FY2005 MISSOURI PROGRAM REVIEW

1.0 INTRODUCTION & SCOPE

A review of the Missouri Department of Natural Resources (MDNR), Water Pollution Control Program (WPCP) compliance and enforcement program was conducted by the Environmental Protection Agency (EPA), Region 7, Water Enforcement Branch (WENF) on September 18-22, 2006. MDNR is the state agency with the authority to administer the federal National Pollutant Discharge Elimination System (NPDES) program in Missouri pursuant to Section 402 of the Clean Water Act (CWA), 33 U.S.C. § 1342.

The review consisted of a program overview questionnaire, file reviews, conversations with MDNR program staff, and visits to the department's regional offices and the central office. EPA staff conducted file reviews in the following MDNR offices: the Southwest Regional Office in Springfield (SWRO), the Southeast Regional Office in Poplar Bluff (SERO), the St. Louis Regional Office (SLRO), the Kansas City Regional Office in Lee's Summit (KCRO), and the MDNR Central Office located in Jefferson City. EPA staff reviewed 146 files of Missouri permittees and facilities. The state program review focused on the CWA NPDES program. The 146 files were reviewed by EPA to determine how MDNR implements its authorized CWA NPDES program. The review focused on MDNR enforcement response in federal fiscal year (FY) 2005; while some violations which occurred prior to FY2005 were also examined in order to assess the rationale for enforcement sought during FY2005.

2.0 PROGRAM REVIEW PROCESS

EPA staff utilized the EPA Region 7 Program Review Protocol (Protocol) to conduct the FY2005 Missouri NPDES Program Review. The Protocol ensures that the program review is a comprehensive analysis of how MDNR's program operated during FY2005. The program review evaluated MDNR's progress made from the previous program review in FY2001; the historical strengths and weaknesses of MDNR's program; the annual commitments achieved in the federally funded performance partnership grant (PPG) in the CWA Section 106 grant workplan (FY2005 workplan); and the compliance and enforcement activities that MDNR's program carried out during FY2005.

EPA staff integrated the national State Review Framework (Framework) protocol in the FY2005 Missouri Program Review. The Framework protocol relies on 12 essential elements referred to as data metrics. The 12 NPDES data metrics are a common set of measures pulled from the national EPA Permit Compliance System (PCS) database that provides generally for an analysis of state-specific performance, and in some cases, comparisons with national averages, for areas where a data stream exists. The aspects that the data metrics reflect are addressed within this report. A complete discussion of data metrics can be found in Appendix A.

3.0 QUESTIONNAIRE SUMMARY

Interviews, using questionnaires, were conducted at the central and regional offices. MDNR discussed the annual enforcement report that highlights the successes of their enforcement program. The interview discussions between EPA and MDNR staff covered many areas, including but not limited to allocation of resources for inspections and enforcement actions and actions taken by MDNR to return permitted facilities to compliance and identify and address illegal discharges. MDNR staff also discussed coordination between the central and regional offices, enforcement escalation, and tracking processes.

More specifically, in order to fully understand how MDNR administers the NPDES program, the discussions included review of MDNR's compliance and enforcement tools, such as the following:

- inspection and enforcement procedures outlined in the WPCP Inspection and Enforcement Manual (I&E Manual);
- Notices of Violation (NOVs);
- MDNR's Conference, Conciliation, and Persuasion (CC&P) process,
- enforcement escalation and enforcement penalties; and
- supplemental environmental projects (SEPs) included as part of an enforcement settlement agreement.

Although discussed in greater detail throughout this document, several issues were highlighted by MDNR for EPA's consideration during the interview process. These issues are summarized below:

- MDNR intends for the enforcement escalation policy to be followed when a facility does not adequately respond to a NOV;
- MDNR applies a penalty matrix for enforcement cases, and the matrix is in the Missouri Code of State Regulations (10 CSR 20-3.0);
- SEPs are assessed as an option when finalizing a case for enforcement negotiation, but SEPs were not frequently applied among enforcement settlements during FY2005. According to MDNR central office enforcement staff, there are very few violators that are able and willing to enter into a SEP as part of the enforcement process. This may be attributed to the penalty offset, costs, and project commitments to which the violators must agree;
- compliance assistance policies; and
- The MDNR field offices described the initiation of the Initial Assistance Visit (IAV) and expressed hope that these visits should lead to more consistent permit compliance.

The MDNR field office staff began implementing the IAV process as a compliance assistance program toward the end of FY2005. MDNR inspection staff resources have been shifted to provide compliance assistance under this program. While MDNR field office staff believe this process may provide a new discharger with a greater

understanding of its permit requirements and thus improve permit compliance, it was too early in the program's implementation for MDNR to determine a specific trend, or measure the long-term effect on permittees' compliance rates. Therefore, EPA has not drawn a definitive conclusion at this time regarding whether the IAV initiative is an effective tool in ensuring compliance and whether the shift in inspection resources has a positive impact on the overall effectiveness of the enforcement program.

A list of complete responses from the Central Office appears in Appendix B, and all regional office responses appear in Appendix C.

4.0 FILE REVIEW SUMMARY

The program review consisted of in-depth assessments of several files that represent various aspects of how MDNR administers the authorized NPDES program. EPA staff assessed the following types of files during the program review:

- Wastewater: 33 files (from 35 selected files).
- Pretreatment: 0 files (no files were available to review for FY05).
- Combined Sewer Overflow/Sanitary Sewer Overflow (CSO/SSO) Program: 3 files (from 3 selected files).
- Stormwater: 13 files (from 15 selected files, some central/regional office files were duplicated), and more than 30 additional files selected at the discretion of central/regional office.
- Confined Animal Feeding Operations (CAFOs): 34 files (from 34 selected files).
- Data Management: 24 files (from 56 selected files, some central/regional office files were duplicated).
- Enforcement Response: Nine of the files identified were also specifically reviewed by EPA's legal staff to analyze the enforcement process.

A complete list of specific file review summaries appears in Appendix D. The summaries include details regarding the facility file history, MDNR's compliance and enforcement actions, EPA's key concerns, and relevant outcomes.

5.0 AREAS OF PROGRAM STRENTH

Generally, MDNR has demonstrated timely coordination with NPDES permitted facilities. For example, inspections are typically transmitted within 30 days of when the inspection is conducted. When a decision to pursue enforcement is made, MDNR regional offices routinely refer the Enforcement Action Request (EAR) to the central office in a timely manner. MDNR has operated and continues to operate a strong CAFO enforcement program.

The FY2005 CWA Section 106 workplan contains specific agreed-upon tasks that will be undertaken by MDNR and EPA to help accomplish the goals of the CWA. Although the primary or sole funding source for each task described in MDNR's FY2005 workplan is expected to come from federal CWA 106 grant funds, some of the tasks may

be partially supported with funding from other sources. MDNR's Continuous Planning Process helps clarify some of the work plan goals and is intended to help EPA and MDNR identify priorities and future directions.

The MDNR regional office and central office staff met or exceeded the following work plan commitments during FY2005:

- MDNR regional offices conducted approximately 92 inspections at CAFOs during FY2005.
- MDNR regional offices conducted a minimum of 103 wastewater inspections during FY2005:
    - Majors (57 inspections, which covers 40% of the universe).
    - Non-Major (46 inspections, which covers 20% of the 92-500s universe).
    - a portion of the state's "other" wastewater minor facilities.
- MDNR regional offices responded to a total of 34 identified water pollution emergencies during FY2005.
- MDNR regional offices conducted 316 stormwater inspections during FY2005. Many of the regional offices had not planned on a specific number of stormwater inspections, but responded in a timely manner to complaints from concerned citizens.
- MDNR issued 77 60-day enforcement letters during FY2005.
- MDNR regional offices referred 48 violators to the Central office for enforcement during FY2005, including a facility identified on the Quarterly Non-Compliance Report (QNCR). Moreover, MDNR referred 13 enforcement actions to the Missouri Attorney General's Office for enforcement escalation during FY2005.
- MDNR resolved and closed 35 Enforcement Agreements out of 276 active Enforcement Agreements during FY2005.
- MDNR regional offices responded to 1,275 citizen complaints during FY2005.
- MDNR is working toward addressing wet weather issues at each CSO community. The letter containing the proposed plans was mailed to EPA on February 1, 2005.
    - For example, Cape Girardeau seems to have eliminated their CSOs by the end of FY2005.
- During FY2005, MDNR continued to improve data entry timeliness, which affects the QNCR and the Watch List data.
- MDNR needs to continue to improve upon the FY2005 reporting rates in WQIS, which is then uploaded to PCS, in order to meet the EPA goal of 95% data entry rate into PCS for discharge monitoring reports (DMR) parameters and DMR forms for both municipal and non-municipal facilities to be entered into the PCS database.
- MDNR began preparation for data migration from the PCS database to ICIS-NPDES during FY2005 (Note: Data migration was discontinued in FY2006; . however, the benefits from the FY2005 data migration will carry-over into the future).

5.1 INSPECTIONS

The MDNR has generally demonstrated a consistent use of its Inspection and Enforcement Manual (I&E Manual) among the regional offices to plan, execute and follow-up after inspections; however, the MDNR should continue to improve inspection consistency by more closely following the inspection criteria in the I&E Manual. MDNR field staff use the I&E Manual process during compliance inspections, wastewater inspections, and for enforcement referral procedures. EPA staff observed that complaints were responded to on the same day or within several days of when each of the complaints was received.

- There were a total of 42 inspections documented within the 34 CAFO files reviewed by EPA. Forty of the 42 inspections demonstrated compliance with MDNR's inspection completion timeframes. According to MDNR staff and tracking databases, MDNR performed inspections at approximately 20% of the permitted CAFOs in FY2005.
- EPA found that in the files reviewed, MDNR staff usually transmitted inspection reports to facilities in a timely manner; typically within 30 days from when the inspection was conducted. Notices of Violation (NOVs) were typically transmitted when the inspection report was sent to the facility. Due to this timeliness, the facility was aware of the violations soon after the inspection.

There was at least one instance in the files reviewed where the inspection report was not transmitted in a timely manner: Doe Run, Brushy Creek Mine (MO0001848). The inspection findings were transmitted eight months after the compliance inspection was conducted, which exceeds the inspection transmittal timeframe established in the I&E Manual. See EPA assessments of the selected files in Appendix D for further details.

5.2 INITIAL ENFORCEMENT RESPONSE

Enforcement was generally sought within a reasonable timeframe among urgent and high-priority scenarios, such as spills, fish kills, and stormwater violations. The responses generally followed the I&E Manual guidelines.

Where enforcement was sought, MDNR central office staff responded quickly, based on the circumstances of each enforcement action. The national enforcement response goal is to address 98% or more of violations at NPDES Major facilities through timely enforcement actions (see Metric 6a in Appendix A). MDNR's timely enforcement response is 90.8% for FY20005, based on enforcement actions entered in PCS. MDNR's timely enforcement response rate is close to the national average of 90.9% for timely enforcement actions at NPDES Major facilities. MDNR's Conference, Conciliation, and Persuasion (CC&P) process may have the potential to influence MDNR's timely enforcement actions, based on the files reviewed for timely and appropriate enforcement actions.

The MDNR has generally demonstrated a consistent use of the I&E Manual in conducting wastewater, CSO and/or SSO, CAFO and stormwater inspections and

provided timely and complete EARs in accordance with the enforcement referral procedures in the I&E Manual.

- Several wastewater cases were initiated and completed with exceptional timeliness. These cases include: Bertrand (5 months), Farmington (8 months), Global Fireworks Inc (7 months), and Leadwood (11 months).
- Similarly, once a decision is made in the regional offices to refer a stormwater case for enforcement, the timeframe is relatively short from enforcement case development until the conclusion of the case. Timely stormwater enforcement examples include the Falls at Little Creek and the Twin Springs Subdivision.

5.3 DATA MANAGEMENT PROCESSES

The MDNR data management staff in the central and regional offices appear to have developed a constructive working dynamic in FY2005. MDNR data management staff in both the central and regional offices demonstrated an ability to work together as a check-and-balance system to assure data quality, particularly regarding data entry for the DMRs. MDNR staff check that DMR data entry is consistent with MDNR permit limits. EPA staff observed that the coordination between regional and central office staff ensures verification of permit limits before any changes are made in the data management system. Overall, MDNR data files were well ordered, chronological, and the data were accessible.

Tracking processes for enforcement actions vary in each regional office. For example, the regional offices track inspections electronically through the Production Action Tracking System (PATS), and these entries will vary based on a facility's progression of CC&P activities. The NOVs are tracked through the regional offices database, and enforcement actions are tracked through the central office using the Water Quality Information System (WQIS) database. MDNR's WQIS database is also used to track enforcement deliverables, schedules of compliance in permits, and DMR information, which is then uploaded to the PCS database.

