2006 FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION STATE REVIEW FRAMEWORK REPORT

I. Executive Summary

Introduction

The Environmental Protection Agency=s (EPA=s) Office of Enforcement and Compliance Assurance (OECA), all ten EPA Regions, the Environmental Council of States (ECOS) Compliance Committee and other state representatives have jointly developed a method to assess state performance in the enforcement and compliance assurance program. This report reflects the Fiscal Year (FY) 2006 review by EPA Region 4 of the Florida Department of Environmental Protection's (FDEP's) compliance and enforcement program utilizing the State Review Framework (SRF). This review has been a collaborative effort between the Region and the State and captures both successes as well as any identified areas that need improvement. As this is the first review of this type for FDEP, this report will serve as a baseline review. Future reviews will look at performance as a comparison to the level documented in this review.

The purpose of the SRF assessment is to provide consistency in the level of core enforcement activity and performance thus in environmental protection across the country. It provides a consistent tool for EPA Regions to use in overseeing state enforcement program performance as well as to provide the basis for a consistent mechanism for EPA Regions to provide flexibility to states which can demonstrate an adequate core enforcement program.

The review consists of 12 critical elements which compare actual compliance and enforcement practices in the Clean Air Act (CAA) Stationary Sources Program, the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) program, and the Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste program with EPA policies and guidance. The 12 evaluation areas posed by this Framework are consistent with evaluation areas delineated in the1986 EPA guidance memorandum signed by Jim Barnes entitled *ARevised Policy Framework for State /EPA Enforcement Agreements.@* Additionally the Framework utilizes existing program guidance, such as national enforcement response policies, compliance monitoring policies, and civil penalty policies or similar state policies (where in use and consistent with national policy) to evaluate state performance and to help guide definitions of an acceptable level of performance. There is also an optional 13th element. EPA and ECOS encourage the use of the 13th element to ensure the review takes a measure of the full range of program activities and results. These components can add meaningful input into a state=s overall performance and program. Examples of topics could include program areas such as compliance assistance, pollution prevention, innovation, incentive or self-disclosure programs, outcome measures or environmental indicators that go beyond the core program activities covered in Elements 1 B 12.

The enforcement and compliance program is administered by the FDEP. The FDEP headquarters office in Tallahassee; six FDEP Water and RCRA Regulatory District offices, as well as eight local Air agencies, implement the State's compliance and enforcement program. The FDEP headquarters has oversight responsibility and performs audits of the enforcement program annually.

FDEP coordinated the file review effort on a statewide basis. The review was not directed at

assessing the capabilities of the individual FDEP District offices or the individual local air programs, rather to assess the State enforcement and compliance program as a whole. Although the FDEP enforcement program was reviewed on a statewide basis, EPA Region 4's review placed emphasis on ensuring an appropriate representation of each of the various entities. Program specific data utilized in the SRF was obtained from the OECA SRF website.

Process Followed in the Review

EPA Region 4=s evaluations of the FDEP=s core enforcement programs were conducted by staff from the Region=s Office of Environmental Accountability (OEA) and the Air and RCRA enforcement programs using Elements 1-12 of the SRF, described above. The State chose not to submit information for the optional Element 13. Each media OEA technical authority and Air and RCRA staff from the programs worked with their counterparts at the State to determine the number of files to be reviewed and to ensure that each of the local Air agencies and Water Management Districts were appropriately represented. The number of files to be reviewed for each media enforcement/compliance program was determined using information from a preliminary data analysis (PDA), that was reviewed and concurred by the State, and the file selection protocol in the SRF Implementation Guide. The file selection protocol considers factors such as the number of facilities in the universe, the number of inspections performed and the level of enforcement activity in each program at a statewide level in determining an appropriate number of files to be reviewed. FDEP collected and made available all selected files at their central office in Tallahassee. For each program, files were randomly selected within a representation of types or program areas. The scope of review generally evaluated the State against FY2006 agreements and outputs such as grant workplan or MOAs. For those instances where two years of data was required, FY2005 and FY2006 information was used. The report contains findings of the review for each program, and areas of concern with a explanation of these concerns along with recommendations for resolution.

Information Considered From Other Reviews and Other Sources

For each of the compliance and enforcement programs, Region 4's OEA staff obtained those documents that identified negotiated compliance and enforcement commitments with FDEP. These documents were reviewed for consistency with national and regional policy and guidelines as well as commitments that may differ from OECA expectations.

Inspection Implementation

CAA - According to the data metrics, FDEP completed 93% of the committed to Full Compliance Evaluations (FCEs) at Compliance Monitoring Strategy (CMS) major sources in FY2005-FY2006, exceeding the national average of 82%, and 98% of FCEs for Synthetic Minor (SM) sources during the five year period of FY2002-2006, exceeding the national average of 85%.

FDEP received and reviewed 100% of their Title V annual compliance certifications in FY2006, exceeding the national average of 81%.

EPA Region 4's review of the 36 source files showed six files with one or more of the FCE or compliance monitoring report (CMR) elements missing, with one of these six files lacking documentation of all elements.

It should be noted that the files were in excellent order and that the Air Resource Management System (ARMS) is an excellent tool to manage documentation of a FCE.

Based on the 29 inspection reports found in the files, all but one was written within 60 days of the inspection. Seven of the files reviewed had inspection report issues, e.g., missing report, incomplete report. The timeliness of completing the written inspection reports is commendable; however, FDEP should examine why inspection reports are not in every file and why some reports are not dated.

NPDES - Florida inspected 99.5% of all its major facilities during Inspection Year (IY) 2006 fifteen month period or 93.8% over the traditional twelve month inspection year period, exceeding the national average of 61.1%. In addition the state performed inspections at 89.5% of its non-major facilities over the traditional 12 month inspection year. Florida's inspection activity suggests strong presence in the field.

The compliance evaluation inspections (CEI) reports reviewed were comprehensive, addressing permit requirements. The files reviewed did not contain documentation that a Significant Non-Compliance (SNC)/Single Event Violation (SEV) review was performed. The quality of inspection reports varied from well documented inspection findings with supporting photographic evidence to limited/very brief findings and no evidence. The storm water inspection files were well organized containing an inspection file checklist.

Eighty-five per cent of inspections reports reviewed were completed and delivered/forwarded to the permittee in a timely manner, i.e., within thirty days from the date of the inspection. The occasions when reports are issued beyond 30 days from the date of the inspection were atypical.

