



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
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AUG 21 2019

Janet L. Coit, Director
Rhode Island Department of Environmental Management
235 Promenade Street
Providence, RI 02908

Dear Director Coit:

Please find attached the final State Review Framework (SRF) Round 4 Report for the Rhode Island Department of Environmental Management (RI DEM) for the review year of 2017.

This report was finalized by the Region 1 Office of the U.S. Environmental Protection Agency, following a review by RI DEM program staff, and in consultation with EPA's Office of Enforcement and Compliance Assurance. Our key findings are provided in the Executive Summary.

We very much appreciate the coordination provided by David Chopy, Administrator of the Office of Compliance and Inspection, as well as the full participation of many RI DEM staff throughout the review.

The Final Report and its recommendations will be posted on EPA's national State Review Framework Website, which can be found at:
<http://www2.epa.gov/compliance/state-review-framework-compliance-and-enforcement-performance>.

Thank you for your continued cooperation on this important review of RI DEM's enforcement and compliance assurance programs.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen McGuire".

Karen McGuire, Director
Enforcement and Compliance Assurance Division

Cc: By E-mail

Deborah Szaro, Acting Deputy Regional Administrator
Chris Knopes, Director, Planning, Measuring, and Oversight Division, OECA
Fran Jonesi, Regional SRF Liaison, OECA
Lucy Casella, Region 1 SRF Coordinator

STATE REVIEW FRAMEWORK

Rhode Island

**Clean Water Act, Clean Air Act, and
Resource Conservation and Recovery Act
Implementation in Federal Fiscal Year 2017**

**U.S. Environmental Protection Agency
Region 1**

**Final Report
August 21, 2019**

I. Introduction

A. Overview of the State Review Framework

The State Review Framework (SRF) is a key mechanism for EPA oversight, providing a nationally consistent process for reviewing the performance of state delegated compliance and enforcement programs under three core federal statutes: Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act. Through SRF, EPA periodically reviews such programs using a standardized set of metrics to evaluate their performance against performance standards laid out in federal statute, EPA regulations, policy, and guidance. When states do not achieve standards, the EPA will work with them to improve performance.

Established in 2004, the review was developed jointly by EPA and Environmental Council of the States (ECOS) in response to calls both inside and outside the agency for improved, more consistent oversight of state delegated programs. The goals of the review that were agreed upon at its formation remain relevant and unchanged today:

1. Ensure delegated and EPA-run programs meet federal policy and baseline performance standards
2. Promote fair and consistent enforcement necessary to protect human health and the environment
3. Promote equitable treatment and level interstate playing field for business
4. Provide transparency with publicly available data and reports

B. The Review Process

The review is conducted on a rolling five-year cycle such that all programs are reviewed approximately once every five years. The EPA evaluates programs on a one-year period of performance, typically the one-year prior to review, using a standard set of metrics to make findings on performance in five areas (elements) around which the report is organized: data, inspections, violations, enforcement, and penalties. Wherever program performance is found to deviate significantly from federal policy or standards, the EPA will issue recommendations for corrective action which are monitored by EPA until completed and program performance improves.

The SRF is currently in its 4th Round (FY2018-2022) of reviews, preceded by Round 3 (FY2012-2017), Round 2 (2008-2011), and Round 1 (FY2004-2007). Additional information and final reports can be found at the EPA website under [State Review Framework](#).

II. Navigating the Report

The final report contains the results and relevant information from the review including EPA and program contact information, metric values, performance findings and explanations, program responses, and EPA recommendations for corrective action where any significant deficiencies in performance were found.

A. Metrics

There are two general types of metrics used to assess program performance. The first are **data metrics**, which reflect verified inspection and enforcement data from the national data systems of each media, or statute. The second, and generally more significant, are **file metrics**, which are derived from the review of individual facility files in order to determine if the program is performing their compliance and enforcement responsibilities adequately.

Other information considered by EPA to make performance findings in addition to the metrics includes results from previous SRF reviews, data metrics from the years in-between reviews, multi-year metric trends.

B. Performance Findings

The EPA makes findings on performance in five program areas:

- **Data** - completeness, accuracy, and timeliness of data entry into national data systems
- **Inspections** - meeting inspection and coverage commitments, inspection report quality, and report timeliness
- **Violations** - identification of violations, accuracy of compliance determinations, and determination of significant noncompliance (SNC) or high priority violators (HPV)
- **Enforcement** - timeliness and appropriateness of enforcement, returning facilities to compliance
- **Penalties** - calculation including gravity and economic benefit components, assessment, and collection

Though performance generally varies across a spectrum, for the purposes of conducting a standardized review, SRF categorizes performance into three findings levels:

Meets or Exceeds: No issues are found. Base standards of performance are met or exceeded.

Area for Attention: Minor issues are found. One or more metrics indicates performance issues related to quality, process, or policy. The implementing agency is considered able to correct the issue without additional EPA oversight.

Area for Improvement: Significant issues are found. One or more metrics indicates routine and/or widespread performance issues related to quality, process, or policy. A recommendation for corrective action is issued which contains specific actions and schedule for completion. The EPA monitors implementation until completion.

C. Recommendations for Corrective Action

Whenever the EPA makes a finding on performance of *Area for Improvement*, the EPA will include a recommendation for corrective action, or recommendation, in the report. The purpose of recommendations is to address significant performance issues and bring program performance back in line with federal policy and standards. All recommendations should include specific actions and a schedule for completion, and their implementation is monitored by the EPA until completion.

III. Review Process Information

Kickoff Meeting

July 18, 2018

Rhode Island Department of Environmental Management Office, Providence, Rhode Island

Clean Water Act (CWA) Contacts

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Resource Conservation and Recovery Act (RCRA) Contacts

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David Chopy, RI DEM, (401) 222-1360, ext. 7400

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Executive Summary

Introduction

EPA Region 1 conducted a State Review Framework (SRF) review of the Rhode Island Department of Environmental Management (RIDEM) pertaining primarily to enforcement and compliance activities conducted by RIDEM in 2017. However, in order to review a representative sampling of HPVs/SNC and enforcement case files, the review also extended into federal fiscal years (FFYs) 2013, 2015, 2016, and 2018. The review entailed analyzing both data metrics and file metrics in order to evaluate RIDEM's strengths and areas for improvement in carrying out its responsibilities under EPA's Clean Air Act (CAA), Clean Water Act (CWA) and Resource Conservation and Recovery Act (RCRA) compliance programs. The report will provide findings under five major headings as follows: Data; Inspections; Violations; Enforcement; and Penalties. Under each heading, EPA evaluated whether RIDEM is meeting or exceeding expectations and, as necessary, will point out areas where EPA will seek improvement by RIDEM. In some cases, where there is only a minor concern, EPA will identify the issue for follow up by the State. Where any major issues are found, EPA will provide recommendations for RIDEM to implement to resolve any issues, and Region 1 will track the resolution of such recommendations.

Areas of Strong Performance

The following are aspects of the program that, according to the review, are being implemented at a high level:

Clean Water Act (CWA)

RIDEM is entering 100 percent of its NPDES permit limits and 99.8 percent of its discharge monitoring reports (DMR) for major and non-major facilities.

The review generally indicated a strong inspection program for major and non-major individual NPDES permits.

Clean Air Act (CAA)

In most cases, RIDEM inspectors write well-documented and comprehensive inspection reports with accurate compliance determinations.

RIDEM does an excellent job of documenting violations and making accurate compliance and HPV determinations.

RIDEM does an excellent job of taking timely and appropriate enforcement. RIDEM also does an excellent job of providing early warning notice to facilities with violations to expedite their return to compliance.

RIDEM does an excellent job of calculating the gravity portion and the economic benefit portion of its penalties according to RIDEM's Rules and Regulations for the Assessment of Penalties.

RIDEM also does an excellent job of documenting that penalties have been collected.

Resource Conservation and Recovery Act (RCRA)

RIDEM does an excellent job of producing timely, accurate inspection reports, and documenting violations.

RIDEM does an excellent job of making accurate SNC determinations.

RIDEM did an excellent job of accurately determining compliance and documenting compliance status.

RIDEM does an excellent job of taking timely and appropriate enforcement, and all enforcement taken (21) was taken by RIDEM was appropriate to the specific case details.

In each penalty action initiated, RIDEM considers and calculates economic benefit if appropriate.

In expedited settlements and expedited citations RIDEM policy is that the collected payments must be greater than any economic benefit determined.

Penalty collection documentation is present in each file.

Priority Issues to Address

The following are aspects of the program that, according to the review, are not meeting federal standards and should be prioritized for management attention:

Clean Water Act (CWA)

Not all penalty calculations adequately consider economic benefits.

Clean Air Act (CAA)

Both the file review metrics and the data metrics indicate that RIDEM has had minor issues regarding the timely entry of minimum data requirements (MDRs) into ICIS.

A review of the file review metrics and the data metrics (Data Metric Analysis and Data Verification) indicate that RIDEM had issues regarding the completeness of data entered into ICIS, especially with regards to the creation of federally-enforceable violator (FRV) case files.

