within 60 days, and stack test reports reviewed and entered within 120 days of the test. WDNR believes, however, that the MOU already in place should be adequate mechanism for addressing this.

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

Findings: A number of inaccuracies were found in AFS during the on-site file review. Of primary concern was proper indication of compliance status and the source's size classification. During FFY 2004, WDNR did not enter data directly into AFS. EPA relied on WDNR to submit various documents to its Region 5 office for review and input. This system had the disadvantage of relying on a continuous commitment by WDNR regions to submit the required paperwork so that EPA may enter all of the data in an accurate and complete manner. Since FFY 2004, WDNR has assigned a capable staff person to enter data directly into AFS, although the staff person has required some time to learn the finer details of AFS data entry. This is a simpler and more accurate process simply by avoiding the step of collecting and mailing documents to EPA's Region 5 office. Recently, some of the inaccuracies were corrected by DNR staff. With EPA assistance, WDNR staff solved a particular data coding problem for identifying the proper air program codes by preparing a transaction generator report. Also, EPA believes that the past inconsistencies in the "source universe" in Wisconsin have largely been reconciled. EPA performed data pulls related to stack test data entered by WDNR, and believes that some concerns about data quality have been corrected.

Citation of information reviewed for this criterion: "Air Compliance and Enforcement Memorandum of Understanding Between the Wisconsin Department of Natural Resources and the United States Environmental Protection Agency-Region 5," revised June 2005.

Recommendations and Actions: AFS entries need to be reviewed to correct the compliance status of Wisconsin sources that had past enforcement actions, as discussed in Review Element No. 10 above. WDNR is already in the process of correcting inaccuracies such as these. WDNR and EPA communicate on this matter nearly on a daily basis. We recommend that WDNR continue its efforts, in conjunction with EPA as needed, to continue improvements to assure a more accurate database. We also recommend that WDNR and EPA discuss whether certain documentation should be submitted to Region 5 in order to provide some level of documentation at the federal level that would assist joint quality

assurance efforts. Since neither EPA nor WDNR want to assume a paperwork burden, this should be limited to a select number of key electronic documents.

**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: AFS generally seemed to have complete data entries. The data issues are associated with accuracy, as discussed in Review Element No. 11 above.

Citation of information reviewed for this criterion: Airs Facility Subsystem (AFS) database, source files.

Recommendations and Actions: None.

**Program Evaluated: RCRA**

**Information Sources Included in the Review:**

1. EPA RCRAInfo, RCRA Rep, and OTIS databases;
2. WDNR RCRA compliance monitoring and enforcement files;
3. WDNR 2003-2005 Environmental Performance Partnership Agreement;
4. EPA FY 2004 RCRA Year-End Evaluation Report on Wisconsin;
5. EPA, ECHO Error Tracker Database;
6. "Wisconsin's Hazardous Waste Program Compliance Evaluation and Enforcement Strategy" dated November 1997;
7. WDNR "Environmental Enforcement Handbook," dated October 1988;
8. WDNR Memorandum "Procedures for Preparation Performance, and Follow-up of Hazardous Waste Compliance Inspections," dated October 13, 1994;
9. EPA Revised RCRA Inspection Manual, dated 1998;
10. EPA Hazardous Waste Civil Enforcement Response Policy, dated October 2003;
11. EPA RCRA State Review Framework Metrics Report, dated June 29, 2005;
12. EPA RCRA Civil Penalty Policy, dated June 23, 2003;
13. EPA 2004 OECA Memorandum of Agreement Guidance Manual, dated June 2005;
14. EPA State Review Framework Training Manual, dated June 2005;
15. EPA OECA Joseph Acton Memorandum, "Request for Information in Follow-up to Watch List Project SNC/HPV Identification Analysis," dated November 5, 2005; and
16. EPA Interview Responses from WDNR Regional Supervisors.

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**Period Covered:**      Federal Fiscal Year 2004

**Introduction:**

The review of WDNR's RCRA Hazardous Waste Compliance Monitoring and Enforcement Program included 32 site-specific files and information sources cited above. File selection followed the File Selection Protocol in the EPA State Review Framework Training Manual. We utilized data from the June 29, 2005, EPA RCRA State Review Framework Metrics Report (Metrics Report) to first identify the universe of files. These files were comprised of both inspection and enforcement activities reported by WDNR in FFY '04. From that universe, we selected the number of files to be reviewed (32) based on a numerical range provided by the File Selection Protocol. Of the 32 files selected, 15

included enforcement activities, while 17 included inspection activities. The 32 files were selected to ensure a reasonable sample of activities from all 5 of WDNR's Regions. Lastly, we utilized a random selection feature in MS Excel to randomly select a proportional number of files for each category (e.g., informal enforcement).