Several instances of unreported violations were observed during the file review (See "6.0 Challenges to Overcome, 6.1 Resolve Data Discrepancies"); however, these events were more case-specific, rather than region-specific, indicating that MDNR's data entry process is generally effective when followed.

Movement toward Consistency

EPA concluded that each of the regional offices seemed to follow the established MDNR policies for inspections and enforcement responses; however, each regional office followed the policies with slight variation. Some of the regional offices gave more emphasis to the process of CC&P than other regional offices.

The MDNR has a statutory mandate to enter into CC&P prior to referring violators for enforcement. CC&P is a compliance assistance and enforcement escalation tool used by MDNR to encourage a noncompliant facility to return to compliance. CC&P is a focused and time-limited process that should not exceed 270 days. If the initial 90-day stage of verbal and/or written compliance assistance does not resolve the

violations, then the CC&P process progresses to negotiation of corrective actions that the facility should complete within 180 days. Noncompliant facilities that do not complete corrective actions within 180 days may negotiate with MDNR staff to reach a mutually agreeable compliance schedule. The CC&P negotiations may include modifications that revise the facility's permit schedule of compliance or special conditions over an extended period of time. MDNR must ensure that if there are any modifications or revisions to a permit that they be made in conformance with procedural and legal requirements of state and federal law.

As explained by MDNR staff, CC&P is utilized in about 85% of MDNR's cases. MDNR regional office staff carry-out the CC&P negotiations from the beginning until the end of the process, and are subject to final approval by management. EPA staff concluded that CC&P may influence the timely enforcement response data element (see Data Metric 6a in Appendix A).

All formal enforcement actions are coordinated among the central and regional offices and are administered through the central office. Centralized enforcement contributed to consistent enforcement during FY2005. MDNR appeared to demonstrate consistency when enforcement was sought. Application of the enforcement policy and the penalty matrix established in 10 CSR 20-3.0 led to consistent proposed penalties.

5.4 INCREASED INVOLVEMENT IN STORMWATER

The MDNR's stormwater program staff began selecting facilities for routine compliance inspections in FY2005, particularly in SERO. MDNR staff has begun to select and inspect these stormwater facilities, in addition to responding to complaints regarding stormwater sites. These efforts should contribute to improved compliance in the stormwater sector.

6.0 CHALLENGES TO OVERCOME

MDNR staff should be commended for the progress that has been made since the FY2001 program review; however, opportunities to further improve the program still exist. The following section reviews the challenges and issues observed by EPA staff during the FY2005 program review.

6.1 RESOLVING DATA DISCREPANCIES

EPA's national PCS policy requires that states maintain at least a 95% compliance rate for submission of DMRs and for complete data reporting on DMRs for both municipal and non-municipal facilities. MDNR needs to continue to improve upon the following FY2005 reporting rates in WQIS, which is uploaded to PCS:

- PCS data indicated that only 88.3% of the municipal and only 91.0% of the non-municipal DMR parameters have been submitted (see Appendix A).
- PCS data indicated that only 91.1% of the municipal and only 83.9% of the non-municipal DMR forms have been submitted (see Appendix A).

- Of the files reviewed, MDNR indicated that the majority of data was entered in a timely manner, but data was not accurate in PCS for approximately half of the facilities reviewed. MDNR believes the inaccurate data is due to an issue with the DMR batch data submission.

During the program review, EPA observed several challenges, which if corrected, may improve data entry reporting rates:

- DMR data were incomplete in PCS for several facilities. Data calculating compliance rates on the DMR sheet (e.g., monthly averages, highest daily values) was often not reported on the DMRs, nor entered into WQIS, or reflected in PCS. Examples include: BSA-Beaumont, Chaffee, Eureka, Excelsior Springs, James River Power Station, Lake Adelle Sewer District, Perryville, and Warrenton.
- Incorrect DMR data were present in PCS for several facilities, including:
  - Glaize Creek –incorrect "DMR received" dates entered in the PCS database. Glaize Creek also had two data discrepancies reported in October 2004: the 5-Day BOD parameter and the in-conduit flow parameter.
  - Independence Rock Creek – a value of "69" s.u., rather than the correct "6.9" s.u., was entered as the Measurement/Violation Concentration Minimum (MCMN) for pH for the month ending July 31, 2005.
  - Sikeston WWTF – a value of "7.14" s.u. was entered as the Measurement/Violation Concentration Minimum (MCMN) for pH for the month ending July 31, 2005, rather than the correct pH value of "7.4" s.u.
- DMR data was missing for several facilities, including:
  - September 2005 DMR data were not present in PCS for any of the selected facilities; although all of the DMR data were viewable in WQIS.
  - November 2004 DMR for Independence Rock Creek could not be located in the file for data comparison.
- MDNR regional offices send delinquency reminders to facilities that submitted DMRs after the monthly due date. Because these notices were not sent out until two or three weeks after the due date, there was approximately a six-week lag after the closing date for the reporting period. Based upon the files reviewed, DMR delinquency reminders did not appear to have a deterrent effect upon facilities that repeatedly submitted delinquent DMRs. In addition, there did not appear to be a consistent method for tracking non-reporters, as opposed to late reporters. MDNR plans to enhance reporting capabilities in WQIS, which will allow regions to obtain the delinquent reminders directly. This should improve timeliness. To improve deterrence among DMR non-compliance, MDNR also plans to develop a method of informing facilities of DMR violations that is consistent among the six regional offices.
- While MDNR is evaluating the use of a more standard NOV, EPA recommends that MDNR also evaluate how it can provide further assistance to facilities when calculating the monthly average, geometric mean, and the 24-hour composite sample. Ideas include the use of a more standard DMR, or an optional supplemental form that can be submitted with the DMR to assist facilities. EPA requests that MDNR provide a plan in the status report.

During the program review EPA became aware that the PCS data reviewed was not always consistent with data in WQIS. The discrepancy appeared to be attributed to a batch processing problem, which takes place when MDNR's WQIS data is uploaded to EPA's PCS database. MDNR staff perform preliminary quarterly data runs to identify errors; nevertheless, errors may continue to be introduced on standard reports, such as the Quarterly Noncompliance Report (QNCR) because of this data discrepancy. EPA staff witnessed the data discrepancy circumstances, but did not observe specific incidents of batched data errors at this time; therefore EPA staff were unable to draw a definitive conclusion as to the cause of these discrepancies.

Additionally, data were occasionally distorted when transferred from WQIS to PCS during FY2005. EPA and MDNR data management staff were unable to determine a pattern or a cause for the data distortion incidents. While data discrepancies may not occur in the future with the ICIS-NPDES database, historical PCS data remain important for purposes of determining accurate histories of non-compliance. EPA recommends that MDNR work towards resolving the DMR batch data submission issue and provide goal timeframes for resolution to EPA in the status report.

6.2 VERIFYING RETURN TO COMPLIANCE

MDNR tracking and response to non-compliant facilities needs to be improved in order to ensure accurate return to compliance and database tracking. EPA staff observed that in several instances no follow-up actions were documented to ascertain that a non-compliant facility had returned to compliance, including documentation of CC & P. EPA determined that regional offices often did not document follow-up actions conducted at non-compliant stormwater facilities to ascertain whether they had returned to compliance. For example, EPA observed follow-up or closure letters in a just a few files such as Black Oak Estates (MOR104482), and Cape Custom Homes, Deevers Farm (MOR106418).

EPA observed that facility files at MDNR regional offices often did not contain adequate documentation of each facility's return to compliance following complaint investigations, compliance inspections, NOVs, or formal enforcement actions. EPA did, however, find some of this information during its review of files in the central office. Properly documenting a facility's compliance status as well as their activities to return to compliance is crucial for an effective compliance and enforcement program. EPA recommends that, at a minimum, the following information should be documented and included in the official facility file:

- Complaint circumstances and complaint investigation findings, as appropriate;
- NOV responses from the facilities, including information that confirms a return to compliance;
- Documentation of the results following CC&P activities;
- Compliance activities that meet or fail to meet schedules of compliance milestones; and
- Documentation regarding compliance activities following completed formal enforcement actions.

Communication among the central and regional offices could be improved. While MDNR regional offices track compliance in PATS, each regional office needs to be more equipped to track compliance with orders and to avoid miscommunication with the facility. MDNR central office should ensure that the regional offices are aware of the status of enforcement. One area that would benefit from improved communication is CAFO inspections. Written enforcement documentation and deliverable tracking should occur among the offices to ensure effective communication and complete files within each regional office and the central office. The Simpson Sow Farm (MOG010184) is a good example of where better documentation is necessary to verify a return to compliance. EPA's review of both regional and central office files for Simpson found no information related to actions that had been taken by the facility to ensure they no longer illegally discharged their waste. After the review, MDNR reported that an operation and maintenance (O & M) plan was located in the construction file at the filed office, and that the facility agreed to follow the O & M plan as part of the settlement agreement. Compliance tracking documents such as settlement agreements should be available at both the central and regional office.

EPA is concerned about facilities that have been operating for a protracted period of time under a stay of permit limitations based on an appeal of one or more limitations in the permit. The Clean Water Commission, with counsel from the Attorney General's Office, has the authority to grant such stays while the appeal is being resolved; however, some appeals continue unresolved, and the stays remain active, for extended periods of time, sometimes for many years. For example, the Exide Technologies facility continues to operate under a stay granted for selenium limits by the Clean Water Commission following a permit appeal in May 2002. This facility has repeatedly been on the QNCR since June 2002 and remains unresolved with no known plans to address or resolve the stay. Additionally, Independence has had a stay on permit limits at the Rock Creek Pump Station for over 10 years, and the matter still has not been resolved.

Facilities with stays on permit limitations have been repeatedly identified on the Watch List and the QNCR due to what appears to be a lack of formal enforcement actions to resolve the permit limit violations reported in PCS. EPA encourages MDNR to work proactively with the Clean Water Commission and the Attorney General's Office to resolve open permit appeals. MDNR indicated that it hoped to add the capability of tracking stays in WQIS. EPA requests that MDNR submit an update on moving forward with this capability in the status report.

6.3 INSPECTION COVERAGE

EPA identified MDNR's inspection rate as a programmatic area of some concern. The national goal is to annually inspect 100% of the NPDES Major facilities to ensure full inspection coverage for NPDES Major facilities. Based on the FY 2005 data, MDNR's inspection coverage is below the national average for inspecting NPDES Majors. MDNR provides data for Major facilities and for Non-Major facilities associated with 92-500 grants, according to negotiated PCS WENDB data elements.

- MDNR inspected 33.8% of the NPDES Majors (48 out of 142) in FY2005. This is below the national average of 63.1%, and well below the 100% national goal.
- Approximately 80% of the NPDES Majors are inspected over a five-year period, which is below the national goal of annually inspecting 100% of the NPDES Majors. The rationale for MDNR's inspection commitment below the national average was not available, so the "NPDES Non-Major for Major" exchange was difficult to determine.
- MDNR inspected 16.10% of the NPDES Non-Majors (461 out of 2,863) in FY2005; however, this inspection metric based on data pulled from PCS indicates that this inspection rate is solely based on Non-Major facilities associated with 92-500 grants. This is below the national average of 64.6%, and well below the 100% national goal.
- MDNR data indicates 1.90% of the NPDES "other" Non-Majors (163 out of 8,532) were inspected in FY2005; however, the data pulled from PCS indicates that this inspection rate is solely based on "other" Non-Major facilities not associated with 92-500 grants. MDNR voluntarily provides this data to support "other" Non-Major facilities, since PCS information for these facilities often does not include the effluent limits identified in the permits. "Other" Non-Major facilities are voluntary data element requirements, according to negotiated PCS WENDB data element. To the extent this data is available nationwide, MDNR's inspection rate for these facilities is below the national average of 64.6%, and well below the 100% national goal.

The MDNR exceeded the inspection commitment in its FY2005-2006 workplan to inspect 20% of Majors and 20% of Non-Major 92-500 facilities; however, these inspection commitments are not reflected in the PCS data used to support the State Review Framework for Data Metric 1 (see Appendix A).

EPA observed that MDNR inspected facilities for which MDNR committed resources during the annual workplan negotiations, and MDNR staff met the inspection goals established therein during FY2005. EPA reviewed MDNR's file information to support its conclusion regarding inspection trades for File Review Metric 1r. EPA concluded that MDNR focuses on the negotiated percent of non-majors and regional tracking of any "major for non-major" inspection trades. Also, EPA noted that discrepancies between state and federal fiscal years caused some discrepancies between EPA and state numbers.