RCRA - The SRF Metrics indicate that for FY2005-FY2006 FDEP inspected 100% of the operating Treatment, Storage, and Disposal Facilities (TSDFs) in their state; in FY2006 inspected 100% of TSDFs owned or operated by the federal government and 100% of TSDFs owned or operated by a state or local government. The only inspection requirement that was not met is the 100% Large Quantity Generators (LQGs) inspection coverage over a five year period. The SRF data metrics indicate that FDEP inspected 70% of the LQG universe over this time frame.

The quality of all of the reviewed RCRA inspection reports is excellent. The inspection narratives were thorough in describing facility processes and waste management activities, and included supporting photographs and documentation. The one instance of a missing checklist appears to be an anomaly, based upon discussions with the State.

The OECA RCRA Subtitle C Program Guidance and File Review Metrics indicate that inspection reports should be completed within 50 days, or other time frames negotiated between the Region and the state. Thirty-seven per cent of the FDEP files reviewed exceeded the

recommended completion time frame.

Enforcement Activity

CAA – FDEP closely manages their high priority violations (HPV) program via monthly calls with their district and local agencies. They review all enforcement actions for possible HPVs, trends are monitored and when lower than normal HPV identification rates are seen, FDEP initiates corrective action. EPA has monthly communication with FDEP to oversee the identification, reporting into AFS and resolution of HPVs.

Of the 36 FDEP source files reviewed, 16 contained state enforcement actions (e.g., consent orders or short form (penalty only action) consent orders. In all cases these state enforcement actions resulted in the sources being returned to compliance.

According to the data metrics, in FY2006 31.5% of FDEP's HPVs went unaddressed passed 270 days. The file review identified that 40% of FDEP's HPVs went unaddressed passed 270 days. The national goal is for no HPVs going unaddressed beyond 270 days. The national average is 44.2 % going beyond 270 days.

NPDES - FDEP enters major facilities' effluent data into the Permit Compliance System (PCS) in a timely manner. During the second quarter of FY2006, FDEP data entry rate for majors averaged an impressive 98.9% that exceeded the national average of 92.4%.

The Florida Enforcement Guidance Manual (EMS) needs to be revised to allow fast tracking for facilities that would become SNC or are in SNC to a formal enforcement action instead of the current process of issuing a Warning Letter (WL) followed by formal enforcement action.

Florida is above the 2% threshold for SNC facilities that are beyond required enforcement timeliness milestones, reported at 6.0%, but below the national average of 8.6%. Forty-three per cent of the enforcement actions at major facilities reviewed were determined not to be issued timely.

Although FDEP has a written penalty policy that has an adjustment for considering economic benefit, the storm water files did not contain enough information to make a determination as to whether economic benefit was or should have been considered.

RCRA - According to OECA SRF Data Metrics, in FY2006 FDEP had a SNC identification rate of 6.0%, which is approximately 1.8 times the national average. A total of 84 new SNCs were identified during FY2006.

The data metrics and file review support the finding that FDEP has a responsive and consistent RCRA enforcement program. The facilities that were not flagged as SNCs appear to be data omissions, since there was timely and appropriate enforcement taken in every case.

In the twenty FDEP enforcement files that were reviewed, 100% of the enforcement actions met the RCRA Enforcement Response Policy (ERP) time lines. FDEP has a consistent and timely

RCRA enforcement process. Violations are addressed and resolved quickly, and the process is implemented consistently across all FDEP district offices.

Commitments in Annual Agreements

CAA - FDEP has consistently met or exceeded all of the enforcement requirements of their FY2006 §105 Grant as detailed in their Annual Planning Agreement (APA).

NPDES - The FDEP met or exceeded most requirements of their NPDES compliance and enforcement FY2006 CWA §106 workplan. FDEP should ensure that all negotiated grant workplan commitments are met.

RCRA - FDEP met or exceeded the vast majority of the enforcement and compliance-related commitments in the FY2006 RCRA grant workplan. The exception to this was certain compliance evaluations at Land Disposal Facilities (LDFs). It is recommended that the grant workplan be updated annually to reflect any changes in guidance/policy for that fiscal year.

Data Integrity

CAA - The data metrics report on the percent of HPVs that are entered greater than 60 days after designated as HPVs. FDEP's data show only 11% of HPVs entered more than 60 days following the date of discovery, far better than the national average of 58%. FDEP is to be commended for the timely entry of HPV data into Air Facility Subsystem (AFS).

NPDES - FDEP generally enters the minimum data requirements into PCS in a timely manner. Florida enters all Water Enforcement National Database (WENDB) data elements for which data are available.

FDEP identifies violations in a timely manner. Florida is one of several state agencies that actively electronically tracks NPDES permit limits and conditions contained in minor NPDES permits, similar to what it does for major NPDES permits. This information is made available in PCS. Since this information is not currently required, the state significantly exceeds existing expectations.

FDEP was able to maintain a Discharge Monitoring Report and parameter entry rate for majors at an impressive 98.9%.

RCRA - All of the SNC facilities received a Warning Letter/Notice of Violation within 150 days. Also, 100% of the cases were settled within 360 days, reflecting timely enforcement in all cases reviewed.

Summary

The State, as a whole, has an effective compliance and enforcement program. In most instances, the State exceeded national averages identified in the Florida SRF Metrics, across all media programs. These data metrics compared Florida data to national figures and standards such as

inspection coverage, identifying and addressing significant violators in a timely way, etc. Florida=s high level of inspection coverage and activity is indicative of an active field presence for their compliance and enforcement program.

EPA Region 4's review of the FDEP enforcement program has determined that the State has a thorough understanding of its media enforcement programs, i.e., CAA- Stationary Source program, CWA-NPDES program and RCRA-Subtitle C hazardous waste program, and is successfully implementing these delegated enforcement programs.

The report includes recommendations for improvement in several areas. The two overarching issues most significant for FDEP are maintaining supporting documentation and rationale in files as to how penalties and economic benefit were calculated and the degree to which national data bases are updated, both timely and completely.

The Region will continue to work closely with the State of Florida to implement the recommendations made in this report. The Region will incorporate the recommendations in this report into the National SRF Tracker System along with agreed upon time lines, milestones, and any tracking agreements, such as Memorandum of Agreement (MOA), Performance Partnership Agreement (PPA), or Performance Partnership Grant (PPG), as well as provide timely updates as to the progress made in the implementation of the recommendations.

II. Media Program Element Reviews

Program: CAA Stationary Source Enforcement Program – State of Florida

Introduction: The CAA portion of this report entailed a three day review of files (April 3-6, 2007) and an analysis of data in the FDEP's air enforcement program. The period of time for this review was FY2005-FY2006. The file selection protocol from the SRF was used to select the 36 files reviewed; however, minor protocol variation was taken to address FDEP's six district offices plus eight local air offices and there was a desire to review approximately three files from each of these offices. The selected list of files was submitted to FDEP for concurrence as being representative of the air enforcement program. Of the 36 files reviewed, 25 were Title V major sources and eleven were synthetic minor sources. Fourteen of the 36 files reviewed were tracked in AFS as HPV sources at some point during FY2005-FY2006.