The Metrics Report indicates that in FFY '04 WDNR conducted a total of 644 inspections, issued 226 informal actions, took 4 formal actions, and sought \$155,699 in penalties. The following findings and recommendations regarding the 12 elements contained in the Metrics Report are supported by the data extracted from the review.

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

#### **1. Degree to which state program has completed the universe of planned inspections.**

By RCRA statute, hazardous waste treatment storage and disposal facilities (TSD) are required to be inspected at least once every two years.

##### **Finding:**

- The Metrics Report indicates that Wisconsin had 18 operating TSDs, and that all 18 were inspected at least once during the two-year period ending September 30, 2004. TSD inspection coverage was 100%.

A core element of the Office of Enforcement and Compliance Assurance's (OECA) 2004 Memorandum of Agreement Guidance states that 20% of the Large Quantity Generator (LQG) universe should be inspected each fiscal year so that the entire universe is inspected in five years. The national average for LQG inspection coverage over a 5-year period, beginning October 1, 1999 and ending September 30, 2004, was approximately 67%. An authorized state, as Implementor of Record, is responsible for maintaining and updating the universe of RCRA LQGs in RCRAInfo.

##### **Findings:**

- The Metrics Report indicates that in FY 2004 there were 592 LQGs in Wisconsin, and that WDNR inspected 118 (20%). WDNR had committed to conduct 50 LQG inspections in FY 2004.
- Over a 5-year period (beginning October 1, 1999 and ending September 30, 2004), WDNR inspected 386 LQGs, or 65% of the 592 LQG universe.

**Information sources utilized for this criterion:** 3, 4, 11 and 13.

##### **Recommendations and Actions:**

- In order to meet the national goal of having 100% of LQGs inspected within a period of 5 years, WDNR's next Environmental Performance Partnership Agreement (EnPPA) should describe how WDNR will inspect all Wisconsin LQGs at least once every 5 years.

WDNR does not agree with EPA's count of LQGs. However, WDNR will work with EPA to meet LQG inspection commitments.

**2. Degree to which inspection reports and compliance reviews document inspection findings, including accurate identification of violations.**

EPA's Revised RCRA Inspection Manual (OSWER Directive #9938.02b, 1998) states that RCRA inspection reports are comprised of 3 elements: a narrative discussion (including a description of facility operations and inspection findings); an inspection checklist; and supporting documentation.

In response to interview questions asked of WDNR Regional supervisors, a majority of the supervisors confirmed that RCRA inspection reports usually contain a narrative, an inspection checklist, and other relevant documents.

**Finding:**

- Of the 32 RCRA files reviewed, 15 files (47%) contained complete inspection reports, while 17 (53%) did not. The incomplete inspection reports usually lacked either a narrative or checklist.

**Information sources utilized for this criterion:** 2, 9 and 16.

**Recommendations and Actions:**

- WDNR's RCRA inspection reports should include the 3 elements, i.e., a narrative, an inspection checklist, and supporting documents.
- WDNR should update inspection guidance to include a clear description of the essential components of a complete RCRA inspection report.
- WDNR should provide RCRA compliance monitoring staff with refresher training covering the elements of completed RCRA inspection reports, and the December 17, 2003, "Procedures for U.S. EPA RCRA Monitoring and Enforcement in Wisconsin" document.

In its September 25, 2006, response, WDNR stated that it would conduct mandatory inspector training in November 2006 which will cover the "...essential components of inspection files..." WDNR also stated that it will implement a new quality assurance/quality control procedure sometime in the future that will involve regular hazardous waste inspection file reviews to ensure that WDNR files and RCRA reports include the 3 elements identified under the Findings and Recommendations.

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

**Findings:**

- Chapter 30 of WDNR's Environmental Enforcement Handbook allows 45 days for completing an inspection review and report.

- Of the 32 RCRA files reviewed, 26 inspection reports (81%) were timely; however, 6 (19%) were not.

**Information sources utilized for this criterion:** 1, 2 and 7.

**Recommendations and Actions:**

- WDNR should ensure that RCRA inspection reports are completed within 45 days, adhering to the timeline set forth in WDNR's Environmental Enforcement Handbook.