EPA noted that MDNR committed to conduct 8 Major and 22 Minor 92-500 Non-Major inspections in Missouri in FY2005. Both of these targets were exceeded. In FY2005, the MDNR committed to inspect 216 "other" Non-Major facilities, 69 stormwater facilities, and 5 CAFOs. According to the OTIS management report updated on May 31, 2006, the MDNR conducted 48 inspections within the class of 142 NPDES Major facilities, 461 inspections within the class of 2,863 NPDES Non-Major facilities, and 163 inspections within the class of 8,532 NPDES "other" facilities.

EPA R7 staff reviewed 33 wastewater files for inspection coverage. EPA observed that MDNR conducted inspections at NPDES Major and Non-major facilities below the national goal for inspection coverage. EPA observed that MDNR met its obligation for the negotiated wastewater inspection commitments according to the FY2005 CWA § 106 grant workplan, with two exceptions. MDNR did not inspect Sedalia on an annual frequency for an NPDES Major facility. In addition, the MDNR field office entered information in PCS for two planned inspections for the Springfield SW WWTP, an NPDES Major facility, but did not actually perform the inspections during FY2005, as scheduled.

EPA appreciates that MDNR has met its workplan commitments for inspections, and understands that MDNR plans to focus on SSO communities during FY2008. Because MDNR is below the national goal of the percent of majors inspected, EPA urges MDNR to consider how it might work towards improving the percent of majors inspected and set a timeframe for when it plans to re-focus on majors in the status report.

6.4 IMPROVING ACCURACY OF AND CONSISTENCY WITHIN INSPECTION REPORTS

The methods and extent of inspections performed by MDNR varied depending on the category or level of inspection recommended as appropriate by the I&E Manual. Many inspections conducted by MDNR staff in FY2005 clearly identified compliance and noncompliance at facilities, and resulted in appropriate follow-up and enforcement escalation; however, inconsistency in inspection processes, inspection reporting, and documentation and follow-up of violations identified during an inspection led to inconsistent enforcement actions. Therefore, MDNR should improve enforcement consistency by more closely following the inspection and enforcement escalation criteria in the I&E Manual.

The type of inspection report written also is dependent upon the category of inspection conducted under the I&E Manual, such as wastewater, stormwater, or CAFO, and Class I, II, or III. The inspection reports documented the inspectors' findings, but varied in format, length, and complexity. EPA reviewed files in which some of the regional offices used condensed checklists to conduct inspections, and then transmitted the inspection findings to the facilities in the checklist-based format with a cover letter. Other regional offices conducted inspections with checklist forms, but transmitted the inspection findings only in a narrative report format with a cover letter. EPA observed that the format and detail of inspection reports varied somewhat between regional offices and between inspectors.

EPA observed that generally CAFO complaints were documented along with the investigation results in the regional office files. On the other hand, EPA staff found that typically the wastewater and stormwater complaints were not included in the facility files. EPA staff found it difficult to determine whether the concerns expressed in the wastewater and stormwater complaints had been adequately addressed, because the complaint record was often absent.

- A significant number of the CAFO files reviewed also did not contain documentation of rationale for inspection. It appeared from the file review that eight facilities were inspected based on complaints. Six of the eight files, however, did not have the documentation of the complaint in the facility file.
- EPA staff had difficulty determining whether stormwater inspections originated from complaint investigations or from targeted site inspections. The complaints were referenced in inspection reports, but records of such complaints were not found in MDNR files.

EPA reviewed files in which the inspections were conducted with a checklist, and violations or deficiencies were marked as "unsatisfactory" or as a "U"; however, the criteria and significance for violations based on unsatisfactory findings in the checklist inspection reports were not clearly identified. Often the checklist inspection reports did not elaborate on whether the unsatisfactory finding identified an egregious violation or a less-serious deficiency. Therefore, EPA staff concluded that inspection reports that included both the inspection checklist form and narrative descriptions of the inspections findings were more helpful in clearly identifying significant violations and deficiencies. EPA recommends that MDNR further develop its inspection protocol to ensure that deficiencies are clearly identified in both inspection reports and any accompanying checklists.

EPA staff observed that MDNR regional office files lacked appropriate evidence collection and consistent report documentation for stormwater inspections. These files also indicated that there were significant inconsistencies in enforcement response. For example, Briarwood Oaks Estates had six NOVs issued in total, and three of the six NOVs were issued in FY2005; however, the site was not referred for enforcement. Cedar Lake Estates was issued a NOV on February 14, 2005, and received a letter of non-compliance on June 21, 2005, four months after the NOV was assessed.

EPA concluded that MDNR could improve its stormwater inspection and compliance program if it implemented the following recommendations:

- Develop consistent procedure for evidence collection to document violations observed during stormwater inspections;
- Ensure inspection reports, NOVs, and pictures referenced in inspection reports or other documents are in the file;
- Develop a clear and consistent inspection report format; and
- Develop a land disturbance/stormwater enforcement response policy to improve consistency among enforcement responses.

It appears that MDNR has made improvements in this area since the time of the review. Please provide a summary of any actions MDNR has taken to improve stormwater inspections and compliance in the status report.

With regard to CAFO inspections, EPA determined that MDNR does not have a consistent methodology for identifying and following up on violations or other deficiencies identified in the inspection report. EPA observed that the regional office

CAFO inspection report contents, details, and format varied depending on which field office and inspector conducted the compliance inspection. Inspectors from SERO filled out the CAFO inspection checklist form**.** Inspectors from SWRO and KCRO include narratives along with the CAFO inspection checklist form.

Additionally, EPA observed numerous instances where the narrative portion of the inspection report or the transmittal letter identified violations that needed to be corrected, but the CAFO inspection checklist indicated the facility was in compliance. It is important that all components of the inspection report be clear, consistent and accurate in identifying what is and what is not a violation. Ten of the 34 CAFO files reviewed had inspections that identified violations or potential violations; however, EPA did not observe follow-up documentation in many of these regional office files. The information transmitted to the permittee must consistently reflect the compliance or violation findings observed and recorded in the inspection checklist.

Similarly, EPA's review of wastewater files found that violations are also not clearly communicated for these inspections. The following wastewater facilities had violations identified in the inspection checklists, but the inspection reports communicated that the facilities were in compliance: BSA-Beaumont Scout Reservation (MO01017549), Timber Springs EST WWTP (MO0123099), Elk Inn (MO0092398), Independence Rock Creek (MO0089681), Popular Bluff (MO0043648), and Sikeston (MO0035009).

The MDNR's inspection program would benefit from greater overall consistency in documenting violations in a clear, complete, and accurate manner. Recommendations identified above for stormwater inspection reports could be implemented for most inspection programs. In addition, to the extent possible, MDNR should require facilities to submit a response to an NOV indicating actions taken to resolve the noncompliance and whether those actions were successful, and this information should be maintained in the file.

6.5 IMPROVING CONSISTENCY FOR ENFORCEMENT ESCALATION

EPA staff observed inconsistent application of the enforcement escalation timeframes. This may be due to inconsistent violation determinations, inconsistent implementation of the I&E Manual, and/or inconsistent application of the CC&P.

EPA legal and program staff reviewed nine of the case files to assess the legal aspects of MDNR's NPDES enforcement program. Each of these nine cases had enforcement actions that were initiated because of a fish kill or because of identification on the QNCR.

Several enforcement actions, other than the nine cases mentioned in the previous paragraph, were sought by MDNR against CAFOs for discharges or operating without a permit. Examples of such enforcement actions include Glen Scott Poultry

(MOG010582), Peter Xiong (MOG010328), and Simpson Sow Farm (MOG010184). Many of these violations were detected through compliance inspections; however, not all CAFO inspections that documented significant violations resulted in an enforcement action. EPA acknowledges that there will be cases where violations are documented that do not require formal enforcement, due to extenuating circumstances and regional office discretion. EPA could not, however, determine MDNR rationale for the lack of enforcement for the Murphy Turkey Farm (MOG010565). Review of the file for Murphy Turkey Farm showed that the facility had an illegal discharge, but there was no referral for enforcement. MDNR did not appear to have followed its policy of referring "significant" violations such as discharges/bypasses for enforcement.

Several traditional wastewater facilities received many NOVs, but no subsequent enforcement action was sought. The decision not to pursue an enforcement action was unclear from the records maintained in the regional office files.

Some of the stormwater files reviewed had several NOVs for violations that occurred at a specific site before the regional office initiated an EAR. In contrast, other stormwater files contained only one or two NOVs before the regional office initiated enforcement with an EAR. There was at least one instance in the files reviewed where a stormwater enforcement action was neither referred nor enforcement escalated in a timely manner: Briarwood Oaks Estates (MOR105988) has six inspections and six NOVs in the file, but there was no documented EAR in the file. MDNR's discretion as to whether or not it initiated an enforcement referral may have been justified, but EPA staff found it difficult to determine the rationale from the documents available in the file. MDNR should ensure that decisions regarding whether or not to initiate enforcement are consistent and based on the state's enforcement escalation policies. MDNR should also develop and implement a system, such as file documentation, by which the rationale for these decisions can be preserved.

EPA staff observed inconsistent application of the enforcement escalation timeframes. EPA recognizes that it is necessary to exercise enforcement discretion; however, MDNR should provide instruction on when it is appropriate to utilize this discretion. In order to improve consistency, MDNR acknowledged the need to develop and document a clear escalation process for publically-owned wastewater treatment plants, CAFOs, stormwater land disturbance sites, and other wastewater facilities. EPA requests that MDNR indicate a timeframe in the status report to develop these guidances.

6.6 ASSESSING APPROPRIATE PENALTIES

EPA reviewed enforcement files in the central office, and determined that MDNR calculates penalties systematically, which ensures consistency. MDNR staff applied the penalty matrix pursuant to the state regulations found in 10 CSR 20-3.0. MDNR also uses a penalty worksheet to assist with calculations of the penalty. Within the worksheet,

enforcement staff calculate the gravity of the violations; the impact to human health the environment; the impact to receiving waters; and resources expended by MDNR in the event of an emergency or spill clean up. EPA observed that the worksheet was completed for each enforcement action reviewed, which further supports consistency among penalties.

EPA concluded that even though MDNR systematically calculated penalties for its enforcement actions during FY2005, MDNR did not include penalty calculations for capturing the economic benefit of noncompliance as EPA defines economic benefit. MDNR does assess a portion of the penalty for economic benefit, but the costs reflected in this estimate tend to capture restoration and costs incurred by MDNR for conducting the case. While penalties are calculated systematically, economic benefit should be included to ensure that violators are placed in the same financial position as they would have been if they had complied on time (see Metric 8 in Appendix A). According to EPA's definition of economic benefit, this portion of the penalty should reflect items such as: delayed or avoided cost of installing controls, sampling, capital equipment improvements, and operation and maintenance. Often, the cost associated with the proposed injunctive relief is used as the basis for economic benefit to reflect the cost that should have been incurred to achieve compliance.

EPA recommends that MDNR assess economic benefit for the factors mentioned above. EPA is including some information on economic benefit as an enclosure. Please examine the information, compare the methodologies and provide a summary in the status report about how MDNR can alter its current methods to more accurately reflect economic benefit.

EPA also observed that MDNR enforcement cases referred to the Attorney General's Office (AGO) for enforcement escalation were often resolved with minimal or no penalties attached to the violations. Examples of such AGO referrals include Leadwood WWTF (MO0104256), Springfield SW WWTP (MO0049522), and the Simpson Sow Farm (MOG010184).

6.7 IMPROVING CSO/SSO OVERSIGHT AND ENFORCEMENT

6.7.1 ENSURE CSOs DEVELOP LTCPs

The MDNR has recently been proactive in pursuing and encouraging CSO communities to eliminate their CSO discharges. EPA reviewed three CSO files for purposes of the program review: Cape Girardeau, Moberly and Macon. While the LTCP requirements should have been imposed on the cities much earlier through the Settlement Agreement/Abatement Orders issued to these cities, or through permit requirements in each of the past two permit cycles, Macon and Moberly are now required to develop LTCPs in their current NPDES permits. Cape Girardeau, having separated, no longer needs to develop a LTCP.

6.7.2 CONTINUE TO SEEK ENFORCEMENT AGAINST SSOs

The MDNR should evaluate overflow reports and inspection information to determine which communities have excessive SSOs and other wet weather related problems, such as basement backups and bypasses at the WWTP. Actions should be taken to address those sewer systems deemed to have excessive SSOs and other wet weather problems (i.e., inflow and infiltration issues, bypasses, basement back-ups, and other similar problems). In 2008, MDNR placed additional resources in each field office to provide more attention to SSO communities.

