

***Final – September 20, 2007***

**U.S. EPA Region 2**

**State Review Program Framework – FY 2006**

**Review of Virgin Islands Department of Planning and Natural Resources**

## **EXECUTIVE SUMMARY**

### **Overall Picture**

This report documents the findings and recommendations of the U.S. Environmental Protection Agency's (EPA) review of the Virgin Islands Department of Planning and Natural Resources (VIDPNR) compliance monitoring and enforcement program based on the State Review Framework. The EPA Office of Enforcement and Compliance Assurance (OECA), all ten EPA Regions, the Environmental Council of States (ECOS) Compliance Committee and state representatives from each of the ten regions jointly developed the framework to assess state performance in enforcement and compliance assurance.

EPA and the States (through the Environmental Council of the States (ECOS) Compliance Committee) developed the State Review Framework to evaluate State performance in the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) Enforcement Program, CAA Stationary Sources and RCRA Subtitle C compliance and enforcement programs in a nationally consistent manner. Since RCRA Subtitle C has not been delegated it is not covered in this report. The report examines 12 elements of VIDPNR's CAA Stationary Source and NPDES compliance and enforcement program including: inspection implementation, enforcement activity, commitments in annual agreements and data integrity. The report documents systemic and crosscutting issues in VIDPNR's air enforcement and compliance program and includes recommendations for improvement in each of these areas.

EPA and VIDPNR will work together to develop an action plan which incorporates the follow-up corrective measures described in the report, as well as, timeframes for completion. EPA and VIDPNR will have a meeting within 6 months of the report being finalized to discuss progress on implementing the action plan. The report recommendations will also be tracked in the national State Framework Review Tracking System

### **Summary of Issues Identified**

The report documents several key findings and recommendations in the both the air and water compliance monitoring and enforcement program. The following is a summary of the key issues and recommendations included in the report.

#### ***Review of State Inspection Implementation***

*1) Air Inspection Implementation Key Findings* - During the time period of the review VIDPNR had a completed zero (0) Full Compliance Evaluations (FCE) between FY04 and FY05 for a coverage rate of 0% which is below the national average of 79.9% for state only data. Furthermore, VIDPNR reported only three (3) Partial Compliance Evaluations (PCE) at majors.

With regard to Title V permits, six (6) have been issued to date. Of these, four (4) title V permits were issued prior to FY 2005, and therefore four title V annual compliance certifications were due in FY 2005. A review of the AIRS data indicated that zero (0) annual certifications were received and/or reviewed which equates to a 0% rate of review. The national average is 79.2% and the national goal is 100% of all title V annual certifications received should be reviewed and entered in AIRS.

During the review of the compliance files, it was determined that VIDPNR had received four (4) annual certifications in FY 2005. A review of the compliance certifications in the source files indicated numerous deficiencies. It was clear that VIDPNR did not review these annual compliance certifications, and failed to pursue appropriate enforcement action.

*Recommendations* - EPA is recommending that, to ensure that FCEs and PCEs are completed, VIDPNR needs to submit an inspection plan in accordance with the Compliance Monitoring Strategy. VIDPNR and EPA need to agree upon a plan that incorporates the present universe of sources on the Islands (large number of minor sources), and how these inspection activities will be reported to AIRS. EPA will provide a generic checklist to the VIDPNR. We also recommend that the VIDPNR receive refresher training on the application of the CMS policy and the timely reporting of inspection related MDRs to the database. With regard to Title V, VIDPNR must review and appropriately address any deficiencies identified in the annual certifications. EPA and VIDPNR will also work together to secure AIRS access through the internet (Host on Demand) for all VIDPNR staff, and to provide training on the requisite data into the AIRS database

2) *Water Inspection Implementation* - According to PCS, VIDPNR inspected 83.3% of all the majors, which is greater than the national average of 64.6% of all majors inspected. Of the (18) inspection files which EPA reviewed, all files provided documentation (i.e. inspection reports) that either a Compliance Evaluation Inspection or a Compliance Sampling Inspection (or both) had been conducted in FY2005. There is no inspection policy which outlines requirements for recording inspection findings. Generally, VIDPNR uses the EPA Water Compliance Inspection Report (Form 3560-3) to record inspection findings. Of the eighteen (18) inspection files that EPA reviewed, all of the files provided documentation that EPA Water Compliance Inspection Report was being filled out and a narrative description of the findings was also attached to the report. Violations and deficiencies are identified in the report and Corrective Action Plans (CAP) are required addressing the deficiencies. However, out of fourteen (14) files that identified violations and/or deficiencies and required a CAP, only five files provided some form of documentation that a CAP was completed.

*Recommendation* - EPA recommends VIDPNR develop and implement a formal Standard Operating Procedure (SOP) outlining use of the inspection forms and checklists for different facilities (municipal, industrial, etc.).

### **Review of State Enforcement Activity**

3) *Air Enforcement Activity* - During the audit, a review of the major source files indicated that VIDPNR had failed to pursue some very clear violations against several major sources. Since some of these violations are potential HPVs, VIDPNR failed to implement the HPV policy. Additionally, the HPV discovery rate for the Virgin Islands, based on FCEs completed at major sources and entered in AIRS, in FY 2005, is 0% (0/0), which is well below the national average (10.3%). The reason for this is because VIDPNR failed to (1) report any FCEs that they completed in FY2005 (only 3 PCEs at the major sources in St. Croix were reported), and (2) failed to complete FCEs for these inspections.

*Recommendation* - EPA recommends that VIDPNR report all formal and informal enforcements actions to Region 2, via completed AIRS data entry sheets. Additional training is needed for the VIDPNR staff on implementing the HPV policy. EPA will work with VIDPNR to provide access and training for AIRS and refresher training on the HPV policy.

4) *Air Penalties* - All civil penalty settlements are negotiated between the source and the Department through informal settlement conferences. A review of final settlement actions showed that a penalty is assessed based on the penalty policy. There were no documents in the files that indicate what mitigating factors were considered and how the final settlement amount was reached.

*Recommendation* - EPA recommends that all enforcement cases where a penalty is assessed must have a penalty calculation worksheet in the file both for the assessed penalty and the settlement amount.

5) *Economic Benefit Air and Water* - When warranted, VIDPNR should factor into their penalty the economic benefit accrued by the facility due to noncompliance. The report identified areas for improvement with regard to incorporating, documenting and ensuring consistency with regard to economic benefit into calculations.

*Recommendation* - EPA will provide economic benefit training to VIDPNR and will work with VIDPNR to set up the training during FY08.

### **Review of Database Integrity**

6) *Air Data* - In accordance with their PPG work plan, VIDPNR is required to report all compliance and enforcement data to EPA within 30 days of the end of each quarter. VIDPNR did not send these updates on a quarterly basis but instead sent them at the end of the year with the year-end progress report.

*Recommendation* - Enter FCEs into AIRS as soon as feasibly possible (but at least within 60 days of the FCE's completion). Enter HPVs in AIRS within 45 days of discovery of the violation.

7) *Water Data* - VIDPNR transmits data directly to EPA for input into PCS (prior to March 2006) and ICIS (after March 2006). VIDPNR is sporadic in transmitting data to EPA for entry into databases. Information is usually sent in batches covering several months (sometimes up to a year) of inspection reports and other data.

*Recommendation*- Data must be sent promptly rather than batched to ensure timely data entry. Additionally, EPA will work with VIDPNR to develop the capacity for direct data entry.

## FORM A - EVALUATION FORM

Date: December 2006

Program Evaluated: CAA

Information Sources Included in the Review: AIRS, source files and interviews with select staff.

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|----------------|-------------------|-----------------------|
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In the Virgin Islands, the environmental programs are administered by the Virgin Islands Department of Planning and Natural Resources (VIDPNR). The VIDPNR is overseen by a Commissioner who oversees both the implementation of environmental programs (air, water and solid waste), and the management of natural resources (coastal zoning, fishing, wildlife). The core programs are further administered by the Division of Environmental Protection (DEP). The DEP has regional offices on both St. Croix and St. Thomas. The office on St. Thomas is also responsible for St. Johns. The VIDPNR stationary source compliance and enforcement program is implemented by the Air Pollution Control Program (APCP), which oversees enforcement activities at both major and minor sources. Additional responsibilities of the APCP include: EIS reviews, responding to citizens' complaints, title V and minor source permitting, air toxics, data validation, ambient monitoring and air quality modeling. The DEP Director's office is located on St. Croix.

As of October 1, 2006, the APCP was further reorganized into the Air Quality Management Office (AQM) who is responsible for air monitoring, air quality and the asbestos NESHAP; the Air Pollution Control Office (APC) is responsible for CAA permitting, compliance and enforcement at stationary sources. The APCP establishes annual priorities, develops the annual inspection plan and conducts compliance evaluations.

EPA Region 2 oversees the air compliance and enforcement program at VIDPNR.

### **Process Followed For the Review**

Region 2's evaluation of VIDPNR's CAA Stationary Source compliance and enforcement program was conducted by staff from the Region 2 Air enforcement program using the Framework described above. The on-site file review and interviews of VIDPNR managers, were conducted by the Air enforcement program at VIDPNR offices in both St. Croix and St. Thomas, US Virgin Islands. The review occurred December 4 - 8, 2006.

Since no full compliance evaluations (FCEs), were reported by VIDPNR in FY 2005, EPA had to deviate slightly from the File Selection Protocol in the Implementation Guide. According to the AIRS database, there were 21 major sources, 0 SM-80s and 63 minor sources in the Virgin

Islands, for a total of 84 sources. The team agreed to review at least 15 files. According to the CAA §105 FY 2005 End-of-year- review documents, six (6) sources in the Virgin Islands have been issued a Title V permit. In addition one (1) facility has been designated as a mega source. All seven (7) of these sources were included in the review. From the remaining 14 sources that had a default classification of a major source, EPA selected an additional three (3) sources for review. The remaining five (5) sources selected were from the list of sources that were designated in AIRS as less than 80% and NESHAP minors. With respect to the enforcement files, no formal enforcement actions were reported by VIDPNR for FY 2005; therefore, EPA could not request review of any enforcement files. However, EPA notified VIDPNR that if enforcement was initiated but not reported to EPA, files should be available to EPA during the review. During the on-site audit the team evaluated enforcement case files for nine (9) minor sources that were either initiated during FY 2005 and/or concluded in FY 2005. In addition, EPA evaluated six (6) enforcement case files that were initiated/settled prior to FY 2005 or after FY 2005. In summary, EPA reviewed a total of 30 compliance evaluation and enforcement files.

### **Information Considered From Other Reviews and Other Sources**

EPA began the on-site review with a discussion with the Director of the Division of Environmental Protection (DEP) within the VIDPNR, the staff from the St. Croix office and the staff from the St. Thomas office (via conference call). In addition, EPA also interviewed the legal counsel from both offices. To augment the review, EPA reviewed the VIDPNR's PPG work plan for FY 2005. Results from the mid-year and end-of-year work plan review were incorporated in our findings. EPA prepared for the interviews and file reviews using the State Review Framework data metrics.

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

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

### *Findings:*

VIDPNR submits their annual work plan to Region 2. The work plan is submitted as part of the Virgin Islands Performance Partnership Grant (PPG) application. The application and ultimately the approved work plan contain timelines for completion of inspection and compliance commitments, and reporting requirements. In the FY 2005 work plan, VIDPNR agreed to conduct full compliance evaluations (FCEs) at four (4) sources (only 2 of the 4 sources were major sources) during the fiscal year, and conduct inspections, at minor sources that "routinely cause environmental problems" and in response to citizen complaints. There are no synthetic minor sources that emit or have the potential to emit at or above 80 percent of the Title V major source threshold (SM-80).

VIDPNR does not have a database separate from AIRS. Information regarding their compliance evaluations, enforcement actions, and related activities are compiled on AIRS data entry sheets and sent to Region 2 for entry into AIRS.

**Inspections at Major sources:** At the time of the review, the data metrics indicated that the VI had a major source universe (those facilities with a major source classification code in AIRS) of 21 facilities, and VIDPNR completed FCEs at zero (0) of these facilities for a coverage rate of 0% between FY 2004 and FY 2005, which is below the national average of 79.9% for state only data. The data also indicated a major source universe based on the facilities associated Compliance Monitoring Strategy (CMS) code of seven (7) facilities, zero (0) of which received an FCE by VIDPNR between FYs 2004 and 2005, which equates to a coverage rate of 0% and is again below the national average of 83.9%.

The review of the FY 2005 inspection plan indicates that VIDPNR agreed to conduct an FCE or an inspection at all the major sources during the fiscal year. The inspection plan further indicates that they will complete an FCE at only two (2) of the seven (7) CMS major sources. A review of VIDPNR's EOY report showed that no FCEs were completed during the fiscal year. Furthermore, APCP reported only three (3) Partial Compliance Evaluations (PCEs) at major sources. The current inventory of major sources is seven (7) with another three (3) probable sources—a hospital incinerator and two landfills.