Resource Conservation and Recovery Act (RCRA)

RIDEM has a minor problem with entering all appropriate data in RCRAInfo. This is mainly an oversight in not entering all formal actions as SNCs. 81.5% of the reviewed facilities had all required data elements entered into RCRAInfo properly. Four facilities never had the SNY Flag turned on (SNC). One facility did not have two CSE Inspections entered.

| RI DEM Round 3 Area for Improvement Recommendations | | | | Status in Round 4 |
|--|-----------|-------------|---|--------------------------------|
| CAA | Data | Finding 1-1 | Both the file review metrics and the data metrics indicate that RIDEM has had some issues regarding the accuracy and completeness of data entered into AFS. | Area for Attention |
| CAA | Data | Finding 1-2 | Both the file review metrics and the data metrics indicate that RIDEM has had some issues regarding the timely entry of MDRs into AFS. | Area for Attention |
| CWA | Data | Finding 1-3 | The review indicates that single-event violations (SEV) and non-DMR significant noncompliance (SNC) are not accurately coded into the ICIS-NPDES data system. | Meets or Exceeds |
| CWA | Violation | Finding 3-2 | The review indicates that single-event violations (SEV) and significant noncompliance (SNC) violations are not accurately identified. | Meets or Exceeds |
| CWA | Penalties | Finding 5-2 | Not all penalty calculations adequately consider economic benefits. | Recommendation for Improvement |
| RCRA | Violation | Finding 3-2 | A review of the case files and the DMA indicates that RIDEM did not make an appropriate SNC determination in 3 of the 20 enforcement cases. | Meets or Exceeds |
| RI DEM Round 4 Area for Improvement Recommendations | | | | Status in Round 3 |
| CAA | Data | Finding 1-3 | A review of the file review metrics and the data metrics indicate that RIDEM had issues regarding the completeness of data entered into ICIS, especially with regards to the creation of federally-enforceable violator (FRV) case files. | Area for Attention |
| CWA | Penalties | Finding 5-1 | Not all penalty calculations adequately consider economic benefits. | Recommendation for Improvement |

Clean Water Act Findings

CWA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Summary:

RIDEM is entering 100 percent of its NPDES permit limits and 99.8 percent of its discharge monitoring reports (DMR) for major and non-major facilities.

Explanation:

RIDEM has exceeded the national goal of entering 95% of the data for Metrics 1b5 and 1b6. In addition, RIDEM has continued to maintain its significant improvements to the entry rate of formal and informal actions into the ICIS-NPDES data system initiated since the Round 2 SRF review.

State Response:

No response necessary.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|--|-----------|----------|---------|---------|---------|
| 1b5 Completeness of data entry on major and non-major permit limits. [GOAL] | 95% | 88.1% | 71 | 71 | 100% |
| 1b6 Completeness of data entry on major and non-major discharge monitoring reports. [GOAL] | 95% | 90.6% | 1459 | 1462 | 99.79% |

CWA Element 1 - Data

Finding 1-2

Meets or Exceeds Expectations

Summary:

The file review indicated a relatively high degree of completeness between the data in the ICIS database and the data in the files reviewed.

Explanation:

For two of the 26 files reviewed, there were relatively few omissions in ECHO of inspection report conclusions and informal actions. At 92.3 percent completeness, this represents a continuation of improvements observed during Round 3, where there was an 84 percent completeness observed. For one of these files, an SEP included in a consent agreement was not entered into ICIS. In the other facility, an inspection report in the file was not entered into ICIS.

State Response:

No response necessary.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|--|-----------|----------|---------|---------|---------|
| 2b Files reviewed where data are accurately reflected in the national data system [GOAL] | 100% | % | 24 | 26 | 92.31% |

CWA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Summary:

The review generally indicated a strong inspection program for major and non-major individual permits.

Explanation:

RIDEM inspected 100 percent of its individual major permits each year (exceeding the EPA requirement of 50 percent each year), and 11 of 51 non-major individual permits (22 percent), consistent with its CMS commitment. While RIDEM did not conduct the 8 inspections for facilities covered under RIDEM's construction general permit it committed to in its FY17 CMS plan, EPA notes that RIDEM performed 19 construction permit inspections in FY18, 11 more than its commitment for FY18 and more than enough to make up for the deficit in FY17. EPA noted that the Data Metrics Analysis Aggregate report (DMA Report) does not reflect desk audits performed by RIDEM, however, EPA included these inspections in its analysis. EPA determined that inspection reports were generally timely, with an average of 17 days and many completed in under 1 week. As discussed in finding 2-2, RIDEM uses inspection checklists that include limited amount of narrative comments. While this may generally provide sufficient detail to determine compliance at inspected facilities, especially in concert with the inspection summaries that are sent to the facility, the inspection reports would be improved by providing more narrative details. In addition, while EPA observes that the reports are signed by the RIDEM inspectors in a timely manner, the inspection report provides a space for a supervisor's signature and the majority of the reports were not signed by a supervisor. The inspection summaries sent to the facilities, however, are signed by a supervisor.

State Response:

No response necessary.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|--|------------------|-----------------|----------------|----------------|----------------|
| 4a1 Number of pretreatment compliance inspections and audits at approved local pretreatment programs. [GOAL] | 100% | % | 3 | 3 | 100% |
| 4a11 Number of sludge/biosolids inspections at each major POTW. [GOAL] | 100% | % | 40 | 25 | 160% |
| 4a4 Number of CSO inspections. [GOAL] | 100% | % | 1 | 1 | 100% |
| 4a5 Number of SSO inspections. [GOAL] | 100% | % | 6 | 1 | 600% |
| 4a7 Number of Phase I and II MS4 audits or inspections. [GOAL] | 100% | % | 10 | 8 | 125% |
| 4a8 Number of industrial stormwater inspections. [GOAL] | % | % | 18 | 15 | 120% |
| 4a9 Number of Phase I and Phase II construction stormwater inspections. [GOAL] | 100% | % | 0 | 8 | 0% |
| 5a1 Inspection coverage of NPDES majors. [GOAL] | 100% | 54.2% | 23 | 23 | 100% |
| 5b1 Inspections coverage of NPDES non-majors with individual permits [GOAL] | 100% | 22% | 11 | 51 | 21.57% |
| 5b2 Inspections coverage of NPDES non-majors with general permits [GOAL] | % | % | 28 | 31 | 90.32% |
| 6b Timeliness of inspection report completion [GOAL] | 100% | % | 26 | 28 | 92.86% |

CWA Element 2 - Inspections

Finding 2-2

Area for Attention

Summary:

Additional narrative would improve the completeness of inspection reports based on checklists.

Explanation:

RIDEM uses inspection checklists that include limited narrative comments. While this approach may generally provide sufficient detail to determine compliance at inspected facilities, especially evaluated along with the inspection cover letters sent to the facility, it is being raised as an area for attention because inspection reports would be improved by the incorporation of a little more narrative detail describing the observations of the inspector.

State Response:

No response necessary.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|---|-----------|----------|---------|---------|---------|
| 6a Inspection reports complete and sufficient to determine compliance at the facility. [GOAL] | 100% | % | 27 | 28 | 96.43% |

CWA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Summary:

Inspection reports reviewed led to accurate compliance determinations.

Explanation:

The file review did not identify inspection reports that made incorrect compliance determinations, as discussed in finding 2-1. As noted in finding 2-2, however, the reports could be made more complete by providing additional narrative details and a discussion of inspection conclusions in the report. This review finds that through its development of an Enforcement Management System (EMS) and certain protocols, DEM has implemented measures to significantly improve its ability to identify and track SEVs. In its review of files, EPA found evidence of a single SEV in an inspection report that was not reflected in ICIS. As the rates of non-compliance in Rhode Island are consistent with the rates of other New England states, EPA made no finding for state attention or recommendation for improvement. The SRF guidance explains that the review indicator metrics, 7k1 and 8a3 are used to identify areas for further analysis during the file review, not to develop EPA's findings. In addition, EPA did not consider data regarding facilities with general permits in this SRF 4 Review. Rhode Island has turned on a "flag" for general permits in its data system, well ahead of EPA's deadline to do so, which will be in 2020. Currently, in the ECHO Data Metrics Analysis, facilities with general permits that are in non-compliance or significant noncompliance are not tracked in ICIS, resulting in apparent 100% general permit compliance rates for these states.

State Response:

No response necessary.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|--|------------------|-----------------|----------------|----------------|----------------|
| 7e Accuracy of compliance determinations [GOAL] | % | % | 28 | 28 | 100% |
| 7j1 Number of major and non-major facilities with single-event violations reported in the review year | % | % | 8 | 9 | 88.89% |
| 7k1 Major and non-major facilities in noncompliance. | % | 18.7% | 183 | 407 | 44.96% |
| 8a3 Percentage of major facilities in SNC and non-major facilities Category I noncompliance during the reporting year. | % | 7.5 | 128 | 405 | 31.6% |

CWA Element 4 - Enforcement

Finding 4-1

Area for Attention

Summary:

RIDEM has not taken timely formal enforcement actions for major facilities in SNC during the audit year.