6.7.3 APPLY PENALTIES APPROPRIATELY

Although outside the FY2005 timeframe for this program review, MDNR should be commended for initiating oversight and seeking enforcement against combined sewer systems, including Moberly and Macon. It was noted during the program review that penalties could be applied more consistently to create a greater deterrence of non-compliance, for example: EPA observed that MDNR sought penalties against Moberly on two separate occasions. The assessed penalty in the Moberly November 2003 settlement agreement was less than the penalty assessed in the Moberly June 2002 settlement agreement. EPA concluded that due to the history of non-compliance, Moberly's penalty in June 2003 should have been adjusted upward accordingly. MDNR's June 2002 Settlement Agreement with Moberly resulted in an assessed penalty of $72,000, of which $28,000 was collected, and $44,000 was deferred pending completion of a supplemental environmental project (SEP). MDNR's November 2003 Settlement Agreement with Moberly resulted in an assessed and collected penalty of $32,000.

In general, SEPs may enhance environmental compliance or provide additional positive environmental results from enforcement cases; however, it appeared that Moberly's SEP was inappropriately applied for its collection system upgrades, which were part of the injunctive relief required to correct the problem for which enforcement was sought. MDNR's June 2002 settlement agreement with Moberly included a SEP with a $44,000 penalty offset for the collection system upgrades, at a cost of $176,000. EPA could not determine if the $44,000 SEP offset credit was given to Moberly during FY2005 for the upgrades to the collection system; however, Moberly's collection system upgrades are now part of the LTCP incorporated in Moberly's December 30, 2005 permit. EPA recommends that MDNR evaluate its SEP review and approval procedures, so that only SEPs that require facilities to exceed the minimum requirements for returning to compliance will be given SEP credit.

6.8 PROVIDE OVERSIGHT FOR THE MUNICIPAL SEPARATE STORMWATER SYSTEM (MS4) PROGRAM

The MDNR conducted no municipal separate storm sewer system (MS4) audits or inspections in FY2005. Therefore, MDNR did not seek MS4 enforcement actions. MDNR staff cited a shortage of resources for the lack of MS4 compliance and

enforcement activity. Implementation of the MS4 program was a requirement in 1993; however, MDNR just recently began implementation of the MS4 program. MDNR should consider how to conduct oversight of MS4s and begin implementation as soon as possible, with implementation beginning no later than October 2007.

6.9 IMPLEMENT THE PRETREATMENT PROGRAM

The MDNR had no activity among the pretreatment sector during FY2005, due to a reallocation of resources. Pretreatment activities that should have taken place in FY2005 include: audits, inspections, review of municipal annual reports, review of industrial semi-annual reports, activity tracking, and enforcement. Cities had been notified of the requirement to develop Pretreatment programs in FY2003 and FY2004, but the programs were not fully developed due to the lack of follow-up from MDNR.

However, beginning in FY2006, MDNR improved its presence in this sector, and has been active in performing Pretreatment audits and Pretreatment Compliance Inspections (PCIs). As of October 2006 (FY2007), about 30 such inspections have been conducted among the 40 active Pretreatment Program Cities.

7.0 FOLLOW-UP TO PAST RECOMMENDATIONS

EPA Region 7 NPDES program staff conducted a full FY2001 Program Review in July 2002. The Missouri Program Review for FY2001 covered NPDES permitting, CWA enforcement, CSOs, CAFOs, stormwater, pretreatment, and biosolids. Recommendations and action items included in the FY2001 review were evaluated during the FY2005 review for follow-up.

Overall the Missouri Program Review for FY2001 identified quality state implementation of the NPDES program. The FY2001 Missouri Program Review also identified some opportunities for MDNR to improve, and strengthen certain aspects of the NPDES program. The FY2005 review concluded that MDNR has advanced their CSO/SSO and stormwater program in comparison with the FY2001 review, and de-emphasized the pretreatment and biosolids programs. Additionally, follow-up to the FY2001 review indicated that several wastewater facilities have remained on the Watch List since that time and require additional attention.

7.1 PROGRAMS SHOWING ADVANCEMENTS

7.1.1 SANITARY SEWER OVERFLOW (SSO) PROGRAM

According to findings in the FY2001 Missouri NPDES Program Review, MDNR discussed the concept of prioritizing the existing inventory of cities with sanitary sewer overflows (SSOs) with EPA in early 2002. The preliminary SSO inventories were rough estimates of SSO problems that existed during FY2001. EPA staff had briefly discussed how to proceed with targeting SSO communities for compliance activities, based on MDNR's FY2001 inventory. EPA staff involved in tracking SSO communities will work with MDNR to use the SSO inventory and SSO community targeting information to support EPA's Sustainable Infrastructure initiative.

7.1.2 STORMWATER ENFORCEMENT

Siltation was the most widespread cause of stream impairment across the United States at the time of the FY2001 review. According to findings in the FY2001 Missouri NPDES Program Review, MDNR's NPDES stormwater permitting program was well implemented, and the state was on track for implementing the Phase II requirements. MDNR has historically preformed inspections for stormwater in response to complaints. In FY2005, MDNR also began to conduct targeted inspections to assess compliance with stormwater permitting requirements. Siltation may be further reduced through this recent implementation of targeted stormwater inspections.

7.2 PROGRAMS SHOWING DE-EMPHASIS

7.2.1 PRETREATMENT PROGRAM AND BIOSOLIDS PROGRAM

According to findings in the FY2001 Missouri NPDES Program Review, the approved Pretreatment Program Cities were doing a commendable job implementing the General Pretreatment Regulations as well as federal Categorical Pretreatment Standards, where applicable. Since the FY2001 review, MDNR shifted resources for pretreatment inspections, and the program has not advanced at the rate necessary to implement a successful program. Resources were restored in FY2006, and MDNR appears to be diligently rebuilding the program.

MDNR has not sought authorization for the Biosolids program as part of its NPDES authorized program. However, MDNR does conduct some activities in support of the Biosolids program. EPA's findings in the FY2001 Missouri NPDES Program Review documented that the Part III Standard Conditions of NPDES operating permits in Missouri governed sludge and biosolids from domestic wastewater treatment facilities. The Part III requirements were at least equivalent to 40 CFR Part 503 requirements, and in some areas were more stringent. These permit requirements were the key components of Missouri's sludge and biosolids program. Since the 1997 expiration of CWA 104(b)(3) grants that funded the sludge program, MDNR was forced to greatly reduce the staffing for the sludge and biosolids program.

There has been little change since the FY2001 program review; however, sludge handling problems have led to water quality issues at NPDES permitted facilities, such as the Leadwood WWTF (MO0104256) for example. Moreover, MDNR indicated that it has not and does not intend to conduct sludge specific inspections unless it is in response to a complaint. Violations of sludge requirements will be referred to EPA staff for enforcement pursuant to 40 CFR Part 503. The emphasis has been shifted away from MDNR's biosolids program since the funding source no longer exists.

7.3 WASTEWATER FACILITIES IN LONG-STANDING VIOLATION

In the FY2001 Missouri NPDES Program Review, EPA found that the MDNR Water Pollution Control Program (WPCP) had a timely and consistent approach to enforcing MDNR NPDES permits. Overall, the cases proceeded expeditiously to formal

enforcement. However, EPA staff noted during the FY2005 program review that some of the facilities listed on the 2001 QNCR and the Exceptions list are still present on the 2005 QNCR and the Watch List. These facilities include: LBVSD, Atherton (MO0101087), Doe Run, West Fork Unit (MO0100218), and Union WWTF (MO0025283).

MDNR staff referred EPA to a 1998 memo that outlined the expected timeline for handling enforcement cases, as a supplement to the I&E Manual during the FY2001 program review. The process flow chart for compliance and enforcement was updated and inserted into the I &E Manual in November 2003 (see Appendix F). The enforcement process and the timeframes are based upon an expected case load of 45 cases for each staff member. This appears to be an optimistic timeframe and an ambitious caseload.

8.0 RECOMMENDATIONS

EPA observed MDNR's use of resources available to the NPDES program during FY2005. EPA encourages MDNR to strive to achieve national goals and prioritized commitments. MDNR should be commended for continuing to staff, facilitate, and encourage the timely, appropriate, and professional enforcement work accomplished by the regional and central office staff. Based on the review, EPA is making recommendations as identified in the following paragraphs of Section 8.0.

8.1 INSPECTION RECOMMENDATIONS

EPA observed that MDNR met its FY2005 negotiated workplan inspection commitments. MDNR's negotiated level of inspection coverage of NPDES Major facilities in FY2005 was 33.8% of its universe, which is below the national average of 63.1% and well below the national goal of 100% annual inspection coverage for NPDES Major facilities.

Overall, MDNR should consider the following recommendations to improve the efficacy of its NPDES inspection program:

1. Meet negotiated workplan commitments for inspection coverage, and strive to meet the national inspection goals. MDNR must document the NPDES Minor for Major inspection substitutions.

While reviewing files in field offices, EPA observed discrepancies in the inspection process during FY2005. MDNR must demonstrate consistent implementation of the inspection processes outlined in the I&E Manual. EPA makes the following recommendations:

2. Collect full and accurate evidence of compliance or violations.

3. Document evidence clearly and accurately in the inspection report.

4. Ensure that an inspected facility receives a clear and timely message about its compliance or noncompliance status (i.e. clear communication of findings documented in the inspection report, including the cover letter).

5. Retain full and complete information regarding inspections and findings in the facility files.

8.2 ENFORCEMENT RECOMMENDATIONS

EPA observed that MDNR conducted formal enforcement activities commensurate with the NPDES enforcement program resources that were committed during the FY2005 workplan negotiations. MDNR's timely enforcement response for NPDES Major facilities identified as significant non-compliance (SNC) was 90.8% for FY2005, based on the enforcement actions entered in PCS. MDNR's timely enforcement response rate for addressing SNC violations at NPDES Major facilities is close to the national average of 90.9%, but below the national goal to timely address 98% or more of the SNC violations at NPDES Major facilities.

EPA observed that MDNR's implementation practices for informal enforcement actions, such as CC&P, has the potential to influence MDNR's timely enforcement actions. MDNR's FY2005 timely enforcement response rate is an improvement from the previous program review in FY2001, but remains below the national goal and slightly below than the national average.

Overall, MDNR should consider the following recommendations to improve the efficacy of its NPDES enforcement program:

1. Following the inspection and identification of violations, MDNR must comply with policies, including the timeframes, for initiating and concluding informal enforcement (e.g. CC&P). If compliance is not achieved in the approved timeframe, MDNR must timely escalate cases to the Central Office for formal enforcement.

2. Strive to meet the national enforcement response goals to address SNC facilities in a timely manner, in order to support state, regional, and national priorities.

While reviewing enforcement files, EPA observed that there are discrepancies in whether MDNR's files document when an enforcement action returned a facility to compliance. EPA makes the following recommendations:

3. Improve documentation and tracking of enforcement.

    a. Return to Compliance –
        i. Improve the consistency of informal and formal enforcement follow-up actions;
        ii. Document the actions taken to ascertain that a non-compliant facility has returned to compliance;

iii. Track responses from non-compliant facilities in response to informal and formal enforcement actions;
iv. Consistently communicate and track follow-up actions (e.g., secondary inspections, responses to NOVs, Abatement Order deliverables), between the regional offices and the central office; and
v. Continue to improve the tracking of follow-up enforcement actions.

b. Informal and Formal Enforcement –
   i. Improve the consistency of informal and formal enforcement follow-up actions;
   ii. Clarify the role of NOVs as an enforcement mechanism to timely identify and resolve violations observed during an inspection, and consistently implement the NOV process; and
   iii. Include in the NOV the timeframe for the violator to provide a response to MDNR with appropriate enforcement language and/or monitoring requirements to support any necessary enforcement escalation.

c. Escalation process –
   i. Ensure that informal and formal enforcement escalation is consistently documented within MDNR's official facility files;
   ii. Clarify the role of informal enforcement and escalated enforcement actions to return a violator to compliance; and
   iii. Clearly identify the tools or mechanisms used to achieve and document each violator's return to compliance.

Although the I&E Manual identifies when an NOV should be issued, EPA could not find a clear statement of what constitutes a significant violation in the I&E Manual. MDNR should work to address facilities in SNC in a more timely manner, which may require expediting or altering the CC & P process. In order to do so, EPA makes the following recommendations:

4. Clarify SNC –

   a. Clearly specify what constitutes significant noncompliance;
   b. Timely address inspection findings of significant noncompliance and initiate timely enforcement responses at facilities with SNC violations; and
   c. Ensure that enforcement actions address SNC, and enter appropriate enforcement related information into PCS.

Although the I&E Manual identifies the process of a formal enforcement action referral, EPA could not find a clear statement about how the penalties are calculated or assessed for formal enforcement actions. MDNR should develop penalty calculation and implementation methodologies to ensure consistency and deterrence, including:

5. EPA encourages MDNR to develop penalty calculations and implementation processes to ensure that escalated enforcement assesses and collects penalties for the gravity and economic benefit portions of the violations, as well as the litigation risk, injunctive relief, ability to pay, and other appropriate penalty considerations.