In its September 25, 2006, response, WDNR agreed with the recommendation that WDNR's RCRA inspection reports be completed within 45 days. WDNR proposes to set staff performance objectives to complete RCRA reports within this time frame.

*Section 2: Review of State Enforcement Activity*

**4. Degree to which significant violators are accurately identified and reported to EPA's national database in a timely and accurate manner.**

According to the Metrics Report, WDNR conducted 563 inspections in FFY '04. These inspections included compliance evaluation inspections, financial record reviews, and other inspections reported by WDNR into RCRAInfo. The Metrics Report indicates that, during that same period, all states identified significant noncompliance with RCRA regulations at a national average rate of 3.2% per 100 inspected facilities. Assuming that rate, a state conducting 563 inspections and actively identifying significant noncompliance with RCRA would have identified 18 new Significant Non-Compliers (SNC). In FFY '03, WDNR identified 3 new SNCs, while in FFY '05, WDNR identified one new SNC.

**Findings:**

- In FFY 2004, WDNR did not classify any RCRA violators as SNCs.
- Violators in 5 cases were identified as Secondary Violators (SV) and received only informal enforcement actions despite such violators appearing to be SNCs.
- Of 4 violators against which WDNR filed formal enforcement actions in FFY 2004, WDNR had timely reported 3 (75%) as SNCs in RCRAInfo in previous years.
- WDNR did not report, in RCRAInfo, one violator appearing to be a SNC, against which formal enforcement was issued in FFY 2004.

In November of 2005, OECA-HQ contacted Region 5 as part of a review of Regional, and State SNC data. OECA identified Wisconsin as having a low RCRA SNC identification rate, i.e. a SNC identification rate of one new SNC (0.2%) based on 580 inspections conducted in FFY 2005.

As required by State law, WDNR refers cases to the Wisconsin Attorney General (AG) for prosecution in order to seek economic sanctions (penalties) that EPA's Hazardous Waste Civil Enforcement Response Policy (ERP) describes as the appropriate response for SNCs. In the mid-1990s, both EPA and the Wisconsin AG expressed concern about the low number of formal enforcement referrals from WDNR. In response, WDNR committed to performing a 3-part self-assessment of its RCRA program, including a review of the low referral and SNC identification rate issue. WDNR completed the first part of the self-assessment, but has not addressed the low referral and SNC identification rate issue.

**Information sources utilized for this criterion:** 1, 2, 5, 10, 11 and 15.

**Recommendations and Actions:**

- WDNR should re-evaluate the 5 SVs, which appear to be SNCs requiring formal enforcement.
- WDNR should conduct an assessment of its policies and procedures in order to determine why its RCRA SNC identification rate is low.
- WDNR should provide RCRA compliance monitoring and enforcement staff with refresher training on identifying, reporting into RCRAInfo, and taking action on SNCs.
- WDNR should develop a plan, with an attendant implementation timetable, to improve the SNC identification rate. Submit the plan to EPA by October 30, 2006.

WDNR does not agree with EPA's count of CEIs. However, to implement EPA's recommendations, staff will be asked to review the cases in which SVs appeared to be SNCs and report their findings to the Program Coordinator and Section Chief for appropriate follow-up, staff will be trained again in designation of SNCs, and QA/QC procedures will be developed for review of hazardous waste inspections.

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

Of the 32 RCRA case files reviewed, 26 contained enforcement actions. Formal enforcement was issued in 4 cases. Informal enforcement was issued in 22 cases.

**Findings:**

- All 4 formal cases included appropriate injunctive relief.
- All 22 of the informal enforcement actions included complying actions.
- All but 4 of the violators (1 formal and 3 informal) had returned to compliance by the time of the file review.

**Information sources utilized for this criterion:** 1 and 2.

**Recommendations and Actions:**

- Though 100% of the files containing enforcement actions included injunctive relief, WDNR should follow up on the 4 violators not returned to compliance, and take all additional actions necessary to return the violators to compliance while following the enforcement response time frames described in the ERP.

WDNR reports that since the review, one of the violators has returned to compliance. Follow-up is occurring for the remaining three and all staff are being reminded of timely return to compliance. Forthcoming training events will address all elements of enforcement, including injunctive relief.

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

Of the 32 RCRA case files reviewed, 26 contained enforcement actions. Formal enforcement was issued in 4 cases. Informal enforcement was issued in 22 cases.