The data analysis consisted of reviewing information generated by the SRF data metrics. The data metrics consists of a standard retrieval of data (for air its source of information is AFS) and it analyzes over 40 categories of data. The air data metrics pull was done in January 2007 and it covered FY2005-FY2006, the most recent period of complete data when the review began.

The findings and recommendations that follow reflect the 12 elements of the SRF that were reviewed. These 12 elements encompass four review areas: inspections, enforcement activity, annual state/EPA agreements and database integrity.

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

   Planned Inspection/Evaluation Findings: In this element, EPA evaluated the percent of FCEs completed of the total number of FCEs committed to be completed in FDEP's CMS Plan for the time period covered by this review (FY2005-2006). For FY2005-2006, FDEP committed to 519 FCEs at Title V sources and 190 FCEs at SM sources (FDEP commits to SM sources versus the smaller universe of SM-80 sources). Since EPA's FCE frequency is once every five years for SM sources, information was gathered on FDEP's FY2002, 2003 and 2004 FCE SM source commitment. This showed 251 FCEs at SM sources. Thus FDEP's FCE commitment for SM sources for the five year period of FY2002-2006 was 441.

   EPA tracks FCE performance via the EPA requirement that sources shown to receive a FCE in a state's CMS Plan be coded in AFS with a CMS flag. The data metrics was used to analyze FDEP's FCE performance. The data metrics showed 374 FCEs out of 402 CMS flagged major sources (93%) during FY2005-2006 and 432 FCEs out of 441 CMS flagged SM sources (98%) during FY2002-2006. The difference in the universe of FCEs for Title V sources (i.e., the 519 in the CMS Plan and the 402 flagged by the data

metrics) is likely due to the dynamic nature of the source universe (sources shut down or take limits to become SM) and possibly inattention to keeping the CMS flag accurate in AFS. The national goal is 100% of Title V sources getting FCEs once every two years and 100% of SM-80 sources getting FCEs once every five years. The national average is 82% for Title V sources and 85% for SM-80 sources (SM-80 sources are a subset of the SM universe).

Title V Annual Compliance Certifications received and reviewed: According to the data metrics, 100% of FDEP's Title V annual compliance certifications that were due in FY2006 were received and reviewed. This meets the national goal of 100% of all Title V annual compliance certifications being received and reviewed. The national average is 81%.

Sources with "Unknown" Compliance Status Designations: The data metrics showed 10 sources with an "unknown" compliance status, 1% of Florida's source universe. An "unknown" compliance status is usually associated with a major source going longer than two succeeding years without a FCE being recorded in AFS. As shown above, only 93% of major sources had a FCE completed over a two year period thus this finding is not unexpected.

Citation of information used for this element:

- FDEP's FY2004-FY2005 and FY2006-2007 CMS Plans
- Data metrics (source of data is AFS)

Recommendation(s): None

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

Findings: Thirty-six source files were reviewed to see how FDEP documents a completed FCE. Twenty-five of these source files were major sources. All elements of a FCE and CMR were examined: general and facility information about source; a description or listing of all applicable requirements for the source; an inventory and description of regulated units and processes; information on previous enforcement actions; compliance monitoring activities such as compliance assistance; reviews of all required reports such as Continuous Emission Monitoring System (CEMS) reports, malfunction reports, the annual compliance certification and semi-annual monitoring reports; assessments of control device and process operating conditions, process parameters and control equipment performance parameters; reviews of facility records, operating logs and visible emissions observations; reviews of stack test reports and findings/recommendations relayed to the source during the compliance evaluation (see EPA's April 25, 2001, CMS guidance for a description of these terms).

States/locals may document the FCE elements as they deem appropriate. FDEP does this through their ARMS. ARMS is an electronic database which integrates and tracks the permitting, inventory, compliance and enforcement history of Florida's CAA regulated sources. In addition, the ARMS complaint module tracks the department's response to complaints at air pollution sources.

CAA Sources of air pollution regulated under Florida's Administrative Code chapters, (and rules, etc.) requiring permits or notifications are included in the ARMS permitting module. Some types of sources are able to electronically submit their permit application, and this facility information is then transferred to ARMS. The subsequent issuance of permits and tracking of notifications (i.e., non-asbestos notifications) are closely monitored in ARMS due to time limits dictated by statute.

The inventory module of ARMS tracks much of the information included in the source's permit, such as the facility name, location, a description of all the emission units (i.e. such as a boiler or combustion turbine), the types and amounts of fuel they are allowed to process, and the pollutants that are emitted and their emission limits. Many of the sources are required to self report emission and operation information annually in a report to the department. Sources can submit this report electronically, with the data compared and reviewed against ARMS data, and the results transferred to ARMS.

Other self monitoring done by the source, such as the annual statement of compliance (i.e. certifying compliance with permit requirements), the semi-annual monitoring report, continuous emission monitoring reports, and compliance test reports etc., are submitted by the source to the department for review. All required reports are reviewed and the compliance result of "in or out" of compliance is entered in the ARMS compliance module, along with some report details (such as the actual emissions during compliance testing for example). In addition to tracking these report results, the compliance module is the repository for all compliance activities performed by the department air staff as part of their routine oversight in the determination of the compliance status of a source. A compliance activity, for example, would be a FCE of the source. An FCE is performed at major and synthetic minor sources within a certain time frame according to the EPA's compliance monitoring policies. One element of an FCE is a detailed on-site inspection of the source. The results of these inspections are recorded on a field unit and electronically submitted to ARMS.

If non-compliance was determined, enforcement may be taken. Findings of and resolution of violations are tracked in the enforcement module of ARMS, including penalties assessed in enforcement orders and corrective actions necessary to bring the source back into compliance.

HPVs, according to the EPA's HPV policy, have their data uploaded from ARMS to the EPA's database, the AFS, along with the required compliance data.

In summary, all modules of ARMS, permitting, inventory, and compliance and enforcement, are integrated so that the respective data are tracked under a single Air Information Retrieval System (AIRS) ID for a specific facility. ARMS is also integrated with several other data systems to either capture more detailed information (permitting, inventory, and compliance) or to upload ARMS information to the applicable EPA data systems, or to the department's publicly available Air Compliance and Enforcement System (ACES).

With respect to compliance assistance, FDEP does track the compliance assistance they perform. Of the files reviewed, six were shown as having compliance assistance performed.

