

FINAL REPORT
September 30, 2010

**State Review Framework Report – Round 2
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I. EXECUTIVE SUMMARY

In October 2009, the Environmental Protection Agency (EPA) initiated the second State Review Framework (SRF) evaluation of the Virgin Island Department of Planning and Natural Resources (VIDPNR). The SRF is a program designed to ensure EPA conducts oversight of state compliance and enforcement programs for the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) program and the Clean Air Act (CAA) Stationary Source program in a nationally consistent and efficient manner. VIDPNR has not been delegated the RCRA program so it is not included in this review. The first SRF evaluation at VIDPNR was completed September 20, 2007 and was based on FY2006 data. The second SRF evaluation is based on fiscal year 2009 compliance and enforcement activities.

SRF evaluations look at twelve program elements covering: data (completeness, timeliness, and quality); inspections (coverage and quality); identification of violations, enforcement actions (appropriateness and timeliness); and penalties (calculation, assessment and collection). Reviews are conducted in three phases, including (1) analyzing information from the national data systems, (2) reviewing a limited set of state files, and (3) development of findings and recommendations. Considerable consultation is built into the process, to ensure EPA and the state understand the causes of issues, and to seek agreement on identifying the actions needed to address problems. The SRF Reports generated by the reviews are designed to capture the information and agreements developed during the review process in order to facilitate program improvements. The reports are designed to provide factual information and do not make determinations of program adequacy. EPA also uses the information in the reports to draw a “national picture” of enforcement and compliance, and to identify any issues that require a national response. SRF Reports are not used to compare or rank state programs.

A. Major State Priorities and Accomplishments (Provided by VIDPNR)

- **Priorities:** USEPA Priority Permits are the focus for issuance by WPC. DMRs were being filed by WPC staff but not tracked for accuracy. Many permittees stated they were not sent blank ones from the USEPA, or the permittee just submitted incomplete monitoring data.
- **Accomplishments:** The backlog of permits in the St. Thomas – St. John district was eliminated and all permits are current in that district. Several enforcement actions have also been initiated by draft NOVA submittals to the legal staff, most recently including the St. Croix district. In the Air Enforcement program, compliance monitoring has allowed the program to identify High Priority Violators and initiate enforcement actions when deemed necessary.
- **Best Practices:** Most recently, the review of Compliance Evaluation Inspection (CEI) Reports has improved from about annually to weekly and daily. As a result, new enforcement actions have been initiated. Additionally, in the air program, the use of a specific checklist assisted in outlining each component of the FCE process.

B. Summary of Results

- **Recommendations from Round 1:** There are no open recommendations from the Round 1 State Review Framework Review.
- **Summary of Round 2 Results:** The findings for the VIDPNR Round 2 SRF evaluation are listed below, by media, for Elements 1 through 12. For each Element, a finding is made in one of the four following categories:
 - **“Good Practice”** – The SRF data metrics and/or the file reviews indicate that activities, processes, or policies are being implemented exceptionally well and which the state is expected to maintain at a high level of performance. This may include specific innovative and noteworthy activities, processes, or policies that have the potential to be replicated by other states and that can be highlighted as a practice for other states to emulate. No further action is required by either EPA or the State.
 - **“Meets SRF Program Requirements”** – This indicates that no issues were identified for that element.
 - **“Area for State Attention”** – The SRF data metrics and/or the file reviews indicate that activities, processes, or policies are being implemented with minor deficiencies that the state needs to pay attention to strengthen its performance, but are not significant enough to require the region to identify and track state actions to correct. This can describe a situation where a state is implementing either EPA or state policy in a manner that requires self-correction to resolve concerns identified during the review. These are single or infrequent instances that do not constitute a pattern of deficiencies or a significant problem. These are minor issues that the State should self-correct without additional EPA oversight. However, the state is expected to improve and maintain a high level of performance.
 - **“Area for State Improvement”** – The SRF data metrics and/or the file reviews indicate that activities, processes, or policies that are being implemented by the state that have significant problems that need to be addressed and that require follow-up EPA oversight. This can describe a situation where a state is implementing either EPA or state policy in a manner requiring EPA attention. For example, these would be areas where the metrics indicate that the State is not meeting its commitments, there is a pattern of incorrect implementation in updating compliance data in the data systems, there are incomplete or incorrect inspection reports, and/or there is ineffective enforcement response. These would be significant issues and not merely random occurrences. Recommendations are required for these problems, and should have well defined timelines and milestones for completion. The recommendations will be monitored in the SRF Tracker.

CAA Results

- **Good Practice – None identified**
- **Meets SRF Program Requirements – None identified**
- **Area for State Attention – (1) Data Completeness, (4) Completion of Commitments, (5) Inspection Coverage, (7) Identification of Alleged Violations, (8) Identification of SNC and HPV, (11) Penalty Calculation Method**
- **Area for State Improvement – (2) Data Accuracy, (3) Timeliness of Data Entry, (6) Quality of Inspection or Compliance Evaluation Reports, (9) Enforcement Actions Promote Return to Compliance, (10) Timely and Appropriate**

CWA Results

- **Good Practice – None identified**
- **Meets SRF Program Requirements – (8) Identification of SNC and HPV**
- **Area for State Attention – (3) Timeliness of Data Entry**
- **Area for State Improvement – (1) Data Completeness, (2) Data Accuracy, (4) Completion of Commitments, (5) Inspection Coverage, (6) Quality of Inspection or Compliance Evaluation Reports, (7) Identification of Alleged Violations, (9) Enforcement Actions Promote Return to Compliance, (10) Timely and Appropriate, (11) Penalty Calculation Method, (12) Final Penalty Assessment and Collection**

C. Major Cross-Media Findings and Recommendations

VIDPNR's program has demonstrated progress in implementing recommendations from the Round 1 SRF Report. For water, the review documented that the program met SRF requirements for Identification of SNC and HPV.

The report includes recommendations for improvement in several areas, for the air program the most significant of which are data entry into EPA's data systems, enforcement actions to promote return to compliance and timely and appropriate enforcement. Similarly, for the water program, data entry, enforcement actions to promote return to compliance and timely and appropriate enforcement were identified as issues. Information was not available to make a definitive determination regarding the appropriateness of penalty calculations for the air or water programs, therefore recommendations have not been included in the report. EPA and VIDPNR look forward to working together on these items.

II. BACKGROUND INFORMATION ON STATE PROGRAM AND REVIEW PROCESS

A. General Program Overview (Provided by VIDPNR)

Agency Structure

Agency Structure: The Division of Environmental Protection (DEP) is under the Department of Planning and Natural Resources (DPNR) within the Government of the U.S. Virgin Islands (USVI). DPNR-DEP has offices in two districts, namely “St. Thomas – St. John” and “St. Croix”. DEP is further subdivided into compliance/enforcement focal groups including our Water Pollution Control (WPC) Program, the Air Pollution Control Program (APC), among many others, which all receive funding from Region II of the U.S. Environmental Protection Agency (USEPA).

Compliance/Enforcement Program Structure

Compliance/Enforcement Program Structure:

- The Water Pollution Control Program (WPC) is composed of the USEPA delegated Territorial Pollutant Discharge Elimination System (TPDES) and Terminal Facilities Licenses (TFL) which both issue permits, respectively every five years for TPDES and annually for TFL. The WPC program is centralized across districts by the supervision of an Environmental Program Manager.
- The APC program is decentralized with staff in both districts.

Roles and responsibilities

- The TPDES program is designed to regulate individual point sources and general stormwater discharges to waters of the USVI which includes for example harbors, bays, ponds, guts, swales, and drainage or irrigation systems. Examples of regulated facilities in the USVI, include reverse osmosis (RO) brine and other wastewater treatment (WWTF) at condominiums, hotels, resorts and marinas, as well as point source industrial sites. In the case of stormwater runoff, any construction site which disturbs more than one acre of land, is required to submit a Stormwater Pollution Prevention Plan (SWPPP) along with a Notice of Intent (NOI). The process requires clearance letters from two other DPNR divisions, namely the State Historical Preservation Office (SHPO) and the Division of Fish and Wild Life (DFL). The other aspect of WPC program is TFL which regulates all waterfront facilities with the potential for oil spills.
- The APC program is tasked with carrying out permitting, enforcement, compliance and reporting for all major sources, synthetic minor and minor sources in the territory. In addition, the program is involved in activities under our local regulations which include open burning permitting and citizen complaints. With the current structure, each employee is task with the following related to major and minor stationary sources:

- writing permits;
- preparing inspection checklists;
- completing inspection reports;
- conducting inspections;
- drafting enforcement action(s);
- resolving enforcement action(s);
- Maintaining program files.

Local Agencies Included/Excluded from Review

- Through WPC public notices all agencies are allowed to comment as well as initially when concerns overlap within DPNR or DEP. For example, an Earth Change Permit may require Stormwater coverage before issuance; or a Division of Coastal Zone Management (CZM) permit may further condition its permit to also require a complete TPDES application on file with WPC before issuance. In yet another example, a waterfront facility such as a TFL would also need a CZM permit.
- No local agencies were included in the APC review.

Resources

Water

- The WPC program includes six employees. There are four full-time employees (FTE) dedicated to the implementation of the TPDES program, including two inspectors for compliance monitoring, two permit writer and an environmental program manager. Eighty percent of another employee's time is committed to TFL as the inspector and writer. There are two DEP attorneys to implement all enforcement actions.
- Each district has a compliance inspector and a permit writer.
- There are still some needs for resources in the St. Thomas – St. John district such as vehicle repairs and computer-related needs which are more recently being addressed.

Air

- The APC program includes seven full time employees (FTEs) territory wide to include the following:
 - One Environmental Program Manager-St. Croix
 - One Environmental Engineer III-St. Croix
 - One Environmental Engineer I-St. Croix
 - One Environmental Specialist III-St. Croix
 - One Environmental Engineer I -St. Thomas
 - One Environmental Specialist III-St. Thomas
 - One Environmental Assessor-St. Thomas
- Major sources are being introduced each year. Also, the Greenhouse-Gas Tailoring Rule will introduce additional facilities to our current universe. Moreover, the island of St.

Croix is home to the HOVENSA refinery which is a mega site. Additional resources are needed to conduct Full Compliance Evaluation at this facility. The completion of task required for the success of the program is hindered by the need for additional employees.

- Furthermore, the division employs two full time attorneys to accommodate all media program. This, in turn, delays the issuance of enforcements actions.

Staffing/Training

Water

- The WPC program is currently not fully staffed however a new permit writer has been hired for the St. Thomas – St. John District and began in late August (before the close of this fiscal year).
- The new employee will need to attend the USEPA Permit Writer’s Training Course. Similarly, all WPC staff are required to attend relevant training in their areas of expertise and program-related activities, once funding is verified or established.
- During this fiscal year FY-10, the legal staff also held an inspection training to insure that enforcement actions would be stronger for settlement hearings.

Air

- The program is not fully staffed. An engineer hired in March of 2010 resigned on June 25, 2010. Subsequently, an Environmental Specialist I resigned on August 06, 2010.
- The division intends to hire additional staff to fulfill current and future tasks. In an effort to reward qualified employees that continue to fulfill workplan requirements, two Environmental Specialist I will be promoted to an Environmental Specialist II.

Data reporting systems/architecture

Water

Copies of WPC permits are transmitted to the USEPA and all TPDES permittees must further complete Discharge Monitoring Reports (DMRs) which are updated in the USEPA’s ICIS database. All inspection reports and enforcement actions are also provided to the USEPA and updated in ICIS.

Air

The program has an Environmental Engineer I on the island of St. Croix that is responsible for entering data into Aerometric Information Retrieval System/AIRS Facility Subsystem (AIRS/AFS) through the use of AIRS data sheets. Twenty percent of her time is dedicated to data entry. Quality Assurance and quality controls are implemented in the data entry process. To minimize errors, a quality assurance checklist is completed with signatures from the inspector, the data entry person and program manger. The inspectors meet with the data entry

personnel to ensure information entered is accurate and complete. The program manger verifies the entry. There is a backup data entry Environmental Engineer I in St. Thomas.

B. Process for SRF Review

The VIDPNR SRF Round 2 was initiated with an October 30, 2009 kick-off letter to Dr. Nadine Noorhasan, Director, Division of Environmental Protection, Virgin Island Department of Planning & Natural Resources from EPA, Region 2. The kick-off letter was followed up with a meeting in the Virgin Islands on November 16, 2009. During this meeting, the expectations and procedures of the SRF were reviewed and a tentative schedule for the SRF process was discussed. During April 2010, the onsite file reviews for each media took place at the individual Field Offices in St. Croix and St. Thomas. The fiscal year of the VIDPNR SRF review was 2010 which was based on FY2009 data.

State and EPA Contacts:

	State	EPA Region
SRF Coordinators	Verline Marcellin David Simon	Barbara McGarry
CAA	Verline Marcellin	Ken Eng Teresita Rodriguez
CWA	David Simon Anita Nibbs (formerly with WPC)	Douglas McKenna Jamie Geliga

III. OUTSTANDING STATUS OF RECOMMENDATIONS FROM PREVIOUS REVIEWS

There are no outstanding recommendations from EPA’s Round 1 review. However, recommended action items from Round 1 were not completed until mid-FY09, and were therefore not fully implemented before we reviewed the program again.