The discrepancy in the universe of facilities based on AIRS classification codes and CMS codes is indicative of a Data Quality issue, which will be addressed in Paragraph 12 of this report.

**Inspections at Synthetic Minor (80 percent of major source level)–(SM-80s):** The universe of SM-80s is comprised of sources with an EPA or State classification code in AIRS for a synthetic minor source and a CMS source code for SM-80s. The CMS requires that FCEs be conducted at each SM-80 once every five years. The CMS policy has been in effect since FY 2002; therefore, by the end of FY 2005 at least 80% of the universe of SM-80s should have received an FCE. According to AIRS, the data metrics, and our file review there are no SM-80 sources in the Virgin Islands.

**Inspections at Synthetic Minor sources:** States are not required by the CMS policy to conduct a specific number of evaluations (FCEs and/or PCEs) at synthetic minor sources and the work plan with the Virgin Islands does not specify a percentage either. According to the data metrics, during the period of review (FYs 2002 to 2005), VIDPNR inspected (i.e., conducted a FCE or a PCE) 12.5% (1/8) of the universe of synthetic minors (sources with a synthetic minor source classification code in AIRS). The national average was not provided for comparison for this source category.

A review of the FY 2005 EOY report submitted by VIDPNR indicated that the VIDPNR had completed seven (7) PCEs at minor sources and had reported them to Region 2 in the AIRS data entry sheets. Only one of these inspections was at a synthetic minor source identified in

the database. The remaining 6 sources are currently accurately identified as minor sources in the AIRS database.

**Inspections at Minor sources:** States are not required by the CMS policy to conduct a specific number of evaluations (FCEs and/or PCEs) at minor sources and the State Enforcement Agreement does not specify a percentage either. According to the data metrics, during the period of review (FYs 2002 to 2005), VIDPNR inspected (i.e., conducted a FCE or a PCE) 1.0% of the universe of minor sources (sources that are not classified as a major or synthetic minor source in AIRS). The national average for this source category was not provided for comparison. According to APCP there are 102 minor sources in the VI.

**Investigations at CAA stationary sources:** Investigations are a category of compliance monitoring activity recognized by the CMS. These are more resource intensive than the other compliance monitoring activities. This data metric evaluates investigations initiated and/or conducted within the last four fiscal years (FYs 2002 to 2005). The data metrics shows that no investigation was initiated and/or conducted between FYs 2002 and 2005 by VIDPNR. VIDPNR concurs that no investigations were initiated in FY 2005.

**Title V Annual Compliance Certifications received and reviewed:** According to VIDPNR only six (6) title V permits have been issued to date. Of these, four (4) title V permits were issued prior to FY 2005, and therefore four title V annual compliance certifications were due in FY 2005. A review of the AIRS data indicated that zero (0) annual certifications were received and/or reviewed which equates to a 0% rate of review. The national average is 79.2% and the national goal is 100% of all title V annual certifications received should be reviewed and entered in AIRS.

During the review of the compliance files, it was determined that VIDPNR had received four (4) annual certifications in FY 2005. A review of the compliance certifications in the source files indicated numerous deficiencies including: late submittal of annual certifications; sources failed to certify compliance for the entire reporting period; failing to submit annual certifications in FY 2005; and annual certifications reported intermittent compliance. It was clear that VIDPNR did not review these annual compliance certifications, and failed to pursue appropriate enforcement action.

VIDPNR is required to submit the appropriate AIRS data entry sheets to Region 2 in a timely manner, so that Region 2 can enter the receipt of the title V annual compliance certifications and their review by VIDPNR in AIRS. During the file review, it became apparent that inspectors most often reviewed facility's annual emission reports but not the title V annual compliance certifications.

**Sources with Unknown Compliance Status Designations:** AIRS generates an "unknown compliance status" for CMS sources when a FCE was not reported in AIRS within two (2) fiscal years. According to AIRS, currently only one (1) facility in VI has a system generated "unknown" default compliance status. We know that this is probably not correct since



VIDPNR has not reported any FCEs at major sources for at least two years and there are significant data errors in how major sources are classified in AIRS.

*Citation of information reviewed for this criterion:*

Data contained in AIRS; OTIS CAA Extended Management Reports; the CAA Stationary Source Compliance Monitoring Strategy, April 25, 2001; and staff interviews.

*Recommendations if corrective action is needed:*

To ensure that FCEs and PCEs are completed, VIDPNR needs to submit an inspection plan for the new two year CMS cycle (FY 2008 – FY 2009) that will be commencing on October 1, 2007. The inspection plan submitted, in accordance with the CMS policy, will include the six (6) major sources and the one (1) mega source. The inspection plan shall commit to completing FCEs at 50% of the major sources during FY 2008, and the remaining 50% to be inspected in FY 2009. An FCE at the mega source will be completed over three years. The inspection plan needs to be in place by September 30, 2007. VIDPNR and EPA also need to agree upon a plan that incorporates the present universe of sources on the Islands (large number of minor sources), and how these inspection activities will be reported to AIRS. The inspection plan will be submitted as part of the PPG work plan process.

EPA also recommends that the VIDPNR receive refresher training on the application of the CMS policy and the timely reporting of inspection related MDRs to the database. The inspectors should use an FCE checklist to ensure that all aspects – review of EERs, review of annual certifications and other relevant records, as well as, the completion of an on-site inspection when appropriate, are completed for an FCE. EPA will provide a generic checklist to the VIDPNR. Finally, attempts shall be made to secure AIRS access through the internet (Host on Demand) for all VIDPNR staff, and to provide training on the requisite data into the AIRS database.

In the interim, the reporting of the MDRS to EPA should be more clearly defined in the annual PPG work plan that is being negotiated annually. EPA will modify the AIRS reporting forms currently used by VIDPNR to ensure that the MDRs are correctly reported. In accordance with the 2005 ICR, all AFS data forms needs to be submitted to the Regional office in a timely manner (within 45 days) so that the data can be entered into AIRS within 60 days of a compliance determination. In a letter dated September 13, 2005, regarding the conditional approval of VIDPNR's Fiscal Years 2006 – 2007 Performance Partnership Grant (PPG) workplans, VIDPNR was directed to submit a revised workplan that contained the conditions included in the letter. The conditions included: review of all excess emission reports submitted, implement the National Stack Test Guidance, review 100% of all title V annual certifications received, submittal of inspection reports and the AIRS data entry form, revisions to the AIRS data entry form that included the most current list of MDRs.

Finally, VIDPNR needs to establish a formal training protocol for all current and new inspectors and/or technical staff similar to the federal protocol (Executive Order 3500.1). Their training should be completed before they conduct compliance evaluations and/or site inspections with no supervision. In addition, VIDPNR staff needs to become familiar with

the training courses offered by the National Enforcement Training Institute (NETI) and take advantage of the courses when possible.

*VIDPNR's response to Recommendation:*

VIDPNR indicated that it recognizes the inspection schedule outlined in the Fiscal Year (FY) 2005 workplan has not been met. In accordance with the Clean Air Act Stationary Source Compliance Monitoring Strategy (CMS), VIDPNR has agreed to develop an inspection plan that addresses the universe of sources. The Air Pollution Control (APC) Program has recognized seven (7) major sources. The lists of minor source are currently being revised. This is in an effort to compile an accurate inventory of the territory's sources.

According to VIDPNR, a generic checklist was received from Francisco Claudio-Rios, Environmental Engineer, at the Caribbean Environmental Protection Division (CEPD). Facility specific checklists had since been created. This checklist incorporated permit conditions as well as all applicable regulations.

Program staff has reviewed the CMS policy. In addition, the staff was provided with access codes for AIRS. The APC program welcomes the training opportunity in the CMS policy and AIRS from EPA. When training is granted, the program will input Minimum Data Requirements (MDRs) into AIRS.

In the interim, MDRS will be submitted to EPA using the AIRs data sheet. This data sheet needs to be revisited to ensure that accurate data is entered in the AIRS Database. This will be outlined in the revised FY 2008 along with conditions expressed in the Environmental Protection Agency's September 2005 letter granting conditional approval of FY 06-07 workplan.

Finally, the APC program has located a contractor to develop an in-house database to track the permitting and enforcement process. This database will assist with timely inspection, reporting and enforcement.

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

*Findings:*

Prior to our on-site file review, EPA was not aware of any FCEs or inspections conducted by DPNR in FY 2005; therefore, the request for files on the universe of facilities as established by data in AIRS. From the universe of major and minor sources, a total of 15 core files and 3 additional files were selected for the file review. In addition, during the on-site file review EPA was informed of enforcement actions issued in FY 2005; if the enforcement action was the result of an inspection, inspection file was requested. EPA ultimately reviewed 21 compliance evaluation files.

Of the inspection reports that were reviewed (21 reports), 14 reports were deemed to be incomplete, as they failed to include some of the basic elements of a compliance monitoring report set forth in the CMS. These elements include: the date of evaluation, facility address and contact information, purpose of inspection, applicable regulatory requirements, accurate inventory and description of regulated emission units and processes, information on previous enforcement actions, and recommendations relayed to the facility during the compliance evaluation.

The inspection reports did not always provide clear documentation that a comprehensive on-site inspection was conducted and one could not determine which emission units were inspected, and how the inspector determined compliance. Many inspection reports were “cut and paste” write-ups from previous visits and as a result, many inaccuracies from earlier inspections were carried forward from one report to another. For instance the type of emission sources are not accurately identified; the dates of inspection were wrong; emission units that were removed or replaced are still being referenced in the inspection report; new applicable requirements are not discussed; and complete reviews of operational records are not cited. Some examples of our findings include:

- Source No. 1 – During an inspection on August 14, 2002, the inspector claims that the opacity from the incinerator was over 20%. However, there was no visible emissions evaluation sheet attached with the report or in the files.
- Source No. 2 – The APCP inspector conducted an inspection of the facility on December 30, 2004, and June 30, 2005. The report does not indicate for which air regulations compliance was determined; only RCRA regulations are cited in the inspection report.
- Source No. 3 – The source installed a new 600 HP boiler on March 20, 2003; the inspector failed to identify that the boiler is subject to NSPS Subpart Dc. The Permit requires monthly Method 9 readings; the inspector never verified if they are kept.
- Source No. 4 – The inspector does not accurately list the number of emission units operating and their respective operating load. There is no mention of the operating status of the CEMS and does not record their values at the time of the inspection.
- Source No. 5 – The inspection does not address a compliance evaluation with the full range of applicable regulations, especially compliance with more recent MACT standards.

EPA identified an issue with title V annual compliance certifications. To date only six (6) title V permits have been issued in the Virgin Islands of which only four (4) had an annual certification due in FY2005. In two instances the source failed to submit the annual certification or submitted it late. A review of all the annual certifications indicated that all sources reported intermittent compliance with their title V permit limits. However, no follow-up enforcement was pursued by VIDPNR.

*Citation of information reviewed for this criterion:*  
Inspection files, staff interviews

*Recommendations if corrective action is needed:*

To ensure that all permit conditions, applicable regulations and current enforcement actions are evaluated for the completion of an FCE, EPA recommends the use of a FCE checklist derived from a facility's permits or other certifications. The checklist should allow for additional evaluation if the facility's permit is not comprehensive. EPA also recommends the development of an inspection report template. The template should include all the basic elements for a compliance monitoring report that are specified in the CMS policy. In addition, the inspection template should provide guidance on what the amount of narrative that would be sufficient to document on-site activity. Hard copies of these documents should be maintained in the source file. Copies of the inspection reports will also be sent to the EPA on a quarterly basis. Finally, the Region and VIDPNR will agree to a number of oversight inspections in the PPG work plan to ensure that the VIDPNR inspectors are conducting adequate on-site inspections.

*VIDPNR's response to Recommendation:*

As stated above in response to Element #1, VIDPNR has indicated that it has developed facility specific checklists to address permit conditions and applicable regulations. VIDPNR has also recognized the need to improve the quality of inspection reports. VIDPNR will develop an inspection report template, based on the CMS policy.

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

*Findings:*

All of the inspection reports contained a date on which the report was written. On average, inspection reports are completed within 5 days of the completion of the inspection. Only one report (a source on St. Thomas) was written up after about 4 weeks. The annual work plan states that all inspections will be completed in accordance with an inspection protocol. The inspection protocol is very generic and identifies the four stages of an inspection –pre-inspection preparation, on-site inspection activities, inspection evaluation, and report preparation. The protocol does state that a “level 2 inspection” be completed that includes conducting visible emission observations, recording of control equipment operating data and process information, and performing emissions calculations.

*Citation of information reviewed for this criterion:*

Inspection files

*Recommendations if corrective action is needed:*

By the end of the calendar year, VIDPNR shall revise the existing inspection protocol to reflect the inspection terminology that is in the CMS policy. The protocol should talk about FCEs, PCEs and investigations. The protocol should also make recommendations on a minimum timeframe when inspection reports need to be completed.

