



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
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CHICAGO, IL 60604-3590

SEP 27 2001

REPLY TO THE ATTENTION OF:
R-19J

Chris Korleski, Director
Ohio Environmental Protection Agency
P.O. Box 1049
122 South Front Street
Columbus, OH 43216

RE: U.S. EPA Review of OEPA's NPDES, RCRA, and Air Enforcement Programs – Final Report

Dear Mr. Korleski:

Region 5 would again like to thank you and the Ohio Environmental Protection Agency (OEPA) staff for participating in the United States Environmental Protection Agency's (U.S. EPA's) enforcement program review of the Clean Air Act (CAA) Stationary Source, the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES), and the Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste enforcement programs. We especially appreciate your staff's cooperation and assistance during this review.

Please find enclosed a final State Review Report (Report). This Report contains an Executive Summary, as well as detailed findings, recommendations, and actions concerning OEPA's enforcement programs. Region 5 utilized U.S. EPA data reports and reviews of OEPA case files in developing this final Report as well as information gained from responses from OEPA to the draft State Review Report. As you can see from the Report, both U.S. EPA and OEPA have committed to ensure follow-up actions occur in many areas.

If you have any questions or issues, feel free to contact me, or Tinka Hyde of my staff, at 312-886-9296. Her email address is hyde.tinka@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary A. Gade".

Mary A. Gade
Regional Administrator

Enclosure

U.S. EPA – Region 5 Review of Ohio EPA Enforcement Program
Federal Fiscal Year (FFY) 2006

September 25, 2007

A. EXECUTIVE SUMMARY

Background

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

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

The review consists of 12 critical elements which compare actual compliance and enforcement practices in the Clean Air Act (CAA) Stationary Sources Program, the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) program, and the Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste program with U.S. EPA policies and guidance. The 12 evaluation areas posed by this Framework are consistent with evaluation areas delineated in the 1986 guidance memorandum signed by Jim Barnes entitled "Revised Policy Framework for State/EPA Enforcement Agreements." Additionally, the Framework utilizes existing program guidance, such as national enforcement response policies, compliance monitoring policies, and civil penalty policies or similar state policies (where in use and consistent with national policy) to evaluate state performance and to help guide definitions of a minimum level of performance.

Process Followed in the Review

U.S. EPA, Region 5's evaluation of OEPA's core enforcement programs was conducted by staff from the Region's Air, RCRA, and Water enforcement programs using the Framework described above. Part of the review consisted of analyzing FFY 2006 data ("data metrics") regarding OEPA's enforcement programs which came from EPA's Online

Tracking Information System (OTIS). During the remainder of the review, U.S. EPA staff reviewed OEPA inspection and case files that were identified to provide a stratified random sample of inspections and case files for FFY 2006. Air reviewed 35 files, RCRA reviewed 40 files, and the Water program reviewed 30 files. The Evaluation Details section of this report contains findings of the review for each program and areas of concern - with a full explanation of these concerns along with recommendations for resolution.

Overall Findings

U.S. EPA has identified both strengths and areas for improvement in OEPA's enforcement and compliance program.

U.S. EPA has found that OEPA has the following strengths:

- In the RCRA program, OEPA has conducted the required number of Treatment, Storage, and Disposal Facility (TSDF) and Large Quantity Generator (LQG) inspections. Also, identification of Significant Noncompliers (SNCs) has exceeded that of the national average.
- In the Air program, inspection reports meet all the minimum requirements of the U.S. EPA Clean Air Act Stationary Source Compliance Monitoring Strategy. Also, enforcement actions are generally successful at bringing sources back into compliance in a specific time frame and penalties are well-defined.
- In the Water program: 1) OEPA maintains a high DMR entry rate for major permittees, exceeding the national goal of 95%; 2) OEPA inspectors employ a "diary" approach for maintaining information on permittees and inspection findings. This ensures that information is available to new staff as personnel changes occur, expedites inspection planning and report writing, and ensures that a comprehensive record is maintained; 3) OEPA calculated the BEN and gravity components or provided documented rationale in the file for not doing so in all cases where a penalty was assessed; and 4) despite delays in U.S. EPA's schedule for transitioning OEPA to the new ICIS-NPDES database, and uncertainties as to which data elements ultimately will be required, OEPA is maintaining an aggressive schedule of data input and quality assurance in order to transition to this new system.

U.S. EPA has found that improvements are needed in certain OEPA programs, which are summarized below along with recommended corrective actions. (Not all findings and recommendations are listed here).

- RCRA
 - Inspection and universe counts in OTIS (as derived from RCRAInfo) in regard to LQGs are significantly different from actual counts. U.S. EPA recommends that OEPA update the LQG source status in RCRAInfo using the active/inactive data flag. (Review Elements 1 and 12)
 - Inspection reports are not complete per U.S. EPA guidance because they are missing narratives. U.S. EPA recommends that OEPA update its Division of Hazardous Waste Management Inspection Procedures Manual (OEPA

- Inspection Procedures Manual) to include a clear description of the essential components of a complete RCRA inspection report. (Review Element 2)
- Formal Enforcement actions are not always timely. U.S. EPA recommends that OEPA follow its established timeframe for formal enforcement as established in the OEPA Enforcement Procedures Manual. (Review Element 6)
- Air
 - OEPA is recording all synthetic minor/Title V violations as HPV, which may include some violations that would not be considered HPV under U.S. EPA policy. U.S. EPA recommends the development of a plan that will outline correct reporting of HPV. (Review Element 4)
 - Timeliness of enforcement actions is a continual issue. U.S. EPA recommends a plan that will address this problem. (Review Element 6)
 - OEPA is not reporting the Minimum Data Requirements (MDRs) to AFS in a complete and timely manner. U.S. EPA recommends the development of a plan to improve MDR reporting. (Review Elements 10, 11 and 12)
 - Water
 - OEPA is not entering monthly operating report data into PCS in a timely manner to produce an accurate Quarterly Noncompliance Report (QNCR). U.S. EPA recommends timely entry of this data and appropriate use of manual overrides when necessary. (Review Element 4)
 - In some cases, the use of multiple NOV's does not bring sources back into compliance. Also, the Ohio EMS does not include specific timeframes for the state to initiate an action to bring a facility back into compliance. U.S. EPA recommends that OEPA revise its EMS to include specific timeframes to initiate and close out enforcement actions. (Review Elements 5 and 6)
 - Some enforcement action data is not being entered or translated into PCS. OEPA has agreed to address these as priority data inputs in the transition plan to be developed under the ICIS-NPDES policy statement that is currently under development. (Review Element 8)

Recommendation Note: At times in this report, reference is made to the updating of certain OEPA policies. U.S. EPA requests that updates be sent to the appropriate Region 5 contacts in this report for review.

B. INFORMATION REGARDING OEPA

Structure

OEPA was created on October 23, 1972, and combined environmental programs that previously had been scattered throughout several state departments. OEPA's Central Office is located in Columbus, and five district offices manage the Agency's programs throughout the state. OEPA establishes and enforces standards for air, water, waste management, and cleanup of sites contaminated with hazardous substances. OEPA also provides financial assistance to businesses, environmental education programs for business and the public, and pollution prevention assistance to help businesses minimize their waste at the source.

OEPA is divided into five regulatory divisions that play different roles in environmental protection. Each division issues permits to regulate industries that pollute in a specific area, like air emissions or wastewater discharges to rivers and streams. The permits include requirements for operating, monitoring, and reporting compliance. There are a few core responsibilities that each division of OEPA must fulfill. These are:

- Reviewing permit applications and issuing permits to facilities,
- Investigating citizen complaints,
- Monitoring to make sure all environmental standards are met (usually accomplished by collecting samples of air, water, or soil and testing them for pollutants in a laboratory; and reviewing sampling and monitoring data submitted by a facility),
- Providing technical assistance to help regulated facilities obey environmental laws and permit requirements, and
- Taking enforcement action against facilities that do not obey environmental laws and permit requirements.

OEPA Enforcement Tools

Several types of tools, as described in OEPA's program guidance are available. Actions that are specifically mentioned in, or affect, this report are described below:

1. Notice of Violation (NOV) /Warning Letter – a notice that identifies violations of applicable regulations and indicates what action must be taken to resolve the violations.
2. Director's Warning Letter - a letter of warning from the Director that contains response deadlines and/or an informal schedule of compliance.
3. Administrative Order – an order that requires compliance with applicable regulations.
4. Administrative Penalty Order – an order that requires compliance with applicable regulations and includes a penalty.
5. Director's Final Findings and Orders (DFFOs) – an order from the Director that contains negotiated settlement actions and penalties.
6. Referral to Attorney General's Office – a referral of a case for civil prosecution if negotiated settlement is not reached for a DFFO.

7. Referral to U.S. EPA – a referral of a case to U.S. EPA for administrative or civil enforcement action.

C. EVALUATION DETAILS

Program Evaluated: RCRA Subtitle C

Information Sources Included in the Review:

1. U.S. EPA RCRAInfo and RCRARep databases for FY 2006.
2. U.S. EPA’s 2005 Biennial Report System data.
3. Review Framework Metric data pull from the OTIS for OEPA dated February 28, 2007.
4. U.S. EPA FY 2006 RCRA Mid-Year File Evaluation of OEPA’s Division of Hazardous Waste Management conducted on May 10 and 11, 2006 (10 files).
5. U.S. EPA FY 2006 RCRA State Framework review of OEPA Division of Hazardous Waste Management conducted on May 2 and 3, 2007 (30 files).
6. OEPA Division of Hazardous Waste Management “Enforcement Procedures Manual,” February 2005.
7. OEPA Division of Hazardous Waste Management “Inspection Procedures Manual,” November 2006.
8. OEPA’s “Work Plan for FFY 2006,” August 31, 2005.
9. U.S. EPA FY 2006 End-of-Year Evaluation Report on OEPA, December 19, 2006.
10. “U.S. EPA Revised RCRA Inspection Manual,” dated 1998.
11. “U.S. EPA RCRA Civil Penalty Policy,” dated June 2003.
12. “U.S. EPA Hazardous Waste Civil Enforcement Response Policy,” December 2003.
13. “U.S. EPA State Review Framework Training Manual,” dated June 2005.
14. “Office of Enforcement and Compliance Assurance (OECA) National Program Manager Guidance (NPM) for FY 2005 – 2007.”

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Period Covered: Federal Fiscal Year 2006

Introduction

The review of OEPA’s Resource Conservation and Recovery Act (RCRA) Hazardous Waste Compliance Monitoring and Enforcement Program included a review of a data metrics report pulled from U.S. EPA’s Online Tracking Information System (OTIS) on February 28, 2007, and a review of OEPA enforcement and compliance files that occurred on May 10 and 11, 2006 (RCRA mid-year review), and May 2 and 3, 2007 (State Review Framework review), at OEPA’s Central Office in Columbus, Ohio.

OEPA provided a total universe of 2,428 files reporting inspection or enforcement action in

FY 2006 from which U.S. EPA could select. The recommended selection protocol in state review guidance for a universe of over 700 files suggests choosing a range of 25-40 files for review. Forty files were selected to represent a stratified random sample reflecting a mix of inspections and enforcement actions at large quantity generators, small quantity generators, and treatment, storage and disposal facilities from each of the OEPA Districts. U.S. EPA utilized 10 files from the May 2006 mid-year file review, and 30 files from the May 2007 file review. Files were then split between 15 inspection files, and 25 enforcement files per the state review guidance.

The following findings and recommendations regarding the 12 Elements contained in the RCRA State Review Framework assessment are supported by the data extracted from the review.

Section 1: Review of State Inspection Implementation

1. The degree to which a state program has completed the universe of planned inspections (addressing core requirements and federal, state and regional priorities).