6. Ensure that penalty assessments are supported by calculations and documented rationale for gravity and economic benefit of noncompliance, consistent with applicable federal and state enforcement penalty policies. Seek additional training in collecting economic benefit penalties in order to ensure that it is accurately following the appropriate policies

7. Gravity and economic benefit penalty calculations should also be performed when an enforcement action escalates to the Missouri Attorney General's Office. Credit for SEPs should only be provided when the scope of the project, and the resulting environmental benefits, exceeds mere regulatory compliance. EPA encourages MDNR to review and update any existing agreement with the Missouri Attorney General's Office, or develop an agreement, if necessary, to ensure that MDNR's formal enforcement actions that are referred to the Missouri Attorney General's Office assess appropriate penalties.

8. Ensure that each enforcement action, such as an Abatement Order, effectively addresses violations and requires corrective action without the need for subsequent or repetitive enforcement proceedings. Escalate enforcement or capture stipulated penalties for a facility's lack of compliance under an existing formal enforcement action.

Note: PCS continues to identify violations at the facilities that have stays on the violated parameters because of permit appeals. EPA identified some concerns about facilities that have been operating for a protracted period of time under a stay of permit limitations based on an appeal of one or more limitations in the permit.

8.3 PRETREATMENT PROGRAM AND BIOSOLIDS PROGRAM RECOMMENDATIONS

The recommendations by EPA from FY2005 reiterate many of the recommendations provided to MDNR in the FY2001 program review. EPA makes the following recommendations:

1. Develop a plan to rebuild its Pretreatment Program. The plan should include timely inspections, oversight, timely and appropriate enforcement, and documented follow-up actions. Since the time of the review, EPA understands that MDNR hired a pretreatment coordinator and is in the process of hiring an engineer who will lend assistance to permitting pretreatment industries. MDNR also reported that they are in the midst of rebuilding its program, as recommended. Please provide an update on this activity in the status report.

2. Develop and immediately implement a Standard Operating Procedure for sampling pretreatment industries and pretreatment facilities. Provide a summary of this activity, including an update of funding in the status report, and an expected timeframe to achieve this item.

3. Perform sampling at pretreatment industries outside of the approved Pretreatment program cities, as required by the General Pretreatment Regulations to ensure effective Pretreatment program implementation. Provide a summary of this activity, including an update of funding in the status report, and an expected timeframe to achieve this item.

4. MDNR has requested six cities to develop Pretreatment programs since 2002: Poplar Bluff, NPSD, Cuba, Rolla, Union and Milan. Since the period of the review, MDNR has approved all six cities. EPA recommends that MDNR seek authorization to issue permits to industries outside of pretreatment cities. Industries outside of Pretreatment Programs do not have individual control mechanisms because MDNR does not have the permitting authority for facilities that indirectly discharge to waters of the state.

While MDNR does not implement a Biosolids program, some sludge related activities do impact the underlying NPDES program. Although MDNR implements state land application requirements, with some land application inspection provisions in the I&E Manual, EPA could not find a clear statement of what constitutes a violation of requirements for biosolids or land application of sludge in the I&E Manual. EPA could not find a provision regarding how MDNR addresses biosolids or sludge violations. EPA makes the following recommendations:

5. Work towards improving detection of biosolids violations during inspections. While MDNR has not accepted delegation of 40 CFR Part 503 (biosolids), EPA would be able to better address non-compliance with improved coordination from MDNR. Please submit MDNR's plans to pursue non-compliance with biosolid violations in the status report.

6. Review sludge specific issues during compliance inspections, in order to timely and appropriately address sludge handling problems that have led to water quality issues at NPDES permitted facilities.

7. Timely address violations of sludge requirements and illegal discharges of sludge at NPDES permitted facilities in accordance with 40 CFR Part 503.

8.4 WASTEWATER-SPECIFIC RECOMMENDATIONS, INCLUDING CSOs and SSOs

EPA staff observed discrepancies in the implementation of the I&E Manual regarding violation determinations, inspection reports, enforcement escalation timeframes, and the application of the CC&P. EPA found that wastewater enforcement actions did not always move wastewater violators toward the resolution of

noncompliance. MDNR enforcement actions did not always exhibit effective case management, or an effective use of resources. MDNR must demonstrate consistent implementation of the I&E Manual. EPA makes the following recommendations:

1. Ensure that wastewater enforcement actions resolve violations and return facilities to compliance.

    a. Clearly identify the violations captured by the enforcement action, and the required milestone activities to return a facility to compliance;
    b. Coordinate with the communities and take appropriate enforcement actions to address the wastewater facilities, including CSO communities, which do not achieve milestone dates outlined in formal enforcement actions or LTCPs; and
    c. Clearly identify the sequence of required compliance activities (e.g. collection system or WWTP evaluations, inflow/infiltration projects, sewer line projects, or WWTP construction) and milestone dates in each subsequent amendment or addendum to the first formal enforcement action. For example, clearly identify the sequence of activities required for Macon to return to compliance through plant upgrades.

EPA observed that there are several NDPES Major facilities that have had long-standing SNC violations. EPA makes the following recommendations:

2. Ensure that wastewater facilities that were on the former Exceptions List, or have been on the QNCR for four quarters or longer will receive appropriate attention to resolve the cause and return to compliance. Facilities may be out of compliance for longer than EPA expects due to the CC & P policy. Address these facilities through enforcement escalation or lend greater attention to the CC & P process to achieve compliance.

Although not specifically a focus during the program review, EPA observed that MDNR should continue to coordinate with the SSO communities to address these SSO issues. EPA makes the following recommendations:

3. Evaluate overflow reports and inspection information to determine which communities have excessive SSOs or other wet weather related problems. Continue to coordinate with the communities, and take appropriate actions to address those sewer systems deemed to have excessive SSOs or other wet weather issues.

8.5 STORMWATER AND CAFO RECOMMENDATIONS

EPA observed some improvements in the MS4 program, but there are still some program issues to resolve. EPA makes the following recommendation:

1. MDNR should consider how to conduct oversight of MS4s and further implementation of the MS4 program, which MDNR began in October 2007. MDNR should begin conducting enforcement no later than October 1, 2008. EPA understands that MDNR will hold an MS4 audit training in summer 2008. Please provide a summary of this activity in the status report. Also submit the number of compliance assistance visits conducted at MS4s since MDNR began implementing the MS4 program in October 2007.

EPA observed some improvements in the land disturbance/stormwater program, but there are still some program issues to resolve. EPA makes the following recommendations:

2. Develop a land disturbance/stormwater enforcement response policy and provide a copy to EPA once finalized. Submit a goal date for completion to EPA with the status report.

    a. Define the timely and appropriate use of letters of non-compliance, NOVs, and other compliance tools;
    b. Define what the land disturbance/stormwater deficiencies, violations, and significant violations are, and how the inspector documents these differences during an inspection (e.g. failed or missing BMPs, impacted waterways, or pollutant reduction);
    c. Ensure that if a land disturbance/stormwater facility remains noncompliant that MDNR timely escalates the case to the Central Office for formal enforcement; and
    d. Escalate enforcement if a land disturbance/stormwater facility does not follow the established milestones or return to compliance within the enforcement action timeframes.

3. Develop a consistent procedure for land disturbance/stormwater evidence collection to clearly document violations observed during land disturbance/ stormwater inspections. EPA understands that MDNR created an inspection checklist since the time of the review, and has developed procedures for stormwater inspections in the Operations Manual. Please provide a copy of the stormwater procedures included in the operations manual and a the new inspection checklist.

    a. Develop a clear and consistent land disturbance/ stormwater inspection report format;
    b. Ensure that the inspection report clearly communicates the inspection findings;
    c. Ensure that the pictures or samples taken during an inspection are referenced in the inspection report or included as attachments; and
    d. Ensure that the inspection report, NOV, and pictures referenced in inspection reports or other documents are in each facility's file.

4. Ensure that appropriate compliance and enforcement tools, including targeted land disturbance/stormwater inspections and enforcement escalation, are used to require facilities to return to compliance.

5. Document and track compliance to ensure that land disturbance/stormwater violators return to compliance following an NOV or an enforcement action.

EPA observed some improvements in the CAFO program, but there are still some program issues to resolve. EPA makes the following recommendations:

6. MDNR should provide additional CAFO inspector training to improve inspection report consistency and to achieve more consistent EAR referrals for CAFO dischargers. Please provide an update of any training which has occurred since the time of the review, and any future trainings in the status report.

8.6 DATA INTEGRITY RECOMMENDATIONS

While reviewing files in the field offices, EPA observed that there were some discrepancies in the facility files. EPA found that the DMRs submitted by the permitted facilities did not always include complete, accurate, or timely information. MDNR must consistently enforce DMR requirements. EPA makes the following recommendations:

1. Require each permitted facility to submit a fully completed and timely DMR form for each reporting period. Facilities should also complete all reportable parameter calculations and summarize the appropriate data, prior to submission to the regional office data management staff.

    a. Require each permitted facility that submits DMRs and quarterly reports to MDNR regional offices to submit the correct DMR form with accurate information;
    b. Ensure that the reported effluent parameters identified in DMRs are complete; and
    c. MDNR should include in its permits enforceable definitions and requirements for sample collections; for example, how to calculate the monthly average, a geometric mean, or a 24-hour composite sample as part of their standard language. Please provide an update of this activity in the status report.

2. Develop a policy and implementation processes to ensure DMRs are timely submitted by permittees and that appropriate informal and formal enforcement tools are used to address late or non-reporting violations.

    a. Implement a strong and swift follow-up process to track DMR submissions and escalate enforcement, as necessary, for late, incomplete, and missing reports. Provide an update of this activity in the status report.

While reviewing files in the field offices, EPA observed that there were some discrepancies in the data files. EPA found that that the PCS data reviewed did not always indicate complete, accurate, or timely data entry. EPA found that the PCS data did not always clearly identify noncompliance for the DMRs submitted by the facilities. EPA indicated that MDNR must demonstrate consistent implementation of data management. EPA makes the following recommendations:

3. Continue to improve the accuracy of DMR data entry.

4. Ensure that all NPDES inspection reports and enforcement related data entered into WQIS and uploaded into PCS are accurate, based on the negotiated PCS WENDB data elements.

5. Meet the EPA national policy that requires entry of 95% of DMR parameters and DMR forms for both municipal and non-municipal facilities into the PCS database. Continue to improve upon the FY2005 reporting rates in WQIS that were uploaded to PCS.

6. Identify SNC violations, and ensure the accuracy of supporting information for reported SNC data that is entered into MDNR databases in a timely manner. Ensure that the SNC identification and response process addresses SNC violators in a timely manner.

7. EPA also found that the DMR Received Date in PCS reflects the date the data was uploaded to PCS by WQIS. MDNR should work to correct this issue.

Provide an update of any steps taken to improve data management which has occurred since the time of the review, and any planned activities to improve data management in the status report.

Chapter I EXECUTIVE SUMMARY

Background

The Air and Toxics Division, Region VII conducted a review of the Missouri Department of Natural Resources (MDNR), Air Pollution Control Program during the week of June 7, 2004. This review included an evaluation of the MDNR's management of the following areas and activities:

- Ambient Air Modeling
- Emission Inventory
- Regulatory Development
- Work plan Development
- Grant Management
- Local Agency Oversight
- Staffing and Training
- Program Planning
- Vehicle Inspection & Maintenance Program
- Compliance and Enforcement
- Permitting
- Asbestos
- Air Toxics

Summary

The Executive Summary provides a brief narrative of the results of this review. This summary and the report are divided into five chapters: Planning, Permitting, Compliance and Enforcement, Asbestos and Monitoring. MDNR operations reviewed were generally satisfactory and showed improvement since the previous program review in 2000.

Planning

This section of the review covers regulatory development, grants and work plan management, staffing, regional and local agency coordination, emissions inventory, training and the small business assistance program.

Regulatory Development The Air Pollution Control Program has a well-documented rule making process for developing regulations. This process incorporates a rule making time line which highlights the critical path for rule development and helps ensure critical dates are not missed. The Rule Making Manual, which provides formal documentation for the rule making process, provides examples and templates to be used by the MDNR staff for all rules proposed and implemented from their inception to their subsequent enaction. The MDNR has enhanced this process to provide further consistency by developing word based macro's which generate standardized forms and letters during the rule making process. It is noteworthy that the Rule Making manual/process has been updated 17 times since its development in 1995 to reflect current process revisions/changes. The Air Pollution Control Program incorporates federal technical and administrative requirements into their rule making packages which apply to State Implementation Plan revisions, updates for New Source Performance Standards (NSPS)

delegations, National Emission Standards for Hazardous Air Pollutants (NESHAP) delegations, and Maximum Achievable Compliance Technology (MACT) delegations, Title V program revisions and 111(d) plans. State Implementation/rule package submittals to the EPA are of high quality and are generally submitted in a timely manner.