IV. FINDINGS AND RECOMMENDATIONS

The Findings for the VIDNPR Round 2 SRF evaluation are listed below, by media, for Elements 1 through 12.

CAA Program

CAA Element 1 – Data Completeness	
Degree to which the Minimum Data Requirements are complete.	
Finding:	Data completeness if an area for state attention.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input checked="" type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	<p>EPA identified 5 of the 11 data metrics for data completeness as potential concerns: 1E – Historical Noncompliance Counts: VI metric 40 1F – Informal Enforcement Actions: VI metric 0 1G – HPVs, number of new pathways/sources: VI metric 0 1I – Formal Actions: VI metric 0 1J – Assessed penalties: VI metric \$0</p> <p>For these metrics, the file review determined that the numbers in the metrics above are correct and no data completeness issues were noted. On April 14th, EPA trained VIDPNR staff on using OTIS to track and run reports to easily identify data needs should issues arise.</p>
Metric(s) and Quantitative Value:	1A – Major and Title V Universe Counts: VI metric 10 1B – Regulated source count for SM, NESHAP minors or other potentially minor Federally Reportable sources: VI metric 0 1C – Subprogram and subpart universe accuracy in AFS: VI metric 100% 1D – Compliance monitoring counts: VI metrics 5 FCEs, 1 PCE 1E – Historical Noncompliance Counts: VI metric 40 1F – Informal Enforcement Actions: VI metric 0 1G – HPVs, number of new pathways/sources: VI metric 0 1H – HPV Day Zero pathways with complete MDR reporting: VI metric 0 1I – Formal Enforcement Actions: VI metric 0 1J – Assessed penalties: VI metric \$0 1K - # of major sources missing CMS applicability: VI metric 0
State Response:	
Action(s):	It is expected that the data issues identified will be addressed by the recommendations noted in Element 2. No additional action required at this time.

CAA Element 2 – Data Accuracy	
Degree to which data reported into the national system is accurately entered and maintained (example, correct codes used, dates are correct, etc.).	
Finding	Data Accuracy with respect to Air Program/ Pollutant/ Compliance Status and other minor issues have not been accurately maintained. Both the file review and data metric support this finding.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	<p>Historical non-compliance count of 40 facilities (Metric 1E), along with a review of the data accuracy from the file review, indicates that approximately 75% of these facilities are incorrectly listed as in-violation. The review found that 75% of the 40 facilities are actually in-compliance or closed. This information needs to be updated in AFS.</p> <p>Data metric 2B indicated that 2 stack test results were not entered, when in actuality they</p>

	<p>were entered using the incorrect code. This error was corrected on-site during the file review. There were 2 other facilities due for stack testing and are HPVs because of this violation.</p> <p>File metric 2c revealed that facility data is mostly complete in AFS, but 12 of 17 files reviewed are lacking small updates such as correcting addresses and compliance status. On 4/14/10, EPA trained VIDPNR staff on using OTIS to track and run reports to easily identify data needs.</p>
Metric(s) and Quantitative Value:	<p>2A - # of HPVs over # of NC sources: VI metric 0</p> <p>2B – Stack test results, % without pass/fail and # of failures: VI metric 100% and 0</p> <p>2C - % of files reviewed where MDR data are accurately reflected in AFS: VI metric 29%.</p>
State Response:	
Action(s):	<ol style="list-style-type: none"> 1. By October 15, 2010, VIDPNR will correct data issues identified in the review. 2. By January 30, 2011, EPA and VIDPNR will develop a bi-annual data certification process which will include quarterly data quality meetings between EPA and VIDPNR. 3. By mid-year 2011, VIDPNR will implement the data certification process.

CAA Element 3 - Timeliness of Data Entry	
Degree to which the Minimum Data Requirements are timely.	
Finding:	VIDPNR is below the national goal of 100% for one of the data timeliness, and it is an area for state improvement.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	<p>VIDPNR is below the national goal of 100% for the data timeliness metrics, but above the national average. For metric 3B1, Percent compliance monitoring related to MDR actions reported <= 60 Days After Designation, VIDPNR's metric is 61.5% while the national average is 55.3%. For metrics 3A and 3B2, Percent HPVs and percent enforcement related MDR actions reported <= 60 Days after designation, VIDPNR had no metric for the review year (no new HPVs or enforcement actions entered).</p> <p>The state is above the national average for the data metric. However, they are below the national goal of 100%.</p>
Metric(s) and Quantitative Value:	<p>3A – Percent HPVs entered <=60 days after designation: VI metric 0/0</p> <p>3B – Percent compliance monitoring related MDR actions reported <= 60 Days After Designation:, VI metric 61.5% (Enforcement related MDRs: VI metric 0/0)</p>
State Response:	
Action(s):	Expect to address this finding with action items developed for Element 2.

CAA Element 4 - Completion of Commitments	
Degree to which all enforcement/compliance commitments in relevant agreements (i.e., PPAs, PPGs, categorical grants, CMS plans, authorization agreements, etc.) are met and any products or projects are completed.	
Finding:	VIDPNR's completion of commitments is an area for state attention.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input checked="" type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	<p>VIDPNR's file review metric for 4a, "Confirm whether all commitments pursuant to a traditional CMS plan (FCE every 2 yrs at Title V majors; 3 yrs at mega-sites; 5 yrs at SM80s) or an alternative CMS plan were completed", was 100%. VIDPNR had a unique program of only 10 Major facilities, 1 Mega site, and no SM80s in the review year.</p> <p>Of their Workplan commitments, they completed 10 of the 15 commitments. However, VIDPNR completed the most significant requirements such as completing their CMS strategy, developing and implementing necessary SOPs, and submitting copies of inspection reports to EPA.</p> <p>3 of the 5 commitments that were not addressed did not have enough evidence to determine completion, and 2 were issues such as correcting compliance status in AFS and issuing enforcement actions for facilities in violation and these issues are addressed under other SRF elements.</p>
Metric(s) and Quantitative Value:	<p>4A - Confirm whether all commitments pursuant to a traditional CMS plan (FCE every 2 yrs at Title V majors; 3 yrs at mega-sites; 5 yrs at SM80s) or an alternative CMS plan were completed: VI metric 100%.</p> <p>4B - Confirm the air compliance and enforcement commitments for the FY under review. Compliance and enforcement commitments listed are pulled from the FY08/09 Workplan: VI metric 67%.</p>
State Response:	
Action(s):	No further action required, will be covered under Element 6.

CAA Element 5 – Inspection Coverage	
Degree to which state completed the universe of planned inspections/compliance evaluations (addressing core requirements and federal, state and regional priorities).	
Finding:	Inspection coverage is an area for state attention.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input checked="" type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	<p>VIDPNR's CMS Plan required FCEs every 2 years at their Major facilities, and every 3 years at Mega sites. CMS also requires SM80s, but VIDPNR had none in the fiscal year reviewed. There were concerns around SM and minor coverage, but these are not required under VI's CMS Plan, therefore, the program requirements were met. Some evaluations, however, did not meet all the requirements of an FCE, so it was concluded that this is an area for state attention, and this issue will be addressed further under Element 6.</p>
Metric(s) and Quantitative Value:	<p>5A – Major FCE Coverage: VI metric 100%</p> <p>5B – SM80 FCE Coverage: VI metric 0</p> <p>5C – SM FCE and PCE Coverage: VI metric 0</p> <p>5D – Minor FCE and PCE Coverage: VI metric 0</p>

	5E - # of sources with unknown compliance status: VI metric 2 5F - # of investigations: VI metric 0 5G - Review of self-certifications: VI metric 100%
State Response:	
Action(s):	No further action required, will be covered under Element 6.

CAA Element 6 – Quality of Inspection or Compliance Evaluation Reports	
Degree to which inspection or compliance evaluation reports properly document observations, are completed in a timely manner, and include accurate description of observations.	
Finding:	Accurate documentation of compliance evaluations is an area for state improvement.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	<p>While facility files documented inspections that generally met the FCE criteria for the CMS policy (metric 6B), 3 of 6 FCE reports reviewed were lacking information (specifically noted were compliance and enforcement history, review of control equipment, and/or process parameters).</p> <p>It should also be noted that 50% equals 3 files, and they were often only missing one piece of the template or checklist; otherwise, they were quite thorough. Also, the templates and checklists were only completed in FY09, so full implementation could not be expected.</p> <p>We reviewed 17 facility files total, and 10 lacked sufficient information to determine compliance (metric 6C). Of these 5 were Minor facilities which do not require extensive reporting.</p>
Metric(s) and Quantitative Value:	6A - # of files reviewed with FCEs: VI metric 6 6B - % of FCEs that meet definition of an FCE per the CMS policy: VI metric 50% 6C - % of facility files reviewed that provide sufficient documentation to determine compliance at the facility: VI metric 41%
State Response	
Action(s):	<ol style="list-style-type: none"> By September 30, 2010 EPA will re-send VIDPNR example compliance monitoring reports. By January 1, 2011, VIDPNR will send EPA its first quarter inspection reports to ensure all template requirements are met including that a manager only approve reports that meet all example requirements.

CAA Element 7 - Identification of Alleged Violations	
Degree to which compliance determinations are accurately made and promptly reported in the national database based upon compliance monitoring report observations and other compliance monitoring information (e.g., facility-reported information).	
Finding:	Identification of violations is an area for state attention.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input checked="" type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	Of 17 facility files reviewed, 8 had accurate compliance determinations in the file (47%).

	Of the 9 facility files that were lacking accurate compliance determinations, 8 were Minors that did not have complete evaluations to determine compliance. One facility remains listed as unknown compliance even though it should be in violation, due to complications with EPA consent decree activity. Data entry issues associated with this measure will be addressed under Elements 2 and 3.
Metric(s) and Quantitative Value:	7A- % of facility files reviewed that led to accurate compliance determinations: VI metric 47% 7B - % of non-HPVs reviewed where the compliance determination was timely reported to AFS: VI metric 17% 7C1 - % of NC facilities that have had an FCE, stack test, or enforcement: VI metric 57% 7C2 - % of facilities with failed stack test and NC status: VI metric 0
State Response:	
Action(s):	No further action required.

CAA Element 8 - Identification of SNC and HPV	
Degree to which the state accurately identifies significant noncompliance/high priority violations and enters information into the national system in a timely manner.	
Finding:	Identification of HPVs is an area for state improvement.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	<p>The metric indicated that VIDPNR identified no new HPVs during the review year. EPA reviewed 17 files, but due to inadequate documentation as identified in Elements 6 and 7, could not definitively state that DPNR was correct in identifying no new HPVs. Of special concern is the issue of continuing violations vs. new violations at the same facility. This will be addressed in HPV training for the state.</p> <p>It should be noted that VIDPNR had correctly identified 4 HPVs of their Major universe of 10 facilities in other fiscal years.</p>
Metric(s) and Quantitative Value:	8A – HPV discovery rate, per major source: VI metric 0 8B – HPV discovery rate, per SM: VI metric 0 8C – % formal actions with prior HPV: VI metric 0 8D - % informal actions without prior HPV: VI metric 0 8E - % of sources with failed stack test that received HPV listing: VI metric 0 8F - % of violations in files reviewed that were accurately determined to be HPV: VI metric 75%
State Response:	
Action(s):	EPA will provide HPV training by March 15, 2011.

CAA Element 9 - Enforcement Actions Promote Return to Compliance	
Degree to which state enforcement actions include required corrective action (i.e., injunctive relief or other complying actions) that will return facilities to compliance in a specific time frame.	
Finding:	The state needs improvement in issuing enforcement actions to return facilities to compliance.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention

one):	X Area for State Improvement – Recommendations Required
Explanation:	VIDPNR had 4 unaddressed HPVs from prior years and 3 additional noncompliant Major sources for the review year, but no enforcement actions were issued. The 3 additional cases had violations that were not HPVs but that still must be addressed. 2 of the 4 HPVs are under EPA lead, and all 4 are on the Watch List. VIDPNR did have <i>draft</i> enforcement actions that were not issued to the facilities.
Metric(s) and Quantitative Value:	9A - # of formal enforcement responses reviewed: VI metric 0 9B - % of formal enforcement actions that include required corrective action to return the facility to compliance: VI metric N/A.
State Response:	
Action(s):	By November 30, 2010, EPA and VIDPNR will begin implementing formal quarterly enforcement meetings to discuss cases requiring timely and appropriate action, including timeliness, injunctive relief, and proposed penalty calculations. Minutes and action items will be prepared following each meeting to assist in Watch List development and forwarded to EPA SRF Coordinator to allow for close out of item at the conclusion of FY2011. Also, EPA and DPNR will additionally implement informal monthly HPV calls specifically for updates on HPV cases. If it is determined during these calls that VIDPNR is not following their Enforcement Response Plan, and if insufficient progress is discovered during the calls, a lead-change will be discussed for cases.

CAA Element 10 - Timely and Appropriate Action

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

Finding:	Timeliness of taking enforcement is an area for state improvement.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	VIDPNR has 4 HPVs, 2 of which were transferred to EPA control after the review year. All 4 are on the Watch List. VIDPNR must begin issuing enforcement actions for noncompliant and HPV facilities.
Metric(s) and Quantitative Value:	10A -Percent HPVs not meeting timeliness goals: VI metric 100% 10B - % of formal enforcement responses for HPVs reviewed that are addressed in a timely manner: VI metric 0 10C - % of enforcement responses for HPVs appropriately addressed: VI metric N/A
State Response:	
Action(s):	It is expected that this finding will be addressed by the action item identified for Element 9.