*VIDPNR's response to Recommendation:*

The APC program will assist DPNR-DEP in developing an agency wide Standard Operating Procedure (SOP) that provides a timeframe for completing inspection reports.

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

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

*Findings:*

According to the *Timely and Appropriate Enforcement Response to High Priority Violations* policy (HPV policy), the timeframe for timely and appropriate enforcement response is dependent on how the violation was discovered. If a self-reported violation is a HPV, it should be designated as such within 30 days. If the violation is discovered through other means and is a HPV, it should be designated a HPV no later than 45 days after the discovery. The enforcing agency has another 45 days if additional information or data is needed to determine if a violation is a HPV. Therefore, at a maximum, a state agency should designate a violation a HPV within 90 days. The HPV policy requires prompt reporting of HPVs to the EPA. The mechanism for reporting HPVs could be monthly meetings, e-mails, etc. Regardless of the mechanism, all potential HPVs should be discussed with EPA within at least 30 days of discovery. Within 60 days of designating the violation a HPV, it should be entered in AIRS. VIDPNR is directed through the PPG work plan to submit a report to EPA within 30 calendar days of the end of each quarter that summarizes all active HPV cases.

According to the FY 2005 work plan, VIDPNR “shall initiate all enforcement actions against any noncomplying source in a manner consistent with the State/EPA Enforcement Agreement and the revised Standard Operating Procedures (SOPs) for enforcement. Within thirty (30) days of the end of each quarter DPNR shall submit a summary report (enforcement status summary) on progress made in addressing/resolving high priority violators (HPVs)”.

A review of the EPA FY 2005 mid-year and end-of-year review letters indicated several discrepancies for HPVs identified during the fiscal year. The mid-year review letter from EPA identified two sources as significant violators and recommended that VIDPNR discuss these cases with Region 2. The end-of-year progress report submitted by VIDPNR for FY 2005 identified two different sources as potential HPVs. Finally, the end-of-year review letter from Region 2 to VIDPNR stated that no formal enforcement actions were taken in FY 2005 and recommended that VIDPNR identify and enforce against major sources in accordance with the HPV policy.

A review of the major source files indicated that VIDPNR had failed to pursue some very clear violations against several major sources. Some of these violations are potential HPVs.

- Source No. 1 – The source’s title V permit was issued on May 31, 2003. The annual certification for the reporting period June 2003 – May 2004 was submitted on December 10, 2004 – significantly late. The certification indicated that the source had not fully complied with the conditions of their title V permit. The source failed to complete the stack tests required for NO<sub>x</sub> and install a continuous opacity monitoring system (COMS). The annual certification for June 2004 – May 2005 was never submitted. The source was inspected on December 8, 2004, and numerous recordkeeping violations were also documented. However, no enforcement action was taken by VIDPNR.
- Source No. 2 – The source’s title V permit was issued on May 31, 2003. The source submitted its annual certification for the period January 2004 – December 2004. It failed to submit one for the period June 2003 – December 2003. The source certified compliance with the weekly VE reading requirement in their permit using Method 9 even though no VE readings were conducted on-site; it has not installed a COMS. The facility certified compliance with the power output although VIDPNR inspections done on September 10, 2003, April 1, 2003, and December 4, 2002, indicate that the source was exceeding the permitted power output on one of the diesel generators. VIDPNR has not taken any enforcement to address this noncompliance situation.
- Source No. 3 – The source’s title V permit was issued on December 31, 2003; the source reported intermittent compliance in their annual certifications for calendar years 2004 and 2005. The source reported that they had not complied with the NO<sub>x</sub> CEMS requirement and the opacity monitoring requirement. VIDPNR has not taken any action against the source.
- Source No. 4 – The source’s title V permit was issued on December 31, 2003. A review of the source file indicated numerous correspondences from the source indicating that it was going to operate emission units without the requisite NO<sub>x</sub> controls. VIDPNR did not take appropriate enforcement action to address the noncompliance situation.
- Source No. 5 – The title V permit for this source was issued on April 28, 2005. A review of the annual certification showed that the source exceeded both the hours of operation and the fuel usage limit for unit #2. No documentation was found in the file to indicate that VIDPNR reviewed the annual certification and if any enforcement was recommended/taken.

As indicated above, VIDPNR has failed to initiate timely enforcement against several major sources, therefore, failing to implement the HPV policy.

VIDPNR has initiated numerous formal and informal enforcement actions against minor sources. However, none of this information is being reported to the EPA as VIDPNR has

failed to submit quarterly enforcement status reports. As referenced in the 2005 ICR, reporting of formal enforcement data is a MDR.

During the on-site file review, EPA evaluated enforcement case files for 9 minor sources that were either initiated during FY 2005 and/or concluded in FY 2005. We also evaluated 6 other enforcement cases against minor sources that were initiated/settled prior to FY 2005 or after FY 2005. None of these cases were reported to EPA-CEPD and/or AIRS although the APCP work plan requires that VIDPNR report enforcement cases to the EPA on a quarterly basis.

The HPV discovery rate for the Virgin Islands based on FCEs completed at major sources and entered in AIRS, in FY 2005 is 0% (0/0), which is well below the national average (10.3%). The reason for this is because VIDPNR failed to (1) report any FCEs that they completed in FY2005 (only 3 PCEs at the major sources in St. Croix were reported), and (2) failed to complete FCEs for these inspections.

*Citation of information reviewed for this criterion:*

OTIS Management Reports, HPV policy, 2005 ICR, file review

*Recommendations if corrective action is needed:*

To improve the process for identifying and addressing potential HPVs, the EPA recommends that VIDPNR modify the upcoming PPG work plan to reflect more frequent coordination. The work plan shall include monthly conferences rather than quarterly meetings. In addition, the following short term and long term measures will be implemented for the reporting of enforcement data into AIRS.

Short term – VIDPNR needs to reports all formal and informal enforcements actions to Region 2, via completed AIRS data entry sheets. In accordance with the 2005 ICR, these reports must be submitted to EPA within 60 days of completion; the Air Pollution Control Program Work Plan should be amended to reflect the change in timeliness of reporting requirements. Additional training is needed for the VIDPNR staff on implementing the HPV policy.

Long term – EPA will secure direct AIRS access, (Host on Demand), for all VIDPNR staff and provide training on how to enter the data in AIRS.

*VIDPNR's response to Recommendation:*

VIDPNR acknowledges that it is clear that the degree to which violations are reported is inadequate and that the High Priority Violators (HPV) policy is not being implemented appropriately. The APC program will submit timely reports EPA. The program is working with CEPD to coordinate training in AIRS and HPV policy for the APC staff. In the interim, the program will review the "Timely and Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs)" and "Issuance of Policy on Timely and Appropriate

Enforcement Response to High Priority Violation” by the EPA Office of Enforcement and Compliance Assurance.

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

*Findings:*

According to a staff attorney at VIDPNR, after the inspector has observed a violation, he/she will document it in an inspection report and send it to the program manager. Once the program manager has determined that a Notice of Violation should be issued, the air program will draft a finding of violation and send it to legal counsel. There is at least one attorney for each Office. The attorney, together with the inspector, will finalize a “Notice of Violation, Order for Corrective Action, Notice of Assessment of Civil Penalty, and Notice of Opportunity for Hearing” (NOVA). This document includes the violations being cited, specifies a compliance plan, assesses a civil penalty based on the Virgin Islands Civil Penalty Policy, and offers the Respondent an opportunity to meet with the Department.

According to the OTIS website (Clean Air Act Extended Management Reports), in FYs 2004 and 2005 zero (0) informal or formal actions were issued at all sources. However, during our file review it became apparent that this was not accurate; therefore, this is a data quality issue, in that VIDPNR has issued/settled nine (9) NOVAs during FY 2005. The majority of the violations cited were for not obtaining construction and/or operating permits for new stand-by generators, and for failing to renew existing operating permits. The NOVA generally has a schedule by which to submit the necessary permit applications to correct the violation.

After the NOVA is issued, informal settlement discussions are held between the source and the Department. According to VIDPNR staff, 99.9% of the cases are settled during these settlement discussions. As indicated above, most of these were for settling violations of operating without a permit. Once a settlement is reached, a consent order is issued memorializing the agreement and the final penalty to be paid. After the source has complied with all the requirements of the Consent Order, a Dismissal Order is issued. We noted three (3) instances where there was no follow-up in the files once the NOVA was issued. In all three cases, NOVAs were issued and penalties were assessed but there was no further documentation available that indicated they were settled.

In many cases, copies of the enforcement documents were not available in the program’s files but they were found with the legal office.

*Citation of information reviewed for this criterion:*

Source files in the program and legal offices; staff interviews, AIRS database.

*Recommendations if corrective action is needed:*



VIDPNR must make sure that there is proper documentation in the files to close-out all enforcement cases. Also, VIDPNR must report all enforcement cases (including minor sources) to the EPA and to AIRS. VIDPNR must be given AIRS training on how to enter enforcement data into AIRS. The program office should have a complete set of all enforcement documents that were issued to a source in the program files.

*VIDPNR's response to Recommendation:*

VIDPNR has indicated that the program has made progress in updating files. A checklist was developed to ensure that all relevant documents are present in the file. While updating files, a number of annual certifications resurfaced. Annual Certifications are now part of the source's file. The APC program understands the importance of reviewing annual certification in identifying HPVs. An enforcement file SOP will be completed.

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

*Findings:*

Enforcing regulations and performing activities in conformance with the HPV policy is included in VIDPNR's APCP PPG work plan. VIDPNR has also developed Standard Operating Procedures (SOPs) for enforcement, which are attached to the annual work plan. However, the internal SOPs do not identify specific timelines when enforcement actions should be commenced and/or concluded.

As indicated previously, a review of the AIRS data revealed that VIDPNR has not identified any HPVs in FYs 2004 and 2005. In EPA's mid-year and end-of-year workplan review letters, Region 2 has constantly reminded the VIDPNR that they need to take enforcement action against major sources and SM-80 sources and that they have to follow the HPV policy.

During the file review, we found five (5) instances of violations identified at major sources by the inspector or instances where the source has not reported their annual compliance certification in a timely manner or reported intermittent compliance. A review of the files also indicated that at least three (3) sources had not applied for Title V permits in a timely manner. The APCP has failed to follow-up on these violations and failed to identify some of these violations as potential HPVs as previously mentioned.

With respect to the NOVAs issued by VIDPNR, the date of issuance of the NOVA from the date of the inspection, ranged from approximately 1 month to 20 months.

*Citation of information reviewed for this criterion:*

AIRS, OTIS Management Reports, source files and staff interviews

*Recommendations if corrective action is needed:*

The Territory should take enforcement against the major sources and identify potential HPVs through AIRS, in accordance with the latest ICR. EPA needs to provide access and training for AIRS and refresher training on the HPV policy.

With respect to the minor sources, the enforcement SOP should have specific timelines that the program office should strive to meet to ensure that timely and appropriate enforcement is taken. The referenced enforcement SOP shall be submitted to EPA for review and comment by December 2007. The revised enforcement SOP shall be adhered to for all types of violations, not just permitting violations, to ensure that enforcement actions are taken in a timely manner and reported to AIRS.

*VIDPNR's response to Recommendation:*

VIDPNR agrees with the recommendation and has indicated that the enforcement SOP will be developed for major as well as minor sources that will outline timely enforcement actions. The SOP will be submitted to EPA for review and comment.

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

*Findings:*

The VIDPNR has a Civil Penalty Policy that they use for assessment of civil penalties for noncompliance. The penalty policy is applicable at all sources – majors and minors. The most recent version of the policy became effective July 10, 2003. Under the Virgin Islands law, the maximum penalty that can be assessed is \$50,000 per day per violation. The Penalty Policy also requires that the litigating team consider the assessment of an economic benefit component for noncompliance. The Civil Penalty Policy has a penalty calculation sheet that the program is required to complete and keep on file. The current VIDPNR penalty policy does conform with EPA's CAA penalty policy. However there has to be more guidance provided to the technical and legal staff on how to apply the policy consistently.

During the review EPA was informed that VIDPNR had issued nine (9) NOVAs against noncomplying sources in FY 2005. All of these sources were minor sources. A review of 15 enforcement files (some had enforcement actions issued prior to or after FY 2005) indicated that the penalty calculation sheet(s) were not included as part of the enforcement file. Also, since many of the violations were "permit type" violations no economic benefit was assessed. The NOVAs showed assessed penalties that ranged from \$3,750 to \$76,500.

*Citation of information reviewed for this criterion:*

Source files, staff interviews, the Virgin Islands Civil Penalty Policy.