The rule process has state statutory and administrative time lines which must be met for a rule to be successfully adopted by the Missouri Air Conservation Commission (MACC). Generally, a rule requires a minimum of ten to twelve months to be enacted. Recently, this process has been revised to include time for a regulatory impact analysis. This analysis could add three months to the rule making process which would increase the time frame for rule enaction to fifteen months. This increase in time will make it critical for the MDNR to continue to perform advanced planning for rule makings to ensure they are submitted in a timely manner to the EPA.

As previously noted, during the 2000 review, this section consisted of 12 full time positions. A reorganization occurred since the last review, reducing the number of full time positions in this Section to 10, a loss of two positions. This section currently has one vacancy. Based on the projected increase in rule-making activities it is important that staffing levels are maintained in this Unit. We recommend the MDNR review the staffing levels of the unit to ensure they are adequate to accommodate the projected increases in rule making activities related to impending CAA deadlines.

Grants and Work Plan Management During the review we examined the process used by the MDNR to negotiate work plans and incorporate State and EPA air environmental priorities. We also looked at the adequacy of the staffing levels for the Operations Section of the Air Pollution Control Program and how the financial management of the program was being accomplished. The MDNR and EPA staff work together to identify mutual air environmental goals. These goals are incorporated into the Performance Partnership Agreement which is signed by both the MDNR and the EPA and is effective for three years.

The Finance and Human Resource Unit tracks federal funding and accounts for charges to Title V and Federal grant accounts and provides support to the Operations Section. This Unit which assures the financial requirements of the program are satisfied, is an integral component of the Air Pollution Control Program, and appears to be operating well.

In-Kind Costs- The only area of concern noted during the review involves tracking of in-kind expenses. The Clean Air Act, Section 103, PM2.5 grants awarded to the State by the EPA, support the PM2.5 ambient air monitoring network in Missouri. These grants are one of the few programs which award in-kind costs in lieu of actual cash for certain activities under the grant. Currently, in-kind expenses constitute thirty percent of the costs contained in the FY 04 PM2.5 grant agreement ($302,849 in-kind, $681,672 federal funds). Based on our review, there were three areas of concern:

- MDNR may not be invoiced for all services rendered by the laboratory;
- EPA is not provided with sufficient information by the laboratory and the State to ensure that services rendered are consistent with those requested by the State; and
- Documentation is insufficient to determine whether the charges made by the laboratory to the in-kind reserve fund are commensurate with the services rendered by the laboratory.

Without controls in place to track the actual costs for in-kind usage, it is not possible to account for the exact amount of benefit the MDNR is obtaining from these reserved funds. Further, there may be an opportunity to convert these in-kind funds back into actual federal funds for the MDNR PM2.5 program in the event there is documentation to show that the State did not actually receive the full benefit provided through the federal grant.

As required by federal regulation, it is recommended that the Air Pollution Control Program track the actual usage of the in-kind dollars for each grant and report these funds in the Financial Status Report submitted to EPA.

Staffing- It is noted that since the past review in 2000, the Air Pollution Control Program has undergone a reorganization. This reorganization moved the Inspection and Maintenance (I/M) function to the St. Louis Air Quality and Mobile Coordinator Section and added the Finance and Human Resources and Data Processing Units to the Section. A review of the current staffing levels for the Operations Section disclosed a net loss of six positions when factoring in the above-referenced reorganization (2000 staffing level was 35 FTEs versus 2004 staffing level of 29 FTEs).

As noted in the previous Regulatory Development Section, it is crucial that staffing levels are maintained in the Operations Section due to the projected increases in workload associated with the NO_x SIP Call, Interstate Air Transport and St. Louis attainment plans. We recommend the MDNR review the adequacy of the current staffing level and provide additional resources as needed.

Additionally, due to the elimination of general revenue funds with the 2004 budget action, additional funding may be needed for the Air Pollution Control program. Using the 2003 Reported Expenditures for the Program and projecting expenditures remain on level with 2003, the potential exists for a shortfall of funds to cover expenses in 2004 in the amount of $348,507 ($112,774 - $461,281). It is recommended the MDNR review the Air Pollution Control Program's funding level to ensure it is sufficient to cover 2004 expenses.

Regional and Local Agency Coordination The Air Pollution Control Program negotiates annual work plans with the regional and local Agency offices and routinely conducts evaluations of their performance. The local air agencies are: Springfield-Greene County Air Pollution Control Authority; Kansas City Air Pollution Program; St. Louis County Department of Health, Air Pollution Control Section; and St. Louis City, Department of Health, Division of Air Pollution Control. The State and Local agreements cover emissions inventory, air quality monitoring, Hazardous Air Pollutants (HAPS), Ordinance/Code/Rule/Plan Development, Enforcement and Compliance, Permits, Asbestos, and General Administration. These local

agencies support the mission of the Air Pollution Control Program by being the primary contact of the Missouri Air Program with the public, and by conducting inspections and responding to citizen complaints. The Regional field offices support the Air Pollution Control Program in a similar manner.

The MDNR is responsible for oversight activities of the local agencies for air quality issues. Federal regulation, 40 CFR 31.40, Monitoring and reporting program performance, requires grantees to monitor grant and sub grant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved.

Our review of the oversight of the local air agencies by the MDNR disclosed that although a performance report was issued to each local agency which contained recommendations for improvement, there was no documentation available to determine whether the recommendations were actually implemented by the local air agency. An important part of a review activity is ensuring that corrective actions have been implemented. It is recommended, that MDNR continue to follow-up on open recommendations until they are resolved. Upon resolution a closure letter should be sent to the air local stating that all recommendations have been implemented and the audit is closed.

Emissions Inventory EPA Region 7 has reviewed the MDNR emissions inventory unit. The primary components of inventory development were examined and include planning and management, documentation and data entry, QA/QC activities, data reporting, and training. These individual components support the implementation of the Consolidated Emissions Reporting Rule (CERR) (40 CFR part 51.1) which required the statewide reporting of eligible sources for the 2002 emission inventory year. The examination of the inventory process and adherence to the CERR is being conducted due to the important role emissions inventories play in SIP planning processes and national rule makings.

Training The Air Pollution Control Program includes in its staff budget an amount for individual staff training each year. Each staff member has a training plan in his/her performance appraisal planning document. Training funded with Federal grant dollars is reported to the EPA in the annual work plan report. It is noted, that even with tightened budget constraints, critical training needs are still being met within the program. In addition, the Air Pollution Control Program provides training for its regional and local agency staff and makes presentations at EPA training activities when requested.

Small Business Assistance Program In the State of Missouri, the Small Business Assistance Program function is performed in the Environmental Assistance Office (EAO) of the Missouri Department of Natural Resources (MDNR). The EAO is a non-regulatory service of MDNR and provides information, assistance, and training to business owners, property owners, local governments, and the general public. The EAO has staff located in the St. Louis, Kansas City, and Jefferson City areas. Duties of EAO staff include, but are not limited to, on-site visits to assist facility staff in understanding and completing required documents; answering questions and providing information via telephone and Internet; presenting training workshops and seminars, and writing technical bulletins and articles for various publications.

The Compliance Advisory Panel (CAP) is known as the Small Business Compliance Advisory Committee (SBCAC). The SBCAC consists of seven members, two that are appointed by the Governor, one each by the majority and minority leaders of the House and Senate, and one to be appointed by the Director of the MDNR. Committee members serve four-year terms. The SBCAC meets approximately six times a year. The SBCAC roster was included as an attachment to the review and indicates there are two CAP vacancies.

While the Ombudsman's position itself has remained vacant for several years, it is noted that funding is provided to support one MDNR employee who performs the ombudsman's duties as a collateral activity to their assigned position. While is it apparent outreach activities to small businesses are being provided, we continue to recommend the Ombudsman position be filled to provide further emphasis on this program. It is also recommended the SBCAC membership be increased to seven in compliance with Section 507 of the Clean Air Act. Two additional SBCAC members should be appointed at the state's earliest convenience.

Vehicle Inspection & Maintenance (I/M) Program Overall, MDNR appears to be doing a good job at administering the I/M program in the St. Louis Metro area. The Remote Sensing Devices executing the clean screening appear to be operating smoothly, as well as the test lane analyzers. It is also reassuring to note the transition to full OBD II testing in January of 2005 should not be a problem on a technical basis. The program has performed extensive outreach efforts focused on the general public and the repair industry. It also appears communication within the program operations has improved. Lastly, the enforcement system appears to be well established between MDNR and the Department of Revenue (DOR).

Permitting

This section of the review covers permitting and modeling activities. During FY2004, EPA Region 7 performed a comprehensive evaluation of Missouri's air permitting program. This evaluation is based on reviews of major source (PSD) pre-construction permits and Title V operating permits throughout the year, and on reviews of approximately eighty non-major pre-construction permitting project files during an on-site visit to MDNR's offices during June 2004. During the on-site visit, the Title V fee program was evaluated as well.

EPA finds that, in general, the department implements a comprehensive and effective permitting program that, in several areas, serves as a good model for others to follow. Some of the exemplary elements of the department's permitting program include:

- Comprehensive pre-construction permit review summaries;
- Air quality and HAP impact analyses;
- Comprehensive communication documentation;
- Improved mass-balance recordkeeping forms;
- Comprehensive Title V permit Statements of Basis and responses to comments;
- Pre-construction permit terms and conditions sufficient to ensure that minor; sources remain minor;
- Availability of permit application forms on-line.

During the review, several opportunities for improvement were discovered. These include:

- Reduction of unnecessary incorporation by reference language in pre-construction permits;
- Establishment of stricter criteria for approval of waiver allowing construction to begin prior to issuance of pre-construction permit;
- Establishment of thirty day public comment period for non-major pre-construction permits;
- Issuance as soon as possible of remaining initial Title V operating permits;
- Revision of standard language used in minor operating permit correspondence.

Additional detail on each of the above, as well as additional improvement opportunities, are provided in this report. We recommend that the five issues described above be addressed during the next two years, and that the remaining opportunities for improvement be implemented as time and resources available.

Over the past several years, MDNR and EPA have collaborated on a number of successful efforts related to the air permitting program, and the level of cooperation has been excellent. Significant challenges are on the horizon for FY05 and beyond. These include timely issuance of pre-construction permits and re-issuance of Title V operating permits that include Compliance Assurance Monitoring (CAM) plans and MACT standards promulgated since initial permit issuance. In addition, priority activities for the near future include major source NSR reform rule making; resolution of discrepancies in increment baseline dates; reevaluation of the techniques used to determine increment consumption; resolution of complex PM10 inventory issues; and predicted NAAQS exceedances in the Ste. Genevieve area. Longer term priorities include resolution of national permit issues such as periodic evaluation of minor source increment consumption, and development of procedures to identify and address environmental justice concerns, where applicable.

Modeling The modeling program staff is very experienced and competent in running traditional air dispersion models. The air dispersion modeling activities at the MDNR are being done in a very professional manner and the modeling staff should be commended. The modeling staff participates in modeling for construction permitting when requested by the permit section for cases where the SCREEN3 model and/or nomogram indicate more refined modeling is necessary. It is recommend that a background value be added when doing screening modeling, and that increment analysis be considered when performing modeling for minor sources as well as PSD sources. The establishment of baseline dates/areas and the tracking of increment consumption in Class I and Class II areas will require a long-term dedication by Region VII and APCP.

Compliance and Enforcement

This portion of the review covers the Compliance and Enforcement, Air Toxics, and Data Management.

Missouri volunteered to be one of the Region 7 pilot states to participate in testing the State Enforcement Review Framework (Framework) drafted by EPA and States. Upon completion of these pilots at the end of January 2005, the following issues will be evaluated: the implementation process; federal and state resource implications of the assessment; and how results from the assessments will be used to recognize and reward states' performance, or work with states to improve areas of concern.

Overall, the Missouri Air Enforcement Program is committed to initiate and complete enforcement actions or refer cases to the Missouri Attorney General's Office or EPA as appropriate. However, during the review four areas of concern were noted:

- State files were incomplete and the inspection reports varied in quality;
- Regional office and local agency inspections were not well documented in the state files;
- Local agency inspections resulted in a comparatively low significant violator rate.
- MDNR does not have an enforcement response policy or a penalty policy.

It is recommended that copies of all inspection reports be placed in each facility file, that inspection reports be standardized to include additional detail regarding specific permitting requirements for the facility, that MDNR provide more oversight over the local agencies and that MDNR develop an enforcement response policy and a penalty policy.