CAA Element 11 - Penalty Calculation Method

Degree to which state documents in its files that initial penalty calculation includes both gravity and economic benefit calculations, appropriately using the BEN model or other method that produces results consistent with national policy.

Finding:	Documentation of economic benefit calculations and consideration is an area for state attention.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	The metrics do not reflect the state's activity in penalty calculations because no

	enforcement actions with penalties were issued during the review year. However, draft penalty actions were reviewed and while penalty calculations were performed, there was not evidence of economic benefit calculations.
Metric(s) and Quantitative Value:	11A- % of reviewed penalty calculations that consider and include where appropriate gravity and economic benefit: VI metric N/A
State Response:	
Action(s):	1. EPA will conduct BEN training by January 30, 2011. 2. EPA recommends that VIDPNR update their Enforcement Response Plan to require economic benefit determinations in its penalty calculation sheets by January 30, 2011. It is expected that this finding will also be addressed by the action item identified for Element 9.

CAA Element 12 - Final Penalty Assessment and Collection	
Degree to which differences between initial and final penalty are documented in the file along with a demonstration in the file that the final penalty was collected.	
Finding:	Did not evaluate as no penalties were collected during FY2009.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	
Metric(s) and Quantitative Value:	
State Response:	
Action(s):	No action required. Determination not made. Will be evaluated through Recommendations in Element 9.

CWA Element 1 – Data Completeness	
Degree to which the Minimum Data Requirements are complete.	
Finding:	Data Completeness is an area for state improvement.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	The data metric 1A1 is showing 5 NPDES major individual permits. VIDPNR has indicated the correct number is 8. There are three additional majors (VI WAPA St. Thomas, Marriott Frenchman’s Reef, and St. Croix Renaissance) that need to be entered into ICIS as majors. However, VI WAPA St. Thomas has been classified as a “Major” but did not appear in the universe for Metric 1A1. During the review, VIDPNR informed EPA that Marriott Frenchman’s Reef and St. Croix Renaissance should be classified as majors due to flow as both facilities are 2.2 MGD and greater than 40 MGD, respectively.

	<p>The data metric 1B1 measures correctly coded limits for 4 major individual permits which do not correlate to the 5 major individual permits that are identified in data metric 1A1 that establishes the major individual permit universe. Data metrics 1B2 and 1B3 measure DMR entry rate based on DMRs expected which do not correlate to the universe identified in data metric 1A1. For example, data metric 1B2 only shows DMR entry for 4 majors and data metric 1B3 only shows DMR entry for 3 majors. Inaccurate data for this sub metric can potentially lead to inaccurate SNC determinations.</p> <p>The data metric 1D1 shows a very high noncompliance % of violations at non-majors – 95.5% which is in direct contrast to data metric 1D2 which states that there are 0 violations at non-majors via the ANCR.</p>
<p>Metric(s) and Quantitative Value:</p>	<p>Data Metrics</p> <p>1A1 - Active facility universe: NPDES major individual permits (Current)</p> <p>1A2 - Active facility universe: NPDES non-major general permits (Current)</p> <p>1A3 - Active facility universe: NPDES non-major individual permits (Current)</p> <p>1A4 - Active facility universe: NPDES non-major general permits (Current)</p> <p>1B1 - Major individual permits: correctly coded limits (Current)</p> <p>1B2 - Major individual permits: DMR entry rate based on DMRs expected (Forms/Forms) (1 Qtr)</p> <p>1B3 - Major individual permits: DMR entry rate based in DMRs expected (Permits/Permits) (1 Qtr)</p> <p>1B4 - Major individual permits: manual RNC/SNC override rate (1 FY)</p> <p>1C1- Non-major individual permits: correctly coded limits (Current)</p> <p>1C2 - Non-major individual permits: DMR entry rate based on DMRs expected (Forms/Forms) (1 Qtr)</p> <p>1C3 - Non-major individual permits: DMR entry rate based on DMRs expected (Permits/Permits) (1 Qtr)</p> <p>1D1 - Violations at non-majors: noncompliance rate (1 FY)</p> <p>1D2 - Violations at non-majors: noncompliance rate in the annual noncompliance report (ANCR)(1 FY)</p> <p>1E1- Informal actions: number of major facilities (1 FY)</p> <p>1E2 - Informal actions: number of actions at major facilities (1 FY)</p> <p>1E3 - Informal actions: number of non-major facilities (1 FY)</p> <p>1E4 - Informal actions: number of actions at non-major facilities (1 FY)</p> <p>1F1 - Formal actions: number of major facilities (1 FY)</p> <p>1F2 - Formal actions: number of actions at major facilities (1 FY)</p> <p>1F3 - Formal actions: number of non-major facilities (1 FY)</p> <p>1G1 - Penalties: total number of penalties (1 FY)</p> <p>1G2 - Penalties: total penalties (1 FY)</p> <p>1G3 - Penalties: total collected pursuant to civil judicial actions (3 FY)</p> <p>1G4 - Penalties: total collected pursuant to administrative actions (3 FY)</p> <p>1G5 - No activity indicator – total number of penalties (1 FY)</p>
<p>State Response:</p>	<p>The major facility list has been provided several times to the USEPA, however now that VIDPNR is aware that a NPDES Permit Rating Work Sheet needs to be completed, it will be done for Frenchman Reef and Renaissance. Also Hess Oil has become Hovensa for many years.</p> <p>Many facilities are in non-compliance due to no DMR submittal. An internal file review will be conducted by WPC staff and summer interns to identify and obtain missing DMRs. Several permittees have also requested NetDMRs. As an action item, the process may take a couple years to correct data if enforcement actions involving fines are required.</p>

Action(s):	<p>1 - By October 15, 2010, VIDPNR will correct data issues identified in the review.</p> <p>2 – By October 15, 2010, EPA determine why VI WAPA – St. Thomas is not appearing as a major when querying ICIS/OTIS.</p> <p>3 – By October 15, 2010, VIDPNR and EPA update the major universe in ICIS to ensure that all major permittees are properly categorized in ICIS.</p> <p>4 - By January 30, 2011, EPA and VIDPNR will develop a bi-annual data certification process.</p> <p>5 - By mid-year 2011, VIDPNR will implement the data certification process.</p>
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CWA Element 2 – Data Accuracy

Degree to which data reported into the national system is accurately entered and maintained (example, correct codes used, dates are correct, etc.).

Finding:	Data accuracy is an area for state improvement.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	<p>VIDPNR’s data metric for 2a, actions linked to violations: major facilities, is 0/0. The national goal is 80%.</p> <p>VIDPNR’s file review metric for 2b, percentage of files reviewed where data is accurately reflected in the national data system was 70%. 28 of 40 files reviewed contained accurate data that was reflected in OTIS. However, there were 12 files that did not match what was reported in EPA’s OTIS pull. For example, dates of inspections in OTIS are not consistent with the records that were reviewed; multiple inspection dates when inspection reports were only found for one inspection; or missing inspections entirely. VIDPNR staff stated that in the case of multiple inspections and missing reports, it is likely that the extra inspections may be Pump Station Inspections (PSIs) which usually are not documented but are entered into ICIS as CEIs.</p>
Metric(s) and Quantitative Value:	<p>Data Metrics</p> <p>2A - Actions linked to violations: major facilities (1 FY)</p> <p>File Review Metrics</p> <p>2b - % of files reviewed where data is accurately reflected in the national data system.</p>
State Response:	WPC will begin using SEV forms for PSI and categorize by associated WWTF.
Action(s):	By October 15, 2010, EPA will arrange a meeting with VI to discuss implementing NETDMR. Expect to address the remaining items with action items developed for Element 1.

CWA Element 3 - Timeliness of Data Entry

Degree to which the Minimum Data Requirements are timely.

Finding:	Timeliness of Data Entry is an area for state attention.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input checked="" type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required

Explanation:	<p>Metric 1B2 (Major individual permits: DMR entry rate based on DMRs expected) and metric 1C2 (Non-major individual permits: DMR entry rates based on DMRs expected) changed considerably between the time the data was pulled and the frozen data set. The official data pull for metric 1B2 stated that 11 out of 17 major permit DMRs were entered (64.7%), yet the frozen data set stated that there were 41 out of 51 major permit DMRs entered (80.4%). The official data pull for metric 1C2 stated there were 72 out of 191 non-major permit DMRs entered (37.7%) yet the frozen data set stated there were 118 out of 250 non-major permit DMRs entered (47.2%).</p> <p>Across the other metrics, there was minimal change. It is important to note that EPA handles data entry for VIDPNR and DMRs are entered as they are received by EPA. DMRs are sent directly to EPA from permitted facilities in VI with copies sent to VIDPNR.</p>
Metric(s) and Quantitative Value:	Comparison of frozen data set to Official Data Set which was pulled on February 1, 2010.
State Response:	Data entry is done through USEPA as stated above.
Action(s):	No action item is required.

CWA Element 4 - Completion of Commitments.	
Degree to which all enforcement/compliance commitments in relevant agreements (i.e., PPAs, PPGs, categorical grants, CMS plans, authorization agreements, etc.) are met and any products or projects are completed.	
Finding:	Completion of commitments is an area for state improvement.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	<p>VIDPNR's file review metric for % of planned inspections at majors is 100%. VIDPNR's file review metric for % of planned inspections at non-majors is 100%. VIDPNR's file review metric for % of planned inspections at other facilities such as construction stormwater and biosolids is 69%. While VIDPNR exceeded its commitments in accordance with its 2009 CMS for inspections at majors (by one) and non-majors (by forty two), eleven (11) construction sites were listed in the FY09 End of Year (EOY) report as having been inspected but the file review showed that some sites were inspected more than once so the number of CEIs at construction sites may actually be greater than 11; however, it is difficult to tell from reviewing the workplan and EOY report. There is no documentation in the EOY report as to whether two biosolids/sludge inspections were done as called for in the 2009 CMS.</p> <p>Additionally, VIDPNR's workplan commitments under 4b range from appears acceptable to significant issue. Significant issues include quality of stormwater inspection reports, lack of enforcement tracking system, review of DMRs to identify violations and issue timely and appropriate enforcement actions, and lack of formal record of SNAP meeting items discussed. Items of potential concern include transmittal of inspection reports to facilities once reports are drafted and reviewed, follow-up of Corrective Action Plans if required, and not inspecting major individual permittees annually as outlined in the workplan.</p>
Metric(s) and Quantitative Value:	<p>File Review Metrics</p> <p>4a - % of planned inspections completed.</p> <p>4b - Other Commitments. Delineate the commitments for the FY under review and describe what was accomplished. This should include commitments in PPAs, PPGs, grant agreements, MOAs, or other relevant agreements.</p>

State Response:	The USVI is not delegated for biosolids permitting. See also Elements 5, 6 and 10.
Action(s):	It is expected that this Element will be address by the following recommendations. <ul style="list-style-type: none"> • VIDPNR address inspection coverage under CWA Element 5. • VIDPNR address quality of inspection reports and CEIs under CWA Element 6. • VIDPNR address documenting SNAP meetings under CWA Element 10. • VIDPVR update the FY 2011 Work Plan to reflect changes to biosolids inspections by 10/15/2010.

CWA Element 5 – Inspection Coverage	
Degree to which state completed the universe of planned inspections/compliance evaluations (addressing core requirements and federal, state and regional priorities).	
Finding:	Inspection coverage is an area for state improvement.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	<p>VIDPNR’s data metric for 5A1, inspection coverage: NPDES majors is 100% which is above the national average of 57.9%. It is important to note that this universe is based on 5 majors in OTIS, not VIDPNR’s reported universe of 8. Based on the file review, it appears that inspection coverage is not 100% as Red Point WWTF (a major facility) was not inspected during FY2009 as an inspection report was not found in the file.</p> <p>VIDPNR reports 73 inspections for data metric 5B2, inspection coverage: NPDES non-major individual permits (1 FY). However, according to the Plain Language Guide, the metric only measures the number of facilities inspected, rather than the total number of inspections. As such, VIDPNR has over-reported inspections since their non-major universe is only 62 as indicated in the response to metric 1A3. Therefore, at this time, EPA is unable to determine what the inspection coverage is for non-majors.</p> <p>VIDPNR reports that the universe identified in metric 5C should actually be captured as part of metric 5B2 as the universe in metric 5C is comprised of construction stormwater permittees.</p> <p>The file review indicates that VIDPNR needs to address data entry for “other” inspections in metric 5C.</p>
Metric(s) and Quantitative Value:	Data Metrics 5A1- Inspection coverage: NPDES majors (1 FY) 5B1 - Inspection coverage: NPDES non-major individual permits (1 FY) 5B2 - Inspection coverage: NPDES non-major general permits (1 FY) 5C - Inspection coverage: NPDES other (not 5a or 5b) (1 FY)
State Response:	Red Point WWTF did not become effective until FY’10 and Airport Lagoon which it replaced using the same outfall, was being decommissioned so no inspection was conducted in FY’09. Total inspections included several general permit tracking no.(s) for stormwater coverage. Minus tracking no.(s), it is believed that all remaining non-major sites were inspected.
Action(s):	By October 15, 2010 EPA and VIDPNR will address data entry for “other” inspections in metric 5C and properly categorize construction stormwater inspections so that they are measured under metric 5B2. The major permit universe will be addressed under CWA Element 1.