*Recommendations if corrective action is needed:*

All enforcement cases where a penalty is assessed must have a penalty calculation worksheet in the file. The first calculation should be a computation of the potential statutory maximum for all provable violations. The worksheet should include the justification for how a penalty

was calculated and what factor(s) were considered in mitigating the penalty. When using the Virgin Islands Civil Penalty Policy, VIDPNR should use all factors to calculate the gravity component of a penalty. Also, when warranted, VIDPNR should factor into their penalty the economic benefit accrued by the facility due to noncompliance. EPA will provide economic benefit training to VIDPNR and will work with VIDPNR to set up the training.

*VIDPNR's response to Recommendation:*

VIDPNR agrees with the recommendation and will develop a worksheet based on the Virgin Islands Civil Penalty matrix. The program will work with the legal department to include economic benefits in assessing penalties. In addition, the program will work with EPA to organize training that focus on factoring economic benefit in penalty assessment

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

*Findings:*

All civil penalty settlements are negotiated between the source and the Department through informal settlement conferences. Although there is no written policy on how much the penalty can be mitigated, we were informed that the Department “does not mitigate the assessed penalty by more than 60%.” However, this was not the situation for the nine (9) NOVAs that were recently settled.

A review of these NOVAs and the final settlement actions showed that a penalty is assessed based on the penalty policy. The final penalty and settlement terms are then negotiated during informal conferences with the source. There were no documents in the files that indicate what mitigating factors were considered and how the final settlement amount was reached. However, the assessed penalties in the 9 NOVAs initiated and/or settled in FY 2005 indicated that the civil penalties were mitigated anywhere from 40% to 100%. Three cases settled prior to FY 2005 had penalties mitigated by an average of 95%. For instance, a minor source located on St. Thomas was assessed a penalty of \$30,000, the case was settled for \$500. Another minor source located on St. John's was assessed a penalty of \$76,000 and the final settlement required a \$5,000 payable penalty. Also, not all of the files included documentation to show that the final penalty amount was collected.

*Citation of information reviewed for this criterion:*

AIRS, OTIS Management Reports, source files, Virgin Islands Civil Penalty Policy, HPV policy.

*Recommendations if corrective action is needed:*

The litigation team must use the penalty calculation sheet provided in the Civil Penalty Policy when calculating the assessed penalty. Also, there has to be documentation in the file that indicates how the final settlement amount was reached and the penalty was paid and

received. When a formal action is issued and a penalty assessed, the assessed penalty should be reported in AIRS with the formal action.

The Virgin Islands Penalty Policy has a discussion on why economic benefit needs to be assessed and collected. However the majority of the cases concern entities that have been operating without permits and these parties don't tend to have any appreciable economic benefit and therefore economic benefit is ignored from the penalty calculation. With regard to the mitigation of penalty, without any documentation in the file, we are unable to ascertain the validity of the penalty reductions.

*VIDPNR's response to Recommendation:*

Again, VIDPNR has indicated that the penalty calculation worksheet based on the Virgin Island Penalty Policy will be developed. This worksheet will be incorporated in the filing system.

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

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

*Findings (including successful performance and areas for improvement):*

According to VIDPNR's APCP PPG work plan, VIDPNR agreed to issue a minimum of four (4) NOV's or any combination of enforcement actions against major sources and MACT sources during FY 2005. VIDPNR has clearly failed to meet this requirement for FY 2005. A review of the AIRS database reveals that VIDPNR has not taken any enforcement against a major source for more than three years now. Also, VIDPNR has failed to forward copies of all enforcement actions to CEPD on a quarterly basis.

*Citation of information reviewed for this criterion:*

Staff interviews, source compliance and enforcement files, AIRS database

*Recommendations if corrective action is needed:*

VIDPNR needs to pursue all violations against major sources and, in accordance with their APCP workplan, provide the appropriate enforcement documents to EPA. EPA and the VIDPNR need to work together to revise the upcoming PPG work plan to ensure that there is more frequent and critical oversight to ensure that all the commitments of the work plan are executed in a timely manner. The additional oversight steps shall include, but not limited to monthly conference calls, review of all inspection reports and enforcement actions, timely submittal of AIRS data sheets, timely entry of the information into AIRS, etc.

*VIDPNR's response to Recommendation:*

VIDPNR has indicated that it will ensure that all violations against major sources are pursued and reported to EPA.

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

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

###### *Findings:*

In accordance with their PPG work plan, VIDPNR is required to report all compliance and enforcement data to EPA within 30 days of the end of each quarter. VIDPNR did not send these updates on a quarterly basis but instead sent them at the end of the year with the year-end progress report. A review of completed AIRS data entry sheets revealed that no inspections were reported from the St. Thomas office and no enforcement actions were reported on the AIRS data sheets.

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

AIRS, OTIS Extended CAA Management Reports, OTIS Management Reports, staff interviews and PPG Workplan for Fiscal Year 2005.

###### *Recommendations if corrective action is needed:*

Enter FCEs into AIRS as soon as feasibly possible (i.e., but at least within 60 days of the FCE's completion). Enter HPVs in AIRS within 45 days of discovery of the violation. Modify the VIDPNR Air Pollution Control Program grant work plan to include more continuous reporting as referenced in the 2005 ICR, 60 days after the action is completed as opposed to within 30 days of the end of each quarter. For the interim period (before VIDPNR get AIRS access) any discrepancies in the AIRS datasheets submitted by VIDPNR should be communicated/discussed at the regularly scheduled monthly meetings.

###### *VIDPNR's response to Recommendation:*

VIDPNR has indicated that MDRS will be submitted to EPA using the AIRS datasheet in a timely manner. After training is provided, MDRs will be entered into AIRS.

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

###### *Findings:*

During the review period covered by the audit, VIDPNR sent completed AIRS data sheets to EPA – CEPD office for entry into AIRS. Some of the examples of MDRs the team found to be inaccurate in the database were:

- No stack tests were reported during FY 2005 although evidence of witnessing one was found in the file review.
- reporting non-applicable air programs
- lack of CMS Codes and Frequency Indicators

- regulated pollutants not reported
- inaccurate pollution classification
- Inaccurate air program pollutants
- Missing title V annual certification date received and title V annual compliance certification reviews
- Inaccurate entry of the review of an annual emission statement as the review of a title V annual compliance certification.
- Inaccurate program operating status.
- Missing applicable air programs and/or subparts
- Some actions did not match those found in compliance evaluation files. For instance, there is no corresponding action for an on-site inspection in AIRS in the compliance file; and there is no corresponding documentation in the compliance file for a FCE that is in AIRS
- No FCEs or PCES entered
- No street address in AIRS, only has a postal address.

Another issue with the data in the Virgin Islands is caused by the frequent change of ownership of some of the sources on the Islands and how they are identified in AIRS. While these sources have not changed their physical location, new corporations have bought them and there is significant confusion as to what names these sources should be listed under in AIRS. According to the AFS Business Rule Compendium of 2006, the change of ownership does not affect the source number and the history of the source goes with the new owner. For AIRS, the plant name should be the name used on the permit application. Also name changes should be entered in AIRS as soon as they are identified to the VIDPNR.

*Citation of information reviewed for this criterion:*

AIRS, OTIS Management Reports, OTIS Extended CAA Management Reports

*Recommendations if corrective action is needed:*

VIDPNR must provide an updated CMS Plan to EPA on a yearly basis separate from the Air Pollution Control Program work plan, enter all Air Program subparts for a facility upon completion of a full compliance evaluation, ensure all MDRs are reported accurately and enter all stack tests and results.

*VIDPNR's response to Recommendation:*

VIDPNR has indicated that, as recommended, a CMS plan will be submitted separate to the annual workplan.

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

*Findings:*

VIDPNR does not directly enter any data into AIRS. As agreed to in the work plan, VIDPNR is required to submit completed AIRS data entry sheets with the MDRs to Region 2

who is then required to enter the data into AIRS. The source level compliance status, classification codes, compliance evaluations and the results of compliance evaluations are included in the PPG work plan as required data elements.

Title V Universe:

At the time of the pull that comprised the data metrics, AIRS indicated a universe of 21 operating majors and seven (7) operating majors with a title V air program code. According to VIDPNR, the current universe of title V majors is seven (7) sources with another three (3) sources required to obtain a title V permit because of applicable regulations (2 landfills and 1 hospital incinerator).

State agrees with source count:

- major sources: Based on VIDPNR's most recent PPG work plan, the universe of major sources in VI is seven, which includes one mega-site. This number does not reflect information we received during the file review, which indicated the title V source universe is 10 sources.
- synthetic minor sources: 8
- NESHAP minor sources: 3

Subprogram Universe:

The below numbers include sources temporarily shut-down, sources under construction and planned sources.

- CAA-NSPS: According to VIDPNR, there are 8 NSPS affected sources in VI.
- CAA-NESHAP: According to VIDPNR, there are 4 sources affected by NESHAP regulations in VI.
- CAA-MACT: According to VIDPNR, there are at least 4 MACT affected source in VI (includes dry cleaners).

Compliance Monitoring Counts Complete:

- Number of FCEs completed: According to AIRS, during the reporting period, zero (0) FCEs were completed by the VIDPNR in FY2005. DPNR agrees with this number, no FCEs were completed.
- Number of PCEs reported: According to AIRS, during the reporting period, zero (0) PCEs were completed by the VIDPNR in FY2005. However, a review of the completed AIRS data entry sheets that were submitted with the EOY report, indicated VIDPNR completed 10 PCEs at major sources and synthetic minor sources.

Historical non-compliance counts complete:

Historical data in AIRS may not get updated by either the VIDPNR or EPA; therefore, this data metric may not be accurate. According to AIRS, the total number of sources reported to be "in-violation" during any period in FY 2005 was 35.

Notice of Violation Counts Complete:

The CAA OTIS Management Report indicates that zero Notices of Violation were issued in FY 2005. However, during our review, we were informed that one (1) notice of deficiency was issued. The Department also issues NOVAs which are more formal than a simple Notice of Violation. The NOVAs include a compliance schedule and an assessment of civil penalty.

HPV Counts Complete:

AIRS indicates that zero (0) new HPVs (pathways and sources) were discovered in FY2005.

Formal Action Counts Complete:

In FY 2005, VIDPNR issued or settled 9 formal enforcement actions in the Virgin Islands. None of these were reported in AIRS. They are all against minor sources.

Assessed Penalties Complete:

The total for penalties assessed in VIDPNR during FY 2005 was \$32,995.

Number of Major Sources Missing CMS Policy Applicability:

According to the VIDPNR work plan, there are 7 major sources on the Island. The database shows that the CMS indicators and frequency codes for at least 14 sources to be missing and/or wrong. Since VIDPNR does not have the authority to batch update the source codes and frequency indicators in AIRS, it is the responsibility of the EPA to update this MDR.

*Citation of information reviewed for this criterion:*

AIRS, IDEA, OTIS Management Reports, OTIS Extended CAA Management Reports, staff interviews.

*Recommendations if corrective action is needed:*

VIDPNR must enter all MDRs in AIRS including enforcement actions, issuance of NOV/NOD, FCEs, air program operating status, compliance status, and HPVs. VIDPNR has to work with EPA to update the CMS Indicator and Frequency Code in AIRS. All AIRS updates must be made in accordance with the latest Information Collection Request.

*VIDPNR's response to Recommendation:*

VIDPNR has indicated that after training is provided, data will be entered in AIRS in a timely manner. The APC program agrees to work with EPA to revise CMS indicators and Frequency Code in AIRS.





However, in the Virgin Islands, no wet weather facilities have been permitted so the Region will focus only on Major and Minor facilities. Majors and Minors will further be broken down into municipal and industrial categories based on the permitted percentage of each category.

Due to the small universe of Major facilities in the Virgin Islands, the Region will review all Major facilities, with the exception of municipal facilities.

Since no enforcement actions were taken during FY05 according to OTIS, the Region will select 18 facility files for review (4 will be Majors and the remaining 14 will be Minors representing different industrial sectors). At the beginning of the review, VIDPNR informed EPA that enforcement actions had been taken during FY05 and initiated in FY06 for violations identified in FY06, for a total of five facilities.. Therefore, EPA reviewed inspection files for all 18 facilities and enforcement files for five facilities.

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

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

*Findings (including successful performance and areas for improvement):*

According to PCS, VIDPNR inspected 83.3% of all the majors, which is greater than the national average of 64.6% of all majors inspected. According to VIDPNR's FY2005 Work Plan, Compliance Evaluation Inspections (CEIs) are to be conducted at all major industrial permittees once per year; CEIs are to be conducted at minor industrial permittees on a violation basis. In addition, Compliance Sampling Inspections (CSIs) are to be conducted at all major industrial facilities, at all municipal facilities, and at designated minor industrial facilities once per year. VIDPNR also inspects all pump stations once per quarter, as indicated in their FY2005 Work Plan.