**Findings:**

With respect to the criterion of timeliness for the 26 enforcement actions:

- 2 of 4 formal enforcement cases (50%) were timely and met the RCRA ERP time frame for either entering a final formal enforcement order, or for making a referral to the state AG;
- 21 of 22 informal enforcement actions (95%) were timely.

With respect to the criterion of appropriate enforcement for all 32 files:

- WDNR determined that 5 violators (16%) were SVs, though they appear to meet the definition of a SNC. In one case, WDNR sent a Notice of Noncompliance (NON), which appeared appropriate. Because the violator was unresponsive, WDNR followed up after 240 days had passed with a Notice of Violation (NOV). According to the ERP, WDNR should have re-classified the facility as a SNC.
- 2 violators (6%), having repeat violations, were issued NONs when NOVs would have been appropriate;
- WDNR issued enforcement actions, which appear to be appropriate, to 19 violators (59%);
- WDNR determined in 6 cases (19%) that facilities were in compliance at the time of the inspection. These determinations appear appropriate.

**Information Sources utilized for this criterion: 2.**

**Recommendations and Actions:**

- WDNR should re-evaluate the 5 violators identified as SVs, but who appear to be SNCs requiring formal enforcement.
- WDNR should more closely follow the established time frames for formal enforcement.

- WDNR should reclassify a SV as a SNC when 240 days have passed from the date of inspection without the SV achieving compliance.

**7. Degree to which a state includes both gravity and economic benefit calculations for all penalties, using the BEN model or similar state model.**

Page 10 of WDNR’s Hazardous Waste Program Compliance Evaluation and Enforcement Strategy states, “WDNR suggests to WDOJ, as part of the referral package, an appropriate forfeiture or fine. Recommended Civil forfeiture will be calculated using the RCRA Civil Penalty Policy.” In his February 9, 2006, e-mail to Walt Francis of EPA, Mr. Steven Sisbach (Section Chief, Enforcement, Investigations & Emergency Management, WDNR) stated that regarding RCRA formal cases WDNR does not have formal policies or regulations for calculating penalties and economic benefit, but Regional staff do include penalty recommendations with requests for prosecution.

Of the 32 RCRA case files reviewed, 4 included formal enforcement.

**Finding:**

- In each of the 4 cases (100%), the files lacked information on how WDNR calculated and documented penalties that included both gravity and economic benefit components described in EPA’s RCRA Civil Penalty Policy.

**Information sources utilized for this criterion:** 2, 6 and 12.

**Recommendations and Actions:**

- WDNR should establish files that include information on gravity and economic benefit calculations for all formal enforcement cases requiring penalties. Such files must be readily accessible to EPA staff conducting file reviews.
- Because there appears to be confusion on how WDNR staff calculates penalty recommendations, WDNR should develop clear penalty calculation policies and guidance.
- WDNR should develop a plan, with an attendant implementation timetable, to improve the penalty calculation, documentation, and collection process for formal RCRA cases, and submit it to EPA by October 30, 2006.

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

In FFY 2004, WDNR took 4 formal enforcement actions. All 4 included penalties.

**Findings:**

- Penalties appear to have been collected for 1 of the 4 cases (25%).
- None of the 4 case files (0%) included information on how WDNR calculated and documented penalties that included both gravity and economic benefit components.

**Information sources utilized for this criterion:** 1 and 2.

**Recommendations and Actions:** See Recommendation for element 7.

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

**9. Degree to which inspection and enforcement commitments in the PPA/PPG/categorical grants are met, and any products or projects are completed.**

In the EnPPA between EPA, Region 5 and WDNR (which was in effect from July 1, 2003, until September 30, 2005), WDNR committed to conduct annually the following: statutorily mandated inspections at TSDs; and 50 LQG inspections (not counted as TSDs). In addition, WDNR committed to conduct inspections at small quantity generators (SQGs), and very small quantity generators (VSQGs). Also, WDNR committed to respond to citizen complaints and follow-up as appropriate. As described in its EnPPA, WDNR staff also focused on several compliance monitoring initiatives, e.g., non-notifiers, automotive repair companies, wood treatment facilities, and generators who discharge to septic systems.