CWA Element 6 – Quality of Inspection or Compliance Evaluation Reports	
Degree to which inspection or compliance evaluation reports properly document observations, are completed in a timely manner, and include accurate description of observations.	
Finding:	Quality of Inspection or Compliance Evaluation Reports is an area for state improvement.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	<p>EPA reviewed 43 inspection reports under file review metric 6a.</p> <p>2% of inspections reports reviewed were deemed complete. EPA’s review indicated that not all required information in the EPA inspection form checklist is recorded or maintained in the VIDPNR inspection reports. While VI is using the EPA 3560-3 form for inspections in addition to a narrative inspection report, some inspection reports referenced an outdated 3560-3 form instead of the most recent form available. Only 1 of 43 inspection reports (Krystal Springs) met all of the criteria in the EPA inspection checklist. Typical information that is missing from the inspection report include applicable permit requirements and citation of observations to permit requirements. Other minor information that is missing from some but not all reports includes information such as inspection start and end time, and phone number. While reports do provide some descriptive information about the physical description of the facility and NPDES regulated activities occurring at the site, more information is recommended for the majority of reports. However, the information that is missing is not critical to determining compliance as it is descriptive information about the facility or the facility's processes.</p> <p>60% of inspection reports reviewed under file metric 6c did provide sufficient documentation to lead to an accurate compliance determination.</p> <p>33% of the inspection reports reviewed were timely. 14 of 43 inspection reports reviewed were completed within 30 days. There were 13 reports that were submitted after 30 days but less than 55 days. However, there were 16 reports that were in excess of 55 days. Some reports were as many as more than 200 days late with the latest report being 294 days after the inspection.</p> <p>It is important to note that there were several reports that referenced an obsolete EPA 3560-3 form from September 1994 instead of the most recent version available from April 2006. In addition, there was no documentation in the file that inspection reports were transmitted to the facility after they were reviewed and approved.</p> <p>Generally, VIDPNR’s inspection reports contain information necessary for compliance determinations and are completed in a timely manner (within 1.5 months). This is an area for further attention for the state to ensure appropriate information is included in inspection reports.</p>
Metric(s) and Quantitative Value:	<p>File Review Metrics</p> <p>6a - # of inspection reports reviewed.</p> <p>6b - % of inspection reports reviewed that are complete.</p> <p>6c - % of inspection reports reviewed that provide sufficient documentation to lead to an accurate compliance determination.</p> <p>6d - % of inspection reports reviewed that are timely.</p>

State Response:	The current EPA form 3560 will be used. Reports will be faxed or e-mailed to permittee and added to the file, then original will be hand delivered. The fax or email will act as a record for the file. Follow-up inspections will be done routinely to ensure compliance. The new program manager will send reports to EPA via e-mail distribution list. Timeliness of the reports is also a function of the individual inspector.
Action(s):	<ol style="list-style-type: none"> 1. By October 15, 2010, VIDPNR should ensure that all field office staff utilize the most recent version of EPA Form 3560-3 (April 2006). 2. By January 1, 2011, VIDPNR should revise and submit to EPA for review, its SOP for inspection report completion and transmittal. It is recommended that a formal SOP be drafted outlining the internal deadlines for circulating within DEP staff as well as procedures for documenting transmittal of inspection reports to permittees. 3. By January 1, 2011, VIDPNR should develop and implement a SOP to address a permittee's failure to respond to Corrective Action Plan (CAP) requests, if not received by the deadline. 4. By January 1, 2011, VIDPNR should develop and implement an internal tracking system to keep track of inspections, CAP deadlines, pending enforcement actions, etc.

CWA Element 7 – Identification of Alleged Violations	
Degree to which compliance determinations are accurately made and promptly reported in the national database based upon compliance monitoring report observations and other compliance monitoring information (e.g., facility-reported information).	
Finding:	VIDNPR needs to properly quantify inspection findings and enter SEVs into ICIS as it is part of the WENDB elements.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input checked="" type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	<p>Data metric 7A1 and 7A2 indicated that VIDPNR reported 0 SEVs. VIDPNR does identify single event violations and reported them via the EPA Form 3560-3. However, SEVs have not been entered into ICIS. The state indicated that they were not informed until recently that SEV data entry required the use of a different form by DECA-CAPSB. Of 18 inspection reports that noted violations, the review team noted that there were 36 SEVs. Of the 36 SEVs, there were 36 non-SNC SEVs and 0 SNC SEV's.</p> <p>Under data metric 7b, zero (0) facilities had unresolved compliance schedule violations at the end of the fiscal year. The national average is 35.8%.</p> <p>The data metric indicated 4 major facilities with DMR violations.</p> <p>All (43) inspection reports reviewed led to compliance determinations; however, the review team identified at least 8 inspection reports or 19% of reports reviewed that appeared to have inaccurate compliance determinations based on the findings in the inspection report and SEVs identified. For example, eight (8) inspection reports were identified as being in compliance but SEVs were identified at the same time.</p> <p>While SEVs are identified during inspections, they should be promptly entered into ICIS. EPA has provided additional guidance to VIDPNR. Additionally, EPA has determined that SEVs have been entered for 9 facilities since frozen data pull occurred.</p>

Metric(s) and Quantitative Value:	Data Metrics 7A1 - Single-event violations at majors (1 FY) 7A2 - Single-event violations at non-majors (1 FY) 7B - Facilities with unresolved compliance schedule violations (at end of FY) 7C - Facilities with unresolved permit schedule violations (at end of FY) 7D - Major facilities with DMR violations (1 FY) File Review Metrics 7e - % of inspection reports or facility files reviewed that led to accurate compliance determinations.
State Response:	SEV forms will be completed routinely and included with report to EPA for all new inspections. In some cases the inspector granted compliance status for minor violations. In the future, all non-compliance will be designated as such.
Action(s):	No further action required.

CWA Element 8 – Identification of SNC and HPV

Degree to which the state accurately identifies significant noncompliance/high priority violations and enters information into the national system in a timely manner.

Finding:	VIDPNR does not identify SNC from SEVs.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	VIDPNR's SNC rate for majors was 80% which is above the national average of 24.2%. Of 18 inspection reports that noted violations, the review team noted that there were 36 SEVs. Of the 36 SEVs, there were 36 non-SNC SEVs and 0 SNC SEV's. The review team reviewed SEVs to determine if SEVs met SNC definitions for majors and determined that no SEVs for majors met SNC definitions. Of the four (4) majors in SNC, SNC violations were not the result of SEVs determined through inspections.
Metric(s) and Quantitative Value:	Data Metrics 8A1 Major facilities in SNC (1 FY) 8A2 SNC rate: percent majors in SNC (1 FY) File Review Metric 8b - % of single event violation(s) that are accurately identified as SNC or Non-SNC. 8c - % of single event violation(s) identified as SNC that are reported timely.
State Response:	N/A
Action(s):	No further action required.

CWA Element 9 – Enforcement Actions Promote Return to Compliance

Degree to which state enforcement actions include required corrective action (i.e., injunctive relief or other complying actions) that will return facilities to compliance in a specific time frame.

Finding:	Enforcement actions promoting a return to compliance is an area for state improvement.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required

Explanation:	<p>EPA reviewed one (1) enforcement file (9a) as only one action was taken during FY2009 according to VIDPNR staff. The enforcement action was taken against an unpermitted facility. There were no actions taken against any permitted facilities in FY2009 as a result of noncompliance.</p> <p>There were 0 enforcement responses for majors in VI that have returned or will return a source in SNC to compliance.</p> <p>100% of enforcement responses that have returned or will returned a source with non-SNC violations to compliance (9c). The enforcement action is still in settlement phase.</p> <p>As a result of the file review, the review team found several instances where enforcement actions would have been appropriate but none were taken. For example, DMR reviews for minor and major facilities showed gross exceedances of effluent limits but it did not appear that DMRs were being reviewed. In addition, enforcement action whether it be informal or formal may be appropriate where Corrective Action Plans were requested and not received within the specified timeline.</p> <p>In response to recommendations included in the Round 1 SRF report, on December 30, 2008, VIDPNR indicated it would adopt the federal Enforcement Response Policy.</p>
Metric(s) and Quantitative Value:	<p>File Review Metric</p> <p>9a - # of enforcement files reviewed</p> <p>9b - % of enforcement responses that have returned or will return a source in SNC to compliance.</p> <p>9c - % of enforcement responses that have returned or will returned a source with non-SNC violations to compliance.</p>
State Response:	<p>See Element 1 regarding DMRs. Generally it has been the practice to include DMR violations with a spill or similar type violation. Exceedances will be reviewed by the new permit writer (once hired) for the purpose of taking enforcement action.</p>
Action(s):	<p>By October 15, 2010, VIDPNR should confirm to EPA that it is using the federal Enforcement Response Policy for water violations or indicate to EPA that VIDPNR intends to develop its own ERP. The due date will be revised if VIDPNR selects that latter option.</p>

CWA Element 10 - Timely and Appropriate Action	
Degree to which a state takes timely and appropriate enforcement actions in accordance with policy relating to specific media.	
Finding:	Timely and appropriate action is an area for state improvement.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	<p>EPA's review of the data metric 10A indicated that 60% of majors did not have timely action which is above the national average of 18%. The national goal is less than 2%. All 3 of the facilities have appeared on the Watch List over throughout FY2009. One facility appears to have been in SNC as a result of a data error. Another facility has been addressed through a federal consent order and has since come off the Watch List. EPA is now considering taking enforcement action against the remaining SNC facility due to lack of formal action by VIDPNR. However, this metric is not a true indicator of SNC in VIDPNR as it does not capture the universe of 8 majors.</p> <p>No enforcement actions reviewed addressed SNC.</p>

Metric(s) and Quantitative Value:	Data Metric 10A - Major facilities without timely action (1 FY) File Review Metric 10b - % of enforcement responses reviewed that address SNC that are taken in a timely manner. 10c - % of enforcement responses reviewed that address SNC that are appropriate to the violations. 10d - % of enforcement responses reviewed that appropriately address non-SNC violations. 10e - % enforcement responses for non-SNC violations where a response was taken in a timely manner.
State Response:	WPC is prepared to resume SNAP calls. Only St. Croix WAPA remains on the EPA watchlist as SNC.
Action(s):	By November 30, 2010, EPA and VIDPNR will begin implementing quarterly meetings to discuss cases requiring timely and appropriate action, including timeliness, injunctive relief, and penalty calculations. Minutes and action items will be prepared following each meeting to assist in Watch List implementation and forwarded to EPA SRF Coordinator to allow for close out of item at the conclusion of FY2011. VIDPNR update the major permit universe which will be addressed under CWA Element 1.

CWA Element 11 - Penalty Calculation Method	
Degree to which state documents in its files that initial penalty calculation includes both gravity and economic benefit calculations, appropriately using the BEN model or other method that produces results consistent with national policy.	
Finding:	Economic benefit calculation is an area for state improvement.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	<p>0% of penalty calculations considered and included where appropriate economic benefit.</p> <p>The State has a Civil Penalty Policy which was approved and implemented on July 10, 2003. The Civil Penalty Policy assesses penalties based on a matrix. The matrix is based on the potential for harm and the extent of deviation from a statutory or regulatory requirement. The matrix only considers gravity and not economic benefit. The policy also states that economic benefit be considered when penalties are assessed and added when a violation results in significant economic benefits to the violator. Of the one (1) penalty action the review team looked at, economic benefit was not considered nor was there an explanation in the file as to why economic benefit was not considered.</p>
Metric(s) and Quantitative Value:	11a - % of penalty calculations that consider and include where appropriate gravity and economic benefit.
State Response:	We intend to revise the economic benefits section of our enforcement matrix.
Action(s):	<ol style="list-style-type: none"> 1. EPA will conduct BEN training by January 30, 2011. 2. EPA recommends that VIDPNR issue a department-wide SOP requiring economic benefit determinations in its penalty calculation sheets by January 30, 2011. It is expected that this finding will also be addressed by the action item identified for Element 9.

CWA Element 12 - Final Penalty Assessment and Collection	
Degree to which differences between initial and final penalty are documented in the file along with a demonstration in the file that the final penalty was collected.	
Finding	Did not evaluate as no penalties were collected during FY2009.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	
Metric(s) and Quantitative Value:	
State Response:	N/A
Action(s):	It is expected that this Element will be addressed under Element 9.

State Review Framework Round 2

Virgin Islands Draft Report

Direct Implementation of the RCRA Enforcement and Compliance Program

FINAL 7/9/2013

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I. EXECUTIVE SUMMARY

Major Issues

The SRF review of Region 2's Virgin Islands RCRA program identified the following major issues:

- The program is not consistently making accurate compliance or SNC determinations.
- Inspection reports are taking one year on average to complete, which is causing many violation determinations and enforcement actions to be issued late.
- The program does not always take timely and appropriate enforcement action.
- Inspection data is not accurately or timely entered into RCRAInfo.