Findings:

Treatment, Storage, and Disposal Facilities (TSDFs):

In accordance with Section 3007(e)(1) of the Resource Conservation and Recovery Act, 100% of all TSDFs must be inspected over two years. According to the February 28, 2007 OTIS data metric report, OEPA inspected 100% (37 out of a universe of 37) of these sources over FY 2005 and FY 2006 (See Element 9). The national average of TSDF inspections by States is 91.3%.

Large Quantity Generators (LQG) – Annual Inspections:

Per Office of Enforcement and Compliance Assurance (OECA) National Program Manager (NPM) Guidance for FY 2005-2007, 20% of the LQG universe must be inspected each year. Although the February 28, 2007 OTIS data metrics report indicates that 479 LQGs out of a universe of 1,877 were inspected, more accurate data from U.S. EPA's 2006 End-of-Year Evaluation Report for OEPA and the 2005 Biennial Report shows that 204 LQGs out of a universe of 891 were inspected (22.8%). This exceeds the national goal of 20%. The national average of LQG inspections by States in FY 2006 is 16.2%. OTIS data appears to include historical LQG data.

Large Quantity Generators (LQG) – 5 Year Inspection Coverage:

Per OECA NPM Guidance, 100% of the LQG universe should be inspected over a 5 year period. Although the February 28, 2007 OTIS data metric report indicates that OEPA inspected 52.6% (987 out of a universe of 1,877) of these sources over FY 2002 – FY 2006, more accurate data from OEPA and a universe agreed upon by U.S. EPA and OEPA shows that 986 LQGs out of an average universe of 881 were inspected. (Some LQGs were inspected more than once in the five-year period.) This exceeds the national goal of 100%. The national average of LQG inspections

by States over the 5 year period is 43%.

Information Sources Used for this Element: 2, 3, 8, 9, and 14.

Recommendations and Actions: U.S. EPA commends OEPA for meeting national goals for TSDf and LQG inspections. However, during the review, it was noted that there is a significant difference between data in OTIS and data reported by OEPA in regard to the LQG universe and number of inspections. These discrepancies must be corrected by OEPA in order to give both agencies and the public a more accurate picture of RCRA activities in Ohio. One method by which to do this is to use the active/inactive flag in RCRAInfo (which feeds data to OTIS) for LQG sources. U.S. EPA recommends that OEPA update the LQG source status using this data flag.

OEPA states that it has tried in the past to verify (via correspondence with generators) the status of LQGs for the purpose of updating RCRAInfo, but has had limited success since many facilities were unresponsive. OEPA is currently requiring inspectors to fill out an Implementer Source Form as part of every inspection, which should help clean up the source universe over time.

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

Inspection reports were considered complete if they contained: 1) a narrative that clearly explained and supported observations and findings during the inspection; 2) a completed checklist if the inspection was a compliance evaluation inspection; and 3) photographic evidence or other documentation if necessary to support observations and findings. This is consistent with guidance in the Revised RCRA Inspection Manual, 1998.

Findings: Of the 40 files reviewed, six did not involve on-site inspections at a facility, and, therefore, did not include inspection reports. Two of these six files involved financial record reviews, two involved annual report reviews, one was a self disclosure, and one was a violation discovered as a result of an inspection of a facility that did business with the violator. Of the 34 files which involved on-site inspections, 33 included inspection reports. One file did not have an inspection report, eight (24%) had complete inspection reports, and 25 (74%) had incomplete inspection reports. The eight files with complete inspection reports included accurate descriptions of what was observed and sufficiently identified the violations. The 25 incomplete inspection reports were missing narratives.

Information Sources Used for this Element: 4, 5, 7, and 10.

Recommendations and Actions: OEPA's inspection reports should include a narrative. OEPA should update its Division of Hazardous Waste Management

Inspection Procedures Manual (OEPA Inspection Procedures Manual) to include a clear description of the three essential components of a complete RCRA inspection report.

In response, OEPA believes that the documentation it currently requires contains the information that is normally found in a narrative and does not see the need to create an additional narrative outline as part of its inspection reports. U.S. EPA recommends that this inspection report issue be resolved by December 31, 2007 with program discussions that consider both U.S. EPA and OEPA viewpoints and needs in regard to reports.

3. The degree to which inspection reports are completed in a timely manner.

Findings: The OEPA Inspection Procedures Manual does not include a specific timeframe for completion of an inspection report. Two of the 33 inspection reports included in the OEPA on-site inspection files reviewed by U.S. EPA were dated.

The OEPA Inspection Procedures Manual states that inspectors "...are required to transmit the results of the inspection to the facility through a written NOC or NOV letter" within a 14 day period following the inspection. Of the 34 files reviewed by U.S. EPA that involved an on-site inspection, 17 (50%) contained Notices of Violation or Notice of Compliance letters that were sent within 14 days of the inspection, while 17 (50%) contained Notices of Violation or Notices of Compliance letters that were sent beyond 14 days of the inspection.

Information Sources Used for this Element: 4, 5, 7, and 10.

Recommendations and Actions: U.S. EPA recommends that OEPA update its OEPA Inspection Procedures Manual to include a clear timeframe for completion of a RCRA inspection report and a requirement to date inspection reports. Also, the policy should distinguish the timeframe for completing an inspection report from the timeframe for transmitting either a NOC or NOV. This activity should be completed by December 31, 2007.

In response, OEPA states does not see the need to establish a separate timeframe for the completion of an inspection report since it sends out NOC or NOV letters relatively soon after the inspections (and thus, the completion of the inspection report). OEPA is currently revisiting its 14 day timeframe and if any changes are made, they will be implemented by December 31, 2007.

Section 2: Review of State Enforcement Activity

4. The degree to which significant violations (significant noncompliance) and supporting information are accurately identified and reported to EPA national databases in a timely and accurate manner.

Findings: The OEPA Division of Hazardous Waste Management Enforcement Procedures Manual (OEPA Enforcement Procedures Manual) incorporates U.S. EPA's Hazardous Waste Enforcement Response Policy (ERP), and establishes two categories of violators under its classifications for noncompliance; Secondary Violator (SV) and Significant Non-Complier (SNC). A SNC determination is reserved for significant violations and should be addressed through formal enforcement. The OEPA Enforcement Procedures Manual states that a SNC or SV determination is considered timely if it's completed within 150 days of Day 0 (1st day of the inspection) and entered into the RCRAInfo database as soon as possible.

According to the February 28, 2007 Review Framework Metric data, 3.7% of sites (37 sites) inspected by OEPA during FY 2006 were determined to be Significant Non-Compliers (SNCs), which exceeds the national average of 3.1%. In regard to the timeliness of the SNC determinations, the Data Metric (4b) is not yet available for evaluation under this element.

Of the 40 files reviewed, 25 files were deemed relevant to this metric because OEPA found noncompliance. OEPA determined the classification for noncompliance for all 25 files.

Of the 25 for which OEPA determined noncompliance, all 25 (100%) had appropriate classifications of noncompliance, i.e., as either Secondary Violators or SNCs.

Information Sources Used for this Element: 1, 3, 4, 5, 7, and 10.

Recommendations and Actions: U.S. EPA commends OEPA for accurately identifying SNCs, and exceeding the national state average for this data metric.

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

Findings: Of the 25 enforcement cases that were reviewed, 20 were addressed through informal enforcement by use of a Notice of Violation letter. All but one of the 20 cases handled through this informal enforcement action resulted in compliance achieved within the 240 day time frame stated in the OEPA Enforcement Procedures Manual.

The remaining five enforcement cases were addressed through formal enforcement and settled by issuance of Director's Final Findings and Orders (DFFOs). Three of the five DFFOs required injunctive relief and penalties, while the other 2 required only payment of penalties.

Of the five formal action cases reviewed by U.S. EPA, four came into compliance within the 240-day time frame stated in the OEPA Enforcement Procedures

Manual, and one came into compliance beyond the 240-day time frame since the required injunctive relief schedule continued beyond 240 days.

Information Sources Used for this Element: 1, 4, 5, 6, and 12.

Recommendations and Actions: None

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

The data metric for this element is not yet available for evaluation.

Findings: The OEPA Enforcement Procedures Manual requires all unilateral/initial formal enforcement actions to be completed by Day 240 (240 days after the 1st day of the inspection [Day 0]), and all referrals to the Ohio Attorney General, or entrance into final orders with the violator to be completed by Day 360. However, the OEPA Enforcement Procedures Manual allows these limits to be exceeded for 20% of the cases when justified.

In regard to the five enforcement files reviewed in which SNC determinations were made, all five were addressed with formal administrative actions and settled with Director's Final Findings and Orders (DFFOs). All five actions (100%) were appropriate because the violators met the criteria in the OEPA Enforcement Procedures Manual for significant non-compliers and formal enforcement actions were taken as a result. Of these DFFOs, one (20%) was timely because it was signed within 360 days of the inspection (Day 0), while four (80%) were not issued, or referred to the State Attorney General's Office, within 360 days of the inspection.

Information Sources Used for this Element: 1, 5, 6, and 12

Recommendations and Actions: Although the data reviewed for this element was limited, U.S. EPA recommends that OEPA follow its established timeframe for formal enforcement as established in the OEPA Enforcement Procedures Manual.

OEPA states that in each of the four cases in which the 360 day timeline was not met, there were unique factors that warranted extending the negotiations beyond 360 days.

7. The degree to which a state includes both gravity and economic benefit calculations for all penalties, using the BEN model or similar state model (where in use and consistent with national policy).

Findings: Of the five formal enforcement actions reviewed that contained monetary penalties, all five (100%) included documented calculations for the gravity portion of the penalty. None of the five included an economic benefit

portion, and none had statements as to why it was not included. One file indicated “NA” for economic benefit, while the other four did not include any discussion about economic benefit. The OEPA Enforcement Procedures Manual incorporates the U.S. EPA RCRA Civil Penalty Policy, which states that any decision not to seek an economic benefit and the rationale for such a decision should be documented on the Penalty Computation Worksheet or penalty calculation summary. In all five cases (100%), only documented gravity calculations were included in the case file.

Of the five formal enforcement actions reviewed, five cases showed that penalties were mitigated, and justification for mitigation was included.

Information Sources Used for this Element: 5, 6 and 11.

Recommendations and Actions: In those cases where OEPA concludes that an economic benefit consideration is not appropriate, it should document the rationale in the enforcement case file as indicated in OEPA’s Enforcement Procedures Manual. This documentation of economic benefit consideration should be implemented by September 30, 2007.

OEPA agrees with this recommendation and will include such documentation in the enforcement file.

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

Findings: According to the OTIS data metrics report, OEPA assessed a total of \$692,610 in RCRA penalties during FY 2006. Of OEPA’s 43 initial formal enforcement actions, 36 (84%) included penalties compared to the national average of 45%. Of OEPA’s 39 *final* enforcement actions, 36 (92%) included penalties, compared to the national average of 82%. The OEPA Enforcement Procedures Manual incorporates U.S. EPA’s ERP, which requires formal enforcement actions against a SNC to include a penalty. OEPA collected penalties for the 36 final actions with included penalties.

Information Sources Used for this Element: 3, 5 and 6

Recommendations and Actions: None.

Section 3: Review of Annual Commitments

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

Findings: Region 5 considered OEPA performance under its FY 2006 Work Plan. In FY 2006, OEPA committed to performing 133 inspections at TSDFs, 180

inspections at LQGs, and 120 financial record reviews. Actual results reported in the FY 2006 End-of-Year Evaluation Report on OEPA show that OEPA conducted 103 TSDf inspections, 204 LQG inspections, and 122 financial record reviews.