Explanation:

RIDEM did not take timely formal enforcement actions for 3 major facilities that had 2 consecutive quarters of SNC during the audit period. Under EPA's 1989 "Enforcement Management System, National Pollutant Discharge Elimination System (Clean Water Act)," formal enforcement action must occur prior to the facility appearing on a consecutive QNCR to be "timely." To meet EPA's criteria for timely action, RIDEM would be required to initiate formal enforcement shortly after a facility appears in non-compliance on the QNCR for the initial time. EPA notes, however, that RIDEM is effectively addressing many violations, including for the 3 facilities cited above, through informal enforcement actions. which are a component of RIDEM's Enforcement Management System. According to EPA's EMS, where formal enforcement is not taken, the State should have a written record that justifies that an alternative action, such as informal enforcement, is more appropriate. EPA believes that it is appropriate for RIDEM to cite its EMS as a basis for using informal response, however, RIDEM should be clear to document its decision regarding the appropriate tools to address violations. EPA is concerned, however, that RIDEM exercise caution to not attribute limited compliance and legal staffing resources as a basis for not initiating appropriate formal enforcement actions; in this case, the State should work to ensure that staffing levels are sufficient to address the need for formal enforcement actions.

State Response:

No response necessary.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|---|-----------|----------|---------|---------|---------|
| 10a1 Percentage of major NPDES facilities with formal enforcement action taken in a timely manner in response to SNC violations | % | 15.6% | 0 | 3 | 0% |

CWA Element 4 - Enforcement

Finding 4-2

Meets or Exceeds Expectations

Summary:

Based on files reviewed, in most cases, RIDEM has taken appropriate enforcement actions to return facilities in violation back into compliance.

Explanation:

Based on files reviewed, in 18 of 21 enforcement responses, actions by RIDEM will return the facility to compliance. In 19 of 21 cases, RIDEM's response addressed the violations in an appropriate manner. In at least one file reviewed, EPA believed that a formal response and penalty was warranted, even though the facility was brought back into compliance through an informal action. As discussed in finding 4-1, RIDEM should follow its Enforcement Management System with regard to violations that warrant a referral for formal actions and penalties, as appropriate. RIDEM should develop protocols to document in its files its decision regarding the appropriate tools to address violations.

State Response:

No response necessary.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|--|-----------|----------|---------|---------|---------|
| 10b Enforcement responses reviewed that address violations in an appropriate manner [GOAL] | 100% | % | 19 | 21 | 90.48% |
| 9a Percentage of enforcement responses that returned, or will return, a source in violation to compliance [GOAL] | 100% | % | 18 | 21 | 85.71% |

CWA Element 5 - Penalties

Finding 5-1

Area for Improvement

Summary:

Not all penalty calculations adequately consider economic benefits.

Explanation:

In the files reviewed, penalty calculations were determined in accordance with DEM penalty matrix worksheets, which are appended to the formal action notices. In 2 of the 5 penalty cases reviewed, economic benefits were included in the penalty calculations. In the remaining 3 cases, there is a note in a comment field on the penalty matrix worksheet indicating that there was "no economic benefit or economic benefit cannot be quantified." This represents an improvement over the finding in the Round 3 SRF review, in that the calculation of economic benefits, when it was assessed was more thoroughly documented in the files. For example, in 1 case, though RIDEM ultimately removed an economic benefit assessed during negotiations of the consent agreement, it documented its decision in a memo to the file. In accordance with the recommendations of Round 3, EPA and RIDEM have had a number of discussions regarding RIDEM's effort to calculating economic benefit. RIDEM asserts that in many cases, it doesn't have reliable cost information to calculate economic benefit and discussions of how EPA calculates economic benefit have failed to persuade RIDEM to adopt a similar approach. Nonetheless, RIDEM expresses a willingness to continue to discuss with EPA methods and tools that it can adopt to calculate economic benefit.

State Response:

No response necessary.

Recommendation:

| Rec # | Due Date | Recommendation |
|-------|------------|--|
| 1 | 09/30/2019 | RIDEM and EPA should begin higher-level talks regarding RIDEM's effort to adopt methods and tools to calculate economic benefit. |

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|---|-----------|----------|---------|---------|---------|
| 11a Penalty calculations reviewed that document and include gravity and economic benefit [GOAL] | 100% | % | 2 | 5 | 40% |

CWA Element 5 - Penalties

Finding 5-2

Meets or Exceeds Expectations

Summary:

All 4 files reviewed with administrative penalty orders contained documentation of final penalty amounts and that the penalty was collected.

Explanation:

RIDEM provided an acceptable rationale for differences between initial penalty calculation and final penalty and documentation that all penalties were collected in files reviewed. However, in one of the files reviewed, RIDEM provided SEP credit in lieu of a cash penalty, a practice that is not acceptable under EPA's SEP policy. In another file reviewed, EPA did not find documentation of the initial penalty calculation.

State Response:

RIDEM: The file reviewed by EPA that did not document a penalty calculation was an Expedited Citation Notice (ECN). As the name implies, the intent is to issue the notice quickly for noncompliance issues that can be easily resolved. An ECN does not afford the party cited an opportunity to appeal; however, in accordance with the statute the ECN expires after 60 days. There is no penalty calculation included in the ECN or in the file. The ECN simply states the penalty assessed. A guidance document is used to assist staff in calculating the penalty. **EPA Region 1 Response:** EPA was not aware that this was an ECN. This explanation is acceptable.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|--|-----------|----------|---------|---------|---------|
| 12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL] | 100% | % | 4 | 4 | 100% |
| 12b Penalties collected [GOAL] | 100% | % | 4 | 4 | 100% |

Clean Air Act Findings

CAA Element 1 - Data

Finding 1-1

Area for Attention

Summary:

Both the file review metrics and the data metrics indicate that RIDEM has had minor issues regarding the timely entry of minimum data requirements (MDRs) into ICIS.

Explanation:

A review of Metric 3a2 of the Data Metric Analysis (DMA) indicates that RIDEM had no newly identified HPVs in FFY 2017. To review a representative sampling of HPVs, 3 HPV case files from other years were reviewed (FFYs 2013, 2015, and 2018). Based on this review, 1 out of 2 HPVs (50%) were entered into ICIS in an untimely manner (after 60 days of being identified as an HPV). The remaining HPV from 2013 would have been EPA's responsibility to report in ICIS/AFS, but was reported to EPA as an HPV in a timely manner. The 1 untimely HPV was entered as an HPV into ICIS three years late. A review of Metric 3b1 of the DMA indicates that 3 compliance monitoring activities out of 58 were entered into ICIS in an untimely manner (after 60 days of the activity). According to RIDEM, this is accurate. A review of Metric 3b2 of the DMA indicates that 26 out of 26 stack tests were reported in a timely manner. A review of Metric 3b3 of the DMA indicates that 1 enforcement-related MDR out of 10 were entered into ICIS more than 60 days after the enforcement action. The untimely enforcement-related MDR was entered 99 days after the action was taken. RIDEM reported that due to unresolved compliance issues with the facility they decided to hold off entering the MDR until all compliance issues were resolved. A review of Metric 5e of the DMA (Reviews of Title V Annual Compliance Certifications Completed) indicates that RIDEM conducted reviews at 22 out of 28 sources where Title V annual compliance certifications were due in FFY 2017. Information in RIDEM's files and ICIS indicate that Title V annual compliance certification reviews were done at all 28 sources required to be reviewed in FFY 2017. RIDEM reports that the data was entered into ICIS in a timely manner for 5 out of the 6 missing sources. These entries were entered into ICIS on the days the reviews were completed in FFY 2017. RIDEM documented the timely entries of these 5 reviews with their respective ICIS compliance monitoring identifiers (CMIs). Upon further review of the ICIS data, RIDEM correctly entered the 6 missing certifications were received, but did not populate other required data fields. ICIS-Air minimum data requirements (MDRs) for Title V annual compliance certification reviews require that proper entries include the name of the reviewing agency, the receipt date, the review date, and if the source reported any deviations. Because the review dates and any reported deviations were not entered into ICIS, these certifications were considered incomplete, and therefore, not counted as reviewed in the DMA. RIDEM reports that 1 out of the 6 missing certifications, although reviewed in FFY 2017, was entered late into ICIS (more than 60 days after the review date). This review was entered into ICIS 95 days after the review date, but still in FFY 2017. RIDEM shared the CMI number for this activity with EPA too to document that the action was entered into ICIS in FFY 2017. Two of these sources did have name changes. The file review revealed that there were some timeliness issues as well. Specifically, 1 letter of

noncompliance and 2 penalty actions were not entered into ICIS. RIDEM explained that because one supervisory staff person was on extended leave, prior to retiring, the paperwork for entry of these actions sat on his desk. The position could not be filled until this person was officially retired so no one had responsibility for the position. The file review revealed that the 3 HPVs were timely identified as HPVs.

State Response:

Specific statistical compliance SOPs have been revised to assist in ensuring ICIS entered data is timely, complete and accurate. Internal spreadsheets have been developed to track inspections and document reviews and the resulting data reporting requirements.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|---|------------------|-----------------|----------------|----------------|----------------|
| 3a2 Timely reporting of HPV determinations [GOAL] | % | % | 1 | 2 | 50% |
| 3b1 Timely reporting of compliance monitoring MDRs [GOAL] | % | % | 55 | 58 | 94.83% |
| 3b2 Timely reporting of stack test dates and results [GOAL] | 100% | 67.1% | 26 | 26 | 100% |
| 3b3 Timely reporting of enforcement MDRs [GOAL] | 100% | 77.6% | 9 | 10 | 90% |

CAA Element 1 - Data

Finding 1-2

Area for Attention

Summary:

Both the file review metrics and the data verification metrics indicate that RIDEM has had issues regarding the completeness of data entered into ICIS.