Summary of Programs Reviewed

Resource Conservation and Recovery Act Subtitle C

The problems which necessitate regional improvement and require recommendations and actions include the following:

- Element 2 — Data Accuracy: Some data from inspections are not entered into RCRAInfo.
- Element 6 — Inspections Report Quality: The program's inspection reports were not completed in a timely manner.
- Element 7 — Identification of Alleged Violations: The program does not always classify violations correctly or report them to RCRAInfo.
- Element 8 — Identification of SNC and HPV: The program does not always make accurate compliance determinations with regard to SNC status.
- Element 10 — Timeliness of Enforcement Actions: The program does not always take timely and appropriate enforcement action.

Areas meeting SRF program requirements or with minor issues for correction include:

- Element 1 — Data Completeness
- Element 3 — Data Timeliness
- Element 4 — Completion of Commitments
- Element 5 — Inspection Coverage
- Element 9 — Enforcement Actions Promote Return to Compliance
- Element 11 — Penalty Calculations
- Element 12 — Penalty Documentation and Collection

II. BACKGROUND INFORMATION ON DIRECT IMPLEMENTATION PROGRAM AND REVIEW PROCESS

The State Review Framework (SRF) is a program designed to ensure EPA conducts oversight of state and EPA direct implementation, compliance and enforcement programs in a nationally consistent and efficient manner. Reviews look at 12 program elements covering: data (completeness, timeliness, and quality); inspections (coverage and quality); identification of violations, enforcement actions (appropriateness and timeliness); and penalties (calculation, assessment and collection). Reviews are conducted in three phases: analyzing information from the national data systems; reviewing a limited set of state files; and development of findings and recommendations. Considerable consultation is built into the process, to ensure EPA and the state understand the causes of issues, and to seek agreement on identifying the actions needed to address problems. The Reports generated by the reviews are designed to capture the information and agreements developed during the review process in order to facilitate program improvements. The reports are designed to provide factual information and do not make determinations of program adequacy. EPA also uses the information in the reports to draw a “national picture” of enforcement and compliance, and to identify any issues that require a national response. Reports are not used to compare or rank state programs.

A. GENERAL PROGRAM OVERVIEW

Agency Structure: Region 2 directly implements the RCRA program in the Virgin Islands. Region 2 New York, Division of Enforcement & Compliance Assistance, and the Caribbean Environmental Protection Division split the inspection workload in the Virgin Islands. Region 2 New York holds most of the enforcement documentation for all inspections and actions concerning RCRA facilities.

Compliance/Enforcement Program Structure: None

Roles and responsibilities: Since its inception, the goal has been for the Caribbean Environmental Protection Division (CEPD) to be responsible for independently developing and implementing hazardous waste programs under the Resource Conservation and Recovery Act (RCRA) in Puerto Rico and the U.S. Virgin Islands. CEPD’s Response and Remediation Branch (RRB) has responsibility for the core RCRA program in the Caribbean. RRB performs their own targeting, inspections, and enforcement, and is responsible for setting and meeting their own goals.

Nevertheless, RRB and Region 2’s RCRA Compliance Branch (RCB) have a workplan agreement in place and are currently working on the development of a new workplan for FY 2011. This workplan serves to prevent duplication of effort and to ensure that activities performed by RRB and RCB complement each other. Due to resource and expertise constraints, RCB coordinates with RRB to perform inspections and enforcement at air emission facilities, landfills, and certain other hazardous and solid waste facilities. Both RCB and RRB work closely together to coordinate with each other to ensure the effective implementation of a full RCRA compliance and enforcement program in the Caribbean.

RCB continues to coordinate with RRB at the beginning of each fiscal year to ensure that the Region’s Annual Commitment System (ACS) commitments in Puerto Rico and the VI are met. CEPD has the lead in meeting the Region’s RCRA ACS commitments in the Caribbean; however, RCB generally has the lead in performing RCRA 40 CFR 264/265 Subpart BB and CC inspections and may assist and perform other inspections as well. RCB also has the lead in addressing the solid waste facilities and dumps in Puerto Rico and the Virgin Islands.

RCB and RRB are each responsible for entry of their own data into the applicable program databases (RCRAInfo and ICIS).

In the past, RCB provided training to RRB inspectors on inspections, regulations, data entry, etc. and continues to do so on an as-needed basis.

RCB and RRB communicate often to ensure effective program implementation. Owing to its large reservoir of experience, RCB also serves as a source of advice and consultation for RRB.

Resources:

Number of RCRA Enforcement FTEs:	2
Number of Corrective Action and Permitting FTEs:	7
<u>Total Number of RCRA Positions (Enforcement, Corrective Action, Permitting)*</u>	<u>9</u>
<u>Total Number of Certified RCRA Inspector**:</u>	<u>2</u>

* including 1 vacancy

** out of 9 RCRA positions

Staffing/Training: The staffing level for this program consists of 2 RCRA Enforcement FTEs divided among 9 employees that perform RCRA Enforcement, Corrective Actions, and Permitting functions. Currently, CEPD has eight RCRA positions filled and one vacancy. CEPD is in the process of hiring the vacant position. Currently, two of the eight employees occupying the RCRA positions are certified RCRA inspectors. This program is developed based on the two enforcement FTEs assigned to CEPD, since CEPD expects to certify three other employees as RCRA inspectors by the end of FY 2009.

Data reporting systems/architecture: None

B. PROCESS FOR SRF REVIEW

Review Period: Reviewed files for Fiscal Year 2009.

Key Dates: Initial regional notification was sent to Region 2 on April 5, 2010, the preliminary data analysis was sent June 29, 2010, and the on-site review was July 12-14, 2010.

Communication with the Region: OECA and Region 2 began planning for the review in April 2010 with initial discussions and a kick-off meeting to discuss the SRF review process. After the

initial discussions were held, the first step was to identify the universe of inspection and enforcement files to use in selecting the files for the on-site review. The team downloaded the data metrics and underlying data from the OTIS web site in order to analyze the data and to select the files to be reviewed. After analyzing the data and preparing the list of files for review, a formal letter was sent to the Region on April 5, 2010 that presented the data metrics, identified the files for inspection, and outlined the main data issues. The on-site review began July 12, 2010 with an entrance meeting with Region 2. On July 14, 2010 an exit meeting was conducted to provide the review team's initial findings based on the data analysis and file reviews.

EPA headquarters and regional lead contacts for review: The EPA headquarters review team consisted of Susan Gilbertson, Paul Karaffa, Allison Donohue, and Chad Carbone. The regional contacts were Dore LaPosta, Barbara McGarry, Leonard Voo, Ariel Iglesias, Eduardo Gonzalez, Norman Rost, and George Meyer.

III. STATUS OF OUTSTANDING RECOMMENDATIONS FROM PREVIOUS REVIEWS

During the first SRF review of the Virgin Islands compliance and enforcement programs, Region 2 and the Virgin Islands identified a number of actions to be taken to address issues found during the review. There are no current outstanding SRF recommendations. Appendix A contains a comprehensive list of completed and outstanding actions for reference.

IV. FINDINGS

Findings represent OECA’s conclusions regarding the issue identified. Findings are based on the Initial Findings identified during the data or file review, as well as from follow-up conversations or additional information collected to determine the severity and root causes of the issue. There are four types of findings, which are described below:

Finding	Description
Good Practice	This describes activities, processes, or policies that the SRF data metrics and/or the file reviews show are being implemented exceptionally well and which the Region is expected to maintain at a high level of performance. Additionally, the report may single out specific innovative and noteworthy activities, process, or policies that have the potential to be replicated by States or regions and that can be highlighted as a practice for other states to emulate. No further action is required by either EPA or the region.
Meets SRF Program Requirements	This indicates that no issues were identified under this Element.
Areas for Regional* Attention	This describes activities, processes, or policies that the SRF data metrics and/or the file reviews show are being implemented with minor deficiencies that the Region needs to pay attention to strengthen its performance, but are not significant enough to require the region to identify and track region actions to correct. This can describe a situation where a Region is implementing either EPA or Region policy in a manner that requires self-correction to resolve concerns identified during the review. These are single or infrequent instances that do not constitute a pattern of deficiencies or a significant problem. These are minor issues that the Region should self-correct without additional EPA oversight. However, the Region is expected to improve and maintain a high level of performance.
Areas for Regional * Improvement – Recommendations Required	This describes activities, processes, or policies that the metrics and/or the file reviews show are being implemented by the region that have significant problems that need to be addressed and that require follow-up EPA oversight. This can describe a situation where a region is implementing either EPA or State policy in a manner requiring EPA attention. For example, these would be areas where the metrics indicate that the Region is not meeting its commitments, there is a pattern of incorrect implementation in updating compliance data in the data systems, there are incomplete or incorrect inspection reports, and/or there is ineffective enforcement response. These would be significant issues and not merely random occurrences. Recommendations are required for these problems that will have well defined timelines and milestones for completion. Recommendations will be monitored in the SRF Tracker.

Element 1 Data Completeness. Degree to which Minimum Data Requirements are complete.

1-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input checked="" type="checkbox"/> Area for Regional Attention <input type="checkbox"/> Area for Regional Improvement – Recommendations Required
	Finding	Violation and enforcement data in the national data system, RCRAInfo, was not complete.
	Explanation	<p>The review team found discrepancies between RCRAInfo and regional files regarding the number of sites:</p> <ul style="list-style-type: none"> • With violations determined at any time (metric 1c1) • With new significant noncompliance (SNC, 1e1) • In SNC (1e2) • With a formal action (1f1 and 1f2) <p>A data entry error associated with three facilities created all of these discrepancies.</p> <p>To improve performance in this area, OECA recommends the region complete refresher RCRAInfo training. However, given the finding of Area for Regional Attention, this is not a required action.</p>
	Metric(s) and Quantitative Value	1c1 — Number of sites with violations determined at any time: 6 1e1 — Number of sites with new SNC: 0 1e2 — Number of sites in SNC: 1 1f1 — Formal action: Number of sites: 1 1f2 — Formal action: Number taken: 1
	Regional Response	The Region agrees with this assessment. The Region’s comments on the preliminary data assessment had identified data issues which were the result of incorrect data entry into RCRAInfo and stated refresher training would be provided as necessary.
	Recommendation	

Element 2 Data Accuracy. Degree to which data reported into the national system is accurately entered and maintained (example, correct codes used, dates are correct, etc.).

2-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for Regional Attention <input checked="" type="checkbox"/> Area for Regional Improvement – Recommendations Required
	Finding	Some data from inspections are not entered into RCRAInfo.

Explanation	The review team found that inspection findings were not entered in RCRAInfo after completing inspection reports. This information is critical to inform the public of inspection findings and compliance statuses.
Metric(s) and Quantitative Value	2c — Percentage of files reviewed where mandatory data are accurately reflected in the national data system: 7/11 = 64%
Regional Response	<p>The Region will revise DECA-RCB-SOP 502 within 90 days to address data entry issues. The Region typically does not develop, and has not developed, annual inspection schedules; therefore, we have no FY2011 inspection schedule to provide to OECA. However, OECA may at its discretion monitor the Region's implementation of the SOP once it has been made final.</p> <p>The Region disagrees with the assertion that the first day of inspection was not always entered as the inspection date in RCRAInfo. Although OECA's SRF RCRA File Review metric Summary Form does not indicate which inspection(s) is at issue, the Region believes OECA is referencing the Hovensa inspections. Hovensa is the only VI facility listed in RCRAInfo with two CEIs in FY 2009. The Region considers the two inspections at Hovensa to be two separate inspections. The August inspection was an inspection of the LQG component of Hovensa and the September inspection was of the TSDF component of Hovensa.</p>
Recommendation	<p>2.1: Region 2 should develop an SOP within 90 days of finalization of this report to ensure accurate data entry of inspection and violation information.</p> <p>2.2: After completing the SOP, Region 2 will provide OECA with a sampling of complete files to demonstrate accurate data entry. This should be completed by within 180 days of finalization of this report. OECA will follow up to review progress toward implementation.</p>

Element 3 Timeliness of Data Entry. Degree to which the Minimum Data Requirements are timely.

3-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for Regional Attention <input type="checkbox"/> Area for Regional Improvement – Recommendations Required
	Finding	Virgin Islands production data for FY 2009 was compared to the FY 2009 frozen data set. Data entry has been timely.
	Explanation	Production data for FY 2009 was compared to the FY 2009 frozen data set used for this review. Frozen data represents the data that existed in the system on a date soon after the close of FY 2009, whereas production data reflects current values. There were no serious discrepancies between the two data sets, which demonstrate that Region 2 entered its Virgin Islands FY 2009 data in a timely manner.
	Metric(s) and Quantitative Value	
	Regional Response	

	Recommendation	
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Element 4 Completion of Commitments. Degree to which all enforcement/compliance commitments in relevant agreements (i.e., PPAs, PPGs, categorical grants, CMS plans, authorization agreements, etc.) are met and any products or projects are completed.

4-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for Regional Attention <input type="checkbox"/> Area for Regional Improvement – Recommendations Required
	Finding	Region 2 completed their planned commitments for FY 2009, including appropriate inspection coverage.
	Explanation	
	Metric(s) and Quantitative Value	<p>5a — Inspection coverage for operating TSDFs (2 FYs):</p> <ul style="list-style-type: none"> • Region 2: 1/1 = 100% • National Goal = 100% • National Average = 85.9% <p>5b — Inspection coverage for LQGs (1 FY):</p> <ul style="list-style-type: none"> • Region 2: 1/1 = 100% • National Goal = 20% • National Average = 26.7% <p>5c — Inspection coverage for LQGs (5 FY):</p> <ul style="list-style-type: none"> • Region 2: 1/1 = 100% • National Goal = 100% • National Average = 73.8% <p>5d — Inspection coverage for active SQGs (5 FY): 3/14 = 21.4%</p> <p>5e1 — Inspections at active CESQGs (5 FY): 12</p> <p>5e2 — Inspections at active transporters (5 FY): 0</p> <p>5e3 — Inspections at non-notifiers (5 FY): 0</p> <p>5e4 — Inspections at active sites not listed above (5 FY): 1</p>
	Regional Response	
	Recommendation	

Element 5 Inspection Coverage. Degree to which region completed the universe of planned inspections/compliance evaluations (addressing core requirements and federal, state and regional priorities).