Our review of the 36 source files showed six files with one or more of the FCE or CMR elements missing. Examples of missing elements were: no description of applicable requirements, or no inspection report, or no inventory of emission units, or no reviews of reports or records, or no facility information like address, plant contact and telephone numbers. One file was lacking documentation of all elements. It should be noted that the files were in excellent order and the use of ARMS is an excellent tool to manage documentation of a FCE and the CMR. Also, FDEP has developed a FCE Checklist but there was no evidence in the files reviewed that it was being used.

Citation of information used for this element:

- FDEP's source files/ARMS
- EPA's April 25, 2001 CMS guidance

Recommendation(s): FDEP should develop and implement a plan that ensures all elements of a CMR and FCE are consistently completed and documented in the source files and that credit for a FCE not be shown in AFS until completion of all elements can be documented. Routine implementation of the existing FCE checklist is a way to ensure element documentation and should be part of this plan.

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

Findings: Thirty-two of the 36 files reviewed had an inspection report though three were undated. Of the dated inspection reports, all were written within 60 days of the inspection except one which was completed within 120 days of the inspection. The violation found was timely reported under the HPV policy. The other four files did not contain an inspection report though one source has since closed (if an on-site visit was not part of the FCE this should be noted in the "files"). Timeliness of completing written

inspection reports is commendable and ensures that HPVs that might be a result of an inspection get identified and addressed in a timely manner.

Citation of information used for this element:

- FDEP's source files

Recommendation(s): To ensure the integrity of reported FCEs and the timeliness of HPV identification, FDEP should examine why inspection reports are not in every file (it is acceptable to maintain an electronic inspection report in ARMS) and why some inspection reports in the files are not dated.

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

Findings: According to the data metrics, FDEP's HPV discovery rate was 7.1% (national average 9.2%) based on major FCEs coverage in FY2006. Discovery rate is defined as HPVs identified by the state in the fiscal year divided by the number of major sources with a state FCE performed in that fiscal year. In addition, the HPV discovery rate based on operating major sources in the same fiscal year was 3.9% (national average 4.3%). Discovery rate in this case is defined as HPVs identified by the state in the fiscal year divided by the number of operating major sources.

In response to these data metrics, FDEP stated that they closely manage the HPV program via monthly calls with their district and local agencies. They review all enforcement actions (warning letters, etc.) for possible HPVs. Trends are monitored and when lower than normal HPV identification rates are seen, FDEP follows up with their district/local offices. FDEP also points out that because of their field presence, sources are aware of their requirements and are less likely to have a HPV. EPA has monthly communication with FDEP to oversee the identification, reporting into AFS and resolution of HPVs.

Citation of information used for this element:

- Data metrics

Recommendation(s): None

5. 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: Of the 36 FDEP sources files reviewed, 16 contained state enforcement actions (e.g., consent orders or short form consent orders – penalty only action). In all cases these state enforcement actions included required corrective or complying actions that resulted in the sources being returned to compliance.

Citation of information used for this element:

- FDEP's source files

Recommendation(s): None

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

Findings: According to the data metrics, in FY2006 17 of FDEP's 54 HPVs (31.5%) went unaddressed beyond 270 days. This statistic was supported by the file review. Of the 15 source files reviewed that were identified as being a HPV, six HPVs went unaddressed beyond 270 days (40%). The national goal is for all HPVs to be resolved (i.e., returned to compliance) or addressed (i.e., on a schedule or be subject to a referral) within 270 days. Nationally, 44% of HPVs went unaddressed beyond 270 days.

In response to this data metric, FDEP stated that they manage the resolution of HPVs, as they do the identification of new HPVs, via the monthly calls they have with their district and local offices.

Citation of information used for this element:

- Data metrics
- Source files

Recommendation(s): FDEP should examine their HPV resolution practices and develop and implement a plan that will ensure conformance with the enforcement action time lines of the HPV policy.

7. **Degree to which the State has a penalty policy that includes both gravity and economic benefit calculations.**

Findings: The FDEP penalty policy for CAA violations consists of two primary documents. The first is the department-wide program directive 923 entitled "Settlement Guidelines for Civil and Administrative Penalties". FDEP directive 923 applies to all media, and in addition to outlining the general approach to calculating penalties, it includes discussion of the following topics: the penalty matrix (which accounts for the gravity of the violation in terms of potential for harm and extent of deviation from requirement), multiple and multi-day penalties, penalty adjustment factors, history of noncompliance and economic benefit of noncompliance. According to the directive, accounting for economic benefit in penalty calculations is necessary to ensure immediate and continued compliance unless the benefit is found de minimum or incalculable.

The second document is the "Guidelines for Characterizing Air Violations," which implements the FDEP directive at the program level. This document provides the specific steps for calculating a penalty. It describes how the major, moderate and minor gravity categories should be applied to various types of violations. For each type of violation, the guideline also lists common items to include in economic benefit calculations.

All six of the Department's district offices and four of the state's local air programs follow these two documents. The other 4 local air programs maintain their own guidelines, and these guidelines reflect a gravity component in their penalty calculation. These local program guidelines also have a brief discussion about including economic benefit.

Citation of information used for this element:

- Settlement Guidelines for Civil and Administrative Penalties (DEP Directive 923), March 2007
- Guidelines for Characterizing Air Violations, April 2007

Recommendation(s): None

8. Degree to which state documents both gravity and economic benefit in accordance with any applicable penalty policy.

Findings: Of the 16 state enforcement actions (consent orders or short form consent orders) found in the files reviewed, all 16 contained penalties. FDEP does use a penalty computation worksheet. This worksheet follows their penalty guidelines in that it tracks violation type, potential for harm, extent of deviation, among other items. Fourteen of the 16 files contained the penalty computation worksheet. All of the penalties assessed the gravity component and eight addressed both the gravity and economic benefit components. For the eight where economic benefit was not addressed, it could not be determined by examining the worksheet whether this component was found not to apply or whether is was not considered.

Citation of information used for this element:

- Source Files
- FDEP's Penalty Computation Worksheet

Recommendation(s): FDEP needs to ensure that their penalty calculation worksheet includes an economic benefit component in the calculation.