Explanation:

A comparison of Metric 1h1 of the Data Verification Metrics (Total Amount of Assessed Penalties) with the RIDEM information for this metric indicates that for FFY 2017 the total amount of assessed penalties in ICIS does not correspond with the actual amount of penalties assessed by RIDEM. Some of the penalty amount not reported in ICIS was for violations at true minor facilities that are not federally-reportable; however, 1 penalty for a SM-80 source and one penalty for a major source was not entered into ICIS. A total of 4 out of 6 reportable penalties were entered correctly. RIDEM has since entered the missing penalty information into ICIS. RIDEM reports that this information was not entered in a timely manner because the supervisory staff person responsible for ensuring these actions get entered into ICIS was on extended leave, prior to retiring, and the paperwork sat on his desk. This position could not be filled until the person officially retired. Now that the position in question has been filled, EPA believes this issue has been resolved and no recommendation is required. A comparison of Metric 5b of the Data Metric Analysis (DMA) (FCE Coverage at SM-80s) with the RIDEM information for this metric indicates that the number of SM-80 sources required to have an FCE in FFY 2017 should have been 19 and not 21. The DMA reports that FCEs were conducted at 19 out of 21 facilities. A closer look at this information reveals that the 2 SM-80 sources that did not have FCEs, as required in FFY 2017, had been permanently shutdown since at least FFY 2014. RIDEM reports that the CMS flag for both of these facilities was removed on 10/19/14 and each has an operating status code of "CLS" (closed). Taking the above into account, RIDEM conducted FCEs at 19 out of 19 SM-80 sources in FFY 2017 that were required to be inspected (100% coverage). A review of Metric 8a of the DMA (Discovery Rate of HPVs at Major Sources) indicates that for FFY 2017 RIDEM did not identify HPVs at any of its 36 major sources. EPA's review of 15 Title V major source files did not identify any HPVs either indicating that this was not an issue. The HPV Policy has been revised such that identification of HPVs has been reduced in recent years. The file review revealed that 1 informal enforcement action, Letter of Noncompliance, was not entered into ICIS.

State Response:

No response is necessary as the issues regarding the completeness of specific ICIS entry elements was due to inattention related to the extended leave of a now retired employee and has since been rectified.

CAA Element 1 - Data

Finding 1-3

Area for Improvement

Summary:

A review of the file review metrics and the data metrics indicate that RIDEM had issues regarding the completeness of data entered into ICIS, especially with regards to the creation of federally-enforceable violator (FRV) case files.

Explanation:

A review of Metric 7a1 (FRV Discovery Rate Based on Evaluations of Active CMS Sources) indicates that for FFY 2017 RIDEM did not find any federally-reportable violators (FRVs) for any of the 110 sources found in their CMS Plan. The file review portion of the SRF indicated that RIDEM was not creating FRV case files for many non-HPV violating sources. Case files were created for all 3 HPV case files reviewed. The file review indicated that FRV case files were created for 1 out of 8 (12.5%) of the non-HPV FRVs where formal enforcement action was taken (7 cases) or where formal enforcement is planned to be taken (1 case). Because the supervisory staff person responsible for ensuring that case files are created, as appropriate, was on extended leave, prior to retiring, no one was handling this responsibility. When this was brought to RIDEM's attention, the data-entry clerk immediately revised the "Standard Operating Procedures" for data entry into ICIS to include an additional line item to ensure FRV case files are created when appropriate. EPA will coordinate with RIDEM on at least a quarterly basis, for four quarters, to ensure FRV case files are being created when required.

State Response:

DEM acknowledges the oversight and has taken steps to ensure federally enforceable violator (FRV) case files are properly created.

Recommendation:

| Rec # | Due Date | Recommendation |
|-------|------------|---|
| 1 | 03/31/2020 | EPA will coordinate with RIDEM on at least a quarterly basis, for four quarters, to ensure FRV case files are being created when required. If after four quarters there appear to be no further issues, this issue will be considered resolved. |

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|--|------------------|-----------------|----------------|----------------|----------------|
| 2b Files reviewed where data are accurately reflected in the national data system [GOAL] | 100% | % | 1 | 8 | 12.5% |

CAA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Summary:

RIDEM met its CMS Plan FCE commitments for Title V major sources and SM-80 sources, with the exception of 1 missed FCE at a Title V major source. The 1 missed FCE was due to scheduling of the inspection for the last week of FFY 2017 and postponement of the FCE until the first week of FFY 2018, due to inspector illness.

Explanation:

A review of Metric 5a of the Data Metric Analysis (DMA) (FCE Coverage at Majors and Mega-Sites) indicates that RIDEM conducted FCEs at 16 out of 17 Title V major sources required to be inspected with an FCE in FFY 2017. This is accurate. RIDEM reports that the one Title V major source that was not inspected in FFY 2017 was scheduled to be inspected during the last week of FFY 2017 (September 2017), but due to an illness, the inspector assigned to conduct the FCE at this facility postponed the inspection until the first week in FFY 2018 (October 2017). A review of Metric 5b of the DMA (FCE Coverage at SM-80s) indicates that RIDEM conducted required FCEs at 19 out of 21 SM-80 sources required to be inspected with an FCE in FFY 2017. A closer review of the two SM-80 sources that were not inspected as required, indicates that both sources have been permanently shut down since at least FFY 2014. RIDEM reports that the CMS flags were removed from these two sources on October 19, 2014 and that each has an accurate operating status of closed ("CLS") in ICIS. Based on this information, RIDEM conducted FCEs at 19 out of 19 SM-80 sources required to be inspected with an FCE in FFY 2017. (100% inspection coverage at SM-80s). A review of Metric 5e of the DMA (Reviews of Title V Annual Compliance Certifications Completed) indicates that RIDEM conducted reviews at 22 out of 28 sources where Title V annual compliance certifications were due in FFY 2017. Information in RIDEM's files and ICIS indicate that Title V annual compliance certification reviews were done at all 28 sources required to be reviewed in FFY 2017. As described in Finding 1-1, there were a few data entry issues for 6 of the annual compliance certifications, based on the data in ICIS. RIDEM did review 100 percent of the required certifications for FFY 2017.

State Response:

As previously discussed in Finding 1-1, ICIS related data issues have been rectified.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|---|------------------|-----------------|----------------|----------------|----------------|
| 5a FCE coverage: majors and mega-sites [GOAL] | 100% | 88.7% | 16 | 17 | 94.12% |
| 5b FCE coverage: SM-80s [GOAL] | 100% | 93.7% | 19 | 19 | 100% |
| 5e Reviews of Title V annual compliance certifications completed [GOAL] | 100% | 76.7% | 28 | 28 | 100% |
| 6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility [GOAL] | % | % | 24 | 30 | 80% |

CAA Element 2 - Inspections

Finding 2-2

Meets or Exceeds Expectations

Summary:

In most cases, RIDEM inspectors write well-documented and comprehensive inspection reports with accurate compliance determinations.

Explanation:

Of the 30 files reviewed, 26 contained compliance monitoring reports (CMRs). In 4 instances, files contained informal and/or formal enforcement actions that were based on self-disclosures or test results where there was no associated CMR. In all 26 of the CMRs, RIDEM generally documented the elements listed in Chapter IX of the CMS (with the exception that some CMR reports for SM-80 sources did not provide an inventory of emission units leaving the file reviewer wondering if all emission units were described). For those reports where a full compliance evaluation (FCE) was done at a Title V major source with a Title V permit issued (11 out of the 26 sources) and for 9 out of the remaining 15 sources that contained CMR reports for review (a total of 20 out of 26 CMR reports), the inspection file included a completed checklist that lists each condition of a Title V permit or other permit(s) (including an inventory of emission units), the method used to determine compliance, and the compliance status of each permit condition. This has been considered a Good Practice in past SRFs and RIDEM should be commended for taking the initiative to develop and continue to use this checklist and for initiating expansion of this checklist template for other than Title V major sources (currently underway and ongoing). For 6 CMR reports for other than Title V major sources, the reports were still comprehensive and accurate compliance determinations were being made; however, in some instances there was no mention of the inventory of equipment (the inspector would describe what he or she saw, but from reading the report there was no indication that the equipment that was observed was the only equipment needing to be evaluated). No recommendation is needed here since the more expansive inspection checklist is now being used for all sources within RIDEM's CMS Plan. EPA has a general policy that inspection reports should be completed within 60 days of conducting an FCE or PCE (partial compliance evaluation), but in no case later than 90 days. EPA Region I's Air Technical Unit has had a 30-day policy in effect for several years. With the exception of one inspection report, all reports were completed in a timely manner.

State Response: Efforts to improve inspection reports were underway at the time of the SRF. Since the review, Title V and SM80 inspection reports are now fully inclusive of inspection observations addressing any and all concerns the EPA had regarding past inspection reports.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|---|------------------|-----------------|----------------|----------------|----------------|
| 6a Documentation of FCE elements [GOAL] | % | % | 25 | 26 | 96.15% |

CAA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Summary:

RIDEM does an excellent job of documenting violations and making accurate compliance and HPV determinations.