U.S. EPA commends OEPA on exceeding its LQG and financial record review work plan goals. U.S. EPA also commends OEPA for exceeding the RCRA requirements of TSDf inspections, although the number of multiple TSDf inspections was short of the work plan goal. U.S. EPA does not consider the number of TSDf inspections to be an issue because all 37 operating TSDfs were inspected over the FY 2005-2006 time period as required by RCRA (as reported in Element 1).

Information Sources Used for this Element: 8 and 9.

Recommendations and Actions: None.

Section 4: Review of Database Integrity

10. The degree to which Minimum Data Requirements are timely.

Findings: The OEPA Enforcement Procedures Manual (which incorporates U.S. EPA's ERP) requires that compliance determinations be entered into RCRAInfo as soon as possible, but no later than 150 days from Day 0 (1st day of the inspection). To measure this standard of timeliness, the OTIS data metrics have flagged SNC entries made greater than 60 days after designation.

According to the OTIS data metrics report, 65.5% of the SNC determinations entered into RCRAInfo were entered more than 60 days after the determination was made. The national average for States is 43.6% for FY 2006. OEPA has been timely in SNC data entry 34.5% of the time during this reporting period using the standard of timeliness mentioned above.

Out of the five enforcement files with SNC determinations that were reviewed, five (100%) were entered more than 60 days after the determination was made.

Information Sources Used for this Element: 1, 3, 6, and 12.

Recommendations and Actions: OEPA should adhere to the guidelines in the OEPA Enforcement Procedures Manual, and enter data into RCRAInfo when a violation determination is made.

OEPA agrees with this recommendation and will implement it.

11. The degree to which Minimum Data Requirements are accurate.

Findings: According to the OTIS data metrics report, none of the SNC determinations made by OEPA in FY 2006 occurred on the date, or within one week, of the issuance of the formal enforcement action. This indicates that OEPA follows the requirement in the OEPA Enforcement Procedures Manual that SNC determinations should not be withheld until the formal action is completed.

Also, the OTIS data metrics report indicates that 511 facilities not designated as SNCs are reported to have been in violation for a period of greater than three years. If these facilities are indeed still in violation, they should have been designated as SNCs within 240 days of the violations having been determined, per the OEPA Enforcement Procedures Manual.

Of the 40 compliance monitoring and enforcement files reviewed, all of the files revealed accurate RCRAInfo data reporting (e.g. the date of the inspection, violator determination, and/or enforcement activity reported in RCRAInfo agree with information contained in the file).

Information Sources Used for this Element: 1, 3, 4, 5, 6, and 12.

Recommendations and Actions: OEPA and U.S. EPA should jointly review this subject list of violators and reconcile the enforcement status of each violator.

In response, OEPA states that this is a RCRA data cleanup issue – the violations have been addressed, but the information has not been entered into RCRAInfo. OEPA is currently addressing this issue and will complete the reconciliation by June 30, 2008.

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

Findings: The purpose of the OTIS data metrics under this Element are to report to the State selected universe and action counts from OTIS and ensure that the State and U.S. EPA agree with the information in the national database. If there is a disagreement about the counts, further evaluation should be performed to determine the source of the discrepancy.

On February 28, 2007, OEPA was provided the OTIS data metrics for all applicable Elements, including Element 12. OEPA has responded with specific count numbers. These items are listed below.

Table 1. Counts for Element 12 for FY 2006. (According to Data Metrics)

Description of Data	OTIS Count	OEPA Count
Number of	37	37

operating TSDFs		
Number of active LQGs	1877	891 (2005BRS)
Number of active SQGs	9,674	9,683 (RCRARep)
All other active Handlers in RCRA Info	8,502	8,952 (RCRARep)
Number of inspections	1,506	1,676 (RCRARep)
Number of facilities inspected	991	1101 (RCRARep)
Number of facilities with violations	1,268	643 (RCRARep)
Facilities receiving a State NOV	673	673 (RCRARep)
Total NOVs issued	879	867 (RCRARep)
# of new SNCs	37	38 (info # 9)
# of facilities in SNC	110	94 (RCRARep)
Facilities with formal actions	43	44
# of formal actions	43	44 (info # 9)
Total penalties assessed	\$692,610	\$692,610

Information Sources Used for this Element: 1, 2, 3, and 9.

Recommendations and Actions: See recommendations in Element 1 regarding reconciling data counts in OTIS and other systems.

Program Evaluated: CAA

Information Sources Included in the Review

1. Enforcement Procedures for the OEPA Division of Air Pollution Control, March 2001.
2. OEPA 2006 PPA End of the Year Report.
3. OEPA Division of Air Pollution Control Organizational Chart.
4. OEPA Division of Air Pollution Control files located at Ohio EPA Central Office, Columbus, Ohio.
5. OEPA Division of Air Pollution Control Draft FY2007 Annual Plan.
6. Model Local Air Agency Contract, OEPA and Local Air Agency for FFY 2007.
7. OEPA Division of Air Pollution Control Facility Inspection Form (Appendix N) and General Instructions.
8. OEPA Division of Air Pollution Control Facility Inspection Checklist.
9. OEPA Division of Air Pollution Control NSR/PSD Inspection Guide.
10. OEPA Division of Air Pollution Control Enforcement Action Request (EAR) Template.
11. OEPA Division of Air Pollution Control Schedule for Processing “Old Cases” for 2006, 2007 and 2008.
12. OEPA Division of Air Pollution Control Summary of Compliance with Effective Findings and Orders.
13. OEPA Division of Air Pollution Control Summary of the 2006 Enforcement Activities.
14. OTIS State Review Framework Drill Down, CAA Metrics.
15. U.S. EPA Guidance, “Issuance of the Clean Air Act Stationary Source Compliance Monitoring Strategy (CMS),” April 25, 2001.
16. U.S. EPA Guidance, “The Timely and Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs),” June 23, 1999.
17. U.S. EPA Guidance, “Clean Air Act Stationary Source Civil Penalty Policy,” October 25, 1991, and “Clarification of the Use of Appendix I of the Clean Air Act Stationary Source Civil Penalty Policy,” July 23, 1995.
18. U.S. EPA Guidance, “Clean Air Act Stationary Sources Program Guidance and File Review Metrics,” June 24, 2005.
19. U.S. EPA Guidance, “Final FY2006 Update, National Program Managers’ Guidance, Office of Enforcement and Compliance Assurance,” June 2005, revised October 2005.
20. U.S. EPA Compliance Monitoring Strategy Evaluation form.
21. U.S. EPA Guidance, “State Review Framework Workshop Notebook,” April 3 and 4, 2006.
22. U.S. EPA Guidance, “Final Guidance on Use of Unannounced Inspections,” September 6, 1984.
23. Air Facility System (AFS) National Database.
24. OEPA Division of Air Pollution Control CETA User’s Manual, Version 1.0, Revised 4/20/2007.

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Period Covered: Federal Fiscal Year 2006

Introduction:

The review of the OEPA Division of Air Pollution Control (DAPC) included a review of a data metrics report pulled from U.S. EPA's Online Tracking Information System on February 28, 2007, and a review of OEPA enforcement and compliance files that occurred on April 23 through 26, 2007 at OEPA Central Office in Columbus, Ohio.

OEPA provided a total universe of 869 inspection and enforcement files from FFY 2006 from which U.S. EPA could select. The recommended selection protocol in state review guidance for a universe of over 700 files suggests choosing a range of 25 to 40 files for review. Thirty-five files were selected to represent a stratified random sample reflecting a mix of sectors, geographic areas, local or district offices, and types of cases (major, synthetic minor, and minor). These files were split between 17 inspection files and 18 enforcement files per the state review guidance. The inspection files chosen consisted of 13 major sources and four synthetic minor sources. The 18 enforcement files chosen consisted of 12 major sources, four synthetic minor sources, and two minor sources.

Sources were selected from the lists provided by the OEPA DAPC, thus assuring that samples of the work from local and district offices, as well as a good geographic distribution of sources, were represented. Four inspection files had associated enforcement actions which were also reviewed.

The OEPA gathered all of the files and provided additional information requested for the review in Ohio. Files are located primarily at the local or district office where each facility is located; therefore the files were delivered to the central office prior to the review. Additional enforcement files located in the central office were also reviewed. In addition to the case files, the review included discussions with OEPA managers and staff about their data and procedures for compliance and enforcement. Discussions also occurred with staff located in one district office to better obtain their perspective as well as additional information for the cases reviewed from the office.

The OEPA DAPC is made up of five district offices, seven "full-role" local air agencies, and two "partial-role" local air agencies. The full-role local air offices handle all aspects of air permitting, compliance monitoring, and enforcement, while the partial-role agencies refer all enforcement actions to the district office. The district offices include Central District Office (CDO), Northeast District Office (NEDO), Northwest District Office (NWDO), Southeast District Office (SEDO), and Southwest District Office (SWDO). The

local air agencies consist of Akron Regional Air Quality Management District (Akron), Canton City Health Department (Canton), Cleveland Department of Public Health (Cleveland), Hamilton County Department of Environmental Services (HamCo), Portsmouth Local Air Agency (Portsmouth), Regional Air Pollution Control Agency (RAPCA), and the City of Toledo Division of Environmental Services (Toledo). Two partial-role local air agencies, Lake County General Health District and Mahoning Trumbull APC Agency have enforcement activities undertaken by NEDO. Each local agency has a local agency air contract that specifies the delegation of authority from OEPA to the local agency as well as funding and responsibilities.

Compliance and Enforcement Tracking Application (CETA) and Data Reporting

The CETA computer program was created in 2002 within OEPA's Central Office Division of Air Pollution Control (DAPC). At the end of 2004 and throughout 2005, CETA underwent a major modification. In December 2005, CETA was brought back on-line as an internet web-based application.

CETA serves as the DAPC's compliance and enforcement database for all regulated facilities in Ohio. Each district and local air office is responsible for inputting data generated by their office. The Central Office DAPC is responsible for inputting final enforcement action data into the system. According to the CETA User's Manual, information should be entered into the system within 30 days of an event occurring. Data from CETA is electronically transferred to U.S. EPA's national air database, the Air Facility System (AFS) by staff from the Central Office DAPC.

Review Note: OEPA has agreed to carry out many of U.S. EPA's recommendations in the Elements below. OEPA believes, however, that most of the actions under these recommendations will use a portion of the limited enforcement resources in the state and that the actions will have no benefit in identifying new violators, pursuing and resolving enforcement cases, or improving the compliance percentage for high priority violators.

Section 1: Review of State Inspection Implementation

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

Findings:

Inspections at Title V Major Sources

Per U.S. EPA's "Issuance of the Clean Air Act Stationary Source Compliance Monitoring Strategy (CMS)," April 25, 2001, full compliance evaluations (FCEs) should be conducted at 100% of the major source universe at least once every two years. OEPA agreed in its 2006 grant commitment with U.S. EPA that it will conduct FCEs at major sources per the CMS Policy. According to the OTIS data metrics report from February 28, 2007, OEPA has inspected a total of 71.7% (600

out of a universe of 837 sources) over FY 2005 and FY 2006. Ohio EPA's review of its own data revealed that OEPA has evaluated 83.4% (594 out of a universe of 712 sources). The national average of FCEs over FY 2005 and FY 2006 is 81.9%.