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

Findings: FDEP has an annual APA with Region 4. It principally applies to non-major sources and asbestos demolition/renovation projects and is funded through CAA Section 105 grant dollars. Activities related to Title V sources are not part of the APA and are funded through industry fees. With respect to the FY2006 APA Monitoring and Enforcement component, FDEP committed to the following:

- Ensure that AFS contains accurate and timely data on the minimum data elements for synthetic minor sources by direct entry and comply with the direct access procedures or through batch updating process (computer uploading).
- Resolve violations of any rule for which EPA has delegated authority to the state for non-major MACT sources and synthetic minor sources.
- Utilize the pollution prevention (PP) database to enhance PP outreach activities during compliance inspections.
- Inspect 25% of all NESHAP asbestos demolition/renovation projects.
- Observe asbestos work practices in progress whenever possible to assess compliance.
- ACTS/NARS database is no longer available. Report the following asbestos NESHAPS activities at least 45 days after each fiscal quarter: 1. number of notifications received; 2. number of inspections; 3. non-notifier activity if applicable; 4. number of non-penalty enforcement actions; 5. number of enforcement actions with an assessed penalty and 6. total penalty assessment.
- Maintain a state health and safety plan for asbestos demolition/renovation inspectors.
- Recommend cases and provide support to the EPA Criminal Enforcement program.
- Implement the CAA section 112 (r) program. Develop a work plan including risk management program audits and facility inspections (in FL, the 112 (r) program is the responsibility of the Department of Community Affairs).

FDEP has met these deliverables based upon the overview the region does on a semi-annual basis using the regions grant tracking system.

Citation of information used for this element:

- FDEP's FY2006 APA
- Regional APA tracking form

Recommendation(s): None

10. Degree to which Minimum Data Requirements (MDRs) are timely (focus on integrity of HPV data)

Findings: MDRs represent the minimum amount of data that EPA believes nationally is

necessary to oversee the national stationary source compliance monitoring and enforcement program. Examples of the 26 elements that comprise the MDRs are recording of FCEs, HPVs, stack test results, compliance status and Title V annual compliance certification reviews. In examining the MDRs for the 36 FDEP files, no significant data deficiencies were noted.

One specific item that the SRF requests to be analyzed is the HPV MDRs. These MDRs require timely entry of HPV data into AFS. The data metrics report on the percent HPVs entered greater than 60 days after designation. FDEP's data show 3 of 27 (11%) HPVs are entered more than 60 days following the date of discovery (national average is 58%). FDEP does a good job in the timely entry of HPV data into AFS.

Citation of information used for this element:

- Data metrics

Recommendation(s): None

11. Degree to which MDRs are accurate (focus on plant compliance status)

Findings: This metric analyzes sources carried as HPVs compared to their AFS plant compliance status. HPVs should be shown in AFS as in non-compliance until they are resolved (i.e., returned to compliance). The data metrics show 36 of 42 HPVs being carried in AFS as in compliance when in fact these 36 HPVs have not been resolved and thus should be depicted in AFS as in non compliance.

In response to the data analysis where this concern was raised, FDED shared during our visit that they show a HPV source as returned to compliance when the source resolves the violation that triggered the HPV. This would be the correct way of coding the plant compliance status when a HPV is resolved. Unfortunately, according to the data metrics, unresolved HPVs are being carried as in compliance.

Subsequent to FDEP seeing a draft of our findings and recommendations on this element, extensive dialogue was held between the AFS staffs in FDEP and the region. The result is a better understanding by FDEP on how to code HPV compliance status especially when a HPV has been addressed via a schedule.

With respect to stack test data, the data metrics show that all 1,431 stack tests performed in FY2006 had their pass/fail results coded into AFS.

Citation of information used for this element:

- Data metrics

Recommendation(s): FDEP should document and share with the Region their present understanding on how HPV resolution is to be coded in AFS and what steps they are or have put into place to ensure this understanding.

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

Findings: The goal of this metric was to ensure agreement between the states/locals and the region on the completeness of the MDRs being reported into AFS and, where discrepancies exist, to develop an action plan for making appropriate corrections. Specific MDR elements examined included: Title V universe; source count of major, synthetic minor and NESHAP minor sources; universe of new source performance standard (NSPS), NESHAP and MACT sources; completeness of FCEs and partial compliance evaluations (PCEs) being reported; historical non-compliance counts; completeness of sources receiving NOVs; completeness of HPV reporting; completeness of enforcement actions being reported; completeness of penalty dollars assessed by state and number of major sources missing CMS policy applicability.

It was determined that FDEP MDRs were complete and submitted into AFS in a timely manner.

Citation of information used for this element:

- AFS

Recommendation(s): None

Program: Clean Water Act – NPDES

Introduction:
Florida identifies and addresses violations using EPA criteria outlined in program authorization documents, the Memorandum of Agreement (MOA), executed in 1995, and/or the Florida EMS. Florida's implementation of the compliance program meets the required standard pursuant to the Clean Water Act (CWA) and its implementing regulation at 40 CFR §123.26. Inspections are conducted to independently assess the compliance status of a given facility with or without a NPDES permit, such as CEI, compliance sampling inspections (CSI), and reconnaissance inspections (RI). DMRs submitted by permittees are reviewed to assess compliance status, and such information is entered by Florida into the PCS in accordance with the Water National Enforcement Database protocol and the CWA annual section 106 workplan. Florida generally addresses complaints received directly from the public or through other sources, including complaints forwarded by EPA, in a timely manner. Florida uses enforcement actions to address environmental noncompliance to bring businesses, individuals and government entities into compliance with environmental laws and regulations. Florida's Enforcement Response Guide (ERG) and EMS describe and contain protocol for State enforcement response to noncompliance determined independently either through inspections or complaints or through the analysis of self reported noncompliance such as DMR submittals, noncompliance notice requirements of a NPDES permit, or under self disclosure /self audit policy.

In addition to a review of the data metrics, the SRF involves the review of compliance and enforcement program files. The on site file review was conducted April 9-12, 2007. EPA utilized the SRF File Selection Protocol when selecting representative files for review. The review period for the Florida State Review Framework was designated to cover FY2006 (October 1, 2005 to September 30, 2006) and IY2006 (July 1, 2004 to September 30, 2006, 15 month transitional inspection year). The file selection protocol dictates selecting 25 to 40 facilities for file review for a universe of NPDES facilities exceeding 700. The protocol also requires diversification where possible, recommending approximately half of the files reviewed include some form of enforcement activity. Preliminary file selection was performed utilizing PCS data of inspections performed in IY2006 and cases concluded in FY2006. Thirty-six facility files were randomly selected, with Florida's consent, and reviewed. Eleven majors, five individual minors, 12 storm water, four CAFOs and four cement batch plant files were selected for review insuring the majority of the facilities had either inspection coverage during IY2006 or enforcement action issued during FY2006.