Explanation:

In 19 out of the 30 files reviewed, there were some violations noted. In all 19 files with violations, RIDEM made accurate compliance and HPV determinations, based on inspections, stack test report reviews, and various other types of report reviews. RIDEM continues to face resource challenges that prevent it from providing inspector coverage to observe emissions testing. However, RIDEM's inspectors continue to invest time to review test protocols and test reports associated with facilities in its CMS Plan. HPV determinations are a collaborative effort between RIDEM and EPA. On an ongoing basis, at a minimum once per quarter, RIDEM and EPA discuss every enforcement action (informal and formal) taken by RIDEM to determine whether any of the violations meet the HPV criteria. The ultimate HPV determination is mutually agreed by both RIDEM and EPA. In the 11 files reviewed without violations, the compliance determinations appeared accurate based on the CMR reports, where applicable, or other information found in the file.

State Response:

No response necessary.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|---|------------------|-----------------|----------------|----------------|----------------|
| 13 Timeliness of HPV Identification [GOAL] | 100% | % | 3 | 3 | 100% |
| 7a Accurate compliance determinations [GOAL] | 100% | % | 30 | 30 | 100% |
| 7a1 FRV “discovery rate” based on inspections at active CMS sources | % | 6.2% | 7 | 110 | 6.36% |
| 8a HPV discovery rate at majors | % | 2.3% | 0 | 35 | 0% |
| 8c Accuracy of HPV determinations [GOAL] | 100% | % | 11 | 11 | 100% |

CAA Element 4 - Enforcement**Finding 4-1**

Meets or Exceeds Expectations

Summary:

RIDEM does an excellent job of taking timely and appropriate enforcement. RIDEM also does an excellent job of providing early warning notice to facilities with violations to expedite their return to compliance.

Explanation:

RIDEM took informal and/or formal enforcement actions against 19 out of the 30 facilities in the files reviewed. One of the facilities had 2 separate violations with 2 separate enforcement responses. A total of 16 informal and 10 formal enforcement actions were taken against these 19 facilities. For the 19 facilities with violations, 14 of the 19 violations included corrective actions to be taken in the informal enforcement stage and 5 included corrective actions to be taken in the formal enforcement stage. In 14 out of the 19 violations reviewed, the violating facility had returned to compliance prior to formal enforcement being taken. RIDEM should be commended for its continued use of an early warning notice to violators to help expedite the return to compliance. This has been considered a Good Practice in earlier SRFs. For the 3 HPV case files reviewed, RIDEM addressed each case prior to the need for a case management plan. One HPV was addressed in 100 days of "Day Zero". One HPV was addressed in 137 days of "Day Zero". One HPV was addressed in 198 days of "Day Zero". If an HPV is not addressed with 180 days, the HPV Policy dictates that a case management plan be developed by Day 225. Since the last HPV was addressed in 198 days of "Day Zero", no formal case management plan was yet required to be submitted to EPA. A total of 3 out of 3 HPV cases (100%) were addressed in a timely manner,

prior to the need of a case management plan. None of the 3 HPVs were identified in FFY 2017. One HPV was identified in FFY 2013. One HPV was identified in FFY 2015. One HPV was identified in FFY 2018. The 3 HPVs identified outside of FFY 2017 were reviewed so that a representative number of HPV case files could be reviewed for this SRF. Due to changes in the HPV Policy, the number of violations meeting the HPV criteria has decreased. Currently, RIDEM has streamlined the enforcement process by issuing Closure Letters in lieu of Consent Agreements in simple penalty cases requiring no injunctive relief.

State Response:

No response necessary.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|--|------------------|-----------------|----------------|----------------|----------------|
| 10a Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place | 100% | % | 3 | 3 | 100% |
| 10a1 Rate of Addressing HPVs within 180 days | % | 63.7% | 2 | 3 | 66.67% |
| 10b Percent of HPVs that have been have been addressed or removed consistent with the HPV Policy [GOAL] | 100% | % | 3 | 3 | 100% |
| 10b1 Rate of managing HPVs without formal enforcement action | % | 12.9% | 0 | 3 | 0% |
| 14 HPV case development and resolution timeline in place when required that contains required policy elements [GOAL] | 100% | % | 0 | 0 | 0 |
| 9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified time frame or the facility fixed the problem without a compliance schedule [GOAL] | 100% | % | 10 | 10 | 100% |

CAA Element 5 - Penalties

Finding 5-1

Meets or Exceeds Expectations

Summary:

RIDEM does an excellent job of calculating the gravity portion and the economic benefit portion of its penalties according to RIDEM's Rules and Regulations for the Assessment of Penalties. RIDEM also does an excellent job of documenting that penalties have been collected.

Explanation:

A total of 9 out of the 30 files reviewed included penalties. One file with penalties included 2 separate penalties for 2 separate violations. Therefore, a total of 10 penalties were reviewed as part of the SRF file review. All 10 penalty cases reviewed were resolved using Closure Letters. In all 10 penalty cases, RIDEM calculated the gravity component of the penalty and determined whether there was an economic benefit component. For one penalty case, an economic benefit penalty component was assessed and collected, along with the gravity penalty component. For the remaining 9 penalty cases, RIDEM determined that the economic benefit penalty component was insignificant and collected the calculated gravity penalty component. EPA agreed with these determinations. In all 10 penalty cases, the initial proposed penalty was the final assessed penalty. Therefore, in no cases was the initial penalty reduced. For all 10 penalty cases, documentation was found in the files that the penalties were paid.

State Response:

No response necessary.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|--|-----------|----------|---------|---------|---------|
| 11a Penalty calculations reviewed that document gravity and economic benefit [GOAL] | 100% | % | 10 | 10 | 100% |
| 12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL] | 100% | % | 0 | 0 | 0 |
| 12b Penalties collected [GOAL] | 100% | % | 10 | 10 | 100% |

Resource Conservation and Recovery Act Findings

RCRA Element 1 - Data

Finding 1-1

Area for Attention

Summary:

81.5% of the reviewed facilities had all required data elements entered into RCRAInfo properly. Four facilities never had the SNY Flag turned on (SNC). One facility did not have two CSE Inspections entered.

Explanation:

In FY17 the data entry staff person at RIDEM retired. The new data entry person was not aware that certain enforcement actions taken required the activation of the SNY Flag. In the case of the missing entry of CSEs, this was brought about by inspectors being directed to carry out assignments by different people. As a result, the data entry person was unaware of the field work conducted. As a result of these findings RIDEM has already made changes to procedures. The data entry staff person is now aware of the need for the SNY in all situations and notification procedures for inspectors are in place to instruct data entry for all field work and to review data to ensure all is present.

State Response:

The explanation regarding the failure to activate the SNY code in four cases involving the issuance of an Expedited Citation Notice (ECN) is correct. RIDEM developed the ECN in 2014 to address cases with significant noncompliance involving a limited number of minor violations. The ECN is used in lieu of a full formal action (210) and requires the party cited to take actions to return to compliance in a short time period (typically 30 days) and pay a reduced administrative penalty. Initially, EPA developed a new code (122) in RCRA Info to record ECNs in the database. RIDEM used the code (122) to enter ECNs in 2015 and interpreted it to represent an informal action. After a few ECN cases were entered into RCRA Info, EPA determined that the ECN should be recorded as a formal enforcement action in the database. In 2016, EPA created a new code (201) for ECNs and RIDEM's data entry person began recording the ECNs as formals. As noted above, RIDEM's data entry person retired and the duties were assumed by a manager. The four ECNs were recorded in RCRA Info under the new code (201), but the SNY evaluation was not entered at that time. RIDEM has updated the subject records by entering the SNY evaluation.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|--|------------------|-----------------|----------------|----------------|----------------|
| 2b Accurate entry of mandatory data [GOAL] | 100% | % | 22 | 27 | 81.48% |

RCRA Element 2 - Inspections**Finding 2-1**

Meets or Exceeds Expectations

Summary:

RIDEM met expectations for the number of inspections conducted in FY17.

Explanation:

There are differences in numbers from ECHO and actual numbers and commitments from RIDEM. RIDEM met the two-year goal for TSDf inspections. DEM had a flex plan in place for FY17. That plan required 20% of non-pharmaceutical LQGs and 5% of LQG pharmacies to be inspected. At the start of 2017 there were 88 non-pharma LQGs in Rhode Island and DEM inspected 18 of those (20.5%). There were 83 pharmacies at that time and DEM inspected 5 of those (6%). SNC data in the system was missing (see Data issue above). However, DEM accurately determined SNC status and nine formal actions covered by this report were reviewed.

State Response:

No response necessary.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|---|------------------|-----------------|----------------|----------------|----------------|
| 5a Two-year inspection coverage of operating TSDfS [GOAL] | 100% | 88.1% | 2 | 2 | 100% |
| 5b1 Annual inspection coverage of LQGs using RCRAinfo universe [GOAL] | 20% | 10.7% | 18 | 88 | 20.45% |

RCRA Element 2 - Inspections

Finding 2-2

Meets or Exceeds Expectations

Summary:

Inspection reports complete and sufficient to determine compliance

Explanation:

All 41 inspection reports reviewed were complete and sufficient to determine compliance. The average inspection report was completed in 17 days. Two reports were outside the range of the rest and were not timely. The report for Cotes Auto Body Supplemental inspection took 95 days to complete and the report for Pease and Curren which took 203 days.

State Response: No response necessary.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|--|-----------|----------|---------|---------|---------|
| 6a Inspection reports complete and sufficient to determine compliance [GOAL] | 100% | % | 41 | 41 | 100% |
| 6b Timeliness of inspection report completion [GOAL] | 100% | % | 39 | 41 | 95.12% |

RCRA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Summary:

RIDEM did an excellent job of accurately determining compliance and documenting compliance status.