**Findings:**

- The Metrics Report indicates that in FFY 2003 and FFY 2004, WDNR staff conducted inspections at 18 TSDs. The Metrics Report and RCRAInfo data indicate in FFY 2004 that WDNR staff conducted the following inspections: 118 LQGs; 106 SQGs; 210 VSQGs; and 74 citizen complaint evaluations.
- In addition, WDNR performed the following inspections: 195 sites not previously inspected; 4 non-notifiers; 13 automotive repair companies; 6 wood treatment facilities; and 10 generators who discharge to septic systems.
- WDNR met its EnPPA inspection commitments.

In the EnPPA, WDNR committed to take enforcement actions in accordance with EPA's ERP.

**Findings:**

- RCRAInfo data indicates that in FY 2004, WDNR issued the following enforcement actions: 6 Verbal Warnings; 55 Compliance Assistance Recommendation letters; 191 Notices of Noncompliance; 10 Notices of

Violation; 1 referral to Wisconsin AG; 2 Civil Judicial Complaints; 1 Civil Action for Monetary Penalties; and 1 Combination Civil Action.

**Information sources utilized for this criterion:** 1, 3 and 4.

**Recommendations and Actions:**

- WDNR should provide RCRA compliance monitoring and enforcement staff with refresher training on identifying, reporting into RCRAInfo, and taking action on SNCs in accordance with EPA's ERP.

**Section 4: Review of Database Integrity**

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

This data metric measures the lag time between the date of a SNC determination, and the actual reporting of the SNC to RCRAInfo. According to EPA's ERP, SNC data is to be entered at the time of SNC determination (the metric "flags" SNC entries made more than 60 days after the determination).

**Findings:**

- For the period spanning 10/19/04 through 8/9/05, WDNR entered 2 SNCs into RCRAInfo. Of the 2 SNC entries, 1 was entered more than a year after the violator was determined to be a SNC.

**Information sources utilized for this criterion:** 1, 2, 10 and 11.

**Recommendations and Actions:**

- Data should be entered into RCRAInfo when a violation determination is made.
- WDNR should adhere to the RCRA ERP guidance.

WDNR agrees with these recommendations. Recent Hazardous Waste Program training events have addressed, and future events will continue to address, all elements of enforcement, including identifying SNCs, reporting these into RCRAInfo, and taking any required actions.

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

**Findings:**

Of the 32 files reviewed,

- 14 (44%) had accurate data reported into RCRAInfo;
- 17 (53%) indicated either discrepancies or inaccuracies between file data and what was entered into RCRAInfo.
- EPA could not verify return to compliance (RTC) data in RCRAInfo for one case (3%) because no RTC information was found in the file.

- In another case it appears that one SV received a timely NON. However, more than a year passed without a response to WDNR by the violator. More than two years after the NON and a separate NOV were sent, the violator has not returned to compliance. WDNR has not determined this recalcitrant violator to be a SNC. EPA's ERP states that if a SV has not returned to compliance within 240 days, from the date of the inspection or record review, then "...the implementing agency should re-classify the facility as a SNC...."
- In 5 cases WDNR had used dates from violator response letters as RTC dates in RCRAInfo.

**Information sources utilized for this criterion:** 1 and 2.

**Recommendations and Actions:**

- WDNR should designate the SV described above in the Findings as a SNC, and take formal enforcement action.
- An RTC date should be the date WDNR determines that a violator has returned to compliance. The RTC date should not be the date a violator determines that he or she has returned to compliance.
- WDNR should develop and implement a data quality plan for data entered into RCRAInfo. Submit the plan to EPA by October 30, 2006.

WDNR reports that RTC dates and determination of these dates have been, and will continue to be, discussed at staff training meetings. Data quality will be a component of the QA/QC procedures currently being developed by the program. Complete details regarding the QA/QC procedures will be provided by October 30, 2006 as part of the EPA-recommended plan to improve the SNC identification rate.

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

**Finding:**

- After reviewing the RCRAInfo data counts, 12a through 12g, in the Metrics Report table, WDNR disagreed with the number found in 12c, i.e., 17 facilities found to be RCRA violators in FY 2004. In their May 22, 2006, comments on this Report, HQ-OECA stated that the 12c figure of 17 was incorrect. HQ-OECA states that the number should have been 323.

**Information sources utilized for this criterion:** 11.

**Recommendations and Actions:**

- WDNR should confirm the accuracy of all data provided under element 12 of the Metrics Report. WDNR and the Enforcement and Compliance

Assurance Branch will work to reconcile any differences WDNR may have with the numerical counts found in element 12 of the Metrics Report.