The file list was submitted to the FDEP in advance of the EPA on site visit. The facilities selected for review represented all six FDEP regulatory district offices. FDEP had the files available for EPA review both electronically and in hard copy format at the Tallahassee office. The facility files provided by FDEP (with the exception of the storm water files) were not the official enforcement and compliance files, rather, the districts provided copies of their enforcement and compliance file documents for the review period. EPA provided FDEP a list of typical documents reviewed prior to the on site file review to help assist the districts in

compiling the necessary material. The prepared documents were well organized and typically contained inspection reports, penalty worksheets, penalty payment documentation, SNC determination, communications from the facility and enforcement actions. Samples of current DMRs available at the Tallahassee office were reviewed for data entry accuracy. In addition to the files reviewed, SRF data metrics were utilized to assist in the review of the compliance and enforcement program. EPA and FDEP agreed to utilize the data metrics from the March 10, 2007, data refresh date pulled from the SRF website, for the review.

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

Findings: Florida conducts inspections in accordance with the Water Grant Commitment Workplan pursuant to the Clean Water Act Section 106. The workplan incorporates an annual inspection plan that dictates the minimum percentage of facilities to be inspected and/or the minimum frequency of inspections. This flexibility provides Florida the opportunity to focus State resources in State priority areas. All of the compliance determinations are performed in the six district offices.

Eleven major facilities were selected for review, eight municipal majors and three industrial majors. Nineteen inspection reports for major facilities were reviewed. Types of major facility inspection reports reviewed included CEI, RI and complaint inspections. No CSI reports were available for review at the time of the on site file review. Twenty-five non-major facilities were selected for file review with 27 inspection files reviewed. Types of non-major facility inspection reports reviewed varied including CEI, RI, CSI, Follow-up Inspection (FI) and storm water. The file review discovered ten inspections not identified in PCS.

Florida inspected 99.5% of all its major facilities during IY2006 fifteen month period or 93.8% over the traditional twelve month inspection year period (July 1, 2005 to June 30, 2006); which exceeds the national average of 61.1%. FDEP exceeded their minimum CWA §106 workplan commitment to conduct inspections at a minimum of 50% of its majors (universe of 210 major facilities). In addition to the inspected majors, the state performed inspections at 89.5% of its non-major facilities over the traditional 12 month inspection year. The number of compliance monitoring inspections reported in PCS for the IY2006 12 month period was 1,012 for 899 facilities inspected.

As part of FDEP's CWA §106 workplan commitment, Florida is to develop an inspection plan annually that covers inspections at conventional, storm water, and CAFO facilities. The inspection plan was determined to be consistent with EPA guidance. Due to Florida's organizational structure (six district offices locations), field presence is maximized. By conducting frequent inspections of permitted facilities, FDEP is able to identify corrective action measures to be taken to address compliance problems.

Florida's inspection activity suggests strong presence in the field implementing one of the key elements of the compliance program.

Citation of information reviewed for this criterion

- CWA State Review Framework Metrics Data
- EPA/FL CWA§106 Program Workplan
- PCS Data Pull for IY2006 (12 month and 15 month inspection period)
- FDEP files

Recommendation(s): FDEP should input all inspections into PCS per the CWA §106 workplan requirements. Current data entry process should be evaluated for possible improvements to ensure timely data entry of inspections.

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

Findings: The CEI reports reviewed were comprehensive in addressing permit requirements. Wastewater compliance inspection reports are standardized in identifying areas evaluated and the compliance determination of each area. Use of standardized inspection reports provide for a level of consistency in areas reviewed and helps assure thorough inspections are performed. Areas evaluated are separated into four sections: permit/orders (permit and compliance schedule), self monitoring program (laboratory, sampling and records and reports), facility operations (facility site review, flow measurement, and operation and maintenance), and effluent disposal (effluent quality, effluent disposal, and residuals/sludge). If an "out of compliance" rating is given in a permit, compliance schedule, records and reports, facility site review, operation and maintenance, effluent quality and effluent disposal areas, the inspector is instructed to review the SNC criteria to determine if the violation should be designated as SNC. The files reviewed did not contain documentation that SNC review was performed, when applicable. The quality of inspection reports varied from well documented inspection findings with supporting photographic evidence to very brief with little to no description. Specific areas observed, condition of the facility, specific records reviewed, etc. could not clearly be determined if the inspection report cover sheet was not accompanied with a detailed narrative and/or photos. No EPA oversight inspections were performed for the selected facilities reviewed during the review period, therefore the quality of the state inspections could not be assessed. Four inspection reports identified in PCS (three CEIs and one CSI) were not found in the documents provided, therefore, not reviewed. However, an additional ten inspections not identified in PCS were found and reviewed for this evaluation.

Five of the wastewater inspection reports reviewed generated formal enforcement actions. Noncompliance/deficiencies were most often addressed via use of warning or

noncompliance letters requiring the facility to respond to the inspection report findings by identifying corrective actions taken.

The storm water inspection files were well organized containing an inspection file checklist. This checklist ensures that the compliance monitoring file includes PCS data entry confirmation with the inspection date, inspection report, inspection recommendation form etc. In July 2006, FDEP signed a contract with SAIC for support in conducting compliance monitoring activities.

Citation of information reviewed for this criterion:

- FDEP files
- FL Wastewater Program ERG, 2006
- PCS inspection information for IY2006
- NPDES Inspection Manual

Recommendation(s): Inspection reports receiving noncompliance ratings, necessitating further review of the SNC criteria, should all be accompanied with documentation that such additional review was performed and that the review supports a SNC determination.

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

Findings: Eighty-five per cent (39 out of 46 inspection reports reviewed) of inspections reports reviewed were completed and delivered/forwarded to the permittee in a timely manner, within 30 days from the date of the inspection. Timely issuance of one inspection report could not be determined due to the final signed and dated CEI cover letter not found. Inspections which reveal a non-compliance situation, which is not considered egregious, are typically followed up with a non-compliance letter within 30 days. Inspections which reveal egregious or SNC type violations would potentially be issued a NOV or WL, within the time frames established in the EMS guidance. Inspections which do not reveal any non-compliance issues are still expected to be issued timely. The occasions when inspection reports were issued beyond 30 days from the date of the inspection (reports issued three to seven months after the inspection date) were atypical, specific cause for the delay of the untimely reports reviewed could not be determined, but likely due to inspector workload. The majority of facility documents reviewed were inspection report(s), correspondence related to the inspections, DMRs, and violation notice(s) generated as a result of inspection or from the review of DMRs. The violations appeared to be identified and responded to in a timely manner. Florida should continue the positive trend in responding to violations discovered during an inspection in a timely manner.

Citation of information reviewed for this criterion:

- PCS data pull for IY2006/FY2006

- FDEP files
- FL EMS, 1999

Recommendation(s): The FDEP should consider including guidance on inspection report content and issuance time frame in its next revision of the EMS. This would help ensure that inspection findings are well documented with appropriate supporting material referenced as well as the timely issuance of the inspection reports.