Explanation:

For every inspection completed by DEM, there was an accurate record of the violations determined at each facility. A review of these records showed that DEM made correct determinations of violator status and if the facility was an SNC.

State Response:

No response necessary.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|--|-----------|----------|---------|---------|---------|
| 7a Accurate compliance determinations [GOAL] | 100% | % | 41 | 41 | 100% |
| 8c Appropriate SNC determinations [GOAL] | 100% | % | 36 | 36 | 100% |

RCRA Element 3 - Violations

Finding 3-2

Meets or Exceeds Expectations

Summary:

After each inspection report is completed a summary sheet is completed with a recommendation for the type of follow-up needed. The average time for report completion is 17 days. The SNC decision is done on average less than 30 days from inspection.

Explanation:

Three formal actions were triggered as an escalation in enforcement response to address noncompliance with an informal action.

State Response:

No response necessary.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|--|-----------|----------|---------|---------|---------|
| 8b Timeliness of SNC determinations [GOAL] | 100% | % | 36 | 36 | 100% |

RCRA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Summary:

All enforcement taken (21) was taken by RIDEM was appropriate to the specific case details.

Explanation:

State Response:

No response necessary.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|--|-----------|----------|---------|---------|---------|
| 10a Timely enforcement taken to address SNC [GOAL] | 100% | % | 8 | 9 | 88.89% |
| 10b Appropriate enforcement taken to address violations [GOAL] | 100% | % | 21 | 21 | 100% |
| 9a Enforcement that returns sites to compliance [GOAL] | 100% | % | 21 | 21 | 100% |

RCRA Element 5 - Penalties

Finding 5-1

Meets or Exceeds Expectations

Summary:

In each penalty action initiated, RIDEM considers and calculates economic benefit if appropriate. In expedited settlements and expedited citations RIDEM policy is that the collected payments must be greater than any economic benefit determined. Penalty collection documentation is present in each file.

Explanation:

State Response:

No response necessary.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|--|-----------|----------|---------|---------|---------|
| 11a Gravity and economic benefit [GOAL] | 100% | % | 9 | 9 | 100% |
| 12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL] | 100% | % | 2 | 2 | 100% |
| 12b Penalty collection [GOAL] | 100% | % | 9 | 9 | 100% |

Appendix A

Background Information on Rhode Island State Program and Review Process

***NOTE:** The background information provided below was provided by the Rhode Island Department of Environmental Management. EPA included this information in this report without any programmatic edits.*

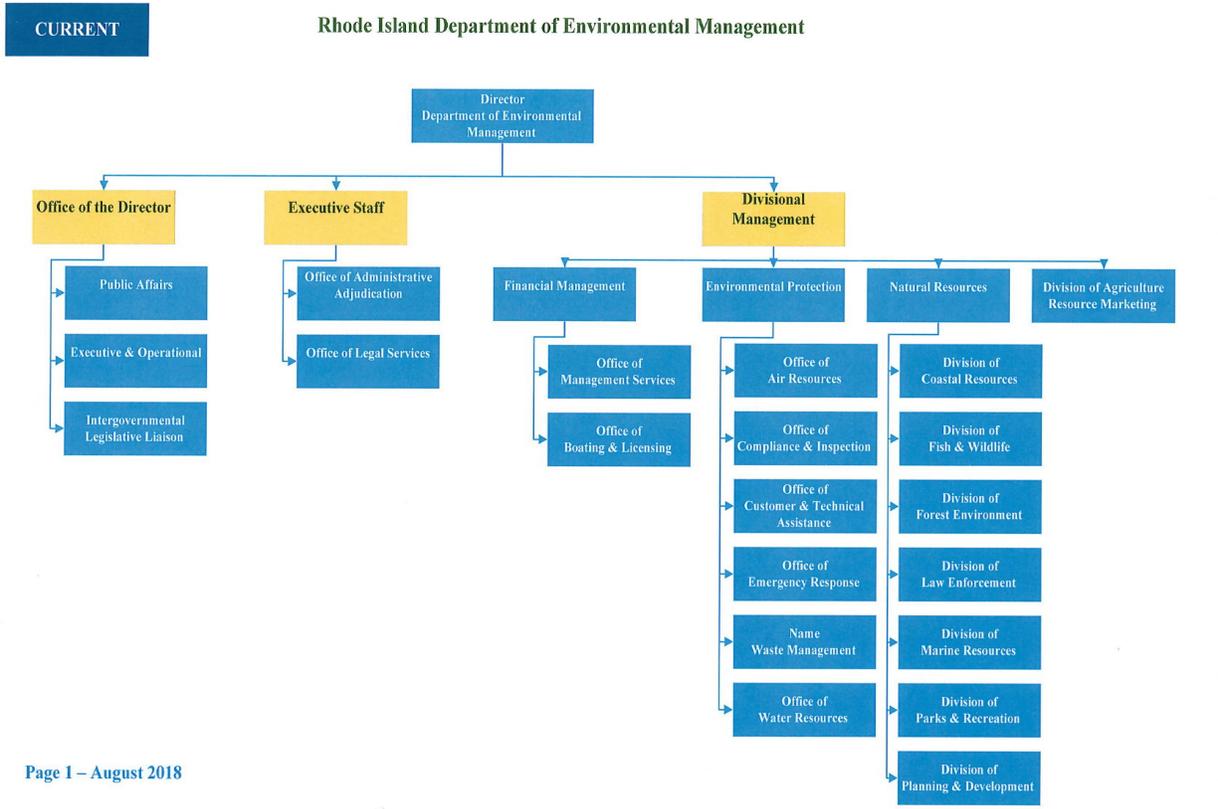
A. General Program Overview

Agency Structure

The Rhode Island Department of Environmental Management (RIDEM) is charged with ensuring residents have equal access to environmental benefits and to prevent any segment of the State's population from bearing a disproportionate share of environmental risks and pollution. It ensures all residents and visitors will have the opportunity to enjoy a diverse mix of well-maintained, scenic, and accessible facilities and outdoor recreation opportunities and that the state's natural habitats are managed to maintain species biodiversity. RIDEM ensures air, water, and land resources are restored and maintained to protect public health and ecological integrity and educates residents and corporate entities to practice an environmental ethic based upon an understanding of their environment, and how their interactions affect it, including preventing pollution and minimizing waste at the source. RIDEM promotes economic opportunity that preserves Rhode Island's resources and maintains its high quality of life for a sound economy. One of the top cross-cutting priorities of RIDEM is improving customer service. This includes training for all staff and development of improved systems and feedback. A critical component of this effort is RIDEM's LEAN government initiative, which is aimed at reducing waste, standardizing processes, and producing clear, predictable, and reliable regulations.

Organizational Chart

The organizational structure of RIDEM is shown in the chart below.



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Mission

The mission of RIDEM, working through its Bureaus and Offices is to:

- Protect, restore, manage and promote the State's natural resources while maintaining its citizens' health and safety
- Motivate citizens to practice an environmental ethic based upon an understanding of their environment, their own dependence on it, and the ways in which their actions affect it
- Practice careful stewardship of Rhode Island's finite water, air, land, agriculture, forest resources
- Ensure that Rhode Island's rich aquatic resources are maintained for the future
- Take necessary actions to preserve and enhance resources of the Narragansett Bay and coastal environments.

Budget

The FY 2017 Final Enacted budget for RIDEM was \$102.6 million, including \$38.3 million in general revenue, \$34.2 million in federal funds, \$17.2 million in restricted receipts, \$9.0 million in Rhode Island Capital Improvement Plan Funds, and \$4.0 million in other funds. This represents a total decrease of \$105,899 from the initial FY 2017 Enacted Budget. The final enacted FTE position count for FY 2017 is 400.0 FTE positions.

The FY 2018 Final Enacted Budget for RIDEM was \$102.2 million, including \$40.3 million in general revenue, \$34.5 million in federal funds, \$17.7 million in restricted receipts, \$6.4 million in Rhode Island Capital Improvement Plan Funds, and \$3.3 million in other funds. This represents a total decrease of \$1.8 million from the initial FY 2018 Enacted Budget. The final enacted FTE position count for FY 2018 is 400.0 FTE positions.

Compliance/Enforcement Program Structure

Civil regulatory activities are handled by the Bureau of Environmental Protection, which consists of the Office of Air Resources, the Office of Water Resources, the Office of Waste Management, the Office of Compliance and Inspection, the Office of Technical and Customer Assistance, and the Office of Emergency Response. The management team for the Bureau of Environmental Protection consists of the Deputy Director; Assistant Director; Administrator, Surface Water Protection; Administrator, Groundwater and Wetland Protection; Administrator, Air Resources; Administrator, Waste Management; Administrator, Office of Technical and Customer Assistance; Administrator, Office of Compliance and Inspection; and Chief, Office of Emergency Response.