Air Toxics- MDNR implements the Air Toxics Program in the State of Missouri. The federal delegation of the federal rules occurs upon adoption of the rule by MDNR. The Air Toxics Regulations are published in 40 CFR Parts 61 and 63. (Part 63 of the CFR is commonly referred to as the Maximum Availability Control Technology (MACT)).

Missouri incorporates the requirements of the MACT regulations in the sources' operating permit, either Title V, or Intermediate Operating Permit. The sources' compliance with the MACT regulations is primarily determined during an inspection. The Air Program reviews the inspection reports and in most cases follows up areas of noncompliance with an enforcement action. Of the 51 files requested by EPA, only 31 were provided by MDNR. Most of the unavailable files were for sources located in the local agencies' jurisdictions. The inspection reports for those sources are maintained at the local agencies' offices, and copies are not routinely provided to MDNR by the local agencies. Because of this, EPA was unable to effectively evaluate the performance of the local agencies.

The adequacy and quality of the inspection reports varied widely. While some reports contained a detailed report of the compliance requirements of the MACT for the affected unit, others did not, merely listing the MACT by name. In some cases information in the state's regional offices' inspection reports was inconsistent with that at MDNR's main office in Jefferson City.

Overall, the department is implementing an adequate program, tracking which sources that are subject to the various MACT standards and performing compliance inspections at those facilities. Recommendations for improvement include

- Standardizing inspection reports to ensure that they contain sufficient detail to determine applicability and compliance with each MACT requirement.
- Providing more oversight of the local agencies and request copies of all local agency inspection reports.

Data Management AFS, Air Facility System, is the national information database for State-EPA communications of compliance determinations and agency compliance activity at major stationary sources of air pollution. MDNR updates AFS directly and maintains the minimum data requirements except for pollutant specific compliance status information. The compliance status data is present in the MDNR database, however, MDNR does not update AFS with compliance status information after initial entry. It is recommended the MDNR begin updating compliance status codes immediately on receipt of current information.

Asbestos

The Air Pollution Control Program (APCP) of MDNR implements a fully-delegated Asbestos NESHAP program pursuant to 40 CFR Part 61, Subpart M. The program is responsible for notifications, inspections, enforcement case development, outreach, and data management. The APCP staff demonstrate proficient knowledge of the NESHAP regulations, and exercise good judgement in prioritizing inspections and developing enforcement actions. The enforcement case files are well organized, but not all files contain adequate documentation to support the action being taken. EPA recommends that MDNR develop a specific written penalty policy for asbestos violations. Moreover, the rationale for calculating penalties should be included in the enforcement case files.

Monitoring

An evaluation of the monitoring network was not completed during this on-site review.

Chapter V COMPLIANCE and ENFORCEMENT

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CHAPTER V COMPLIANCE and ENFORCEMENT

A. Introduction

Missouri volunteered to be one of the Region 7 pilot states to participate in testing the State Enforcement Review Framework (Framework) drafted by EPA and States. The Framework is based upon compliance and enforcement policies and guidance that have been in place for many years. Upon completion of these pilots at the end of January 2005, EPA will

- evaluate the Framework; the implementation process;
- federal and state resources implications of the assessment;
- and how results from the assessments will be used to recognize and reward states' performance or work with states to improve areas of concern.

The essential (required) elements for evaluating state performance, as identified in the Framework include:

1. Inspections/coverage of the regulated universe
2. Documentation of inspection findings
3. Timely and accurate completion of inspection reports
4. Timely reporting of violations
5. Inclusion of injunctive relief and return to compliance
6. Timely initiation of enforcement actions
7. Economic benefit calculations
8. Collection of appropriate economic benefit and gravity portion of a penalty
9. Meeting PPA/PPG/SEA agreements and commitments
10. Timely data requirements
11. Accurate data requirements
12. Complete data requirements

Since Region 7 had an exiting State Review Protocol in place, prior to the initiation of this Framework pilot, Region 7 compared the "proposed" Framework with its existing questionnaires to ensure that all essential information was being gathered during the scheduled review. The only information not available at the time of the on-site review, was information generated by the data matrices discussed in the Framework. EPA and the state agreed that this information will be shared and discussed when it is received by headquarters.

Information gathered during this review, and supplemented by the review of the data matrices, will be provided to EPA's headquarters as part of this pilot project.

B. Methodology of Review

Prior to meeting with the State, several elements were developed to assist in the review. An Evaluation of State/Local Air Quality Compliance and Enforcement Activities

questionnaire was provided to MDNR two months prior to the review. This questionnaire is found in the Appendix for this Section. A list of source files to be reviewed was sent to MDNR approximately two weeks prior to the review to allow the State time to gather the file information at one central location. A total of 84 files were reviewed. The sites were randomly selected from the areas of jurisdiction of each of the five Regional Offices (ROs) within the State, as well as each of the four Local Agencies (LAs). Ten source files were reviewed per RO/LA. The sources selected were mainly facilities that were classified as major sources which were subject to significant Clean Air Act requirements such as NSPS, NESHAP, MACT, or PSD.

The AFS database was used to pull retrievals to assist in the selection of sources for file review, as well as to provide full compliance evaluations and enforcement activities for each facility.

The focus of the review primarily covered the time period starting with calendar year 2002 through the date of the review. To assist with the file review, a checklist was developed by the EPA. This checklist was completed by the review team for each file reviewed. A copy of the checklist is included in Appendix V-AP3.

C. Overview of Missouri Enforcement Program

The Missouri Compliance/Enforcement Program consists of the central office Enforcement/Compliance Section and five Regional Offices (ROs) located throughout the state. All legal support is provided by the Attorney General's Office (AGO). The RO staff is comprised of multi-media inspectors, while the Compliance/Enforcement Section consists of enforcement officers and stack test observers. The ROs are located organizationally within the Water Division. There are currently two vacancies in the Compliance/Enforcement Section at APCP. When fully staffed, the number of allocated positions appear to be adequate.

The MDNR inspects most Title V sources and all intermediate sources (synthetic minor sources) each year. Facilities with Basic Operating Permits (a Basic State permit is where potential emissions are greater than the *de minimis* level, but less than 100 tons per year of any non-HAP pollutant) are inspected once every four years. The Regional office inspects the sources and submits the inspection report to the Air Program along with any Notice of Excess Emissions (NOEE). The State identifies a list of sources to be inspected by the local agencies. The local agencies refer enforcement cases to the MDNR with the exception of Kansas City, which proceeds with its own enforcement actions.

All MDNR complaints are taken by the Regional Offices (ROs). Any complaints received by the Compliance/Enforcement Section are forwarded to the Regional Offices. The Regional Offices attempt to promptly follow-up on all complaints received. After investigation of the complaint, the inspector sends a follow-up letter to the complainant which details any findings.

All MDNR inspections are performed by the ROs. All inspection reports are forwarded to the MDNR Compliance/Enforcement Section Chief, who reviews the enforcement cases and forwards them on for distribution within the Compliance/Enforcement Section. The enforcement officers then proceed with case development with input solicited from the inspectors who discovered the violations.

The Air Program, when appropriate, issues a Notice of Violation (NOV) to sources that have not returned promptly to compliance. When deemed pertinent, the Air Program initiates an enforcement action.

Since there are no interim enforcement actions, once an NOV is issued, the enforcement case proceeds directly to settlement negotiations and a settlement agreement. Penalties are determined based on gravity of the violation and experience. All enforcement actions, including routine settlement agreements, must be drafted by the Attorney General's Office. If a settlement cannot be reached, an enforcement case is referred to the AGO, which can significantly delay the conclusion of the case.

Initial notifications and compliance notifications related to MACT requirements are received by the Air Pollution Control Program staff. These notifications are then entered into a data system. The MDNR sends copies of these documents to the regional offices. The MDNR receives the initial notification reports, tracks and observes the performance tests, and tracks the compliance status. The MDNR also incorporates the MACT standard in the operating permits, tracks the semiannual and annual compliance status reports, schedules inspections, reviews inspection reports, and takes enforcement actions.

Discussion and Findings. One noteworthy aspect of Missouri's Air Enforcement Program is that all inspection reports and potential violation issues are directed through the Enforcement Chief. This practice provides consistency for all enforcement actions. NOV's are issued quickly, frequently at the time of the inspection, which eliminates any delay in the enforcement process. When an RO issues an NOV or NOEE, a letter usually accompanies the notice with an explanation of the violation. This practice helps facilities address the violations in an expeditious manner. Violations which are discovered by the RO are forwarded to the Compliance/Enforcement Section Chief who then solicits input from the inspector to determine the extent of the violation. In addition, the Title V Annual Compliance Certifications are also utilized as an enforcement tool by MDNR. It is clear from our file review that the Certifications are reviewed by MDNR enforcement staff, and appropriate enforcement actions are taken.

During this on-site evaluation th region reviewed numerous inspection reports. Our review disclosed that specific permit requirements for each facility were not included in the inspection reports. Without this information it is not possible to determine whether the inspector has verified all of the permitting and compliance requirements for the facility. In addition, we found that the quality of the inspections varied from inspector to inspector. Some inspectors included hand-written notes in the "Comment" section of the report documenting the permitting and compliance requirements for the facility and potential violations, while others did not. This lack of information can greatly reduce the quality

and effectiveness of Missouri's Air Enforcement Program. One suggestion that was made during the debriefing following the review, was for the air program to standardize the inspection format for all inspectors to ensure consistency.

Although we reviewed numerous enforcement actions, the MDNR program does not have a formal enforcement response policy (ERP) that establishes specific time-frames for the completion of formal enforcement activities or a formal penalty policy. The purpose of such documentation would be to show that, in Missouri penalties are assessed in a fair and consistent manner;

- that penalties are appropriate for the gravity of the violation committed;
- that economic incentives for noncompliance with the air requirements are eliminated;
- that penalties are sufficient to deter persons from committing air violations;
- and that compliance is expeditiously achieved and maintained.

Under the Framework, this is considered one of the essential elements that apply to all enforcement and compliance assurance programs. It was recommended that the air program develop guidelines for enforcement responses and a framework for a penalty policy.

MDNR has centralized their filing system to a single location, which dramatically improves the ease and capability of retrieving files. The files reviewed were well organized and appeared to have up-to-date information and contained notes, e-mails, and follow-up letters to the facility demonstrating the conclusion of the cases.

However, one concern noted, was the absence of inspection reports in the files. The inspection reports are contained in a separate file location. This practice poses a vulnerability under the Missouri Sunshine Law which requires the MDNR to provide complete records upon citizen request. Another concern is that an enforcement officer must have all the appropriate information, including the inspection report, before proceeding with an enforcement action. It is recommended that the inspection reports (or a copy) be placed in the individual enforcement files.

Another concern regarding the files is the lack of information for facilities located in the jurisdictional area of the Local Agencies. Unless the local agency forwarded an enforcement action to MDNR for followup, there were no inspection reports, Notices of Violation, or any other documentation regarding facilities in local jurisdiction in the files. Since MDNR has an oversight responsibility for the local agencies, it is our recommendation the MDNR include in their state/local agreements a requirement that the Local Agencies forward a copy of all inspection reports and NOVs for inclusion in the state files. It was not possible for the review team to determine the quality of the local agency enforcement actions during this review due to the lack of documentation of these actions in the state files.

EPA is especially concerned about the effectiveness of air enforcement carried out in the Local Agencies since non-attainment areas, major populations and a large portion of major sources are all located within the Local Agencies' jurisdiction. EPA would expect to find the same violation per inspection rate in the local jurisdictions as found in MDNR's inspections. However, during this review, no enforcement actions in local jurisdictions were discovered or reviewed. EPA's overall concern is not only the quality of compliance and enforcement actions taken by Local Agencies, but MDNR's oversight of these programs.

Missouri utilizes several in-house data management systems, as well as the national Air Facility System (AFS) to track compliance data. This data is tracked in the state data tracking systems very well. Most of the enforcement actions in the files reviewed were entered into the AFS system. It was noted that none of the Title V Annual Compliance Certifications had been entered into AFS for 2004. These compliance certifications were contained in the file and had been entered into the state tracking system. It is our understanding that MDNR plans to complete a "batch" entry of all of the Certifications into the AFS system in the near future.

Air Toxics. Overall, the department is implementing an adequate air toxics program, tracking which sources are subject to the various MACT standards and performing compliance inspections at those facilities.

Of the 51 files requested by EPA, only 31 were provided by MDNR. Most of the unavailable files were for sources located within the local agencies' jurisdictions. Copies of inspection reports for the local agencies (as noted above) are not routinely sent to the MDNR thus were not available for review during this evaluation.

The inspection reports which were reviewed were evaluated based on the following criteria :

- Does the report identify the MACT affected unit and the applicable requirement?
- Did the inspector determine compliance with the applicable MACT?
- Was sufficient information recorded in the report to determine document compliance/noncompliance?