As stated in VIDPNR's work plan, all majors are to be inspected once per year; however, PCS indicates that all but one major was inspected. There are a total of 6 majors in VI. According to VIDPNR's End of Year Report for FY2005, all 6 majors were inspected. VIDPNR sends inspection data to EPA to be input into PCS/ICIS. Copies of all inspection reports for majors are submitted to EPA.

Of the (18) inspection files which EPA reviewed, all files provided documentation (i.e. inspection reports) that either a Compliance Evaluation Inspection or a Compliance Sampling Inspection (or both) had been conducted in FY2005.

*Citation of information reviewed for this criterion:*

*Recommendations if corrective action is needed:* EPA recommends that VIDPNR continue to fully implement its inspection policy which requires at least one CEI to be conducted at all major industrial permittees once per year; at all minor industrial permittees on a violation basis; and at least one CSI to be conducted at all major industrial facilities, at all municipal facilities, and at designated minor industrial facilities once per year.

EPA also recommends that EPA and VIDPNR reevaluate data entry procedures to ensure that all data (inspections, enforcement actions, etc.) are captured in the databases in a timely manner. Once data entry procedures are reevaluated, EPA recommends VIDPNR formally develop and adopt a written policy that addresses data entry to ensure consistency across offices. To date, there is no written policy or standard operating procedure which addresses data entry in VIDPNR.

*VIDPNR's response to Recommendation:*

VIDPNR has agreed with these recommendations and will develop and implement a SOP for timely inspection completion and transmittal. Additionally, DPNR-DEP will begin attaching a cover letter to the report outlining the deficiencies found and, if necessary, a required response and a timeframe for the response. DPNR-DEP will also work with the assistance of EPA to develop an Enforcement Response Guidance or Strategy.

VIDPNR will also begin to document when facility's correct deficiencies outlined during inspections before the close of inspection or by a follow-up call. This will be done via a phone log or a memo to the file. DPNR-DEP will develop and implement a SOP to address a permittee's failure to respond to Corrective Action Plan requests, if not received by the established deadline.

Finally, VIDPNR agrees that EPA and VIDPNR need to revisit the current status of the majors and minors in the VIDPNR permit universe.

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

*Findings (including successful performance and areas for improvement):*

There is no inspection policy which outlines requirements for recording inspection findings. Generally, VIDPNR uses the EPA Water Compliance Inspection Report (Form 3560-3) to record inspection findings. To some extent, inspectors utilize the EPA Form 3560-3 Attachment which is a checklist to evaluate Records and Reports, Permit Verification, Compliance Schedules, Self-Monitoring Program, and Operations and

Maintenance. It appears that VIDPNR is using versions from September 1977 and September 1994. Most of the inspections reviewed did not include this checklist in the files as it was not used. However, two (2) inspection reports included a blank checklist. Upon discussion with VIDPNR, the checklists are not required to be used for all inspections. They are filled out at the discretion of the inspector.

Of the eighteen (18) inspection files that EPA reviewed, all of the files provided documentation that EPA Water Compliance Inspection Report was being filled out and a narrative description of the findings was also attached to the report.

Violations and deficiencies are identified in the report and Corrective Action Plans (CAP) are required addressing the deficiencies. However, out of fourteen (14) files that identified violations and/or deficiencies and required a CAP, only five files provided some form of documentation that a CAP was completed and returned to VIDPNR.

*Citation of information reviewed for this criterion:*

EPA Water Compliance Inspection Report Form 3560-3; and VIDPNR St. Thomas and St. Croix Office Files file reviews

*Recommendations if corrective action is needed:* EPA recommends VIDPNR develop and implement a formal Standard Operating Procedure (SOP) outlining use of the inspection forms and checklists for different facilities (municipal, industrial, etc.). In addition, EPA recommends using the most recent version available for EPA Form 3560 as it was revised in January 2006, if it is not being used already.

*VIDPNR's response to Recommendation:*

VIDPNR has agreed to develop and implement a formal Standard Operating Procedure (SOP) outlining use of inspection forms and checklists for different facilities (municipal, industrial, etc.) Additionally, DPNR-DEP will begin using the most recent version of the compliance inspection form (EPA Form 3560), which was revised in January 2006.

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

*Findings (including successful performance and areas for improvement):*

VIDPNR's FY 2005 Work Plan states that "original inspection reports will be sent to the Permittee and copied to EPA within 30 days of completion of the inspection. A cover letter describing the deficiencies, if any, will be prepared and require a response by the Permittee within 30 days." In addition, EPA's NPDES Compliance Inspection Manual indicates that reports be completed and sent to the permittee in a timely manner (generally within 30 days). Of the twenty-one (21) annual CEIs and CSIs (some facilities were inspected more than once during FY2005), only four (4) reports were prepared

within 30 days of the inspection. However, of those four inspections, only one was approved within 30 days. The remaining seventeen (17) inspections, completion of inspection reports exceeded 30 days, sometimes by as much as year past the date of the inspection. One report was completed over a year later (i.e. inspection was conducted on June 9, 2005, inspection report was not completed until June 23, 2006). In another instance, one report was not completed until ten and one half months (May 3, 2006) after the inspection was conducted on June 24, 2005.

VIDPNR has indicated that inspection reports go through a lengthy approval process which contributes to the delay in finalizing reports within a timely period. Inspection reports are prepared by the inspector and then transmitted to the manager for review and then they are ultimately sent to the Director for final approval. Sometimes as much as three months can elapse between the time the inspector writes the report and the Director approves the report.

As indicated in the FY2005 Work Plan, all original inspection reports are to be transmitted to the permittee along with a cover letter describing deficiencies, if any. There was no documentation in the eighteen (18) inspection files that indicated that inspection reports were transmitted. In discussion with VIDPNR, it was indicated that inspection reports are mailed to the permittee but documentation is not provided in the file.

Violations and deficiencies were identified in inspection reports and Corrective Action Plans (CAPs) addressing the deficiencies were required, however, only five files out of fourteen files provided documentation that the CAPs were completed and implemented. The review team did not find documentation of the adequacy of the permittee's response in the file for any of the five files with CAPs returned by the permittee. In discussion with VIDPNR, CAPs are sometimes not submitted because the facility took immediate action to correct the deficiencies when they were notified by the inspector of the initial findings (which were either transmitted while the inspector was at the facility or by phone).

Of the twenty-one (21) inspection reports reviewed, violations were identified during seventeen (17) inspections. Only one of the seventeen inspection findings resulted in an enforcement action. The remaining sixteen (16) inspections with some form of violation were not followed up with an addressing enforcement action at a total of thirteen (13) facilities. Some inspection findings referred to previous inspections with the same findings, yet no enforcement actions were taken (i.e. two facilities). In the instance where inspection findings referred to previous inspections with similar findings, EPA recommends that VIDPNR issue formal enforcement action against these facilities to ensure full and prompt compliance with the Clean Water Act. EPA further recommends that VIDPNR issue Notices of Violation when violations are identified during inspections. In no instance, did an inspection report indicate Significant Noncompliance (SNC).

*Citation of information reviewed for this criterion:*

VIDPNR St. Thomas and St. Croix Office Files, VIDPNR-DEP Water Pollution Control Program, FY 2005 Work Plan Revised – June 2005, EPA's NPDES Compliance Inspection Manual

*Recommendations if corrective action is needed:* EPA recommends that VIDPNR develop and implement a Standard Operation Procedure (SOP) for timely inspection report completion and transmittal. It is also recommended that a cover letter be attached to the report indicating deficiencies, if any, and a required response along with a timeframe for the response. In addition, the majority of the inspection reviewed all outlined deficiencies and required a Corrective Action Plan (CAP); however, it was sometimes difficult to ascertain what the deficiencies were. Therefore, it is recommended that all deficiencies to be addressed be clearly outlined in the cover or transmittal letter so the permittee knows exactly what needs to be addressed.

VIDPNR needs to develop an Enforcement Response Guidance or Strategy.

EPA also recommends that VIDPNR follow up on CAPs and document the response in the file. If no CAP is submitted because the facility rectifies the deficiencies immediately, the file should be noted that the facility was informed of the deficiencies at the close of the inspection or through a follow-up phone call and it was corrected immediately. Documentation should be in the form of a phone log or a letter/memo to the file.

EPA further recommends that VIDPNR develop a Standard Operating Procedure to address failure to respond to Corrective Action Plan requests if the response is not received by the deadline established in the inspection report transmittal letter.

It is also recommended that EPA and VIDPNR revisit the current status of majors and minors as the universe has changed.

*VIDPNR's response to Recommendation:*

VIDPNR has agreed with these recommendations and will develop and implement a SOP for timely inspection completion and transmittal. Additionally, DPNR-DEP will be attach a cover letter to the report outlining the deficiencies found and, if necessary, a required response and a timeframe for the response. DPNR-DEP will also work with the assistance of EPA to develop an Enforcement Response Guidance or Strategy.

VIDPNR will also begin to document when facility's correct deficiencies outlined during inspections before the close of inspection or by a follow-up call. This will be done via a phone log or a memo to the file. DPNR-DEP will develop and implement a SOP to address a permittee's failure to respond to Corrective Action Plan requests, if not received by the established deadline.

Finally, VIDPNR agrees that EPA and VIDPNR need to revisit the current status of the majors and minors in the VIDPNR permit universe.

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

### **4. Degree to which significant violations (e.g. significant noncompliance and high priority violations) and supporting information are accurately identified and reported to EPA national databases in a timely manner.**

*Findings (including successful performance and areas for improvement):*

Significant Noncompliance is not reported to EPA directly, but instead into EPA databases, whereupon SNC is system generated after data entry. Upon review of Draft Managers and Managers Quarterly Noncompliance Reports (QNCRs) and Watch List, EPA and VIDPNR are to discuss facilities in SNC through the Significant Noncompliance Action Program (SNAP) process. Currently, all major municipal facilities are under a Federal Judicial Order with the Court requiring active EPA involvement at these facilities. In addition, EPA continues to have routine ongoing discussions on the limited number of industrial facilities in the Virgin Islands in order to determine compliance and the actions being taken by the VIDPNR. Accordingly, EPA met with VIDPNR in May 2007 to discuss the approach to be followed as it relates to enforcement and priority violations. As agreed in the meeting, SNAP meetings via conference calls will be reinstituted to follow-up on these issues on a quarterly basis beginning in August 2007.

According to the CWA Data Metrics, VIDPNR has 83.3% of its majors in SNC with five major facilities, which is at least 4.5 times the national average of 18.5.

*Citation of information reviewed for this criterion:*

CWA Framework Metric Results/data

*Recommendations if corrective action is needed:* SNAP meetings will be reinstituted by Region 2 and VIDPNR. EPA is planning to host SNAP meetings on a quarterly basis. Meetings will take place on the last Wednesday of the month with the first SNAP meeting to be held in late August.

EPA also recommends that in the interim, VIDPNR submit single-event violations to Region 2 within 30 days of the violation. Ultimately, VIDPNR should be trained and able to enter this information into ICIS.

*VIDPNR's response to Recommendation:*

VIDPNR agrees to work with EPA to reinstitute quarterly SNAP conference call.

Additionally, VIDPNR believes that if it was to be trained and obtain access to the ICIS database it would be able to be notified of non-compliances reported a more timely manner.

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

*Findings (including successful performance and areas for improvement):*

Of the five (5) files that were reviewed for enforcement actions (which were not recorded in PCS or OTIS), 4 enforcement actions were prepared in response to incidents such as spills or citizen complaints. One of the enforcement actions was in response to permit violations or inspection violations (Divi Carina Bay).

According to VIDPNR's "Water Pollution Control Program FY '05 End of the Year Report", the Department issued three (3) Notices of Violation (NOVs) and had two (2) others in development in FY2005. Of the three NOVs that were issued, EPA looked at two facility files. The first was issued an NOV as the Department had been unable to conduct inspections on several occasions as the facility failed to provide required documents when requested. The second facility was issued an NOV in response to a citizen complaint of an overflow from the wastewater treatment system holding tank to a natural gut leading to the Nazareth Bay. Both facilities were issued NOVs and entered into Consent Agreements.

Of the two files, only one Consent Agreement had been executed and a penalty of \$5,000 collected. In the other instance VIDPNR and the respondent have entered into a Consent Agreement and are currently negotiating their final penalty amount. Both NOVs and Consent Agreements outlined corrective actions that the facilities were to undertake as well as an assessed penalty.

The remaining three files that were reviewed for enforcement actions were all in response to spills during FY2005. However, the enforcement actions were not taken until FY2006. All three facilities are still undergoing Consent Agreement negotiation but initial actions included appropriate complying actions.

*Citation of information reviewed for this criterion:*

VIDPNR St. Thomas and St. Croix Office Files

*Recommendations if corrective action is needed:* N/A

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



*Findings (including successful performance and areas for improvement):*

Based on review of eighteen (18) inspection files, EPA found that twelve (12) facilities should have had some form of addressing enforcement action, such as a Notice of Violation, in response to deficiencies and violations identified during the inspection. However, VIDPNR did not take action against any of these facilities.