Roles and Responsibilities

Enforcement of environmental laws and regulations is carried out by all the Offices within the Bureau of Environmental Protection. The response to noncompliance discovered through complaint inspections, compliance monitoring, or other channels can take several forms, but, for the most part, can be described as either **informal or formal enforcement**. **Informal enforcement** includes those actions that do not result in an enforceable order or assessment of a penalty. For the most part, these actions include correspondence such as letters of deficiency, warning letters, letters of noncompliance, and notices of intent to enforce. All these actions are taken to allow violators to resolve noncompliance voluntarily and as quickly as possible, including repairing any environmental damage that may have resulted due to noncompliance. If compliance through informal enforcement is not met, or RIDEM determines that the violations represent significant noncompliance, the case may proceed to **formal enforcement**.

Formal enforcement typically involves the issuance of a Notice of Violation (NOV) or Expedited Citation Notice (ECN). A NOV advises the respondent of the alleged facts surrounding the case, the statutes and regulations that are basis of the alleged violations, the requirements to meet compliance and usually includes an administrative penalty. The requirements to return to compliance are set forth in the order portion of the NOV. The assessed penalty is developed in accordance with the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)*, and the NOV includes worksheets providing information on how the penalty was determined. The maximum penalty for violations is derived from the legislative statute providing RIDEM with the authority to assess and collect a penalty for civil (non-criminal) violations of laws or regulations. Since formal enforcement actions contain enforceable orders and assessments of penalties, such actions are subject to appeal with RIDEM's Administrative Adjudication Division (AAD). The respondent has 20 days to appeal the NOV to the AAD. Prior to or even after a hearing commences, the parties may finalize a settlement of the NOV. Upon completion of a hearing, a final decision is issued by the AAD hearing officer. The respondent or RIDEM may file an appeal to contest the AAD decision to Superior Court. If an administrative hearing is not requested, the NOV becomes a final order of the Director and is enforceable in Superior Court.

In 2013, legislation was enacted to allow RIDEM to issue an ECN. An ECN is similar to an NOV in that it advises the party/parties of the alleged facts that support the violation and the statutes and regulations that are alleged to have been violated. It can include requirements to meet compliance, but it cannot order corrective action. It always includes an administrative penalty, which is developed in accordance with the Rhode Island Code of Regulations titled *Rules and Regulations for the Assessment of Administrative Penalties (250-RICR-130-00-1)*. Unlike an NOV, the party/parties do not have a right of appeal; however, the ECN cannot be recorded on the title for the property and the ECN expires after 60 days. After that time, if the party/parties have not complied with the ECN, RIDEM can issue an NOV.

In 2017, the law was amended to allow RIDEM to issue an ECN with penalties up to \$5,000.

Office of Air Resources

The Office of Air Resources (OAR) is responsible for the preservation, protection and improvement of air quality in Rhode Island. This is accomplished, in partnership with the U.S. Environmental Protection Agency, by regulating the emission of air pollutants from stationary and mobile emission sources. Planning, permitting, air pollutant emission inventory, air quality monitoring and inspecting emission sources are among the major activities of OAR.

Air pollutants fall into two broad categories – criteria pollutants and air toxics. National Ambient Air Quality Standards have been set for criteria pollutants. In general, criteria pollutants are irritants or have other minor and/or acute health or environmental effects. Examples are ground level ozone and carbon monoxide. Air toxics are pollutants that, for example, are carcinogens, or have other major and/or chronic health effects. Examples are benzene and trichloroethylene. Rhode Island and most of the Northeast United States do not meet the health-based air quality standards for ozone. Much of the work of the OAR is related to assuring that Rhode Island improves its air quality to attain the standards on the schedule required by the federal Clean Air

Act. A number of toxic air pollutants are present in Rhode Island's air that are above acceptable levels. The OAR works to reduce emissions of air pollutants in Rhode Island and works with other states to secure emission reductions that will help Rhode Island solve its air quality problems. Compliance with environmental laws, rules, regulations, permits and licenses is enforced through **informal enforcement and referrals to OC&I for formal enforcement.**

Office of Water Resources

The Office of Water Resources (OWR) is responsible for ensuring that rivers, lakes, and coastal waters will support healthy communities of fish, plants, and other aquatic life, and will support uses such as fishing, swimming, and drinking water quality. OWR also ensures that groundwater will be uncontaminated, freshwater wetlands will be protected and rehabilitated to provide wildlife habitat, reduce floods, and to improve water quality and public health will be protected from the adverse impacts of water pollution. This is accomplished, in partnership with the U.S. Environmental Protection Agency, by regulating the discharge of water pollutants from point sources. Planning, permitting, developing Total Maximum Daily Loads, water quality monitoring and inspecting sources are among the major activities of OWR. Compliance with environmental laws, rules, regulations, permits and licenses is enforced through **informal enforcement and referrals to OC&I for formal enforcement.**

Office of Waste Management

The Office of Waste Management (OWM) has two primary functions:

- To oversee the investigation and remediation of contaminated sites and releases from leaking underground storage tanks.
- To regulate and permit facilities that accept or transport solid, medical or hazardous waste or that store petroleum products in underground tanks.

These functions are divided into four programs as listed below:

- Underground Storage Tank Management Program – This program oversees the registration of Underground Storage Tanks (UST program) as well as the cleanup of Leaking Underground Storage Tanks (LUST program).
- Waste Facilities Management Program – This program regulates facilities that receive Solid, Hazardous and Medical Waste and transporters of hazardous, medical and septage waste. It also oversees the closure of active landfills.
- Site Remediation Program – This program oversees the investigation and remediation of sites contaminated with hazardous materials and petroleum. This includes the redevelopment and reuse of sites commonly known as Brownfields.
- Superfund and Department of Defense Program – This program oversees the cleanup of NPL Sites (commonly referred to as Superfund Sites) and sites used or formerly used by the U.S. Department of Defense. This program also oversees the evaluation of sites on the U.S. Environmental Protection Agency's CERCLIS List for consideration of action under the Superfund Program.

Compliance with environmental laws, rules, regulations, permits and licenses is enforced through **informal enforcement and referrals to OC&I for formal enforcement.**

Office of Compliance and Inspection

The Office of Compliance and Inspection (OC&I) is responsible for the regulatory enforcement activities related to air, waste, and water. OC&I investigates complaints and suspected violations of environmental laws and regulations relating to air pollution, dam safety, freshwater wetlands, hazardous waste management, unpermitted releases of hazardous materials and/or petroleum, onsite wastewater treatment systems (i.e., septic systems), solid and medical waste, underground and leaking underground storage tanks, and water pollution. In addition to complaint response, OC&I carries out compliance monitoring of regulated activities involving hazardous waste generators, underground storage tanks, and exterior lead paint removal activities. OC&I also inspects dams to monitor safety conditions and to advise dam owners of unsafe conditions. Significant noncompliance that is identified by any of the Offices within the Bureau of Environmental Protection that requires **formal enforcement** is referred to OC&I for issuance of a Notice of Violation or Expedited Citation Notice and management of the case. Not all OC&I programs focus on compliance and enforcement activities in the same way. For example, one program may spend considerable time on citizen complaint response while another may spend most of its time on compliance monitoring. In fact, much of OC&I's compliance and enforcement effort is a team approach, either internally in the office or externally with other RIDEM Divisions and Offices. In many cases, OC&I's activities are coordinated with the Offices of Air Resources, Emergency Response, Water Resources, Waste Management and Legal Services. Under some circumstances, OC&I supports the Office of Criminal Investigation and assists them with sampling, regulatory interpretation, and expert witness testimony. In many cases, OC&I is in close communication with the U.S. Environmental Protection Agency since RIDEM has specific authority delegated under federal regulations regarding air, water, underground and leaking underground storage tanks and hazardous waste. OC&I also works with attorneys in the Office of Attorney General in prosecuting civil and criminal cases. Compliance with environmental laws, rules, regulations, permits and licenses is enforced through both **informal and formal enforcement.**

Office of Technical and Customer Assistance

The Office of Technical and Customer Assistance (OTCA) assists the public, state and local governments, and the business community concerning compliance with rules, regulations, environmental standards, and the permitting process. One aspect of this service is to coordinate pre-application assistance to companies and to individuals seeking permits. Prospective applicants for environmental permits will be able to have a single point of contact who will provide information on permits required, including permits for large facilities where more than one type of environmental permit is required. Another service is to coordinate the application review process for projects that require more than one environmental permit such as the permitting of large facilities that involve air emissions as well as construction that involves more than five acres (which requires a stormwater permit). Part of this coordination function is to track projects that the Economic Development Corporation's Board has determined to be of Critical Economic Concern. OTCA also serves as an information repository for RIDEM's regulations

and policies so that the public can easily access these regulations and policies. RIDEM's web site is coordinated and maintained by OTCA. In addition, OTCA maintains user-friendly descriptions of the regulations so that the public can easily determine the requirements associated with the regulations. To improve compliance among several business and industry sectors, OCTA also manages several industry-wide Environmental Results Program (ERP) initiatives. ERP is a comprehensive, “evidence-based” industry compliance certification program using guidebooks and checklists. Facilities certify to RIDEM that they are complying with environmental protection requirements every three years. ERP is currently used as a compliance improvement tool in the automotive refinishing, auto yard recycling, underground storage tank, green hospitality, golf course and MS4 sectors.