Inspections at Synthetic Minor Sources

Per U.S. EPA CMS policy, FCEs must be conducted at 100% of synthetic minor sources that emit or have the potential to emit at or above 80 percent of the Title V major source threshold, once every five years. In Ohio, the universe of applicable sources equals 100 percent of the synthetic minor facilities, rather than those at the 80 percent threshold, as OEPA has chosen to evaluate all synthetic minor facilities. OEPA agreed in its 2006 grant commitment with U.S. EPA that it will conduct FCEs at synthetic minor sources per the CMS Policy. According to the OTIS data metrics report, OEPA has inspected a total of 82.9% (257 out of a universe of 310) of these sources in the required five-year timeframe. OEPA's review of its own data revealed that OEPA has evaluated 66.1% (592 out of a universe of 895 sources), but this includes all synthetic minor sources as mentioned above. The national average of FCEs over the same time frame is 85.2%.

Based upon data provided by OEPA in the course of their review of the data metrics, U.S. EPA has made some updates to the major and synthetic minor source universes. These updates should change some of the data for evaluation coverage in the future.

Title V Annual Compliance Certifications (ACCs) Reviewed

Per U.S. EPA CMS policy, 100% of Title V self-certifications should be reviewed every year. According to the OTIS data metrics report, OEPA has reviewed 98.1% of the certifications (576 out of a universe of 587 sources). OEPA's review of its own data revealed that OEPA has evaluated 89.7% of the certifications (639 out of a universe of 712 Title V facilities). The national average is 81.4%. Based on the data above, OEPA has a data issue based on the differences of data reported to OTIS versus the review of their own data. U.S. EPA is currently researching this issue.

Number of Sources with Unknown Compliance Status

In the OTIS data metrics report, 37 facilities were listed in "automatic unknown" compliance status. OEPA's review of its own data revealed a total of 158 facilities in this status, which includes facilities where FCEs were not conducted in a timely manner with CMS commitments. This data provides an indicator where improvements could be made in timeliness of FCE commitments.

Summary:

- Discrepancies exist between OEPA data and OTIS data of major and minor source universe and inspection coverage.
- OEPA's evaluation coverage for major sources based on its review of data is consistent with the national average, although below the national goal of 100%.

- OEPA's evaluation coverage of synthetic minor sources is below the national average as well as the national goal of 100%.
- OEPA has reported that 89.7% of Title V self-certifications received have been evaluated, which exceeds the national average but is below the national goal of 100%.

Information sources used for this Element: 1, 2, 4, 13, 14, and 15.

Recommendations and Actions:

OEPA believes that its records accurately define the universe of major and synthetic minor sources as well as the number of evaluations performed for those facilities. To reconcile these numbers with the information in OTIS, U.S. EPA recommends that U.S. EPA and OEPA jointly take measures to correct data discrepancies by December 31, 2007.

In regard to evaluation coverage, OEPA agrees that federal goals/commitments for major and synthetic minor sources have not been met and that improvements are needed. OEPA believes that the easiest way to achieve these goals is by more closely monitoring the inspections performed by each of the field offices. The progress in meeting the FFY evaluation commitments for major and synthetic minor sources will be reviewed with each field office by the Central Office on a quarterly basis. The evaluation schedules will be revised, if necessary, to ensure that goals are met.

In regard to annual certification reviews, OEPA states that the reviews of the certifications by the field offices are currently tracked by means of the CETA program. The field offices are aware that all of the annual certifications should be reviewed for completeness and accuracy; however, this obligation has not been established by the Central Office as an air program goal for the field offices. As a result, the Central Office has not routinely tracked the field offices' performance in reviewing the annual certifications. OEPA believes that by establishing a goal for the review of the certifications and routinely checking the field offices' efforts to meet the goal, it can ensure that all the certifications will be reviewed each year. U.S. EPA recommends that OEPA establish this goal by December 31, 2007.

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

Findings: U.S. EPA reviewed 17 compliance monitoring reports (CMRs), 16 of which were FCEs and one which was a partial compliance evaluation (PCE). The CMRs reviewed were from the following district and local offices: one file each from Canton, Cleveland, Portsmouth, SEDO and SWDO; two files each from CDO, HamCo, NEDO; and three files each from NWDO and RAPCA.

According to U.S. EPA CAA CMS policy, CMRs should have seven elements. The seven elements include: (1) general information (date and level of evaluation); (2) facility information (name, location, address, and contacts); (3) applicable requirements; (4) inventory and description of regulated emission units and processes; (5) enforcement history; (6) compliance monitoring activities (on-site observations and compliance assistance); and (7) findings observed and discussed with the facility during the inspection.

The format that OEPA uses for CMRs is based on the CMS Policy, with a checklist-type setup for each of the required elements and space for comments. The inspection form was developed by a work group consisting of staff from the OEPA Central Office, district offices, and local air agencies, and was finalized in FFY 2004. The Facility Inspection Form (Appendix N of the local agency air contracts) also includes general instructions with explanations for each field to be completed during the facility evaluation. The Appendix N form consists of a checklist for each field with a space for comments under each element. The report includes a section for the inspector to note the review of the Title V Annual Certification of Compliance, if applicable. Emission units, with a description of each unit, are also included in the reports.

All of the reviewed CMRs had the minimum required elements. However, there was a great deal of variability between district and local offices, as well as between inspectors, as far as the level of detail provided for each evaluation. While some of the inspection reports reviewed provided a full narrative of the inspection activities, other reports listed the minimum amount of information and provided no additional comments. Some reports were handwritten on the Appendix N form, while others were printed on the computer with additional narrative added. Under the enforcement history part of the form, two of the reports reviewed that had previous enforcement actions provided a narrative of the actions, while two others stated the action that was taken (such as a warning letter) and the date, without describing the regulation or permit terms violated. More narrative would have been useful in those cases for the reviewer to determine if the facility had addressed the areas of noncompliance.

Findings and recommendations were present, but limited in several of the reports; they were merely checking that the facility was in compliance. One report noted some issues at the time of the evaluation but did not provide sufficient detail in the report for the reviewer to determine what the violation was. Another report checked that the facility was in compliance. However a warning letter was sent to the facility about a week after the CMR for recordkeeping violations.

Two of the CMRs reviewed were for unannounced inspections, while the rest were announced evaluations. In OEPA's facility inspection checklist, inspectors are instructed to contact the facility at least one week prior to their visit to ensure the facility contact or a qualified representative will be present. In addition, OEPA believes that to perform an FCE, all emission units should be observed in operation,

which could be difficult during an unannounced inspection, especially in remote areas. Unannounced inspections, OEPA staff reported, are conducted in the case of a complaint, uncooperative facility, or investigation.

U.S. EPA's "Final Guidance on Use of Unannounced Inspections," September 6, 1984, states that unannounced inspections provide the most representative picture of normal source operation and practices. Consequently, U.S. EPA believes there would be a benefit to conducting more unannounced inspections.

Information sources used for this Element: 1, 2, 4, 7, 8, 13, 14, 15, 21, and 22.

Recommendations and Actions: OEPA's FCE and PCE CMRs across all local offices and districts reviewed include the minimum information required under the CMS Policy. However, U.S. EPA is concerned that with the lack of narrative in the CMRs, it may be difficult to properly develop and defend an enforcement action that was based on the evaluation findings. The CMR comment sections should be expanded to allow for a more complete discussion of the inspector's activities and findings. OEPA should also emphasize the importance of providing adequate detail about the enforcement history in the background section of the CMR. Such detail may help future inspectors target process areas or regulations that were violated in the past.

OEPA states that it is willing to revise the CMR format or instructions for its use with the direction of U.S. EPA. As a result, U.S. EPA will review the CMR with OEPA and suggest any needed changes. The review and implemented changes will occur by December 31, 2007.

While announced inspections may be important to accurately verify operating emission units, U.S. EPA suggests that OEPA consider the use of more unannounced inspections. Unannounced inspections may also include notice that is given shortly before the inspection, and therefore their use could be considered in the case of facilities that are located within close proximity of the district or local offices.

OEPA states that it is extremely important, especially considering the travel times that may be involved, to know that all the emission units at a facility will be in operation during an inspection and that the person who is responsible for the environmental affairs of the facility will be available to accompany inspection personnel. OEPA believes these concerns normally outweigh the benefits of an unannounced inspection; therefore it does not believe it needs to revise inspection procedures to focus primarily upon unannounced inspections. In the vast majority of cases, unannounced inspections are not necessary in identifying violations. In addition, OEPA states that field offices always have the option to conduct unannounced inspections if they are necessary to view the "normal" operation of the emission units.

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

Findings: According to U.S. EPA’s “Clean Air Act Stationary Sources Program Guidance and File Review Metrics, June 24, 2005”, CMRs must be completed within 60 days of the inspection. Using this measure, 12 of the 17 inspection reports that were reviewed (70.6%) were completed in a timely manner.

In regard to the remaining five of the 17 reports, timeliness was unable to be determined in two of the reports as the reports located in the file were not dated. The remaining three reports were not completed in a timely manner. One report was created five months after the inspection, one was created approximately three months after the inspection, and one included a series of partial compliance inspections that made up the FCE and began six months prior to the finalization of the FCE report.

In addition, three FCEs, one of which would have been considered timely under the guidance, were begun prior to end of the FFY, but not completed until after the start of the following fiscal year. CMS guidance states a FCE should be completed within the federal fiscal year in which the commitment is made, except in the case of extremely large, complex facilities (mega-sites).

Not every inspection report contained violations. For inspections where violations were found, the CMR generally contained a description of the violation in the summary sections of the report. Thus, timely completion of reports produced timely identification of violations.

Information sources used for this Element: 1, 4, 13, 14, and 18.

Recommendations and Actions: Improvements should be made in the timeliness of CMRs. OEPA should also reiterate to its inspectors the need to properly sign and date inspection reports to ensure they are reported correctly.

OEPA states that the dates of the FCEs are entered into the CETA program by the field offices, and the CETA program will be modified before the next FFY to also include the dates the inspection reports were completed. This will enable Central Office to track compliance with the 60-day goal for completing the inspection reports. In addition, before the next FFY, OEPA states that all the field offices will be reminded of the 60-day goal and the requirement to sign and date each of the inspection reports.

Section 2: Review of State Enforcement Activity

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

Findings: Informal enforcement actions, such as a Notice of Violation (NOV) or a certified Warning Letter (WL), are issued to facilities by the local or district office. OEPA considers NOV's and WL's to be the same enforcement tool and they are used interchangeably at the local and district office levels. Formal enforcement actions take place after referral of an Enforcement Action Request (EAR) from the local and/or district offices to the Central Office, although the RAPCA, HamCo, and Toledo field offices have the ability to issue local formal enforcement orders without a referral to the Central Office. EARs include information about the violation and supporting documentation that the Central Office will need to pursue enforcement activities. Data regarding enforcement actions should be reported to AFS within 60 days, and OEPA agreed in its 2006 grant commitment with U.S. EPA that it would report data to AFS on a monthly basis.

Central Office enforcement activities take place under the SIP Development and Enforcement Section of the Division of Air Pollution Control. Under this section, the Enforcement Committee (EC), made up of the DAPC enforcement coordinator, air attorneys from the legal office, and field office contacts, provides assistance to field office enforcement activities. The "steering group," consisting of the EC contact person, an assigned staff member (usually someone that reports to the EC contact person), and the assigned attorney, determines the recommended course of action for the enforcement case in consultation with the field office representative(s) and, if necessary, management at the Central Office. The assigned staff member then prepares the enforcement documents for the Director and calculates the proposed civil penalty.