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

Findings: Florida uses the federal definition of SNC. FDEP identifies and strives to address violations using the EPA criteria outlined in program authorization documents and the MOA. FDEP submits Quarterly Non-Compliance Reports (QNCRs) and generally addresses QNCR reported SNC violations in a timely and appropriate manner. The wastewater program operates under a current Enforcement Response Guide (ERG) dated January 2006, that describes how and when Florida will take action on violations. Use of the ERG is intended to recommend enforcement responses that are timely and appropriate in relation to the nature and severity of the violation and the overall degree of noncompliance. In addition to the QNCR, FDEP and Region 4 utilize the national Watch List system to address facilities with longstanding violations without recent formal enforcement action. The Watch List has been a useful tool since its implementation in 2004, in assisting both the Region and State in reviewing and tracking facilities with serious or chronic violations, without recent formal enforcement response.

The current EMS does not address changes in the rules/regulations such as those dealing with storm water, MS4, and concentrated animal feeding operation, and changes in SNC definitions.

FDEP enters major facilities' effluent data into PCS in a timely manner (see Element 10). FDEP is required to maintain a DMR and parameter data entry rate for majors at or above 95% per the PCS policy statement, the annual CWA section 106 workplan commitment, and MOA. During the second quarter of FY2006, FDEP data entry rate for majors averaged an impressive 98.9% that exceeded the national average of 92.4%. The data entry rate for majors is based on the universe of those majors with limits coded in PCS. The SRF data metrics noted major facilities having correctly coded limits (current) for Florida is at par with the national average of 91%, yet still below the national goal of at or above 95%. A high data entry rate helps ensure accurate SNC identification and accurate Enforcement Compliance History Online (ECHO) reports.

PCS automatically identifies and designates SNC based upon compliance schedules contained either in permits or enforcement actions, effluent violations contained in DMRs, and other violations such as SEVs. The state has discretion in designating SEVs

and entry into PCS as "significant." The percent of Florida's majors in SNC for FY2006 is 22.6% compared to the national average of 19.6%. Although the FY2006 SNC rate is above the national average, FDEP has demonstrated improvement in achieving a decrease from the FY2005 SNC rate of 27.7%. This decrease is an indication of increased effort in timely addressing violations at majors, as well as effective compliance assistance provided to facilities to prevent violations from occurring.

Twenty seven SEVs were identified by the State for the 15 month inspection year, due to SNC determination from CEIs or CSIs. FDEP is commended for evaluating and identifying violations determined as a result of inspections as SNC/SEV as mentioned in Element 2. However, FDEP has not been entering SEV data into PCS.

Citation of information reviewed for this criterion:

- EPA/FL MOA
- CWA State Review Framework Data Metrics
- FDEP provided data
- EPA/FL CWA§106 Program Workplan
- FL EMS, 1999
- Wastewater Program ERG, 2006
- Revised Wastewater Program Guidance for Determining SNC, OWM-00-01
- FDEP files
- PCS Policy Statement

Recommendation(s): Florida should review and update its EMS and submit the EMS to EPA in accordance with the CWA §106 workplan. The enforcement escalation requirement, in addition to the circumstances mentioned in the EMS, should allow for facilities that would become SNC or are in SNC to be fast tracked to a formal enforcement action instead of the current process where WL is issued followed then by formal enforcement action consideration.

FDEP should start entering SEV determinations into PCS. SEV entry as SNC in PCS will be monitored and reviewed in subsequent reviews, starting in FY2007.

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

Findings: FDEP addresses noncompliance through informal and formal enforcement responses. Two basic levels of enforcement responses that are most often used are namely Warning Letters (WL) and Short Form Consent Orders (SFCO). The WL is an informal enforcement action which identifies the violation(s), proposes a penalty and requests a conference. Use of the WL is not required by rule or statute, rather it allows for the recipient an opportunity to settle the violation without a NOV or further

enforcement response. The WL requires the facility to respond with corrective actions taken in returning the facility back to compliance. FDEP initiates formal administrative enforcement with a NOV, which is concluded with an enforcement order, typically including a penalty. The NOV is considered an administrative formal enforcement action which is used to collect penalties as well as seek corrective action with no penalty. With the enactment of the "Environmental Litigation Reform Act (ELRA)," FDEP now has the authority to assess a penalty through the NOV process (penalty cap at $10,000). The ELRA applies to violations in various programs which include the wastewater and storm water programs. Use of the ELRA is to promote consistency in the Department by specifying the penalty amounts for each violation. By standardizing the process, the efficiency and speed of prosecuting environmental violations has increased.

The Consent Order is a formal enforcement action that specifies corrective actions and time frames or milestones for these actions. Consent Orders used are either the SFCO or the Long Form Consent Order (LFCO). The SFCO is issued when the corrective actions necessary for the facility to come into compliance have already been implemented and only payment of the penalty is required. The LFCO generally contains injunctive relief (corrective measures to be taken), milestones schedules, date certain return to compliance, and may include administrative penalty assessment and/or stipulated penalties.

Twelve (12) formal enforcement actions were reviewed which indicated that FDEP is implementing the above described process in such a manner that the state enforcement actions requiring complying actions return facilities to compliance in a reasonable and specific time frame. When injunctive relief or corrective action was required the files contained a reasonable compliance schedule.

Citation of information reviewed for this criterion:

- PCS data pull for FY2006
- CWA State Review Framework Metrics Data
- FDEP files
- ELRA, 2001
- FL EMS, 1999
- Wastewater Program ERG, 2006

Recommendation: None

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: FDEP strives to identify and address all violations using the EPA criteria outlined in program authorization documents and the MOA. In addition to the MOA, the

State maintains an EMS and an Enforcement Response Guide for the Wastewater program, which describes how and when the State will take action on violations. Florida is above the 2% threshold, set by national guidance, for SNC facilities that are beyond required enforcement timeliness milestones, reported at 6%, but is below the national average of 8.6%. Forty-three per cent (three out of seven) of the enforcement actions at major facilities reviewed were determined not to be issued timely (beyond 180 days from the date the facility was determined to be out of compliance). An appropriate enforcement response is one that results in the violator returning to compliance as expeditiously as possible, promotes deterrence, and is equitable.

The ERG states that the implementation of a particular enforcement response should be determined by evaluating the following factors:

- the magnitude and duration of the violation
- the impact of the violation on the environment and public health, and
- the compliance history and good faith of the facility.