Office of Emergency Response

The Office of Emergency Response (OER) is Rhode Island's first line of defense in protecting public health, safety, and welfare in an environmental emergency. Like police and fire fighters, OER's highly trained emergency responders are prepared to handle incidents of great variety – from a spill of a few gallons to a whole tanker-full of petroleum, from a single abandoned drum to biological, radiological and chemical weapons – and are on-call 24-hours a day, 7 days a week. The responders spend the bulk of their time remediating mishaps that could otherwise pose a significant danger. Nearly every day of every year, despite preventive measures, hundreds of incidents threaten the public and environment. The responders are prepared to limit the risks from oil and chemical spills, failed tanks or pipes, fires or fumes, overturned trucks, sunken vessels, litter, weapons of mass destruction, abandoned drums, and the like. In some cases, OER coordinates with the Offices of Air Resources, Compliance & Inspection, Water Resources, Waste Management and Legal Services and supports the Office of Criminal Investigation and assists them with sampling and provides expert witness testimony. State agencies that OER works with include the Rhode Island Emergency Management Agency, State Fire Marshal's Office, Department of Health, Department of Transportation and State Police. Many large responses require working with the U.S. Environmental Protection Agency and the U.S. Coast Guard when incidents impact their area of responsibility. OER works with other federal agencies that include the Drug Enforcement Administration, the Federal Bureau of Investigation and the Civil Support Team (National Guard). OER is responsible for regulatory enforcement of aboveground storage tanks that are greater than 500 gallons and ensures that the tanks are compliant with the Rhode Island Code of Regulations titled *Oil Pollution Control Regulations (250-RICR-140-25-2)*. In 2015, OER took over the Tier II Reporting Requirement from the Department of Labor and Training. The requirement ensures that responding agencies have the needed emergency information for facilities that store chemicals of concern and that they comply with the Federal Emergency Planning Community Right-to-Know Act Reporting Requirements.

The State Climatologist also resides in OER and provides weather information to the Governor's Office, multi-State agencies and emergency responders. The Climatologist tracks weather and other environmental related data for the National Weather Service, the Rhode Island Executive Climate Change Coordinating Council and the public.

Compliance with environmental laws, rules, and regulations is enforced through **informal enforcement and referrals to OC&I for formal enforcement**.

Resources/Staffing/Training/Data Reporting Systems

Office of Water Resources

Resources

OWR has 13.0 FTEs to implement the Clean Water Act NPDES Enforcement Program (which includes Permitting, Pretreatment, O & M, and Sludge Management programs). 2.0 of the FTEs are supervisors/program managers. The FTEs work on both permitting and compliance monitoring and enforcement. There have not been resource constraints in OWR that present major obstacles to implementing compliance monitoring and enforcement with the NPDES Enforcement Program (see additional clarification under Staffing/Tracking). It is important to note that a substantial amount of compliance monitoring and enforcement is undertaken by OWR in other federal and state programs that were not subject to the EPA State review. These programs include Freshwater Wetlands, On Site Wastewater Treatment Systems, Underground Injection Control, and Water Quality Certification. The FTEs assigned to these programs have not been included in this summary.

Staffing/Training

Compliance monitoring and enforcement has not been impacted by vacancies. However, compliance tracking and enforcement of NPDES MS4 General Permit requirements remains a challenge. There is no specific state program for hiring and maintaining qualified staff. When vacancies occur, managers determine whether the position is critical and, if so, prepare a critical need form that is forwarded to RIDEM's Director and the Department of Administration for approval. Depending on availability of funds, managers may authorize staff to attend training programs or technical conferences to refresh their knowledge or gain new knowledge.

Data Reporting Systems

OWR is a direct user of the EPA ICIS national data system. OWR's efforts with assistance from EPA to require that permittees input data through the EPA NetDMR system have been highly successful. As of December 2018, 100% of major and minor individual permittees are submitting DMRs using NetDMR and 75% of general permittees (combination of Multisector and Non-Contact Cooling Water general permits) have created NetDMR accounts.

Office of Air Resources

Resources

OAR currently has 4.5 FTEs to implement the Clean Air Act Stationary Source Enforcement Program. The FTEs work on compliance monitoring and enforcement of both major air pollution sources, synthetic minor air pollution sources (those with emission caps) and other source types. 3.5 FTEs are staff that conduct inspections and 1.0 FTEs are supervisors/program managers. There are resource constraints in OAR that present major obstacles to implementing compliance monitoring and enforcement with the Stationary Source Enforcement Program.

Staffing/Training

Compliance monitoring and enforcement has not been impacted by vacancies. There is no specific state program for hiring and maintaining qualified staff. When vacancies occur, managers determine whether the position is critical and, if so, prepare a critical need form that is forwarded to RIDEM's Director and the Department of Administration for approval. Depending on availability of funds, managers may authorize staff to attend training programs or technical conferences to refresh their knowledge or gain new knowledge.

Data Reporting Systems

OAR inputs all required data directly into the EPA national data system.

Office of Waste Management

Resources

OWM currently has 1.5-1.75 FTEs to implement the RCRA Subtitle C Enforcement Program (which includes the TDSF, Program Authorization, Transporter, and Biennial Reporting/Data Management programs). The FTEs work on permitting, authorization and compliance monitoring and enforcement. About 0.25 FTEs do inspections and 1.25-1.5 FTEs do authorization/supervision/permitting, transporters, and data entry. There are resource constraints in OWM that present major obstacles to implementing compliance monitoring and enforcement with the RCRA Subtitle C Enforcement Program. It is important to note that a substantial amount of compliance monitoring and enforcement is undertaken by OWM in other federal and state programs that were not subject to the EPA State review. These programs include medical waste management, solid waste, and landfill closure. The FTEs assigned to these programs have not been included in this summary.

Staffing/Training

Compliance monitoring and enforcement has been impacted by vacancies and OWM foresees impacts soon. There is no specific state program for hiring and maintaining qualified staff. When vacancies occur, managers determine whether the position is critical and, if so, prepare a critical need form that is forwarded to RIDEM's Director and the Department of Administration for approval. Depending on availability of funds, managers may authorize staff to attend training programs or technical conferences to refresh their knowledge or gain new knowledge.

Data Reporting Systems

OWM does not input all data directly into the EPA national data system, although it may in the future.

Office of Compliance and Inspection

Resources

OC&I currently has 3.1 FTEs assigned to the Water Enforcement Program. The FTEs work on compliance monitoring and enforcement. 2.0 FTEs are inspectors and 1.1 FTEs are supervisors/program managers. There are no resource constraints in OC&I that present major obstacles to implementing compliance monitoring and enforcement with the NPDES Enforcement Program. It is important to note that a substantial amount of enforcement is undertaken by OC&I through its citizen complaint response program that was not subject to the EPA State review. The FTEs assigned to this program are included in this summary.

OC&I currently has 2.1 FTEs assigned to the Air Enforcement Program. The FTEs work on compliance monitoring and enforcement. 1.0 FTE is an inspector and 1.1 FTEs are supervisors/program managers. There are no resource constraints in OC&I that present major obstacles to implementing compliance monitoring and enforcement with the Clean Air Act Stationary Source Enforcement Program. It is important to note that a substantial amount of compliance monitoring and enforcement is undertaken by OC&I through its citizen complaint response program that was not subject to the EPA State review. The FTEs assigned to this program are included in this summary.

OC&I currently has 4.4 FTEs to implement the RCRA Enforcement Program. The FTEs work on compliance monitoring and enforcement. 3.0 FTEs are inspectors (although .4 FTEs are used for database entry and management) and 1.4 FTEs are supervisors/program managers (although .2 FTEs are used for database entry and management). There are no resource constraints in OC&I that present major obstacles to implementing compliance monitoring and enforcement with the RCRA Enforcement Program.

Staffing/Training

For the Water, Air and RCRA Enforcement Programs, compliance monitoring and enforcement have been impacted by vacancies; however, OC&I does not foresee further impacts soon. There is no specific state program for hiring and maintaining qualified staff. When vacancies occur, managers determine whether the position is critical and, if so, prepare a critical need form that is forwarded to RIDEM's Director and the Department of Administration for approval. Depending on availability of funds, managers may authorize staff to attend training programs or technical conferences to refresh their knowledge or gain new knowledge.

Data Reporting Systems

OC&I inputs all data for the RCRA Enforcement Program directly into the EPA national data system.

Office of Legal Services

The Office of Legal Services (OLS) has 5.0 FTEs to manage all the legal work within the RIDEM. No FTEs are specifically assigned to any one office or program. Compliance monitoring and enforcement has been significantly impacted by vacancies within the OLS and there are resource constraints that present major obstacles to implementing compliance monitoring and enforcement.

Administrative Adjudication Division

The Administrative Adjudication Division has 2.0 FTEs to manage all the administrative appeals within the RIDEM. No FTEs are specifically assigned to any one office or program. There are no resource constraints that present major obstacles to implementing compliance monitoring and enforcement.

B. Major State Priorities and Accomplishments

Priorities

The Offices of Waste Management, Water Resources, Air Resources, and Compliance and Inspection have all undergone significant hiring of new employees in 2018 to replace employees who retired because of an early retirement incentive program offered to State employees. It is a priority for the offices to continue and complete the training of these new employees.

In addition, we have a continuing priority of maintaining compliance and enforcement activities in the core programs and implementing LEAN techniques to be more effective and productive in performing these activities. This is an ongoing effort and involves employees throughout RIDEM as specific processes are identified for improvement.

Accomplishments

RIDEM's major accomplishments over the last 1-2 years have been to maintain compliance and enforcement activities in the core programs and hire (and train) new employees within these programs.