5-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for Regional Attention <input type="checkbox"/> Area for Regional Improvement – Recommendations Required
	Finding	Region 2 completed inspection commitments in FY 2009.
	Explanation	
	Metric(s) and Quantitative Value	<p>5a — Inspection coverage for operating TSDFs (2 FYs):</p> <ul style="list-style-type: none"> • Region 2: 1/1 = 100% • National Goal = 100% • National Average = 85.9% <p>5b — Inspection coverage for LQGs (1 FY):</p> <ul style="list-style-type: none"> • Region 2: 1/1 = 100% • National Goal = 20% • National Average = 26.7% <p>5c — Inspection coverage for LQGs (5 FY):</p> <ul style="list-style-type: none"> • Region 2: 1/1 = 100% • National Goal = 100% • National Average = 73.8% <p>5d — Inspection coverage for active SQGs (5 FY): 3/14 = 21.4%</p> <p>5e1 — Inspections at active CESQGs (5 FY): 12</p> <p>5e2 — Inspections at active transporters (5 FY): 0</p> <p>5e3 — Inspections at non-notifiers (5 FY): 0</p> <p>5e4 — Inspections at active sites not listed above (5 FY): 1</p>
	Regional Response	
	Recommendation	

Element 6 Quality of Inspection or Compliance Evaluation Reports. Degree to which inspection or compliance evaluation reports properly document observations, are completed in a timely manner, and include accurate description of observations.

6-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for Regional Attention <input type="checkbox"/> Area for Regional Improvement – Recommendations Required
	Finding	Region 2 inspection reports are generally complete and sufficient to determine compliance.
	Explanation	The standardization of inspection reports was beneficial. However, the inspection files would benefit from containing other information such as inspector field notes, more facility documentation, and inspection history documentation.
	Metric(s) and Quantitative Value	6b — Percentage of inspection reports reviewed that are complete and provide sufficient documentation to determine compliance at the facility: 11/13 = 85%
	Regional Response	
	Recommendation	
6-2	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for Regional Attention <input checked="" type="checkbox"/> Area for Regional Improvement – Recommendations Required
	Finding	Region 2's inspection reports were not completed in a timely manner.
	Explanation	Inspection reports were on average signed and completed a year following inspection.
	Metric(s) and Quantitative Value	6c — Inspection reports completed within a determined time frame: 0/13 = 0%
	Regional Response	DECA-RCB-SOP 101 currently requires inspection reports to be submitted to a supervisor within 10 workdays of returning to the office. RCB and RRB will collaborate on developing an SOP within 90 days of this report to include a more realistic inspection report timeframe (i.e., 30 days).
	Recommendation	<p>6.1: Region 2 should develop an SOP to ensure timely inspection report completion within 90 days of finalization of this report.</p> <p>6.2: After completing the SOP, Region 2 shall provide OECA with the FY 2013 inspection schedule, and a sampling of complete files to demonstrate timeliness of inspection report completion. This should be completed within 180 days of finalization of this report. OECA will follow up to review progress toward implementation.</p>

Element 7 Identification of Alleged Violations. Degree to which compliance determinations are accurately made and promptly reported in the national database based upon compliance monitoring report observations and other compliance monitoring information (e.g., facility-reported information).

7-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for Regional Attention <input checked="" type="checkbox"/> Area for Regional Improvement – Recommendations Required
	Finding	Region 2 does not always make accurate compliance determinations or report them to RCRAInfo.
	Explanation	<p>The review team found that 7 of 13 compliance determinations were inaccurate based on the information in the inspection reports.</p> <p>The review team also found that many violations identified in inspection reports were not reported to RCRAInfo. In addition, only four of the 12 violations reviewed were reported to RCRAInfo in a timely manner.</p>
	Metric(s) and Quantitative Value	<p>7a — Percentage of accurate compliance determinations based on inspection reports: $6/13 = 46\%$</p> <p>7b — Percentage of violation determinations in the files reviewed that are reported timely to the national database (within 150 days): $4/12 = 33\%$</p> <p>7c — Violation identification rate at sites with inspections (data metric compiled from RCRAInfo): $1/7 = 14.3\%$</p>
	Regional Response	
	Recommendation	<p>7.1: Region 2 should develop an SOP within 90 days of finalization of this report for making timely and accurate violation determinations.</p> <p>7.2: After completing the SOP, Region 2 shall provide OECA with a sampling of complete files to demonstrate timeliness and accuracy of violation determinations. This should be completed within 180 days of finalization of this report. OECA will follow up to review progress toward implementation.</p>

Element 8 Identification of SNC and HPV. Degree to which the Region accurately identifies significant noncompliance/high priority violations and enters information into the national system in a timely manner.

8-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for Regional Attention <input checked="" type="checkbox"/> Area for Regional Improvement – Recommendations Required
	Finding	Region 2 does not always make accurate compliance determinations with regard to SNC status.

Explanation	The review team found documentation of violations that constituted SNC in three inspection reports, but the violations were classified as secondary violations.
Metric(s) and Quantitative Value	8d — Percentage of violations in files reviewed that were accurately determined to be SNC: 9/12 = 75%
Regional Response	
Recommendation	Implement recommendations 7.1 and 7.2.

Element 9 Enforcement Actions Promote Return to Compliance. Degree to which regional enforcement actions include required corrective action (i.e., injunctive relief or other complying actions) that will return facilities to compliance in a specific time frame.

9-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input checked="" type="checkbox"/> Area for Regional Attention <input type="checkbox"/> Area for Regional Improvement – Recommendations Required
	Finding	Region 2's enforcement responses did not always appropriately address violations, which hampered its ability to return facilities to compliance.
	Explanation	<p>Enforcement taken in response to violations was not always appropriate and did not always return facilities to compliance.</p> <p>In addition, the review team found several facilities with violations that should have been classified as SNC. If Region 2 had identified these as SNC violations, formal action would have been the appropriate response. Instead, these were identified as secondary violations and were typically addressed through informal means. SNC identification is addressed under Element 8.</p> <p>Because some enforcement responses were not appropriate, they sometimes failed to return facilities to compliance.</p>
	Metric(s) and Quantitative Value	<p>9b — Percentage of enforcement responses that have returned or will return a source in SNC to compliance: 4/6 = 67%</p> <p>9c — Percentage of enforcement responses that have returned or will return secondary violators to compliance: 6/8 = 75%</p>
	Regional Response	
	Recommendation	

Element 10 Timely and Appropriate Action. Degree to which a Region takes timely and appropriate enforcement actions in accordance with policy relating to specific media.

10-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for Regional Attention <input checked="" type="checkbox"/> Area for Regional Improvement – Recommendations Required
	Finding	Region 2 does not always take timely and appropriate enforcement action.
	Explanation	<p>Some of the facilities reviewed did not have enforcement responses that were timely or appropriate for the violations identified.</p> <p>In addition, the review team found several facilities with violations that should have been classified as SNC. If Region 2 had identified these as SNC violations, formal action would have been the appropriate response. Instead, these were identified as secondary violations and were typically addressed through informal means. The SNC identification issue is addressed under Element 8.</p> <p>Untimely completion of inspection reports also impacted the timeliness of enforcement, but this issue is addressed under Element 6.</p>
	Metric(s) and Quantitative Value	<p>10c — Percentage of enforcement responses reviewed that are taken in a timely manner: $4/6 = 67\%$</p> <p>10d — Percentage of enforcement responses reviewed that address SNC and SVs and are appropriate to the violations: $6/9 = 67\%$</p>
	Regional Response	<p>Metric 10c – The SRF RCRA File Review Metric Summary Form for Metric 10c lists “no” for Chitolie Truck Services and Elite Dry Cleaners. Note that the RCRA Enforcement Response Policy recognizes that there are “circumstances that may dictate an exceedance of the standard response times” and that, “In some complex cases, more time may be required.” Thus, for example, based on Region 2’s experience most dry cleaners in the Region are recalcitrant and difficult to bring back into compliance. Hence, the Region makes every attempt to identify individuals with control over the operations who can also be held jointly liable with the corporation.</p> <p>While this process itself can extend the period of time before a formal penalty enforcement action is taken, in the Elite case there was also a change of ownership during the development of the complaint. Thus, additional time was needed to show that the individual who had control of the operations in the original company actually had control over the operations in the new company too. The ERP allows for a 20% per year exceedance of civil cases existing in the Region, not just the State.</p>
	Recommendation	10.1.1: Region 2 should develop an SOP within 150 days of finalization of this report to ensure timely and appropriate enforcement response to inspections.

	10.1.2: After completing the SOP, Region 2 shall provide OECA with a sampling of complete files to demonstrate timely and appropriate enforcement. This should be completed within 240 days of finalization of this report. OECA will follow up to review progress toward implementation.
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Element 11 Penalty Calculation Method. Degree to which Region documents in its files that initial penalty calculation includes both gravity and economic benefit calculations, appropriately using the BEN model or other method that produces results consistent with national policy.

11-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for Regional Attention <input type="checkbox"/> Area for Regional Improvement – Recommendations Required
	Finding	Region 2 calculates penalties appropriately.
	Explanation	The review team found that penalties were assessed, the penalty calculations were appropriate and well documented.
	Metric(s) and Quantitative Value	11a — Percentage of reviewed penalty calculations that consider and include where appropriate gravity and economic benefit: 4/4 = 100%
	Regional Response	
	Recommendation	

Element 12 Final Penalty Assessment and Collection. Degree to which differences between initial and final penalty are documented in the file along with a demonstration in the file that the final penalty was collected.

12-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for Regional Attention <input type="checkbox"/> Area for Regional Improvement – Recommendations Required
	Finding	Region 2 documents initial and final penalty calculations appropriately.
	Explanation	The review team found that the difference and rationale between the initial and final assessed penalties were well documented.
	Metric(s) and Quantitative Value	12a — Percentage of penalties reviewed that document the difference and rationale between the initial and final assessed penalty: 4/4 = 100%
	Regional Response	
	Recommendation	

12-2	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input checked="" type="checkbox"/> Area for Regional Attention <input type="checkbox"/> Area for Regional Improvement – Recommendations Required
	Finding	Region 2 does not always document the collection of penalties consistently.
	Explanation	In two instances, the review team was unable to document the collection of the penalties assessed through a copy of checks or other documentation in the file.
	Metric(s) and Quantitative Value	12b — Percentage of files that document collection of penalty: $2/4 = 50\%$
	Regional Response	The Region disagrees and believes the finding should be revised to Meets SRF Program Requirements. Records of penalty payments are kept by the Region's Office of Regional Counsel. Formal enforcement actions requiring payment of a penalty generally have a requirement for Respondent to provide proof of payment to the Assistant Regional Counsel and/or the Regional Hearing Clerk. Upon OECA's request for proof of payment, the Region obtained proof of payment and provided it to OECA.
	Recommendation	

APPENDIX A: STATUS OF RECOMMENDATIONS FROM PREVIOUS REVIEWS

During the first SRF review of the Virgin Islands compliance and enforcement programs, Region 2 and the Virgin Islands identified a number of actions to be taken to address issues found during the review. The table below shows the status of progress toward completing those actions.

Status	Due Date	Media	E#	Element	Finding	Recommendation
Completed	9/30/2007	RCRA	E1	Insp Universe	Universe of active facilities is out of date.	Region needs to update RCRA Info to ensure that the universe of active facilities in the Virgin Islands is accurately reported in RCRA Info.
Completed	11/1/2007	RCRA	E2	Violations ID'ed Appropriately	Inspection reports are not complete.	Region 2 should ensure that each inspection report is complete and that they include the date of the inspection and the date the inspection report was completed.
Completed	12/31/2007	RCRA	E2	Violations ID'ed Appropriately	Waste determinations are not being made during inspections.	Region 2 inspectors should ensure that the RCRA sources in the Virgin Islands are making proper waste determinations for processes at the facilities and describing this in the inspection report findings. (The Region agrees to provide, in each of its inspection reports, a full description of the processes and waste characterizations carried out by the generator.)
Completed	12/31/2007	RCRA	E3	Violations ID'ed Timely	Inspection reports are not timely.	Region 2 needs to improve the timeliness of preparing inspection reports. OECA recognizes that it may not be possible for one inspector to complete multiple inspection reports from one visit to the Virgin Islands. However, the Region should set and implement a realistic goal for improving the timeliness of completing inspection reports.
Completed	12/31/2007	RCRA	E4	SNC Accuracy	SNC are not documented in files.	Region 2 needs to begin to document SNC determinations in the files. The 2006 SOP provides a method for doing this. The Region should ensure that the draft complaint to the ORC RCRA Branch Chief, which indicates that the facility is in SNC, is in the file with the 150 days timeline established in the RCRA ERP. If the Region believes that they will exceed the 150 day time frame, then there should be a note to the file indicating that this will be the case and so that it will not be assumed that the SNC was overlooked.
Completed	12/31/2007	RCRA	E7	Penalty Calculations	Lack of documentation of penalties in files.	Region 2 should improve the file documentation of their decisions on how they apply the 2003 RCRA Civil Penalty Policy. They need to document the economic benefit calculation, and they need to justify a decision not to calculate economic benefit using the BEN model based on the criteria in the penalty policy.
Completed	12/31/2007	RCRA	E10	Data Timely	Data entry for SNC is not timely.	Region 2 is entering SNC data into RCRA Info in a timely manner. They are, then, doing something right. There may be a best practice here that can be shared with the other regions and the states. The process for entering SNC data is guided by the Region 2 SOP regarding when SNCs are identified and when they are entered into RCRAINFO.