According to the OTIS data metrics report, the High Priority Violation (HPV) discovery rate per FCE coverage at major sources for OEPA in FY 2006 was 19.0%. OEPA's review of its own data revealed an HPV discovery rate of 22.4%. U.S. EPA's goal is that the rate be above half of the national average for the time period. Since the national average for FY 2006 was 9.3%, OEPA was well above the goal. However, this data may be inaccurate as OEPA is currently reporting all synthetic minor and major source violations as HPV, which includes some violations that would not be considered HPV under U.S. EPA policy. This is because synthetic minor and major facilities are considered High Priority Facilities (HPF) in OEPA guidance, and violations at all HPFs are automatically considered to be HPV. OEPA has agreed in its 2006 grant commitment with U.S. EPA that, as resources permit, the DAPC will attempt to conduct its enforcement activities in accordance with the U.S. EPA Guidance "Policy on Timely & Appropriate Enforcement Response to High Priority Violations (HPVs)".

Of the 18 enforcement case files reviewed, 16 were reported as HPV and two were reported as non-HPV. U.S. EPA found that in three HPV files (18.8%), OEPA had timely reporting into AFS according to their grant agreement of 30 days. According to U.S. EPA policy of 60 day entry into AFS, OEPA had timely reporting in six cases (37.5%).

In the 18 files reviewed, U.S. EPA believes that identification of HPV was made when it should have been. However, as stated above, OEPA's policy is to report all synthetic minor and major source violations as HPV, therefore, cases that may be considered by U.S. EPA as non-HPV may have been reported to U.S. EPA as HPV.

Information sources used for this Element: 1, 2, 4, 14, and 16.

Recommendations and Actions: Ohio EPA should begin reporting as soon as possible only those facilities that meet U.S. EPA HPV criteria as HPV cases in order to present a more accurate assessment of facilities where formal enforcement action is needed. This recommendation was discussed with OEPA at the time of the file review. Timeliness of HPV reporting also needs to improve.

OEPA concurs with this recommendation and will train field office staff to use U.S. EPA's HPV criteria starting on January 1, 2008.

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

Findings: OEPA informal enforcement actions reviewed included NOV's and WL's. For these actions, a schedule of compliance is required to be completed and the facility back in compliance within 30 days. Otherwise, the local or district office is required to submit an EAR to the Central Office. OEPA DAPC Enforcement Procedures guidance states that referrals to the Central office should be made when the facility does not timely respond to the NOV/WL, if the response is unacceptable, if compliance will not be achieved within 30 days, if violations are longstanding, and/or if the violations involve substantial levels of noncomplying emissions.

OEPA final formal enforcement actions reviewed included Findings and Orders (F&Os) and Consent Orders. F&Os are negotiated administrative actions and may be used below a certain penalty amount, as well as for facilities that have already come back into compliance or have a control plan and schedule to bring the emissions units back into compliance within a certain time frame. When settlement negotiations are not successful for F&Os with a company, the case is referred to the AG office. Consent Orders are also used in cases where there are larger penalties and when additional time is needed to bring a facility back into compliance.

Of the 18 enforcement cases that were reviewed, six were handled through informal enforcement by use of an NOV or WL. These cases came back into compliance within the 30 day time frame stated in the DAPC Enforcement Procedures guidance, or were already in compliance at the time the informal action was issued. However, one facility was an HPV with two stack test failures, and although it retested in compliance, the violations may have warranted further enforcement action beyond an NOV or WL.

Six enforcement cases were handled through formal enforcement by use of an F&O (five cases) or Consent Order (one case). The EARs for each case were comprehensive, with well explained summaries of the violations, a chronological list of events, and supporting documentation. An additional four cases are expected to be resolved with a formal enforcement order, as an EAR has been submitted or proposed F&O issued. In the six resolved cases, all had proper injunctive relief if necessary and came back into compliance within the appropriate time frame for each order, or were back in compliance at the time the final enforcement action was issued.

OEPA Enforcement Procedures states that it is the responsibility of the field office and the EC contact to monitor the facility's status of compliance with all the requirements of the final order, including the payment of any civil penalties. OEPA Central Office has a method to track penalty payment compliance with effective F&Os, with a spreadsheet that tracks penalty payment milestones and actual dates received. For other compliance milestones necessary to detail a return to compliance or a supplemental environmental project required by F&Os, there does not appear to be a defined method to track facility compliance. OEPA stated that milestones should be tracked in CETA; however, it is possible that they are not all being entered into the database at this time.

Milestones for non-penalty actions required by F&O are generally tracked by district and local offices rather than the Central Office. Periodic telephone conferences with the district/local offices, the Central Office, and U.S. EPA allow for updates to milestone tracking. However, in regard to one of the milestones for one file reviewed (SEP reports required by the terms of an F&O), the reports had not been approved by OEPA in a timely manner. Discussions with OEPA staff regarding that case revealed that the telephone conference with the district/local office had not been held for an extended period of time. Another case had a failed stack test that was required by the F&O, in which no further action had yet been taken. Follow-up should be necessary to ensure that the terms of the F&O were completed.

Information sources used for this Element: 1, 2, 4, 14, and 16.

Recommendations and Actions: The results of the review show that enforcement actions are generally successful at bringing sources back into compliance in a specific time frame. Also, OEPA has a clear plan in place for tracking penalty payments; however, a more defined method is needed to track other compliance milestones with final orders.

OEPA states that all of the penalty and other compliance requirements in final F&Os and Consent Orders are routinely summarized in a milestone tracking form that OEPA has been using for years. U.S. EPA receives a copy of this tracking form each time it receives copies of the minutes of the EC meetings. At some point in the future, OEPA will enter all the compliance milestones from F&Os and

Consent Orders into the CETA program and track compliance with the milestones through that program. OEPA stated the date by which we will begin using the CETA program for that purpose has not yet been determined.

U.S. EPA recommends that OEPA provide the expected timeline for tracking milestones in CETA by December 31, 2007.

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

Findings: OEPA agreed in its 2006 grant commitment with U.S. EPA that, “as resources permit, the DAPC will attempt to conduct its enforcement activities in accordance with the ‘Policy on Timely & Appropriate Enforcement Response to High Priority Violations (HPVs)’” and try to address State lead significant violators within 270 days.

In July 2002 Ohio enacted statute of limitations provisions that provide for a five year limit on enforcement actions. Also, beginning in 2004, an Enforcement Improvement Committee began work on improving the timeliness of enforcement actions. The goal for the OEPA DAPC is to ensure that at the end of each calendar year, there are no cases on the Enforcement Committee docket that are older than 21 months from the date the EAR was received by Central Office. The Central Office also allows 18 months for the local and district offices to submit an EAR from the discovery date of the violation. Older violations may be included in a final enforcement action, but penalties will not be collected for those violations. One limitation of the OEPA program is that they do not have the legal authority to request and require submittal of information from a facility; therefore the state relies on information gathered during facility evaluations, report submittals, and other sources of information in developing enforcement actions.

Per U.S. EPA’s HPV Policy, HPVs must be addressed with a formal action within 270 days of Day 0. Under the HPV Policy, Day 0 will ordinarily be no later than 45 days from the day the violation was discovered. For violations requiring additional information, Day 0 is 90 days from the date the violation is discovered, or the date of receipt of the additional information, whichever is earlier. If a violation is self-reported, Day 0 will be 30 days from the date the agency receives the information.

Timeliness

According to the OTIS data metrics report, 62.3% of HPVs in FY 2006 were addressed beyond the HPV timeframe. OEPA’s review of its data revealed 45.8% of HPVs in FY 2006 were addressed beyond this timeframe. The national average is 45.0% for FY 2006. However, as OEPA is reporting all synthetic minor and major source violations as HPV, the data may not accurately represent timeliness of actions in cases covered under U.S. EPA HPV policy.

The timeliness issue was also examined for the 18 enforcement files reviewed. Eight cases had a final enforcement action, of which seven were HPV. Four cases (all HPV) are expected to be resolved with a final enforcement action. Six enforcement cases were resolved with no further action, or expected to be resolved with no further action after the preliminary NOV/WL, five of which were HPV. Of the seven HPV cases addressed with a final formal enforcement action, one of these actions (14.2%) was timely because it was addressed within 270 days of Day 0. One pending enforcement action includes a verified complaint and several NOV/WLs which are more than 270 days old, and should be referred to the OEPA EC according to Ohio EPA's Enforcement Procedures Guidance. Two other cases had multiple NOV/WLs issued over two to three years prior to issuance of the final enforcement action, which exceeds the timeliness guidelines in both U.S. EPA and OEPA policies.

Timeliness of enforcement cases was discussed with Central Office management and staff. Based on the recommendations of the Enforcement Improvement Committee, OEPA DAPC developed schedules for processing "old cases" for 2006, 2007 and 2008, a copy of which was provided to U.S. EPA. OEPA has developed timeframe goals for submittal of EARs to the Central Office, as well as resolution of cases at the Central Office level. OEPA explained that individual staff performance evaluations have been linked to case resolution goals.

Appropriateness

In regard to the 16 enforcement files reviewed that identified HPVs, five were addressed using an NOV or WL. Although three of these cases were addressed within 270 days of Day 0, they were not addressed with a formal action, and were therefore not appropriate. One facility was later shut down. OEPA's use of HPV for all major and synthetic minor sources, as mentioned previously, may affect this assessment.

Of the remaining files that identified HPVs, seven were addressed with an F&O or Consent Order. An additional four cases have been or will be referred to the Central Office with an EAR and are expected to be resolved with a formal enforcement action. Six of the resolved actions (85.7%) were appropriate because they provided an appropriate compliance plan and appropriate enforcement action. Three cases had four or more NOV/WLs issued to the violating facility prior to referral of the case with an EAR and issuance of the final enforcement action. Given the number of informal actions issued, an EAR may have been appropriate sooner in the process.

One case addressed with an F&O for failed stack tests had a stack test required as part of the orders, which the company subsequently failed after the final F&O was issued. Another enforcement action, such as a Consent Order, may have been appropriate if it was suspected the facility would not be able to meet the requirements of the F&O or come into compliance within a timely manner. F&Os

require the facility to be in compliance at the time of the orders, or else be able to come into compliance with a compliance plan.

Information sources used for this Element: 1, 2, 4, 11, 13, 14, 16, and 23.

Recommendations and Actions: Based on discussions with OEPA, it appears the state is aware of the timeliness issue with regard to its HPV cases and has made steps to address the issue at the Central Office level, with dissemination to the local/district office level. However, based on the files reviewed, U.S. EPA still has concerns about the timeliness of enforcement actions between the issuance of an informal enforcement action and referral to the Central Office for final resolution. OEPA allows more time for local and district offices to refer cases for final enforcement action from the date of discovery of the violation than is allowed under U.S. EPA HPV policy.

OEPA states that the Director's Office issued guidance to the field offices in 2004 that requires EARs to be submitted to Central Office not later than 18 months after a violation is discovered. Also, in accordance with that guidance, by the end of each CY, DAPC must not have any enforcement case on its EC docket that is older than 21 months from the date the EAR was received. These are the goals that have been applicable to DAPC and the field offices for the last few years. The goals were originally established by the Director's Office to ensure that the Agency complies with Ohio's five-year statute-of-limitations law.

Although OEPA has been fairly successful in meeting these goals, it recognizes that it is not consistent with U.S. EPA's national guidance concerning the timeliness of enforcement actions. To try to improve the timeliness of its enforcement actions for the HPVs, OEPA will give priority to resolving the new EARs it receives for HPFs, even though those EARs would not be considered to be part of the "old cases" for the CY. OEPA will begin this effort this calendar after the "old cases" for calendar year 2007 are completely resolved. OEPA will attempt to resolve each of those cases within three months of receiving the EAR. OEPA states that during calendar year 2008 and beyond, this approach may adversely affect their ability to meet the Director's Office goal for the "old cases," but it will improve their timeliness in resolving HPVs. U.S. EPA recommends that OEPA provide further information regarding its progress in this area by December 31, 2007.