Based on the data metrics, VIDPNR has 50.0% of the Territory's active majors in significant noncompliance. The Territory is far above the national average of 8.8%. Although 50% of the Territory's active majors would be classified as in SNC if no formal enforcement action had been taken, they are currently under a Federal judicial enforcement order.

*Citation of information reviewed for this criterion:*

VIDPNR St. Thomas and St. Croix Office Files, CWA Framework Metrics Results/data

*Recommendations if corrective action is needed:* VIDPNR should develop and implement an Enforcement Response Guidance or Strategy in the near future. The Guidance or Strategy should address protocol for issuance of Notice of Violations (NOVs) upon identification of violations for permit violations as well as incidents (i.e. such as spills).

The Enforcement Response Guidance or Strategy should also address timely and appropriate enforcement for municipal and non-municipal TPDES permit violations (i.e. such as effluent limit violations, DMR non-reporting, inspection deficiencies, audit deficiencies, etc.) and document to the files all enforcement response determinations via violation evaluation forms and initiate enforcement action. In addition, VIDPNR should seek to improve the quality, content and timeliness of all reports (i.e., Significant Noncompliance Action Program) and follow Federal requirements for submission of data to EPA.

It is also recommended that EPA and update the current status of majors and minors as the universe has changed.

*VIDPNR's response to Recommendation:*

With EPA's assistance, VIDPNR has agreed to develop an Enforcement Response Guidance or Strategy, which will include protocol for the issuance of Notices of Violations upon identification of permit violations and incidents (i.e. spills). EPA will also work with VIDPNR to identify opportunities improve the quality and content of all its reports, such that they follow Federal requirements for submission of data to EPA.

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

**for all penalties, appropriately using the BEN model or similar state model (where in use and consistent with national policy).**

*Findings (including successful performance and areas for improvement):*

VIDPNR developed and implemented its Civil Penalty Policy in July 2003. The Civil Penalty Policy is equivalent to EPA's policy and utilizes a penalty matrix which is developed based on the seriousness of the violation (i.e. Major, Moderate, and Minor). Two factors are considered in determining the gravity-based penalty, potential for harm and extent of deviation from a statutory or regulatory requirement. Economic benefit is calculated and added to the gravity-based penalty when a violation results in significant economic benefits to the violator.

In the two (2) enforcement files reviewed, gravity and/or economic benefit calculations were taken into consideration in calculating penalties and documentation was provided by the legal department. In the review of penalty calculations the team had access to, it was observed that the civil penalty policy was being implemented with respect to gravity in each file that was reviewed for FY05 and in FY06 for violations identified in FY05. Of all the files reviewed (actions executed in FY05 and initiated in FY06 but not yet executed at the time of the review), economic benefit was only assessed in one particular case. No economic benefit was assessed nor was a reason given as to why it was not in the remaining four files that were available for EPA to review for violations that occurred in FY05.

*Citation of information reviewed for this criterion:*

VIDPNR St. Thomas and St. Croix Office Files; VIDPNR Civil Penalty Policy of July 10, 2003.

*Recommendations if corrective action is needed:* Penalties need to be better documented by VIDPNR.

*VIDPNR's response to Recommendation:*

VIDPNR will work to better document penalties assessed for enforcement actions. Additionally, VIDPNR agrees with the recommendation and will work with EPA to identify or develop a policy outlining calculation of economic benefit to be used as part of the Civil Penalty Policy. VIDPNR agrees to become more consistent with its use of the Penalty Computation Worksheet and will work with EPA to set-up adequate training for VIDPNR staff.

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

*Findings (including successful performance and areas for improvement):*

Of the two enforcement actions reviewed for FY2005, both enforcement actions included gravity-based penalties in accordance with VIDPNR's Civil Penalty Policy. The Civil Penalty Policy utilizes a penalty matrix which is developed based on the seriousness of the violation (i.e. Major, Moderate, and Minor). Two factors are considered in determining the gravity-based penalty, potential for harm and extent of deviation from a statutory or regulatory requirement. Economic benefit is calculated and added to the gravity-based penalty when a violation results in significant economic benefits to the violator. One enforcement action included economic benefit in its penalty calculation narrative in accordance with the Civil Penalty Policy; however, the economic benefit calculations were not available for review. The other enforcement action reviewed did not include economic benefit in its calculations and no explanation for why it was not considered was provided. Finally, VIDPNR should be consistent in the use of its Penalty Computation Worksheet (found in Section IX of the Civil Penalty Policy) as it appears to be used in the St. Croix office but not in the St. Thomas office.

*Citation of information reviewed for this criterion:*

VIDPNR St. Thomas and St. Croix Office Files, VIDPNR Civil Penalty Policy of July 10, 2003.

*Recommendations if corrective action is needed:* It is recommended that VIDPNR adopt a model (i.e. EPA's BEN model) for the calculation of economic benefits to be used as part of the Civil Penalty Policy. It appears that calculation of economic benefit is arbitrary and left to the discretion of the case developer without specific guidance to follow.

It is also recommended that VIDPNR be consistent in the use of its Penalty Computation Worksheet (found in Section IX of the Civil Penalty Policy). EPA will provide economic benefit training to VIDPNR and will work with VIDPNR to set up the training.

*VIDPNR's response to Recommendation:*

VIDPNR agrees with the recommendation and will work with EPA to identify or develop a policy outlining calculation of economic benefit to be used as part of the Civil Penalty Policy. VIDPNR agrees to become more consistent with its use of the Penalty Computation Worksheet and will work with EPA to set-up adequate training for VIDPNR staff.

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

#### **9. Degree to which enforcement commitments in the PPA/PPG/categorical grants**

**(written agreements to deliver a product/project at a specified time) are met and any products or projects are completed.**

*Findings (including successful performance and areas for improvement):*

There are no specific enforcement commitments in the PPG workplan. Task V (Enforcement) of VIDPNR's FY 2005 Work Plan states that "DEP will continue to initiate and proceed with enforcement actions as deemed necessary against violators of the Water Quality Standards of the Virgin Islands. This will include issuing Notices of Violations, Assessment of Civil Fines and Opportunity for Hearings to violators, Cease and Desist Orders etc. DPNR-DEP will provide EPA in a timely manner as agreed under our existing MOAs copies of all enforcement actions taken. The Division's Legal Counsel will coordinate all enforcement activities along with the Program staff. A start to finish enforcement tracking system will be developed and implemented." Currently, EPA and VIDPNR are drafting a new Memorandum of Agreement (MOA) which will provide specific enforcement commitments.

*Citation of information reviewed for this criterion:*

VIDPNR-DEP Water Pollution Control Program, FY 2005 Work Plan Revised – June 2005

*Recommendations if corrective action is needed:* It is recommended that VIDPNR continue to follow and implement the terms of its workplan. EPA and VIDPNR should re-evaluate the terms of the workplan and update it as necessary. The workplan should include specific inspection numbers, data entry procedures, and ensure that all inspection reports and enforcement actions are completed in a timely and appropriate manner.

*VIDPNR's response to Recommendation:*

VIDPNR agrees with the recommendation and will work with EPA to ensure that the workplan includes specific inspection numbers, data entry procedures, and ensure inspection reports and enforcement actions are completed in a timely and appropriate manner.

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

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

*Findings (including successful performance and areas for improvement):*

Data is entered into PCS/ICIS by EPA DECA-CAPBS. VIDPNR transmits data directly to EPA for input into PCS (prior to March 2006) and ICIS (after March 2006). Data entry depends on timeliness of transmittals from VIDPNR. When information is received by EPA, it is input into the appropriate database immediately. VIDPNR is sporadic in transmitting data to EPA for entry into databases. Information is usually sent in batches

covering several months (sometimes up to a year) of inspection reports and other data.

*Citation of information reviewed for this criterion:*

CWA Framework Metrics Results/data, VIDPNR file review, discussion with VIDPNR's Anita Nibbs

*Recommendations if corrective action is needed:* Data must be sent promptly rather than batched to ensure timely data entry.

*VIDPNR's response to Recommendation:*

VIDPNR agrees with this recommendation and will work to submit its data in amore timely manner.

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

*Findings (including successful performance and areas for improvement):*

| Metric                                                      | Metric Description                  | Measure Type | Metric Type | National Goal | National Average | Virgin Islands Metric | Count | Universe |
|-------------------------------------------------------------|-------------------------------------|--------------|-------------|---------------|------------------|-----------------------|-------|----------|
| 11. Degree to which Minimum Data Requirements are accurate. |                                     |              |             |               |                  |                       |       |          |
| W11A                                                        | Actions Linked to Violations (1 FY) | Data Quality | State       | >= 80%        |                  | 0 / 0                 | 0     | 0        |

VIDPNR does not report enforcement actions to DECA CAPSB for input into data systems.

*Citation of information reviewed for this criterion:*

CWA Framework Metrics Results/data, VIDPNR file review

*Recommendations if corrective action is needed:* EPA recommends that VIDPNR begin sending all enforcement actions issued and executed in the Virgin Islands to EPA immediately for data entry.

*VIDPNR's response to Recommendation:*

VIDPNR agrees with this recommendation and will begin forwarding all enforcement actions issued and executed to EPA. VIDPNR, however, requests that EPA inform VIDPNR of any forms or supporting documentation that must accompany the actions before submittal.

# 12. **Degree to which the Minimum Data Requirements are complete.**

*Findings (including successful performance and areas for improvement):*

| Metric                                                                                                                                                    | Metric Description                                                 | Measure Type | Metric Type | National Goal | National Average | Virgin Islands Metric | Count | Universe |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|--------------|-------------|---------------|------------------|-----------------------|-------|----------|
| 12. Degree to which the minimum date requirements are complete, unless otherwise negotiated by a region and state or prescribed by a national initiative. |                                                                    |              |             |               |                  |                       |       |          |
| W12A1                                                                                                                                                     | Active Facility Universe: NPDES Major Individual Permits (Current) | Data Quality | State       |               |                  | 6                     | NA    | NA       |

|       |                                                                              |              |          |        |       |       |    |    |    |
|-------|------------------------------------------------------------------------------|--------------|----------|--------|-------|-------|----|----|----|
| W12A2 | Active Facility Universe: NPDES NPDES Non-Major Individual Permits (Current) | Data Quality | State    |        |       | 58    | NA | NA | NA |
| W12B1 | Majors: Correctly Coded Limits (Current)                                     | Goal         | Combined | >= 95% | 89.6% | 83.3% | 5  | 6  | 1  |
| W12B2 | Majors: DMR Entry Rate based on DMRs expected (1 Qtr) **                     | Goal         | Combined | >= 95% | 95.5% | 97.6% | 83 | 85 | 2  |
| W12B3 | Majors: Manual SNC Override Rate (1 FY)                                      | Data Quality | Combined |        |       | 0.0%  | 0  | 5  | 5  |
| W12D1 | Compliance Monitoring: Facilities Inspected (1 NPDES Insp Yr)                | Data Quality | State    |        |       | 33    | NA | NA | NA |
| W12D1 | Compliance Monitoring: Facilities Inspected (1 NPDES Insp Yr)                | Data Quality | Regional |        |       | 3     | NA | NA | NA |
| W12D2 | Compliance Monitoring: Number of Inspections (1 NPDES Insp Yr)               | Data Quality | State    |        |       | 74    | NA | NA | NA |
| W12D2 | Compliance Monitoring: Number of Inspections (1 NPDES Insp Yr)               | Data Quality | Regional |        |       | 4     | NA | NA | NA |
| W12F1 | NOV: Number of Facilities (1 FY)                                             | Data Quality | State    |        |       | 0     | NA | NA | NA |
| W12F1 | NOV: Number of Facilities (1 FY)                                             | Data Quality | Regional |        |       | 0     | NA | NA | NA |
| W12F2 | NOV: Number of NOV's (1 FY)                                                  | Data Quality | State    |        |       | 0     | NA | NA | NA |
| W12F2 | NOV: Number of NOV's (1 FY)                                                  | Data Quality | Regional |        |       | 0     | NA | NA | NA |
| W12H1 | Formal Action: Number of Facilities (1 FY)                                   | Data Quality | State    |        |       | 0     | NA | NA | NA |
| W12H2 | Formal Action: Number of Actions (1 FY)                                      | Data Quality | State    |        |       | 0     | NA | NA | NA |
| W12J  | Major Facilities with Compliance Schedule Violations (1 FY)                  | Data Quality | Combined |        |       | 4     | NA | NA | NA |
| W12K  | Major Facilities with Permit Schedule Violations (1 FY)                      | Data Quality | Combined |        |       | 2     | NA | NA | NA |

Data is entered into PCS/ICIS by Region 2. VIDPNR transmits data directly to EPA for input into PCS (prior to March 2006) and ICIS (after March 2006). Data entry depends on timeliness and completeness of transmittals from VIDPNR. When information is received by EPA, it is input into the appropriate database immediately. VIDPNR is sporadic in transmitting data to EPA for entry into databases. Information is usually sent in batches covering several months (sometimes up to a year) of inspection reports and other data.