Status	Due Date	Media	E#	Element	Finding	Recommendation
Completed	9/30/2007	RCRA	E10	Data Timely	Universe of sources is not correct.	Region needs to update RCRA Info to ensure that the universe of active facilities in the Virgin Islands is accurately reported in RCRA Info. A timeframe with milestones needs to be set to implement this improvement to data management.
Completed	12/31/2007	RCRA	E11	Data Accurate	Data entry needs to be documented in the files.	Region 2 should include in each of the RCRA files a record, which can be note to the file, indicating when data from inspection reports and enforcement actions are entered into RCRA Info. There needs to be a timeframe and milestones for implementing this recommendation.

APPENDIX B: OFFICIAL DATA PULL

Metric	Metric Description	Metric Type	Agency	Natl Goal	Natl Avg	VI Metric Prod	Count Prod	Universe Prod
R01A1S	Number of operating TSDFs in RCRAInfo	Data Quality	State			1	NA	NA
R01A2S	Number of active LQGs in RCRAInfo	Data Quality	State			8	NA	NA
R01A3S	Number of active SQGs in RCRAInfo	Data Quality	State			14	NA	NA
R01A4S	Number of all other active sites in RCRAInfo	Data Quality	State			25	NA	NA
R01A5S	Number of LQGs per latest official biennial report	Data Quality	State			1	NA	NA
R01B1S	Compliance monitoring: number of inspections (1 FY)	Data Quality	State			0	NA	NA
R01B1E	Compliance monitoring: number of inspections (1 FY)	Data Quality	EPA			8	NA	NA
R01B2S	Compliance monitoring: sites inspected (1 FY)	Data Quality	State			0	NA	NA
R01B2E	Compliance monitoring: sites inspected (1 FY)	Data Quality	EPA			7	NA	NA
R01C1S	Number of sites with violations determined at any time (1 FY)	Data Quality	State			0	NA	NA
R01C1E	Number of sites with violations determined at any time (1 FY)	Data Quality	EPA			6	NA	NA
R01C2S	Number of sites with violations determined during the FY	Data Quality	State			0	NA	NA
R01C2E	Number of sites with violations determined during the FY	Data Quality	EPA			1	NA	NA
R01D1S	Informal actions: number of sites (1 FY)	Data Quality	State			0	NA	NA
R01D1E	Informal actions: number of sites (1 FY)	Data Quality	EPA			1	NA	NA
R01D2S	Informal actions: number of actions (1 FY)	Data Quality	State			0	NA	NA
R01D2E	Informal actions: number of actions (1 FY)	Data Quality	EPA			1	NA	NA
R01E1S	SNC: number of sites with new SNC (1 FY)	Data Quality	State			0	NA	NA
R01E1E	SNC: number of sites with new SNC (1 FY)	Data Quality	EPA			0	NA	NA
R01E2S	SNC: Number of sites in SNC (1 FY)	Data Quality	State			0	NA	NA
R01E2E	SNC: Number of sites in SNC (1 FY)	Data Quality	EPA			1	NA	NA
R01F1S	Formal action: number of sites (1 FY)	Data Quality	State			0	NA	NA
R01F1E	Formal action: number of sites (1 FY)	Data Quality	EPA			1	NA	NA
R01F2S	Formal action: number taken (1 FY)	Data Quality	State			0	NA	NA
R01F2E	Formal action: number taken (1 FY)	Data Quality	EPA			1	NA	NA
R01G0S	Total amount of final penalties (1 FY)	Data Quality	State			\$0	NA	NA
R01G0E	Total amount of final penalties (1 FY)	Data Quality	EPA			\$2,330	NA	NA
R02A1S	Number of sites SNC-determined on day of formal action (1 FY)	Data Quality	State			0	NA	NA
R02A2S	Number of sites SNC-determined within one week of formal action (1 FY)	Data Quality	State			0	NA	NA

Metric	Metric Description	Metric Type	Agency	Natl Goal	Natl Avg	VI Metric Prod	Count Prod	Universe Prod
R02B0S	Number of sites in violation for greater than 240 days	Data Quality	State			0	NA	NA
R02B0E	Number of sites in violation for greater than 240 days	Data Quality	EPA			4	NA	NA
R03A0S	Percent SNCs entered ≥ 60 days after designation (1 FY)	Review Indicator	State			0 / 0	0	0
R03A0E	Percent SNCs entered ≥ 60 days after designation (1 FY)	Review Indicator	EPA			0 / 0	0	0
R05A0S	Inspection coverage for operating TSDFs (2 FYs)	Goal	State	100%	85.9%	0.0%	0	1
R05A0C	Inspection coverage for operating TSDFs (2 FYs)	Goal	Combined	100%	90.9%	100.0%	1	1
R05B0S	Inspection coverage for LQGs (1 FY)	Goal	State	20%	24.6%	0.0%	0	1
R05B0C	Inspection coverage for LQGs (1 FY)	Goal	Combined	20%	26.7%	100.0%	1	1
R05C0S	Inspection coverage for LQGs (5 FYs)	Goal	State	100%	68.4%	0.0%	0	1
R05C0C	Inspection coverage for LQGs (5 FYs)	Goal	Combined	100%	73.8%	100.0%	1	1
R05D0S	Inspection coverage for active SQGs (5 FYs)	Informational Only	State			0.0%	0	14
R05D0C	Inspection coverage for active SQGs (5 FYs)	Informational Only	Combined			21.4%	3	14
R05E1S	Inspections at active CESQGs (5 FYs)	Informational Only	State			0	NA	NA
R05E1C	Inspections at active CESQGs (5 FYs)	Informational Only	Combined			12	NA	NA
R05E2S	Inspections at active transporters (5 FYs)	Informational Only	State			0	NA	NA
R05E2C	Inspections at active transporters (5 FYs)	Informational Only	Combined			0	NA	NA
R05E3S	Inspections at non-notifiers (5 FYs)	Informational Only	State			0	NA	NA
R05E3C	Inspections at non-notifiers (5 FYs)	Informational Only	Combined			0	NA	NA
R05E4S	Inspections at active sites other than those listed in 5a-d and 5e1-5e3 (5 FYs)	Informational Only	State			0	NA	NA
R05E4C	Inspections at active sites other than those listed in 5a-d and 5e1-5e3 (5 FYs)	Informational Only	Combined			1	NA	NA
R07C0S	Violation identification rate at sites with inspections (1 FY)	Review Indicator	State			0 / 0	0	0
R07C0E	Violation identification rate at sites with inspections (1 FY)	Review Indicator	EPA			14.3%	1	7
R08A0S	SNC identification rate at sites with inspections (1 FY)	Review Indicator	State	1/2 National Avg	3.1%	0 / 0	0	0
R08A0C	SNC identification rate at sites with evaluations (1 FY)	Review Indicator	Combined	1/2 National Avg	3.3%	0.0%	0	7
R08B0S	Percent of SNC determinations made within 150 days (1 FY)	Goal	State	100%	75.2%	0 / 0	0	0
R08B0E	Percent of SNC determinations made within 150 days (1 FY)	Goal	EPA	100%	65.3%	0 / 0	0	0
R08C0S	Percent of formal actions taken that received a prior SNC listing (1 FY)	Review Indicator	State	1/2 National Avg	60.7%	0 / 0	0	0

Metric	Metric Description	Metric Type	Agency	Natl Goal	Natl Avg	VI Metric Prod	Count Prod	Universe Prod
R08C0E	Percent of formal actions taken that received a prior SNC listing (1 FY)	Review Indicator	EPA	1/2 National Avg	71.8%	100.0%	1	1
R10A0S	Percent of SNCs with formal action/referral taken within 360 days (1 FY)	Review Indicator	State	80%	40.3%	0 / 0	0	0
R10A0C	Percent of SNCs with formal action/referral taken within 360 days (1 FY)	Review Indicator	Combined	80%	36.8%	0 / 0	0	0
R10B0S	No activity indicator - number of formal actions (1 FY)	Review Indicator	State			0	NA	NA
R12A0S	No activity indicator - penalties (1 FY)	Review Indicator	State			\$0	NA	NA
R12B0S	Percent of final formal actions with penalty (1 FY)	Review Indicator	State	1/2 National Avg	64.7%	0 / 0	0	0
R12B0C	Percent of final formal actions with penalty (1 FY)	Review Indicator	Combined	1/2 National Avg	65.0%	100.0%	1	1

APPENDIX C: PDA TRANSMITTAL LETTER

Appendices C, D and E provide the results of the Preliminary Data Analysis (PDA). The Preliminary Data Analysis forms the initial structure for the SRF report, and helps ensure that the data metrics are adequately analyzed prior to the on-site review. This is a critical component of the SRF process because it allows the reviewers to be prepared and knowledgeable about potential problem areas before initiating the on-site portion of the review. In addition, it gives the region focus during the file reviews and/or basis for requesting supplemental files based on potential concerns raised by the data metrics results.

This section, Appendix C, contains the letter transmitting the results of the Preliminary Data Analysis to the Region. This letter identifies areas that the data review suggests the need for further examination and discussion during the review process.

June 29, 2010

Dore LaPosta
Director
Division of Enforcement and Compliance Assistance
EPA Region 2
21st Floor
290 Broadway
New York, NY 10007-1866

Dear Dore:

In our opening letter of April 5, 2010, EPA's Office of Enforcement and Compliance Assurance (OECA) notified EPA Region 2 of its intention to begin the State Framework Review of Regions 2's Resource Conservation and Recovery Act Enforcement Program in the Virgin Islands. As noted, the base year for review will be federal fiscal year 2009. Thank you for providing the requested information and your response to the official data metrics results sent on May 26, 2010. OECA has analyzed the data against set goals and commitments, and with this letter, are transmitting our analysis and the file selection to you.

This follow-up letter includes our preliminary analysis of the EPA Region data metrics results, the official data metrics results spreadsheet(s) with any EPA Region-provided data corrections/discrepancies, our focus areas for the upcoming on-site file review, and the files that have been selected for review.

In this transmittal, we also are outlining any specific conditions or information that we are aware of and may be relevant to the review (for example, credits under Element 13, special situations regarding data flow, etc). We are providing this information to you in advance so that you have adequate time to compile the files that we will review and can begin pulling together any supplemental information that you think may be of assistance during the review. After reviewing the enclosed information, if there are additional circumstances that OECA should consider during the review, please provide that information to us prior to the on-site file review.

OECA has established a cross program team of managers and senior staff to implement the Region 2 review. Paul Karaffa will be OECA's primary contact for the review. He will lead the review team, directing all aspects of the review for the region. Susan Gilbertson is OECA's SRF Team Leader with overall responsibility for the review. The RCRA program expert on the review team will be Chad Carbone. All team members will perform their onsite review of Regions 2's RCRA Enforcement Program of the Virgin Islands beginning July 12, 2010 and ending July 14, 2010. OECA is requesting that a room with secure Internet accessibility be available.

Please note that the enclosed preliminary findings are based only on the data metrics results themselves. Final findings may be significantly different based upon the results of the file review and ongoing discussions with you and your staff. If you have any questions about the process that we intend to use, please contact Paul Karaffa.

All information and material used in this review may be subject to federal and/or state disclosure laws. While EPA intends to use this information only for discussions with EPA Region 2, it may be necessary to release information in response to a properly submitted request.

Sincerely,

Chris Knopes, Director, NPMAS

Enclosure 1 – RCRA Preliminary Data Analysis of EPA Region’s SRF Data Metrics

Enclosure 2 – RCRA Data Metrics Preliminary Data Analysis Worksheet

Enclosure 3 – RCRA Explanation of File Selection

Enclosure 4 – RCRA Table of Selected Files

cc: Lisa Lund, Director, Office of Compliance
David Hindin, Deputy Director, Office of Compliance

APPENDIX D: PRELIMINARY DATA ANALYSIS

CHART

This section provides the results of the Preliminary Data Analysis (PDA). The Preliminary Data Analysis forms the initial structure for the SRF report, and helps ensure that the data metrics are adequately analyzed prior to the on-site review. This is a critical component of the SRF process because it allows the reviewers to be prepared and knowledgeable about potential problem areas before initiating the on-site portion of the review. In addition, it gives the region focus during the file reviews and/or basis for requesting supplemental files based on potential concerns raised by the data metrics results.