In regard to the appropriateness of actions, OEPA does not believe it is appropriate to resolve every NOV with a formal action. The appropriate enforcement action must be determined on a case-by-case basis. U.S. EPA agrees that this is true, but will only work when OEPA implements U.S. EPA's HPV criteria in January 2008 (see Element 4). Once this is done, those cases in which an HPV is not involved can be addressed informally. Conversely, HPVs must be addressed by a formal enforcement action.

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

Findings: OEPA’s Enforcement Procedures guidance states that almost all of the air enforcement cases that are resolved with a F&O or a Consent Order are resolved with civil penalties. OEPA has incorporated U.S. EPA’s CAA Civil Penalty Policy into its guidance to calculate most civil penalties and the OEPA guidance includes a copy of the U.S. EPA policy in its appendices. The guidance states the policy is followed closely except for the component that addresses administrative penalties for not applying for, and obtaining, a Permit to Install or operate for an emission unit. In this case, DAPC has chosen to use a penalty figure varying generally from \$2,500 to \$15,000 per emission unit for a Permit to Install violation and a dollar-per-day figure (usually not greater than \$150 per day) for each day an emissions unit operates without an operating permit.

Of the eight formal enforcement actions reviewed that contained monetary penalties, all included documented calculations for the gravity portion of the penalty, and four included economic benefit portions of the penalty or statements as to why economic benefit was not considered. The other four formal enforcement actions stated only “NA” or “not applicable” in the penalty calculations for economic benefit without an explanation stating why the economic benefit calculations were not applicable. In addition, for one case, economic benefit was listed as zero, and stated that the non payment of fees and late installation of equipment was not known and assumed to be less than \$5000. With U.S. EPA’s BEN model, it is possible to calculate economic benefit. The model should have been used in this case, as the cost of the control equipment could have been requested from the facility, and required and actual dates of installation should have been known.

The U.S. EPA CAA Penalty Policy states that the benefit from delayed and avoided costs should be calculated using the U.S. EPA BEN computer model. However, the litigation team has the discretion not to seek the economic benefit component where it is less than \$5,000.

Of the formal enforcement actions reviewed, all of the cases showed penalty mitigation. Some actions were mitigated to substantially lower penalties; however, a full justification for the mitigating factors was included in the calculation to support the reduction in penalty. Mitigating factors that were documented included additional information presented by the facility that affected the case, litigation risk, and other information. Justification for penalty mitigation was generally well documented in the Central Office files, but was generally not included in the local or district files.

Information sources used for this Element: 1, 2, 4, 14, and 17.

Recommendations and Actions: OEPA is diligent about including calculations of

assessed penalties as part of each enforcement file at the Central Office level. District and local offices did not generally have all of the penalty calculations and mitigations in their files. For those situations where OEPA does not feel that a BEN calculation is appropriate, it should more clearly document the rationale in the enforcement case file.

In response, OEPA states that it always considers economic benefit in calculating the civil penalty for an enforcement case. If it believes that the economic benefit in a case is significant, it uses the BEN model to calculate the benefit. In most penalty calculations, where OEPA indicates N/A or \$0, the reason for that conclusion is obvious from the violations involved in the case, and no further explanation is necessary. However, in future penalty cases where it is not obvious from the violations that there would be no economic benefit, OEPA states that it will provide an explanation in the penalty worksheet.

8. Degree to which final enforcement actions take appropriate action to collect economic benefit and gravity portions of a penalty, in accordance with penalty policy considerations.

Findings: According to the OTIS data metrics report, OEPA assessed a total of \$533,332 in penalties during FY 2006. Ohio EPA's review of its own data revealed a total of \$1,464,978 in assessed penalties assessed during that time period for HPV and non-HPV actions. In a follow-up review to identify the discrepancy between the dollar amount reported to AFS and the dollar amount counted by OEPA, it was found that OEPA is not reporting to AFS final enforcement actions and the assessed penalties for non-HPV violations.

For formal enforcement actions reported by OEPA, 61.3% included some penalty compared to the national average of 76.8%. U.S. EPA's goal is for states to issue penalties for greater than 80% of HPV actions. Seven of the eight formal actions reviewed were HPV. As mentioned previously, the lower OEPA percentages may be affected by the fact that the state claims all major and synthetic minor violations as HPV.

As discussed under Element 7, penalty calculations for economic benefit and documentation are areas where improvement is warranted.

In regard to penalty collections, of the eight files reviewed where a penalty was due, all eight files contained documentation of penalties collected or scheduled to be collected. Penalty payment documents are maintained at the Central Office rather than the district or local offices. According to OEPA, the finance office has a tracking system for penalty payment, while a copy of the payment is sent to the Central Office.

Information sources used for this Element: 1, 4, 12, 14, and 17.

Recommendations and Actions: See also the recommendations for Element 7. OEPA is diligent in collecting penalties in enforcement actions after issuance based on the files reviewed. However, OEPA is below national averages and the national goal for issuing penalties to HPV cases, which may be affected by the fact that the state labels all synthetic minor and major source violations as HPV. OEPA should provide a plan by December 31, 2007, to ensure that all final State enforcement actions and assessed cash penalties are reported to U.S. EPA in a timely and accurate manner.

OEPA states that it thought it had been reporting penalty assessments to AFS for some time through its CETA program. Now that it knows that it hasn't, OEPA will revise CETA to ensure reporting of required penalty information. OEPA believes that this information would show that the statement that OEPA is below national averages and the national goal for issuing penalties to HPV cases is inaccurate, since almost all of OEPA final F&Os and Consent Orders for HPVs include civil penalties.

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

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

Findings: Region 5 considered OEPA performance under its FY 2006 grant agreement and found that there were no additional commitments that have not been previously discussed in Elements 1, 4, 6, 7, and 8.

Information sources used for this Element: 2, 14, 23, and 24.

Recommendations and Actions: See Recommendations for Elements 1, 4, 6, 7, and 8.

Section 4: Review of Database Integrity

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

Findings: According to the 2005 AFS Information Collection Request (ICR), federally reportable data is to be provided to the national database within 60 days of the date of occurrence. In their FY 2006 grant, OEPA committed to providing compliance and enforcement data to AFS on a monthly basis. According to the OTIS data metrics, OEPA entered 65.7% of the HPVs into AFS greater than 60 days after designation. Therefore, OEPA was timely only 34.3% of the time for this reporting element.

Out of the 18 enforcement files that were reviewed, 11(61.11%) were entered more than 60 days after the determination was made. Therefore, OEPA was timely 38.89% of the time in regard to the reviewed files.

Information sources used for this Element: 2, 4, 14, 23, and 24.

Recommendations and Actions: OEPA should provide a plan which seeks to improve the timeliness of reporting HPV designations by December 31, 2007.

OEPA states that completing these reporting requirements on a monthly basis is a resource intensive obligation, and compliance with this obligation has no benefits in OEPA's ability to pursue and resolve enforcement cases in Ohio. Nevertheless, the Central Office will establish performance standards for the staff responsible for fulfilling this reporting obligation, and on a monthly basis will review with the staff their efforts to comply with those standards. The performance standards will be developed by October 1, 2007, and the first monthly review will be completed during October.

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

Findings: Of the 35 compliance monitoring and enforcement files reviewed, 21 (60%) of the files revealed AFS data reporting errors (e.g. compliance status, applicable air programs, and/or enforcement activity reported in AFS do not agree with information contained in the file).

OEPA district and local air agency staff report information on stack tests through Appendix K in CETA. The dates of stack tests and the test results are then uploaded to AFS. According to the OTIS data metrics report, during FY 2006, OEPA had reported results codes for all 1,314 tests reviewed. This 100% reporting rate exceeds the national average of 15.6% and meets the national goal.

Information sources used for this Element: 2, 4, 14, 23, and 24.

Recommendations and Actions: While U.S. EPA commends the state on their reporting of stack test information, attention still needs to be focused on reporting the remaining MDRs. In particular, OEPA needs to ensure that name and address changes, compliance status changes, and changes to applicable air programs are updated in AFS within the 60 day reporting standard. OEPA should provide a plan by December 31, 2007 that ensures all MDRs are reported to AFS.

As in Element 10 above, OEPA states that completing these reporting requirements on a monthly basis is a resource intensive obligation, and compliance with this obligation has no benefits in OEPA's ability to pursue and resolve enforcement cases in Ohio. Nevertheless, the Central Office will establish performance standards for the staff responsible for fulfilling this reporting obligation, and on a monthly basis will review with the staff their efforts to comply with those

standards.

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

Findings: The purpose of the OTIS data metrics under this Element are to report to the State selected universe and action counts from OTIS and ensure that the State and U.S. EPA agree with the information in the national database. If there is a disagreement about the counts, further evaluation should be performed to determine the source of the discrepancy.

On March 6, 2007, Ohio EPA was provided the OTIS data metrics for all applicable Elements, including Element 12. On April 20, 2007, Ohio EPA provided a response which included the following counts based on their review of the data.

Table 1. Counts for Element 12 for FY 2006. (According to Data Metrics)

Description of Data	U.S. EPA Count	Ohio EPA Count
AFS Operating Majors	837	712
AFS Operating Majors with Air Program Code	830	712
Source Count: Majors	837	712
Source Count: Synthetic Minors	700	895
Source Count: NESHAP Minors	59	10
Sources with FCEs	533	564
Number of FCEs	541	571
Number of PCEs	1334	888
Sources with violations	784	State is unable to validate this count using existing databases.
NOVs issued	265	260
Sources issued a NOV	235	232
New HPVs	110	State is unable to validate this count using

		existing databases.
Sources in HPV	100	State is unable to validate this count using existing databases.
Formal actions	36	46 (see note below)
Sources with formal actions	32	46 (see note below)
Assessed penalties	\$533,332	\$1,464,978 (see note below)
Sources missing CMS policy applicability	93	State is unable to validate this count using existing databases.

U.S. EPA has made some updates to the AFS classification codes and CMS flags for the major and synthetic minor source universes. These updates more closely align the AFS universes with the state data. The discrepancy in the major and synthetic minor source universes, as well as the sources missing CMS policy applicability, should be near resolution by the next refresh. (See Element 1).

The discrepancy in the Number of Formal Actions, Sources with formal actions, and Assessed penalties is currently under review with Ohio EPA. As identified in Element 8, the state has not been reporting final enforcement actions and the assessed cash penalty for non-HPVs.

Information sources used for this Element: 2, 4, 14, 23, and 24.

Recommendations and Actions: OEPA and U.S. EPA will continue to work through and resolve the remaining data discrepancies. By September 30, 2007, OEPA should develop a plan to improve MDR reporting. This plan should include a commitment that OEPA will provide U.S. EPA with complete, accurate and timely data consistent with agency policy and the ICR. By October 31, 2007, OEPA should report on its progress implementing the plan.

OEPA states that it appears that the corrective actions to which it committed under Elements 10 and 11 will also address this critical element.

Program Evaluated: NPDES

Information Sources Included in the Review:

1. Selected Inspection Files.
2. Selected Case Files.
3. Data from OTIS, as summarized in the CWA Framework Metric Results, February 28, 2007 version.
4. Data in PCS as of February 28, 2007.
5. Ohio Environmental Protection Agency (OEPA) Enforcement Management System (EMS) April 1997.
6. OEPA Division of Surface Water State Fiscal Year 2006 Revised Section 106 Work Plan.
7. Conversations with OEPA Staff.
8. OEPA Division of Surface Water 2005 and 2006 Annual Enforcement Reports.
9. The Enforcement Management System National Pollutant Discharge Elimination System (Clean Water Act) USEPA Office of Water, 1986.
10. U.S. EPA NPDES Compliance Inspection Manual (July 2004).
11. Comment letter from OEPA dated August 21, 2007. (U.S. EPA has incorporated some comments into this report, and will continue to assess the remainder for incorporation into the final document).