*Citation of information reviewed for this criterion:*

CWA Framework Metrics Results/data, VIDPNR file review

*Recommendations if corrective action is needed:* Data must be sent promptly rather than batched to ensure timely data entry.

*VIDPNR's response to Recommendation:*

VIDPNR agrees with this recommendation and will work to submit its data in a more timely manner.

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The Virgin Islands for FY 2005**

**Virgin Islands RCRA Review**

**Review Place and Date**

Caribbean Environmental Protection Division Office,  
Puerto Rico

November 6 to 9, 2006

Region 2 Office, New York City

November 20-21, 2006

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**Background**

**Introduction and Organizational Structure**

This is a review of Region 2's direct implementation of RCRA Subtitle C in the Virgin Islands using the State Review Framework process. OECA conducted the review because the Virgin Islands is not authorized for the RCRA Subtitle C programs.

The direct implementation of the RCRA Subtitle C enforcement and compliance assurance program in the Virgin Islands is conducted by the RCRA compliance branch in the Division of Enforcement and Compliance Assistance (DECA) in New York and the Caribbean Environmental Protection Division (CEPD) in Puerto Rico. Most of the inspections and enforcement actions are conducted by DECA. CEPD conducts some inspections in the Virgin Islands and manages some enforcement actions.

The environmental agency in the Virgin Islands is the Department of Planning and Natural Resources. The DPNR is not authorized for the hazardous waste program and conducts no work in that program. Region 2 does, however, work with them on solid waste issues.

**Process for SRF Review**

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To assess the full range of enforcement and inspection files, the review was conducted in both the CEPD offices in Puerto Rico and the Region 2 offices in New York. The OECA review team conducted the on-site review of the Region 2 direct implementation of the Puerto Rico NPDES and RCRA compliance and enforcement program on November 6 to 8, 2006 in the Caribbean Environmental Protection Division (CEPD) offices in San Juan, Puerto Rico, and from November 20 to 21, in the Region 2 offices in New York City. This review is based on FY 2005 data, which was the most complete data available at the time of the review.

Prior to the on-site visit, the review team conducted several preliminary calls with managers and staff in Region 2 and CEPD to obtain preliminary information and to organize the review. A conference call for the review team, Region 2, and CEPD was conducted on September 20, 2006 to discuss program and logistical issues related to the review. The review team then obtained and analyzed the data metrics from OTIS and selected the inspection and enforcement files for review. The preliminary data findings and the file list were shared with the Region for their input. On November 1, the review team conducted a conference call with the Region and CEPD to discuss the initial findings. The on-site portions of the review focused on the file review. There has been subsequent follow-up calls and email communications with the Region to gather additional information.

#### **File Selection for Virgin Islands RCRC Subtitle C Program**

The data metrics show that there is a universe in the Virgin Islands of 62 active handlers. There is one TSD, one LQG. The other handlers are conditionally exempt SQGs until determined not to be exempt. During the review period (FY 2005) in the Virgin Islands, Region 2 conducted 12 inspections and issued 4 enforcement actions, which constitutes the universe of files to review. Each of the enforcement files contains an inspection report, which provides a total of 16 inspection files to review. Ten inspection only files and three enforcement files were in the DECA office in New York. Two inspection only files and one enforcement file were in the CEPD office in Puerto Rico. Because of the limited number of files to in the universe, the review team decided to review all of these files.

#### **Media Specific Findings**

- Data accuracy, particularly identifying the characteristics of the universe of generators, is an issue.
- Inspection reports for the Virgin Islands are complete and well prepared, but not timely.
- Enforcement actions in the Virgin Islands are appropriate, but economic benefit is not always calculated as part of the final penalty.

#### **Major Recommendations**



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- Region 2 should update and reconcile the universe of RCRA sources and ensure that each source is properly characterized in RCRA Info.
- Region 2 RCRA program should improve the timeliness of reporting inspections.
- Region 2 RCRA program should document SNC or SV determinations in inspection files.
- Region 2 RCRA program needs to calculate the economic benefit for each penalty order.

**Virgin Islands RCRA Subtitle C Element by Element Review**

|                                                                    |
|--------------------------------------------------------------------|
| <b><i>Section 1: Review of State Inspection Implementation</i></b> |
|--------------------------------------------------------------------|

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

Findings:

Metric 1a – 100% (1 of 1) of TSDFs in the Virgin Islands were inspected by EPA Region 2 over the two year (FY2004-FY2005). The national average is 94%.

Metric 1b – 100% (1 of 1) of the LQGs were inspected in FY 2005 in the Virgin Islands. This LQG is also the same facility as the TSDF. Data provided by Region 2 indicates that there is one LQG in the Virgin Islands and not five that were not inspected as reported in the OTIS report of the RCRA data metrics. The reason for the discrepancy is the method Region 2 uses to calculate the active universe of LQGs. This method is based on the active universe in the three-year BRS Report. When a facility reports twice during the three-year period, the Region adds it to the active universe. Data for this reporting cycle is based on the 1999-2003 BRS Report. The most recent view of the OTIS report for FY 2005 now shows that there is one LQG in the Virgin Islands, which indicates that the Region has been updating the data.

Metric 1c – 100% (1 of 1) LQGs were reviewed over the five-year (FY 2001 – FY 2005) period. These data were provided by Region 2 and differs from the data in the OTIS report of the RCRA data metrics. The data were adjusted for the same reason described in Metric 1b.

Metric 1d – 67% (4 of 6) SQGs inspections were completed in FY 2005. There is no national goal for inspecting SQGs. The most recent view of the OTIS report for FY 2005 now shows that in FY 2005 there was a universe of three SQGs and that they were all inspected.

Metric 1r – Region 2 committed to inspect one TSDF in the Virgin Islands in FY 2005. This commitment was met. There were no commitments for LQGs although there is one in the Virgin Islands and it was inspected in FY 2005. There were no commitments

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for inspecting SQGs since there is no national inspection goal. In FY 2005, Region 2 conducted a total of 12 inspections: one TSD, one LQG, four SQGs, and six other types of facilities.

Citation of information reviewed for this criterion: **RCRAInfo, BRS Reports, and OECA National Program Guidance**

***Recommendations:***

***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. (This has already been accomplished.)***

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

**Findings:**

The review team reviewed a total of 16 inspection reports. These reports were in the 12 inspection only files and 4 enforcement files selected for review.

Fourteen of the 16 inspections were conducted by inspectors from the RCRA compliance branch in the Division of Enforcement and Compliance Assistance in New York. The other inspections were conducted by the CEPD in Puerto Rico.

Metric 2a – 86% (14 of 16) inspection reports were complete. All 16 of the inspection reports identified where there were potential violations or where there were no potential violations.

The two inspection reports that were not complete (Bovoni Landfill and VI Scrap Metal) did not contain the dates for completing the inspection reports, which did not allow the reviewers to determine the timeliness of the reports. All of the reports were thorough and contained narrative descriptions of the facility and where there were or were not potential violations and photographs to support the findings.

The review team also found that most of the inspection reports focused on waste management and not on waste determination. Most of the inspection reports provide little information on the processes and how the facilities determine if they have a hazardous waste. EPA's Office of Compliance finds that the generators often mischaracterized their hazardous wastes. As a result, Region 2 should put more emphasis on proper waste determination for future RCRA inspections.

Citation of information reviewed for this criterion: RCRAInfo, RCRA inspection and enforcement files.

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**Recommendations:**

***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.***

***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.)***

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

**Findings:**

Sixteen inspection reports were reviewed. These reports were in the 12 inspection only files and 4 enforcement files selected for review. Fourteen of these inspections were conducted by the New York office, and two of the inspections were conducted by CEPD.

Metric 3a – 45% (5 of 11) of the inspection reports that had both inspection and report dates met the 30 day standard for completing a RCRA inspection. The average time to complete an inspection report was 65 days. Two reports took as long as 124 and 131 days to complete. Because of the distance and expense of traveling to the Virgin Islands, inspections are conducted by a limited number of inspectors who conduct multiple inspections per trip. Of the inspection reports reviewed, 7 were conducted by one inspector during a four day visit. Three of those reports were timely and four were not. All of these inspection reports were prepared within 70 days.

As noted under Element 2, all of the 16 inspection reports reviewed were thorough and contained narrative descriptions of the facility and where there were or were not potential violations and photographs to support the findings. Eight of the 12 inspection reports from FY 2005 identified potential violations and led to follow-up enforcement actions such as NOVs and compliance orders.

Two of the inspection reports that had no report date were for inspections conducted at landfills. It should be noted though that these reports were well documented and identified potential violations. One of these two inspections (Bovoni) identified violations of a previous 7003 order and the other inspection led to issuing a 7003 order.

Region 2 indicated that its goal is to have inspection reports completed in less than 30 days, particularly where a potential SNC is identified. In the case of the Virgin Islands

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inspections, as OECA pointed out, one inspector conducted seven inspections during a one week period. This is appropriate when performing inspections in PR and the VI. Travel dollars must be maximized so that multiple inspections need to be done when an inspector is in PR and VI. As a result, it is very difficult, if not impossible to meet the 30 day timeframe depending upon the number of inspections, the type of facilities and the findings of the inspections.

Citation of information reviewed for this criterion:

***Recommendations if corrective action is needed:***

***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.***

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

Metric 4a – 33.3% (4 of 12) is the rate of SNC identified per 100 facilities at RCRA facilities in the Virgin Islands in FY 2005. This is above the combined national average of 3.6% for both EPA and states.

Metric 4b – Timeliness of SNC determination is not currently available in RCRA Info at this time.

Metric 4c – Four SNCs were identified in RCRA Info in FY 2005. This indicates that the Region is actively identifying SNC.

Metric 4d – 100% (4 of 4) formal enforcement actions were taken during FY 2005 that received a prior SNC listing. This is above the national average of 56.8%. The Region points out that one of the four orders used to calculate this metric was a 7003 order, which was for imminent and substantial endangerment and not a 3007 compliance order and should not be counted in the denominator. Since it was identified in the data metrics this facility is being included in the review.

Metric 4e – This file review metric cannot be calculated because the data is not in the files. Several of the inspection reports led to SNC determinations that were recorded in the RCRA Info, but there is nothing in the files to indicate when or if a SNC determination was made.

Through RCRA inspections Region 2 identifies violations and makes SNC determinations. The Region is conscientious about this and updating the RCRA Info. The problem is that RCRA Info cannot currently determine the timeliness of SNC

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identification and the files do not document when a SNC determination is made.

Region 2's SOP indicates that the SNC determination is made when a draft complaint is sent to Office of Regional Counsel for its review. The draft complaint is transmitted via memo from the Section Chief/Team Leader to the ORC RCRA Branch Chief. The date of the SNC determination is the date of this transmittal memo. This SOP was developed in the beginning of FY 2006, subsequent to the time period that this review covered.

Citation of information reviewed for this criterion: RCRA ERP

***Recommendations if corrective action is needed:***

***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.***

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

Metric A – 100% (4 of 4) enforcement actions reviewed contained schedules for return to compliance in the compliance orders.

Three of the enforcement actions were 3007 compliance orders that contained a schedule for return to compliance, only one of the files documented that the facility had returned to compliance. This was based on a follow-up inspection. The fourth enforcement action was a 7003 order issued against a landfill. The order contained a compliance schedule and the facility appears to be in compliance with the schedule.

Citation of information reviewed for this criterion: RCRA ERP, RCRA Civil Penalty Policy

Recommendations if corrective action is needed:

***No recommendation.***

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

Metric 6a – This metric to measure timeliness of enforcement actions is not yet available.

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Metric 6b – Four formal enforcement actions were issued in the Virgin Islands in FY 2005. This is a no action indicator. The enforcement actions are an indication that Region 2 is following up on violations found during RCR inspections.

Metric 6c – None (0%) of the four formal enforcement actions were addressed in a timely manner. This metric is based on the file reviews.

The three compliance orders were issued over 240 days from the time of the inspection. The 7003 order finalized in FY 2005 was issued over a year and a half after the inspection. This Consent Order was negotiated with the VI government. The timeframe specified in the RCRA Enforcement Response Policy does not apply to RCRA 7003 Orders on Consent. There were no violations of RCRA Hazardous Waste Regulations; there was a potential imminent and substantial endangerment identified.

The US VI DOA, this was a Final Order with Penalty. A complaint had been issued the previous year. There is no timeframe in the RCRA ERP associated with entering into a Final Order after the complaint is issued. The 360 day timeframe for entering into Final Orders only applies when a complaint is not issued.