The PDA reviews each data metric and evaluates state performance against the national goal or average, if appropriate. The PDA Chart in this section of the SRF report only includes metrics where potential concerns are identified or potential areas of exemplary performance. The full PDA Worksheet (Appendix E) contains every metric: positive, neutral or negative. Initial Findings indicate the observed results. Initial Findings are preliminary observations and are used as a basis of further investigation that takes place during the file review and through dialogue with the state. Final Findings are developed only after evaluating them against the file review results where appropriate, and dialogue with the state have occurred. Through this process, Initial Findings may be confirmed, modified, or determined not to be supported. Findings are presented in Section IV of this report.

Preliminary Data Analysis of EPA Region's SRF Data Metrics

I. Introduction – Purpose of Preliminary Data Analysis

To adequately prepare for OECA's on-site review and discussions of findings/recommendations, the SRF process calls for OECA to: (1) perform preliminary analysis of the SRF data metrics to identify potential areas of concern and (2) identify the number and specific facility list of files to be reviewed during the on-site file review step. The following preliminary data analysis provides the EPA Region with a preliminary look at how OECA interprets Regional performance relevant to each SRF element that has an associated data metric. EPA's preliminary review of the data is only the first step in the review process, and is primarily used to frame key discussion topics during the on-site review. Elements that do not have data metrics will be evaluated during the file reviews. Actual findings will be developed only after the file reviews and dialogue with the Region have occurred. Data metrics results were pulled from the Online Tracking Information System (OTIS) SRF data metrics Web site (<http://www.epa-otis.gov/otis/stateframework.html>) on May 5, 2010.

Preliminary review by OECA of CWA SRF data metrics results for the FY09 period has identified both positive accomplishments and potential areas of concern that will require a focused dialogue. The SRF on-site file review meeting(s) will cover all SRF metrics (data and file review), including additional Element 13 information if submitted by the Region. This enclosure provides a detailed look at OECA's preliminary data analysis.

III. Preliminary Data Analysis of EPA Region’s Data Metrics Results

OECA has reviewed the SRF data metrics in relation to national goals and averages. Below are highlights and potential areas of concern. OECA intends to focus on these areas of concern during the on-site review. The enclosed worksheet contains more detail.

Metric	Description	MetType	Agency	NatGoal	NatAv	VIMet	Count	Universe	Initial Findings	Region 2 Response
R01C1E	Number of sites with violations determined at any time (1 FY)	Data Quality	EPA				3	NA	NA	There could be some data entry errors which need to be further explored. (Change 6 to 3) All sites listed in the ODS, excluding K-Mart (VIR000000760), should have been marked RTC. Two additional K-Mart sites (VIR000000778 and VIR000000786) also should have been included as open violations but had been entered incorrectly as PR location sites rather than VI. An oversight led to the late entry of RTC dates. Open violations will be evaluated semiannually to ensure RTC dates have been entered where appropriate. Refresher training will be provided to employees who enter their own data into RCRAInfo
R01E1E	SNC: number of sites with new SNC (1 FY)	Data Quality	EPA				3	NA	NA	There could be some data entry errors which need to be further explored. (Change 0 to 3) 3 sites (K-Mart) did not show up because they were inadvertently entered with location as PR. Refresher training will be provided to employees who enter their own data into RCRAInfo.
R01E2E	SNC: Number of sites in SNC (1 FY)	Data Quality	EPA				4	NA	NA	There could be some data entry errors which need to be further explored. (Change 4 to 1) 3 sites (K-Mart) did not show up because they were inadvertently entered with location as PR. Refresher training will be provided to employees who enter their own data into RCRAInfo.
R01F1E	Formal action: number of sites (1 FY)	Data Quality	EPA				4	NA	NA	There were 6 sites determined to have violations. There was only 1 formal action. (Change 4 to 1) 3 sites (K-Mart) did not show up because they were inadvertently entered with location as PR. Refresher training will be provided to employees who enter their own data into RCRAInfo.
R01F2E	Formal action: number taken (1 FY)	Data Quality	EPA				2	NA	NA	There were 6 sites determined to have violations. There was only 1 formal action. (Change 1 to 2) 3 sites (K-Mart) did not show up because they were inadvertently entered with location as PR. Refresher training will be provided to employees who enter their own data into RCRAInfo.

Metric	Description	MetType	Agency	NatGoal	NatAv	VIMet	Count	Universe	Initial Findings	Region 2 Response
R02B0E	Number of sites in violation for greater than 240 days	Data Quality	EPA			3	NA	NA	This is a high number of days to be in non-compliance. Are enforcement actions bringing the facilities back into compliance?	(Change 4 to 3) All sites, excluding K-Mart, were RTC. Additional 2 K-Mart facilities were entered incorrectly as PR activity location. Three K-Mart sites have violations greater than 240 days. Enforcement action is on-going.
R03A0E	Percent SNCs entered ≥60 days after designation (1 FY)	Review Indicator	EPA			3	0	0	There could be some data entry errors which need to be further explored.	(Change 0 to 3) All 3 new SNCs were entered greater than 60 days after designation. An oversight led to the late entry of SNC dates. Refresher training will be provided to employees who enter their own data into RCRAInfo
R05D0C	Inspection coverage for active SQGs (5 FYs)	Informational Only	Combined			21.4%	3	14	36% seems to be a low percentage of inspections for SQGs.	(Change 21.4% to 35.7%) 5/14 or 36% of SQGs were inspected. 2 Kmart facility inspections were entered incorrectly as PR activity location. Refresher training will be provided to employees who enter their own data into RCRAInfo.

**APPENDIX E: PDA WORKSHEET (with EPA Region 2 and OECA
Comments)**

A PDA Worksheet was not completed for this review.

APPENDIX F: FILE SELECTION

Files to be reviewed are selected according to a standard protocol (available to EPA and state users here: http://www.epa-otis.gov/srf/docs/fileselectionprotocol_10.pdf) and using a web-based file selection tool (available to EPA and state users here: http://www.epa-otis.gov/cgi-bin/test/srf/srf_fileselection.cgi). The protocol and tool are designed to provide consistency and transparency in the process. Based on the description of the file selection process in section A, states should be able to recreate the results in the table in section B.

EPA has followed the SRF File Selection Protocol when selecting the listed files. This includes a representative sample of files, and may include supplemental file review. Under the File Selection Protocol, EPA may examine additional files to help better understand whether any potential areas of concern identified via the data metrics review are substantiated. These additional files are noted below.

EPA is requesting 11 files for the RCRA Direct Implementation SRF review. The representative file selection method was conducted using the methodology described in the File Selection Protocol (using the OTIS website). Eleven files were selected. No supplemental files will be examined in this review since only eleven files fall in the review period, FY 2009. Supplemental file reviews are used to ensure that the region has enough files to look at to understand whether a potential problem pointed out by data analysis is in fact a problem.

File Selection Table

	f_name	Program ID	f_street	f_city	f_state	f_zip	Eval	Viol	SNC	InfAction	FormAction	Pen	Uni	Select
1	ANGUILLA LANDFILL	VIS009000183	RTE 64	ST CROIX	VI	850	1	0	0	0	0	0	OTH	accepted_representative
2	BOVONI LANDFILL	VIR000000406	BOVONI RD	ST THOMAS	VI	801	1	0	0	0	0	0	OTH	accepted_representative
3	CARIBBEAN AUTO MART DBA CARIBBEAN AUTO BODY SHOP	VIN008020638	1J ESTATE BODY SLOB	KINGSHILL	VI	850	1	0	0	0	0	0	CES	accepted_representative
4	CHITOLIE TRUCK SERVICES	VIN008020646	2-4 CASSAVA GARDEN	ST CROIX	VI	851	1	0	0	0	0	0	CES	accepted_representative
5	ELITE DRY CLEANERS	VIS009000068	259 ENIGHED	CRUZ BAY	VI	831	0	0	0	0	1	2,330	OTH	accepted_representative
6	HOVENSA LLC	VID980536080	1 ESTATE HOPE	CHRISTIANSTED	VI	820	2	1	0	1	0	0	TSD (LDF)	accepted_representative
7	KMART #3829	VIR000000760	26-A TUTU PK MALL CHARLOTTE AM	ST THOMAS	VI	802	0	0	1	0	1	0	SQG	accepted_representative
8	KMART #3972	VIR000000778	SUNNY ISLE SHOPPING CENTER	ST CROIX	VI	820	0	1	1	0	1	0	SQG	accepted_representative
9	KMART #7413	VIR000000786	REMAINDER MATRICULATE #1	ST CROIX	VI	804	0	0	1	0	1	0	SQG	accepted_representative
10	PRESTO CLEANERS	VIR000000745	193 ALTONA & WELGUNST	CHARLOTTE AMALIE	VI	802	1	0	0	0	0	0	NON	accepted_representative
11	VIRGIN ISLAND REGULATED WASTE MGMT INC	VI0000597823	ONEALES TRANSPORT YARD	CHRISTIANSTED	VI	850	1	0	0	0	0	0	SQG	accepted_representative

APPENDIX G: FILE REVIEW ANALYSIS

This section presents the initial observations of the Region regarding program performance against file metrics. Initial Findings are developed by the region at the conclusion of the File Review process. The Initial Finding is a statement of fact about the observed performance, and should indicate whether the performance indicates a practice to be highlighted or a potential issue, along with some explanation about the nature of good practice or the potential issue. The File Review Metrics Analysis Form in the report only includes metrics where potential concerns are identified, or potential areas of exemplary performance.

Initial Findings indicate the observed results. Initial Findings are preliminary observations and are used as a basis for further investigation. Findings are developed only after evaluating them against the PDA results where appropriate, and dialogue with the state have occurred. Through this process, Initial Findings may be confirmed, modified, or determined not to be supported. Findings are presented in Section IV of this report.

The quantitative metrics developed from the file reviews are initial indicators of performance based on available information and are used by the reviewers to identify areas for further investigation. Because of the limited sample size, statistical comparisons among programs or across states cannot be made.

Resource Conservation and Recovery Act Program

Name of State: Virgin Islands (RCRA)

Review Period: FY 2009

RCRA Metric #	RCRA File Review Metric Description:	Metric Value	Initial Findings
Metric 2c	% of files reviewed where mandatory data are accurately reflected in the national data system.	7/11 = 64%	The review team found that the findings from an inspection were not entered or updated in RCRAInfo when an inspection report was complete. The findings information is critical to inform of the public of the inspection findings and compliance status. There were also some minor issues with the inspection date. The first day of the inspection was not always entered as the inspection date in RCRAInfo.
Metric 4a	Planned inspections completed		
Metric 4b	Planned commitments completed		
Metric 6a	# of inspection reports reviewed.	13	
Metric 6b	% of inspection reports reviewed that are complete and provide sufficient documentation to determine compliance at the facility.	11/13 = 85%	Inspection reports were found to contain enough information and documentation to determine noncompliance, even when the Region did not make such a determination. The standardization of inspection reports was beneficial. However, the inspection files would benefit from containing other information such as: inspector field notes, more facility documentation, inspection history documentation.

RCRA Metric #	RCRA File Review Metric Description:	Metric Value	Initial Findings
Metric 6c	Inspections reports completed within a determined time frame.	0/13 = 0%	The review team found that the enforcement response to violations found through inspections was not timely due to the untimely completion of the inspection reports and final violation determinations. The inspection reports were on average completed and signed a year following an inspection report.
Metric 7a	% of accurate compliance determinations based on inspection reports.	6/13 = 46%	The review team found that several violations were inaccurately classified as SNC and SV. For example, the inability to identify hazardous waste constitutes SNC.
Metric 7b	% of violation determinations in the files reviewed that are reported timely to the national database (within 150 days).	4/12 = 33%	The review team found that the inspections were not reported timely to the national database. The review team also found that any violations identified in the inspection report were not reported to the national database.
Metric 8d	% of violations in files reviewed that were accurately determined to be SNC.	9/12 = 75%	The review team found that the findings reported in the inspection report clearly identified violations that constituted SNC. However, the violations were classified as SV rather than SNC.
Metric 9a	# of enforcement responses reviewed.		
Metric 9b	% of enforcement responses that have returned or will return a source in SNC to compliance.	4/6 = 67%	The review team found that inspection reports did contain enough information and documentation to accurately determine SNC. However, the enforcement responses taken, while appropriate for some of the identified violations, did not address all violations identified in the inspection reports.
Metric 9c	% of enforcement responses that have returned or will return Secondary Violators (SV's) to compliance.	6/8 = 75%	The review team found that NOVs were issued for violations identified as SVs however, the violations should have been identified as SNCs instead and therefore there the enforcement response should have been a formal enforcement action rather than a NOV.
Metric 10c	% of enforcement responses reviewed that are taken in a timely manner.	4/6 = 67%	For identified violations, enforcement response was generally timely.
Metric 10d	% of enforcement responses reviewed that are appropriate to the violations.	6/9 = 67%	Enforcement responses did not appropriately address all violations identified by the region.
Metric 11a	% of reviewed penalty calculations that consider and include where appropriate gravity and economic benefit.	4/4 = 100%	The review team found that where penalties were assessed, the penalty calculations were appropriate and well documented.

RCRA Metric #	RCRA File Review Metric Description:	Metric Value	Initial Findings
Metric 12a	% of penalties reviewed that document the difference and rationale between the initial and final assessed penalty.	4/4 = 100%	The review team found that the difference and rationale between the initial and final assessed penalties were well documented.
Metric 12b	% of files that document collection of penalty.	2/4 = 50%	Only 2 files contained documentation of penalty collection.