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Introduction

The review of the Ohio Environmental Protection Agency (OEPA) National Pollutant Discharge Elimination System (NPDES) program includes the evaluation of a data metrics report pulled from U.S. EPA's Online Tracking Information System (OTIS) on February 28, 2007 and a review of OEPA enforcement and compliance files that occurred on May 14-17, 2007 at the OEPA offices in Columbus, Ohio.

For FFY 2006, OEPA provided a total universe of 1366 files from which U.S. EPA could make selections. The recommended selection protocol in the review guidance, for a universe of over 700 files, suggests choosing a range of 25-40 files for review. Thirty files were selected to represent a stratified random sample reflecting a mix of industrial, municipal, and agricultural cases as well as major and minor facilities.

The files were divided into two (2) categories: inspections and enforcement actions. Fifteen inspection files and 15 enforcement files were reviewed using the state review guidance.

Inspections

The 15 Inspection files were randomly selected from inspections OEPA entered into the Permit Compliance System database up to February 3, 2007. These files were chosen from 1108 facilities and reflect 4 types of inspections:

- 7 Compliance Evaluations (non-sampling) Inspections from a universe of 146
- 2 Compliance Evaluations (sampling) Inspections from a universe of 13
- 4 Reconnaissance (RECON) inspections from a universe of 12
- 2 Compliance Bio-monitoring Inspections from a universe of 60

The inspection files reviewed included 10 facilities from a total of 169 majors, and 5 facilities from a total of 939 minors. The evaluated facilities consisted of industrial, municipal, federal, and other operations.

Enforcement Actions

Fifteen enforcement case files were reviewed. OEPA provided a list of 128 facilities which were subject to various enforcement actions between October 1, 2005 and September 30, 2006. Enforcement options ranged from Notices of Violation (NOVs), to Administrative Orders (AOs), to Judicial Consent Orders.

- 5 AOs from a universe of 40
- 5 NOVs from a universe of 16
- 5 Judicial Orders from a universe of 11

These enforcement actions address violations from the following categories: traditional NPDES permittees, storm water sources, un-sewered facilities, agricultural businesses, and unauthorized discharges.

Section 1: Review of State Inspection Implementation

1. The degree to which a state program has completed the universe of planned inspections (addressing core requirements and federal, state and regional priorities).

Findings: Historically, U.S. EPA had set a goal of inspecting 100% of all major NPDES facilities each year. In guidance issued in 2003, U.S. EPA modified this goal to allow states the option to trade-off two minor inspections for each major facility not inspected with the provision that a minimum of 70% of the major facilities be inspected. Historically, U.S. EPA had also required that these

inspections be compliance evaluation inspections (CEIs) or the equivalent, but in the 2003 guidance, this requirement was modified to include use of reconnaissance (RECON) inspections to the extent that the facility being inspected had not been in Significant Non Compliance (SNC) for any of the four quarters prior to the inspection, the facility was not a primary industry as defined by 40 CFR Part 122 Appendix A, and the facility was not a municipal facility with a pretreatment program. This additional flexibility was welcomed by most states but made inspection planning and EnPPA negotiations somewhat more uncertain. For example, it was not possible to predict at the beginning of the year which facilities would be in significant noncompliance during the year.

The OEPA Division of Surface Water State Fiscal Year 2006 Revised Section 106 Work Plan identifies the target to conduct a CEI at each major facility once every other year, which includes a commitment to visit 70% of its major permit holders annually. This commitment translates into an estimated 150 CEIs or CSIs, and 60 RECONS for a total of 210 major facility inspections per year.

The Work Plan further targets inspections at significant minor facilities twice every five years and all other minor facilities once every five years. This target includes a commitment to inspect a total of 900 minor facility inspections per year (150 CEI and 750 Recon) for minor permit holders. To the extent that the RECONS are conducted at major facilities that are not excluded by the three criteria identified in the 2003 Program Guidance, these commitments will fully address the above national goal of 100%, including use of a two-for-one minor/major trade-off.

U.S. EPA Region 5 provided OEPA an OTIS data pull dated February 8, 2007. OEPA generally agrees with data summarized in this OTIS data pull. However, OEPA believes that various extenuating circumstances should be taken into consideration when particular data metrics for topics in other sections of the report are evaluated (e.g. OEPA does not consider effluent data reported below the Practical Quantification Level (PQL) to be violations. U.S. EPA does consider this to be a violation).

Data from a July 10, 2007 PCS pull indicates that during the 2006 Work Plan year, OEPA conducted inspections at 169 (58.7%) of its 288 major facilities. Specifically, OEPA has conducted 164 CEIs, which exceeds the Work Plan commitment of 150. However, fifteen RECON inspections were conducted, which does not meet the Work Plan commitment of 60. Additionally, OEPA inspected 939 (31.6%) of its 2972 non-major facilities, exceeding its goal of 900 minor facilities.

Information Sources Used for this Element: 3, 4, 6, and 7.

Recommendations and Actions: OEPA has been made aware that a new Compliance Monitoring Strategy (CMS) will be issued by U.S. EPA in 2007, and that the State will need to develop an inspection strategy consistent with the national strategy, to be effective in FFY 2008. We recommend that OEPA send a

draft of the State strategy to Region 5 for review, by December 31, 2007, and complete the final Strategy by April 1, 2008. (This latter date assumes timely comments on the draft are provided by Region 5). If the State wishes to expedite its inspection planning, the State may base its strategy on the April 30, 2007 draft of the CMS, rather than waiting for the final guidance to be issued.

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

The OEPA EMS, Chapter 3 requires the following to be included in all inspection reports:

- Date of inspection,
- Purpose of inspection (CEI, CSI, O&M, etc.),
- Names of inspectors and facility representatives present,
- Completed Ohio EPA NPDES inspection checklist,
- Summary of all violations,
- Item by item description of deficiencies noted,
- Recommended corrective actions (if applicable) and time by which correction of deficiencies is requested,
- For CSI, a comparison of OEPA and facility self-monitoring data,
- Results of most recent DMR-QA study, if available,
- Any other information relating to entity's compliance status,
- Signature of person preparing report,
- Date of inspection mailed to entity, and
- Appropriate cc: list.

The EMS also recommends that for larger facilities a diary-type summary be maintained that is updated regularly and attached to each report. This is helpful when personnel changes occur in OEPA or with the permittee and is considered a "best practice" by Region 5.

Findings: Of the 15 inspection files reviewed, ten (67%) included reports that were consistent with the requirements and guidance specified in the OEPA EMS. The remaining 5 inspection files did not contain inspection reports consistent with the OEPA EMS.

The first two of the five files only included transmittal letters to their respective facility alerting them to the findings of their inspection along with compliance history from the OEPA Surface Water Information Management System (SWIMS) database. The third inspection file was a RECON inspection; however, it was associated with a Region 5 Lead multimedia inspection and only included a RECON checklist identifying a "not evaluated" rating pending a detailed U.S. EPA report. The fourth file mentioned an investigation into potential fraudulent effluent data, but did not contain a report or other data to document the investigation. The fifth and last inspection file was a Compliance Bio-monitoring Inspection (CBI)

that only included compliance history from OEPA SWIMS and not a Screening Bioassay Report form as provided for such inspections in the OEPA EMS.

Information Sources Used for this Element: 1, 3, 4, 5, and 7.

Recommendations and Actions: The State has advised the Region that it is in the process of revising its inspection planning and documentation guidance, and would like input from the Region on any suggestions we may have for improvements, beyond the findings expressed above. This input will be based on such things as observations made during recent joint or oversight inspections, “best practices” observed in other states and Regions, and recommendations stemming from recent inspection training.

3. The degree to which inspection reports are completed in a timely manner.

Findings: According to U.S. EPA’s Enforcement Management System (EMS), inspection reports generally should be distributed within 45 days of the inspection for sampling inspections and within 30 days for non-sampling inspections. OEPA’s EMS states that inspection reports for the same type of inspections should be prepared and mailed no more than 60 days and 30 days, respectively.

The file review showed that ten of the 15 inspection reports were completed within the required 30 or 45-day time period and thus met the U.S. EPA and OEPA EMS requirements. The five files that did not contain complete inspection reports (as mentioned in Element 2) could not be evaluated for timeliness.

Information Sources Used for this Element: 1, 3, 4, 5, and 7.

Recommendations and Actions: None.

Section 2: Review of State Enforcement Activity

4. The degree to which significant violations and supporting information are accurately identified and reported to EPA national databases in a timely and accurate manner.

Determination of SNC in the NPDES program involves violations of NPDES permit conditions of substantial concern to the Agency including:

- Violations of monthly and non-monthly effluent limits by 20 percent for toxic pollutants such as metals, and 40 percent for conventional pollutants such as total suspended solids, for two or more months during two consecutive quarterly review periods;
- Non-effluent violations such as bypasses or unpermitted discharges, which cause or have the potential to cause a water quality problem (e.g., beach closings);
- Permit schedule violations;

- Reporting violations including failure to submit timely discharge monitoring reports (DMRs) (filing a DMR more than 30 days late); and
- Violations of existing enforcement orders, including judicial or administrative orders.

The majority of these SNC violations are self-reported by the permittee in its periodic self monitoring reports. In addition, certain violations, termed Single Event Violations (SEVs), may result in SNC. According to final U.S. EPA guidance, SEVs are documented through compliance inspections, collection of information requests, state/tribal referrals, Discharge Monitoring Report comments, annual reports, and non-compliance reports. Single Event Violations include one-time events and long-term violations. The Interim Single Event Violation Data Entry Guide for PCS was issued to Regional Water and Enforcement Branch Chiefs for distribution to their States on September 30, 2005. The Final Single Event Violation Data Entry Guide for the Permit Compliance System (PCS) was issued on May 22, 2006.

For the subject review period, the OTIS pull showed that two single-event violations were identified at major facilities and five SEVs were identified at minor facilities. U.S. EPA reviewers found that seven of the 15 inspection files included violations that were SEVs and that were not recorded in PCS.

During the review period, the OTIS pull shows 88 major facilities (30.6%) were in SNC status, which is more than the national average of 19.8%. The OTIS pull also show no formal actions were taken and that there were two incidences of SNC manual overrides. In a subsequent review and correction of SNC data by OEPA, OEPA has determined that the SNC list has dropped from 88 to 37 majors out of a universe of 288. This modifies the SNC rate to 12.8%, which is less than the national average of 19.8%.

The OEPA EMS does not specifically address SNC manual overrides. However, it does discuss the use of four summary lists. These include the Preliminary SNC (PSL), Active Exception (AEL), Major facilities in SNC with initiated enforcement actions or permit appeals, and Resolved Exceptions (REL) lists. These lists are compared to the QNCR and discrepancies are addressed quarterly with a Watch List report. This process is of concern because data discrepancies and enforcement action entries that adversely affect QNCR production should be corrected in PCS prior to official QNCR submission. Failure to override false SNC (for example, failure to override a determination that a report was late, when the report was actually received on time, but entry into PCS was delayed) may result in an overstated SNC rate. Since the SNC rate for majors is one of the key measures against which OMB measures the health of the NPDES program, it is critically important that this statistic be as accurate as possible.

Ten major facility inspection files were reviewed. Two of these files include SNC violations that are correctly reported in PCS. A SNC that was discussed in a third

file was not included in PCS.

Information Sources Used for this Element: 1, 2, 3, 4, 5, 6, 7, and 11.