For the two cases where there are RCRA ERP timeframes that apply, the complaint was issued for one in about 260 days and the complaint was issued for the second in about 355 days. The additional time needed for these cases, in particular the second case, was due primarily to delays in obtaining the necessary information through RCRA 3007 Information Request Letters. With respect to case development, Region 2's practice is to use RCRA 3007 IRLs to supplement and confirm observations made and information obtained during the inspections, where appropriate. This step adds significant time to the case development process. Region 2 strives to meet the 240 day timeframe for issuing complaints, but this is not always possible.

Metric 6d – 100% (4 of 4) formal enforcement actions were address appropriately. Each of these facilities was issued a compliance order with a return to compliance schedule and assessed penalties where appropriate. The landfill was issued a 7003 order, which is only a compliance order.

Citation of information reviewed for this criterion: RCR ERP

Recommendations if corrective action is needed:

***No recommendation.***

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

Metric 7a –100% (3 of 3) Virgin Islands RCRA compliance orders reviewed included calculations for the gravity component of the penalty. Economic benefit was considered

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for each of these actions; however, economic benefit was assessed as part of only one of the final penalty assessments.

Each of the files contained documentation on the calculation and assessment of the gravity component of the penalty. The administrative orders outlined each of the counts and the assessed penalty. The final orders contained the final penalties, although there were no justification memos in the files for these final penalties. Those justifications may be in the Regional Counsel files, which were not reviewed by the review team.

One of the enforcement actions (US VI DOA) set an initial gravity penalty of \$25,000, which had a final settlement of \$2,000 that was upheld by a judge. No economic benefit was calculated or assessed for this action. The second enforcement action (Island Laundry) set a gravity component of \$267,693 and economic benefit of \$10,992. The Region was working on the final settlement at the time of the review. The complaint for the third case (Tropical Cleaners) assessed a gravity component of \$30,329. The final CAFO settled the action for \$5,000, SEP worth \$50,000, and no economic benefit was calculated or assessed.

The Region's judgment is that when economic benefit is less than \$5,000 is insignificant and is not required to include it in the penalty. The review team did not find in the files calculations or analyses that would support the conclusion that the economic benefit of non-compliance for any of these actions was less than \$5,000.

According to the most recent RCRA Civil Penalty Policy (2003), the economic benefit of noncompliance must be calculated and added to the gravity-based penalty component when the violation results in "significant" economic benefit as defined in the policy. The policy states that enforcement personnel may forgo the inclusion of the benefit component where it appears to be insignificant. The economic component must be applied if the applicable amount meets the following criteria:

| <b>When the gravity based and multi day total penalty is:</b> | <b>EBN should be pursued if it totals:</b> |
|---------------------------------------------------------------|--------------------------------------------|
| \$30,000 or less                                              | At least \$3,000                           |
| \$30,001 to \$49,999                                          | At least 10% of the proposed penalty       |
| \$50,000 or more                                              | \$5,000 or more                            |

There are two findings: 1) the Region is not using the most recent definition of an insignificant amount of economic benefit; and 2) the Region needs to calculate the economic benefit of noncompliance before it can determine if that benefit is insignificant. Region 2 indicates that they use the method for assessing economic benefit specified in the 2003 RCRA Civil Penalty Policy. In most instances, it is clear which violations may have a significant economic benefit. For these violations, the Region calculates the economic benefit using the BEN model. For those violations that clearly have no economic benefit, the Region does not believe that there is no value in spending

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resources to it.

**Citation of information reviewed for this criterion:** RCRA ERP, RCRA Civil Penalty Policy (2003), BEN Model

**Recommendations if corrective action is needed:**

***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.***

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

Findings:

Metric 8a – \$2,000 in final penalties were reported in RCRA Info for actions taken in the Virgin Islands in FY 2005. As noted above, both final compliance orders assessed penalties that exceed this amount.

Metric 8b1 – 100% (1 of 1) of EPA enforcement actions in the Virgin Islands in FY 2005 assessed a penalty, which is the Region's calculation of the metric. The percentage provided by the data metrics was 25% (1 of 4). The Region suggests that this is due to inaccurate select logic in the OTIS data. Metric 8b2 for final penalty orders does show that 100% (1 of 1) of the Region's formal enforcement actions contained a penalty of \$2,000. The three enforcement additional actions were a RCRA 7003 non-penalty order and two 3007 compliance orders with penalties that were included in final orders issued in FY 2006.

Metric 8c – The review team found no evidence in the program files that final penalties were collected in any of the three formal enforcement actions. One of the cases still needs to issue the final order, so there is no penalty as yet. The team did speak with the Regional Counsel attorney who worked on another case and located a copy of the penalty check in his files.

The finding is that Region 2 does follow-up and document the collection of final penalties for enforcement actions in the Virgin Islands.

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

**Recommendations if corrective action is needed:**



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***No recommendation. The issue in calculating metric 8b is most likely found in the select logic for the metric. This is an issue that will be address during the evaluation of the data metrics.***

|                                                                                      |
|--------------------------------------------------------------------------------------|
| <b>Section 3: Review of Performance Partnership Agreement or State/EPA Agreement</b> |
|--------------------------------------------------------------------------------------|

- 9. Enforcement commitments in the PPA/SEA (written agreements to deliver product/project at a specified time), if they exist, are met and any products or projects are complete. For Regions the MOAs for FY 2004 and the Annual Commitment System since FY 2005.**

**Findings:**

Region 2 committed to inspect one TSDF in the Virgin Islands in FY 2005. This commitment was met. There were no commitments for LQGs although there is one in the Virgin Islands and it was inspected in FY 2005. There were no commitments for inspecting SQGs since there is no national inspection goal. In FY 2005, Region 2 conducted a total of 12 inspections: one TSD, one LQG, four SQGs, and six other types of facilities.

Citation of information reviewed for this criterion: OECA National Program Guidance

Recommendations if corrective action is needed:

***No recommendation.***

|                                                |
|------------------------------------------------|
| <b>Section 4: Review of Database Integrity</b> |
|------------------------------------------------|

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

**Findings:**

Metric 10a – 100% of SNCs were entered into RCRA Info in less than 60 days after the SNC determination was made by Region 2. This is above the national average of 38.4%. It is a sign that the Region is timely in entering SNC information on violations

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found at facilities in the Virgin Islands.

Metric 10b – Nationally required data elements are entered into RCRA Info. Data in the files compared with the OTIS facility reports indicates that this data flow occurs, but there appears to be gaps in the data. For instance, ten of the facility reports do not specify the characteristic of each of these facilities: are they an SQG, CESQG, or some other type of facility. This information needs to be accurately entered into RCRA Info.

Timeliness of data entry cannot be determined from the files. Metric 10a indicates that data entry is timely for SNC entry. However, it cannot be automatically assumed that other data is not entered in a timely manner. There is no documentation in the files to track data entry.

Citation of information reviewed for this criterion:

***Recommendations if corrective action is needed:***

***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.***

***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. (This has already been accomplished.)***

Citation of information reviewed for this criterion: RCRA Info

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

**Findings:**

Metric 11a – No SNCs were shown as being determined on the same day that the formal action was completed. This means that Region 2 is accurately entering SNC data.

Metric 11b – Zero Secondary Violations were listed in RCRA Info as remaining in noncompliance for more than three years without being returned to compliance or being redesignated as SNC. This indicates that the Region is putting end dates on the violations. The RCRA ERP states that the secondary violator status should be changed after 270 days. This metric was calculated in mid-2006. A review of the new on-line version of the metrics in OTIS shows that this number is still zero, which indicates that

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this is not an issue for the Region 2 RCRA program in the Virgin Islands

Metric 11c – The files do not provide a way of verifying data accuracy and the reporting of data. What can be seen from the files is that dates of inspections and enforcement actions are accurately reflected in the database. As noted in Element 10, there is no documentation in the files to track data entry in RCRA Info.

Citation of information reviewed for this criterion: RCRA Info

***Recommendations if corrective action is needed:***

***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.***

Citation of information reviewed for this criterion: RCRA Info

***Recommendations if corrective action is needed:***

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

Findings:

Below are the data metrics for Element 12. The two main issues in these metrics are:

Metric 12a2 – The metric shows five LQGs when there was only one LQG in the Virgin Islands in FY 2005.

Metric 12g – Based on the file review, three orders with penalties were issued in FY 2005. The amount of those final penalties in the Virgin Islands in FY 2005 was greater than \$2,000 that is indicated in the data metrics.

|   | Name                                      | Description                                 | Guidance Requirement or Goal                               | Metric Type | Combined Region/State or State only Data | National Average | Virgin Islands |
|---|-------------------------------------------|---------------------------------------------|------------------------------------------------------------|-------------|------------------------------------------|------------------|----------------|
| a | Active facility universe counts accurate* | 12a1. Number of operating TSDFs in RCRAInfo | Region and state should agree on operating universe count. | DQ          | Combined                                 | 891              | 1              |
|   |                                           | 12a2. Number of active LQGs in RCRAInfo     | Region and state should agree on active universe count.    | DQ          | Combined                                 | 31,227           | 1              |

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|   | Name                                | Description                                                             | Guidance Requirement or Goal                                      | Metric Type | Combined Region/State or State only Data | National Average | Virgin Islands |
|---|-------------------------------------|-------------------------------------------------------------------------|-------------------------------------------------------------------|-------------|------------------------------------------|------------------|----------------|
|   |                                     | 12a3. Number of active SQGs in RCRAInfo                                 | Region and state should agree on active universe count.           | DQ          | Combined                                 | 176,690          | 6              |
|   |                                     | 12a4. All other active handlers in RCRAInfo                             | Region and state should agree on active universe count.           | DQ          | Combined                                 | 244,500          | 62             |
| b | Inspection counts complete          | 12b1. Number of inspections performed by state during reporting period. | Mandatory data elements are listed in the RCRAInfo documentation. | DQ          | State-only                               | 24,203           | 0              |
|   |                                     |                                                                         |                                                                   |             | Combined                                 | 25,765           | 12             |
|   |                                     | 12b2. Total # of facilities inspected during reporting period           | Mandatory data elements are listed in the RCRAInfo documentation. | DQ          | State-only                               | 17,914           | 0              |
|   |                                     |                                                                         |                                                                   |             | Combined                                 | 18,863           | 12             |
| c | Violation counts complete           | Number of facilities with violations during reporting period            | Mandatory data elements are listed in the RCRAInfo documentation. | DQ          | State-only                               | 13,751           | 0              |
|   |                                     |                                                                         |                                                                   |             | Combined                                 | 15,068           | 12             |
| d | Notice of violation counts complete | 12d1. facilities with state NOVs (informal enforcement actions)         | Mandatory data elements are listed in the RCRAInfo documentation. | DQ          | State-only                               | 5,824            | 0              |
|   |                                     |                                                                         |                                                                   |             | Combined                                 | 6,248            | 8              |
|   |                                     | 12d2. total state NOVs (informal enforcement actions) issued            | Mandatory data elements are listed in the RCRAInfo documentation. | DQ          | State-only                               | 7,048            | 0              |
|   |                                     |                                                                         |                                                                   |             | Combined                                 | 7,582            | 8              |
| e | SNC counts complete                 | 12e1. # of new SNCs in last FY;                                         | Mandatory data elements are listed in the RCRAInfo documentation. | DQ          | State-only                               | 571              | 0              |
|   |                                     |                                                                         |                                                                   |             | Combined                                 | 687              | 4              |
|   |                                     | 12e2. # of facilities in SNC in last FY                                 | Mandatory data elements are listed in the RCRAInfo documentation. | DQ          | State-only                               | 1,322            | 0              |
|   |                                     |                                                                         |                                                                   |             | Combined                                 | 1,602            | 5              |
| f | Formal action counts complete       | 12f1. facilities with formal actions.                                   | Mandatory data elements are listed in the RCRAInfo documentation. | DQ          | State-only                               | 1,123            | 0              |
|   |                                     |                                                                         |                                                                   |             | Combined                                 | 1,290            | 4              |

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|   | Name                        | Description                                | Guidance Requirement or Goal                                      | Metric Type | Combined Region/State or State only Data | National Average | Virgin Islands |
|---|-----------------------------|--------------------------------------------|-------------------------------------------------------------------|-------------|------------------------------------------|------------------|----------------|
|   |                             | 12f2. total formal actions taken.          | Mandatory data elements are listed in the RCRAInfo documentation. | DQ          | State-only                               | 1,427            | 0              |
|   |                             |                                            |                                                                   |             | Combined                                 | 1,644            | 4              |
| g | Assessed penalties complete | Total amount of final (assessed) penalties | Mandatory data elements are listed in the RCRAInfo documentation. | DQ          | State-only                               | \$15,268,147     | \$0            |
|   |                             |                                            |                                                                   |             | Combined                                 | \$20,221,648     | \$2,000        |

Citation of information reviewed for this criterion: RCRA Info

***Recommendations if corrective action is needed:***

***No recommendation.***