Our review found the adequacy and quality of the inspection reports varied widely. While some reports contained a detailed list of the compliance requirements of the MACT for the affected unit, others merely referenced the applicable MACT. The latter inspection reports did not contain information sufficiently detailed to determine compliance with the specific requirements nor were operating parameters evaluated for compliance (*e.g.*, Boeing Company, 10/3/03 inspection report). In some cases, information in the regional offices' inspection reports was inconsistent with that in the MDNR's files in Jefferson City. In other cases, applicable MACTs were not identified (*e.g.*, Eagle-Picher Technologies, 6/27/03 inspection report).

The appendices includes the following: the state responses to the program questionnaire; a listing of the source files which were reviewed; and a checklist.

Given the complexity of the air toxics program, we have some concern regarding the implementation MACTs, particularly in the local jurisdictions.

D. Data Management

The Air Facility System (AFS), is the national information database for State-EPA communications of compliance determinations and agency compliance activity at major stationary sources of air pollution. All states and regions must report and track certain core information pertaining to air facilities.

Accurate characterization of air facilities is a critical requirement for the air program for a variety of reasons including the establishment of an inspection baseline (Compliance Monitoring Strategy), the tracking of High Priority Violators, as well as workload projections. In addition, since core information from the national database is made available to the public, every effort should be made to ensure that the information is accurate.

In an April 24, 1998, memorandum from Frederick F. Stiehl, Director, Enforcement Planning, Targeting and Data Division, EPA identifies the minimum data reporting (MDR) requirements for stationary sources covered under Title V Operating Permits and Maximum Achievable Control Technology (MACT) rules.

Missouri (MDNR) uses their in-houses database to track facility compliance information. MDNR receives compliance data information directly from the Missouri local and regional agencies.

MDNR updates AFS directly. MDNR does maintain the minimum data requirements except for the pollutant specific compliance status information. The compliance status data is present in the MDNR database, however, MDNR does not update AFS with compliance status information after initial entry. MDNR uses the compliance evaluation results code and the settlement agreement to define compliance status for the plant level in their database. MDNR maintains that they have not agreed to maintain this data in AFS. Currently, EPA - Region 7 maintains the HPV data, for all Region 7 States.

The review also included Facility Registry System (FRS) data quality corrections. MDNR has made a commitment to correct AFS compliance data quality issues in FRS. A conference call was held with Maryane Tremaine (EPA - Region 7 data steward) to discuss areas of concern in the data and what appropriate reports in FRS to be used to identified FRS data quality problems.

The region recommends that MDNR update compliance status codes immediately upon receipt of current information. Accurate compliance status information is important in monitoring air facility information and is particularly critical since this information is made available to the public via the internet.

E. Conclusion

Overall, the Missouri Compliance/Enforcement Program is working quite well in many areas. Our review disclosed several areas of concern:

- The state files were incomplete
  The inspection reports were usually not found in the compliance files, rather they were located in a separate office within the Air Program. It is recommended that a copy all inspection reports be placed in the appropriate enforcement files.

- Local Agencies files lacked enforcement documentation
  It is recommended the Local Agencies provide a copy of all inspection reports and NOVs to the MDNR.

- Inspection forms were of poor quality and incomplete
  The existing inspection forms do not contain most of the information needed to determine the compliance status of a facility. It is recommended the MDNR improve and enhance the inspection report forms to include greater detail of specific permitting and compliance requirements for each source. In addition, the inspection reports should be evaluated for the regional offices and the local agencies to ensure there is sufficient information to determine the source's compliance status and compliance with the MACT standard.

- Quality of inspection reports was variable
  There was a wide variation in the quality of the inspection reports in the files, particularly in the manner in which compliance with the MACT was documented. In some files, detailed compliance with each parameter required by the MACT was documented; in others, the inspection report included only a statement that the source was in compliance, without even listing the MACT as an applicable requirement. It is recommend that all inspection reports should contain information sufficient to determine applicability and compliance with each MACT requirement

- Penalty policy The MDNR doe not have a formal penalty policy. It is recommended the MDNR develop a penalty policy to ensure consistency in penalties.

Executive Summary for FY04 RCRA Enforcement Program Review

Overall Picture: MDNR continues to implement an effective hazardous waste enforcement program.

Information sources included in the review: RCRAInfo and OTIS database reports were used to develop some of the sections of this report.

Any overarching issues among the enforcement programs reviewed: none that I know of. I haven't reviewed any of MDNR's other enforcement programs.

Inspection implementation: MDNR targeted its hazardous waste inspections to cover all types of facilities within Missouri. Generator and permitted facility categories were well represented in the inspection reports reviewed by the Agency. The inspection reports were completed in a timely manner and included the required information.

Enforcement activity: Based on the hazardous waste facility files reviewed by Region 7, the appropriate enforcement actions were taken in all cases. The timeliness of the enforcement actions suffered due to the State's required Conference, Conciliation and Persuasion process. The enforcement data maintained by the State did not always include the use of the Significant Noncompliance (SNC) flag in RCRAInfo. The penalties calculated in the formal enforcement cases did not include a separate economic benefit component.

Commitments in Annual Agreements: The MDNR's hazardous waste enforcement program completed the majority of the activities outlined in the PPG work plan, with the exception of 12 financial assurance reviews.

Data Integrity: Minor data omissions were noted in some of the files reviewed. For the most part, data was entered in a timely and accurate fashion, with the exception of the SNC flag as noted above. Based on an OTIS data report, some violation and return-to-compliance data should be reviewed for approximately 48 facilities indicated to be out of compliance for more than 3 years.

RCRA Enforcement Program Review of the Missouri Department of Natural Resources Hazardous Waste Enforcement Program

On-site Review conducted October 4 – 6, 2004

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Section 1: Review of State inspection implementation.

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

Hazardous waste inspections are conducted by MDNR's five regional offices. In federal fiscal year 2004, inspections were conducted at facilities ranging from conditionally exempt small quantity generators to permitted treatment/storage/disposal (TSD) facilities. The inspection coverage for operating TSDs for FFY03 and FFY04 was close to 100 percent. Based on a RCRAInfo data report, generated on November 15, 2004, there are 25 operating TSDs in Missouri. 21 of the 25 facilities were inspected in either FFY03 or FFY04. The remaining four facilities include two that ceased operation during this two year time frame, where the MDNR is working with the facility to remove hazardous waste that remains on-site (Millenium and West Star). The remaining two facilities (R A Metal and UMR) were last inspected in FFY01 and FFY02 respectively. Commercial TSDs (those accepting hazardous waste from off-site) are usually inspected four times per year by a separate group of MDNR inspectors.

Inspection coverage for the large and small quantity generators was adequate as well. Based on the most recent biennial report information, there are 270 large quantity generators (LQG) in Missouri. During FFY03 and FFY04, almost 60 percent of the LQGs in the state were inspected by MDNR or EPA. Review of inspection data in RCRAInfo for the past five years (FFY2000 through 2004) indicates that 87 percent of the 270 LQGs were inspected during this time frame. MDNR continues to target LQGs for inspection, especially those that have never been inspected or have not been recently inspected.

MDNR targets inspections so as to cover all aspects of the hazardous waste program. For example, the small quantity generator (SQG) universe in Missouri is quite extensive, at 3639 generators (based on November 2004 RCRAInfo data). However, MDNR inspected almost five percent of this large universe of generators in FFY04. MDNR

continues to target SQGs for inspection, which include outreach and Level 2 inspections, geared toward compliance assistance and expeditious return to compliance.

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

Forty-five facility files were reviewed during the on-site evaluation portion of the enforcement program review. The vast majority of the inspection reports included a narrative discussion of the inspection, inspection checklists, and the necessary photo documentation and copies of pertinent facility documents. Some of the outreach and level 2 inspections did not necessarily include a narrative of the inspection, however these types of inspections are usually completed at small generators where minor violations are forwarded to the Environmental Assistance Office for follow up. None of the files reviewed indicated that any violations were missed during the inspection.

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

All inspection reports reviewed were completed in a timely manner. The evaluations were entered into RCRAInfo in a timely manner. Significant noncomplier (SNC) designations were not entered in all cases where appropriate. In some cases, the violations are outstanding for a very short time, as MDNR pursues an expeditious return to compliance before pursuing formal enforcement with penalties. Therefore, the violations are returned to compliance in RCRAInfo in a relatively short period of time. This issue was discussed with MDNR's hazardous waste enforcement program as part of the program review close-out meeting. Program staff will be working to address this issue.

Section 2: Review of State Enforcement Activity

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

Based on data in RCRAInfo as of November 15, 2004, EPA and the State identified 8 new SNCs in FFY04. Six were identified by State inspection, and two by EPA. As stated in the previous paragraphs, the MDNR was not routinely identifying all SNCs in the RCRAInfo data system. For those SNCs that were identified, all but one was identified within the 150 day time frame established by the Enforcement Response Policy. The on-site file review revealed that violations detected during inspections were consistently identified in RCRAInfo.

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

The MDNR's hazardous waste enforcement program is required by State statute to use a process of conference, conciliation and persuasion (CC&P), in which they work with

facilities to return to compliance as quickly as possible, before the State proceeds with a formal action seeking penalties. For those files reviewed by EPA during the on-site visit, the State took the appropriate enforcement action for the violations noted. The informal enforcement actions included a schedule for return to compliance. The formal enforcement actions included a schedule for return to compliance in those cases where the facility had not returned to compliance before the formal enforcement action was issued. It should be noted that MDNR's lack of SNC designations in RCRAInfo did not impact the enforcement actions taken by the State.

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

As stated in previous paragraphs, the enforcement actions reviewed by EPA during the on-site file review were found to be appropriate. Also discussed previously is the fact that the MDNR must use the CC&P process to return a facility to compliance before a formal action is taken to collect an appropriate penalty. This has an effect on the timeliness of their formal enforcement actions. The RCRAInfo data from November 2004 was reviewed for all State formal enforcement actions, where the initial formal action was taken in FFY2004. *(Some facilities received more than one formal action for the same violation. In these cases, only the initial formal action was considered for purposes of timeliness, and then, only if the initial formal action occurred in FFY2004.)* In reviewing the RCRAInfo data from November 2004, twelve such formal enforcement actions were taken by the State. The timeliness of these actions ranged from 12 to 21 months from the date of the inspection that documented the violation. All 12 of these actions assessed and collected a penalty from the facility.

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

The MDNR hazardous waste enforcement program uses the EPA's RCRA Civil Penalty Policy, adjusting the gravity and per-day penalty figures to remain within the State's statutory maximum penalties that may be assessed ($10,000). File reviews indicated that the gravity-based penalties were appropriately assessed and justified within the penalty calculation. The use of per-day penalties was not automatic, but based on the State's evaluation of the violation and the appropriateness of any resulting per-day penalty, should one be assessed. The use of the BEN model to calculate economic benefit of noncompliance (EBN) was not evident in the file review. While the total assessed penalty might be sufficient to recoup economic benefit, EBN was not calculated or assessed separately. This was brought to the MDNR's attention at the close-out meeting, and is an issue that they are actively working to correct. The Agency's cost estimate guidance for calculating the cost of compliance was provided to the MDNR.

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

The penalties collected by the State include the gravity portion of the assessed penalty, but as stated above, the economic benefit is not calculated as a separate portion of the penalty. This is the case for assessed and final collected penalties.

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

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

The enforcement portion of the PPG end of year report from the State was reviewed separately from this program review. However, the MDNR's hazardous waste enforcement program was found to have completed the majority of the activities outlined in the PPG work plan. The annual financial assurance reviews were not completed for 12 facilities, due to staff shortage. The State expects to complete the remaining 12 reviews in the first half of FFY2005.

Section 4: Review of database integrity

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

With the exception of the SNC designation discussed in previous sections, all required data elements were found to be entered in a timely manner for the facility files reviewed. The RCRAInfo data from November 15, 2004 for those files were evaluated and found to be complete except for minor changes or omissions, which do not merit comment here.

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

The accuracy of the data entry was evaluated with the timeliness of the data entry. The same comment applies here as in item 10, above. SNY and SNN evaluations, where entered, were appropriately entered when a formal action was deemed necessary, and the facility returned to compliance. The State has processes and procedures in place to complete data entry once an evaluation has been completed by the State. The state has developed data entry forms that are completed by program staff and provided to other staff for data entry. The data is reviewed periodically and changes made where appropriate. Nonetheless, there are errors in the data that require correction. An OTIS data report from November 16, 2004, of facilities in violation for more than 3 years, indicates 48 facilities in this category. The enforcement data for these facilities must be evaluated for accuracy and omissions. The list of facilities includes violations detected by the State and EPA, and will require data review by both agencies to correct any data errors.

12. Degree to which the minimum data requirements are complete.

As stated above, minor omissions in data entry were noted for the filed reviewed during the on-site visit.