Recommendations and Actions: The Region recommends, and OEPA agrees, that OEPA update its EMS to address current requirements on identifying and reporting SEVs and begin entering them into PCS. We also suggest that OEPA update its EMS to address appropriate use of manual overrides when they are needed. A draft of the EMS should be provided to Region 5 by December 31, 2007 and a final version should be issued by April 1, 2008. This latter date presumes timely comments on the draft EMS are provided by Region 5. The State should begin entering SEVs into PCS as soon as possible, but no later than April 1, 2008.

In addition, by December 31, 2007, OEPA should ensure that monthly operating report data are input into PCS in a timely manner to produce an accurate QNCR.

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

OEPA's EMS includes the requirement that enforcement actions specify that sources come into compliance within a specific time frame.

Findings:

Of the 15 enforcement cases that were reviewed, five were handled through the use of Administrative Orders (AOs). All of the AOs appropriately included compliance schedules or requirements for injunctive relief.

Five of these enforcement cases were Judicial Consent Orders (COs). All of the COs appropriately included compliance schedules or requirements for injunctive relief.

The remaining five enforcement cases were informal Notices of Violation (NOVs). The NOVs were used to address the discovered violations, but in two cases did not bring the sources back into compliance. In these cases, multiple NOVs were issued for the same violations.

During its review, U.S. EPA also noted that the OEPA EMS states that Director Warning Letters (DWLs), another form of informal enforcement, could be used to address and resolve violations. No DWLs were found during the file review.

Information Sources Used for this Element: 2, 5, 6, 7, and 11.

Recommendations and Actions: The OEPA should investigate the use of multiple NOVs and determine whether or not their use is consistent with the expectations in its EMS in regard to continuing noncompliance. To the extent that it is determined

that the use of the multiple NOV_s is not consistent with the EMS, the OEPA should send a memo to enforcement staff advising them that the guidelines in the EMS are to be followed. These actions should be completed by March 31, 2008. See also Element 6 below which discusses the apparent impacts of the use of multiple NOV_s on the timeliness of escalated enforcement action.

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

Findings: According to U.S. EPA's EMS, facilities with SNC violations should return to compliance within the quarter following the SNC violation or the facility must receive a formal enforcement action from the administering authority that is timely and appropriate. The Ohio EMS does not identify specific time frames for the state to initiate an action to bring a facility back into compliance.

Timeliness

According to the OTIS data pull, forty-seven major facilities (16.3%) were in SNC for more than two consecutive quarters in FFY 2006. This is above the national goal of less than 2% and also above the national average of 8.9%.

In regard to the ten formal enforcement files that were reviewed, three (30%) had extensive histories of violations, and multiple NOV_s issued for those violations, prior to initiating formal enforcement that appeared to resolve the recurring violations. A fourth facility received only one NOV which brought the facility into compliance in ten days; however the NOV was not issued until three quarters had passed. These four enforcement files are considered untimely in that these facilities did not return to compliance within one quarter of the SNC violation first appearing on the QNCR.

Appropriateness

The OEPA EMS specifically addresses the U.S. EPA definition of SNC as one factor the OEPA uses in making enforcement decisions. The OEPA EMS also includes an enforcement screening worksheet and a table of Enforcement Response Criteria (Table VI) to assist in the determining the appropriate enforcement action. Table VI identifies particular situations in which they apply, and provides recommended enforcement responses.

All ten formal enforcement actions reviewed were appropriate in that they adhered to both EPA and OEPA guidance for the range of enforcement response and they returned the subject facilities to compliance.

In the same respect, four (80%) of the five informal enforcement actions reviewed were appropriate. However, numerous NOV_s were issued to the remaining facility which was in SNC for more than three quarters. In one case, the NOV returned the facility to compliance within 10 days; however the NOV was not issued within the first quarter, and consequently was not considered timely, as described above. The

reviewers believe formal enforcement was required for these facilities as described in U.S. EPA's EMS.

Information Sources Used for this Element: 2, 5, 6, 7, and 11.

Recommendations and Actions: We recommend that OEPA revise its EMS to include specific time frames for states to initiate and close out enforcement actions consistent with the U.S. EPA EMS. We also recommend that OEPA's EMS include instruction regarding the elevation of informal cases to formal enforcement when the situation is appropriate.

In response to these recommendations, OEPA will submit a draft of the EMS to Region 5 by December 31, 2007 and will prepare a final EMS by April 1, 2008, assuming timely comments on the draft EMS provided by the Region. OEPA also commits to do a better review of data prior to finalizing the QNCR, which will result in a more accurate SNC report and thereby Active Exceptions List.

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

Findings: Ohio Revised Code § 6111.09, the OEPA EMS, and the U.S. EPA Clean Water Act Settlement Penalty Policy, dated 1995, provide guidance for calculating the amount of a penalty for various environmental violations. These policies ensure violators do not obtain an economic advantage over their competitors, ensure penalties are consistent across the country, and provide for a logical calculation methodology.

Of the ten formal enforcement actions reviewed, three assessed monetary penalties. All three included documented calculations for both the gravity and economic benefit portions of the penalty or statements as to why economic benefit was not considered. In the other seven cases, penalties were not assessed.

Information Sources Used for this Element: 2, 5, and 7.

Recommendations and Actions: None.

8. Degree to which final enforcement actions take appropriate action to collect economic benefit and gravity portions of a penalty, in accordance with penalty policy considerations.

Findings: According to the OTIS data pulls, OEPA either did not assess any penalties, or did not enter them into PCS during FY 2006. OEPA acknowledged during the exit interview that they input penalty data into a state database that is not currently interfaced with PCS. From this database, OEPA is able to calculate statistics on the number of enforcement actions in FY 2006 that contained penalties.

Our file review showed that three of the seven final enforcement actions reviewed included a penalty component as described in Element 7. All three files contained documentation of penalties collected or scheduled to be collected.

Information Sources Used for this Element: 2, 3, 4, 7, and 11.

Recommendations and Actions: OEPA will be required to develop a transition plan for using ICIS-NPDES as the database of record, once the federal ICIS-NPDES policy statement is issued. This transition plan will require that the State commit to a schedule for inputting all currently required data elements (WENDB) as well as any newly identified required data elements (RIDE). OEPA will be asked to develop such a plan within the deadline established in the Policy statement, and to specifically address entry of penalty data to the extent that they are identified as RIDE.

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

Findings: Region 5 considered OEPA performance under its OEPA Division of Surface Water State Fiscal Year 06 Revised Section 106 Work Plan. In addition to the inspection targets described in Element 1, OEPA has committed to develop a compliance inspection database to track the number of inspections completed and their results, manage the discharge monitoring data, enforce compliance consistent with its EMS, and complete a review of the EMS and identify changes and updates for the next edition.

According to U.S. EPA's review, the following has occurred in regard to OEPA's workplan commitments:

- As described under Element 1, OEPA has met its work plan commitment for minor facility inspections but has not met the commitment for all major facilities.
- OEPA has developed the required compliance inspection database, as evidenced by review of the Division Surface Water Enforcement Reports.
- The review of major facilities in SNC shows 14 of 88 violations were due to non-receipt of discharge monitoring report (DMR) data. This potentially indicates that OEPA is not processing hard copy DMR data by the 15th of the following month, as required in its work plan.
- Overall, OEPA is operating its NPDES compliance and enforcement program consistent with its EMS.
- Work is progressing on the review of the State's EMS; the findings in this report will supplement that review.

Information Sources Used for this Element: 1, 2, 5, and 11.

Recommendations and Actions: U.S. EPA recommends that OEPA complete its review of its EMS and update it where needed.

In response, OEPA states that it will complete a review and provide a draft of the EMS for U.S. EPA review by December 31, 2007. A final version of the EMS will be developed by April 1, 2008, this date contingent upon the Region providing timely review of the draft.

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

Findings: The Permit Compliance System (PCS) policy statement that prescribes the minimum data requirement for entry into PCS was issued in 1985. Timeliness of data is based on a review of Quarterly Non-Compliance Reports (QNCRs), since these reports are used nationally to judge regional and state performance.

Formal Enforcement actions for major facilities are required to be entered in PCS. As described under Element 8, the OTIS pull showed that no formal enforcement actions were taken in FY 2006. Similarly, the OTIS pull showed no penalties were assessed and no violations were linked to enforcement actions. As mentioned earlier, OTIS does not represent correct data because OEPA's database system of record does not translate this information into PCS.

Additionally, based on the OTIS report, a relatively high number (31 out of 88, or 35%) of the major facilities flagged in SNC during FY06 represented compliance schedule violations. Moreover, 18 out of 47 (38%) of the major facilities in SNC for more than two consecutive quarters were listed because of compliance schedule violations. Though the file review did not reveal any erroneous recording of compliance schedule SNC, the rates noted above are much higher than those observed in other Region 5 states. Given the importance of the SNC rate statistic (as discussed previously) the Region would like OEPA to confirm that these instances of SNC are valid.

Information Sources Used for this Element: 1, 2, 3, 4, 7, and 11.

Recommendations and Actions: See recommendation under Element 4. In addition, by December 31, 2007, OEPA should evaluate its process for recording compliance schedule completion events in PCS, and if deficiencies are revealed, correct them by March 31, 2008.

In response to these recommendations, OEPA has agreed to evaluate its process and correct any deficiencies by the dates listed above.

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

Findings: The current national goal is for 80% or more of the enforcement actions found in PCS to be linked to violations. According to the OTIS pull (dated

December 27, 2006) OEPA has not input any of its enforcement actions beyond NOVs in PCS.

Of the 30 compliance monitoring and enforcement files reviewed, 10 of the files revealed PCS data reporting errors (e.g., PCS does not reflect the formal enforcement actions taken nor the penalties collected).

Information Sources Used for this Element: 1, 2, 5, and 11.

Recommendations and Actions: See recommendation under Element 8. OEPA has agreed to begin entering transition data by December 31, 2007, including enforcement case information and resulting penalties.

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

Findings: On March 9, 2007, U.S. EPA Region 5 provided OEPA an OTIS pull dated February 28, 2007 for all applicable data metrics, including Element 12. This OTIS pull formed the basis of our review. U.S. EPA asked OEPA to review the OTIS pull for accuracy and consistency with its records. OEPA responded that the inspection data was consistent with its records. However, enforcement and penalty data were not translated into PCS. This data is currently available through another database. As noted under a number of the previous Elements, the Region has recommended certain actions to evaluate the accuracy of the SNC data, and the completeness of the enforcement-related data.

Particularly noteworthy is the DMR entry rate for majors, at 100% against a national goal of 95%, and correctly coded limits for majors, at 98% also against a national goal of 95%. In addition, though there is no requirement to enter DMR data for minors, the State enters nearly 100% of these data. This will aid considerably in OEPA's ability to meet the deadlines in the ICIS-NPDES policy statement. As noted under a number of the previous elements, the Region has recommended certain actions to evaluate the accuracy of the SNC data, and the completeness of the enforcement-related data.

Description of data	OTIS Pull 2/28/07	OEPA DSW Data
Active NPDES Majors	288	288
Active NPDES Minors	2972	2972
Majors: Correctly coded limits	282	282
Majors: DMR entry rate	97.9	97.9
Majors in SNC	88	37

% Majors in SNC	30.6%	12.8%
Majors: SNC override rate	2.2%	2.2%
Non Major: DMR entry rate	99.9%	99.9%
Facilities inspected	1150	1150
Number of inspections	1285	3971
Sources issued a NOV	10	10
NOVs issued	15	15
Formal Actions: # of facilities	0	0
Formal Actions: # of actions	0	23
Penalties: Actions with penalties	0	–
Penalties: Total penalties	0	\$956,638

Information Sources Used for this Element: 3, 4, and 7.

Recommendations and Actions: See Recommendations in Elements 10.