A total of 24 enforcement actions were reviewed (eleven informal and 13 formal enforcement actions). Two storm water files reviewed demonstrated FDEP did not respond timely to violations discovered. In one case, an inspection was conducted by the municipality in January 2005, determined that the facility was not permitted for storm water discharge and "... must obtain a Multi Sector General Permit (MSGP) as required by FDEP..." FDEP conducted an inspection in May 2005, and confirmed the County's determination that a NPDES permit was required by the facility. FDEP subsequently issued a WL in August 2005, followed by a SFCO in September 2006. A significant amount of time had passed from the date initial violation determination to the issuance of a formal enforcement response. The second case was similar in the amount of time that passed from the date of initial violation determination (via County inspection and notification to FDEP) to the date of formal enforcement action issuance. County inspection, FDEP inspection and two Warning Letters all addressed the facility's need to apply for a permit, prior to the issuance of the SFCO with an assessed penalty.

Citation of information reviewed for this criterion:

- CWA State Review Framework Metrics Data
- FDEP files
- FL EMS, 1999
- FL Wastewater Program ERG, 2006
- EPA/FL MOA
- PCS data pull for FY2006

Recommendation(s): Florida should evaluate its enforcement response policies to determine ways to ensure that the state enforcement action response is timely, striving to maintain the less than two percent national goal for major facilities without timely action.

The ERG/EMS should be amended to incorporate processes that address identified areas of improvement.

Florida should better utilize their county partners' inspection resources in targeting unpermitted facilities for enforcement and/or compliance assistance. County inspection reports submitted to FDEP should all be reviewed and inspection findings evaluated in order to more timely address violations.

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

Findings: FDEP has a written penalty policy, which is described in the FDEP Enforcement Manual. The penalty assessment process considers environmental harm and uses a two dimensional matrix that accounts for environmental harm and deviations from requirements. Economic benefit is required to be considered when assessing penalties either by using BEN, or other equivalent means. If it is determined that the economic benefit is not significant and does not need to be included in the enforcement action, this determination should be documented in the Penalty Calculation Worksheet.

Based on data provided by FDEP, approximately 77% (23 out of 30) of the waste water formal enforcement actions taken in FY2006 had a penalty associated with it, totaling an assessed amount of $168,838. For the wastewater program, penalty calculation and determination worksheets and penalty payment acknowledgement documentation were reviewed for all enforcement actions with penalties assessed with only two exceptions where such documentation was not found in the facility file.

The storm water program utilizes a penalty guideline for characterizing NPDES violations. A penalty assessment matrix is used which considers degree of violation and potential for harm. Adjustment factors that may increase or decrease the penalty amount include:

- Good or bad faith efforts,
- History of noncompliance,
- Economic benefit of noncompliance,
- Ability to pay,
- Merits of the case and
- Resource consideration

Although included as one of the adjustment factors, consideration of economic benefit as a component of the penalty assessment for storm water was not clear and could not be determined during the file review.

Citation of information reviewed for this criterion:

- CWA State Review Framework Metrics Data
- FL EMS, 1999
- FL Wastewater Program ERG, 2006
- FDEP files
- EPA/FL CWA§106 Program Workplan
- BEN Model
- Guidelines for Characterizing NPDES SW Violations, 7/2003

Recommendation(s): An assessment of economic benefit or potential economic benefit derived should always be performed and documented. Every reasonable effort must be made to calculate and recover economic benefit and gravity. If such assessment is not feasible or is not applicable, a notation in the file should be made with an explanation. If exceptions to the calculated penalties are made, then a detailed explanation should follow documenting the cause for such deviations (e.g. waiving penalties, inability to pay evaluation, etc.). All supporting documentation demonstrating penalty derivation, specifically addressing gravity and economic benefit, should be retained and made available for review by EPA.

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: The State Review Framework Metrics Data indicates that during FY2006, 0% of formal enforcement actions had a penalty associated with it. Data reported to EPA by FDEP states that Florida issued 30 wastewater formal enforcement actions against facilities in FY2006, 23 of which had penalties associated with them (approximately 77% of the actions) with a total of $168,838 in collected penalties. This discrepancy was due to not all of the formal enforcement actions were entered into PCS and due to data improperly coded into PCS. Since this discovery, the problem has been corrected. FDEP data entry staff has received additional training and have re-entered the actions utilizing the correct PCS codes.

In accordance with the EPA/Florida CWA, 106 Program Workplan, it is the State's responsibility to quarterly submit new stormwater enforcement information to the Region and for the Region to enter that data into PCS. However, once the initial information has been entered into PCS by the Region the State has the ability and responsibility to update the data that is in PCS. No updated storm water enforcement information was entered into PCS by the State. Three storm water formal enforcement actions were reviewed with penalty payment acknowledgement documented. Consideration of economic benefit as a component of the penalty assessed and collected for storm water was not clear and could not be determined.

Citation of information reviewed for this criterion:

- FDEP files
- CWA State Review Framework Metrics Data
- EPA/FL CWA §106 Program Workplan

Recommendation(s): See Recommendation(s) for Element 7.

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

Findings: The FDEP met or exceeded most requirements of their NPDES compliance and enforcement FY2006 CWA §106 workplan with the exception of data management requirements. This includes the entering and maintaining of data in PCS for all formal and informal enforcement actions, including penalty data (assessed and collected amounts and date of collection), entering inspection data for all NPDES program areas, and entering and tracking designated SEV into PCS. FDEP has not entered SEV data into PCS. The file review discovered nine informal and seven formal enforcement actions that were not entered into PCS. Ten inspection reports (including two MS4 audits) were found not to be entered into PCS. No storm water enforcement information has been entered into PCS (see Element 8). It is noted that all storm water formal and informal actions and penalty only actions are submitted quarterly to EPA, but are not identified in PCS.

Citation of Information Reviewed for this Criterion:
- EPA/FL CWA §106 Program Workplan
- FDEP files

Recommendation(s): FDEP should ensure that all negotiated grant workplan commitments are met.

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

Findings: FDEP generally enters the minimum data requirements into PCS in a timely manner. Florida uses a local database, Wastewater Facility Regulation (WAFR) system to track most NPDES data and uses PCS to directly track DMR data. WAFR currently update PCS through a batch upload process. Florida enters all WENDB data elements for which data are available.

FDEP identifies violations in a timely manner (see Element 4). FDEP is required to maintain a DMR and parameter data entry rate for majors at or above 95% per the PCS policy statement, the annual CWA section 106 workplan commitment, and MOA. During the second quarter of FY2006, FDEP data entry rate for majors averaged an impressive 98.9% that exceeded the national average of 92.4% (the data entry rate for

majors is based on the universe of those majors with limits coded in PCS. The SRF data metrics noted major facilities having correctly coded limits (current) for Florida are at par with the national average of 91%). SRF metrics data reports that the FDEP DMR entry for non-majors is 96%. Florida is one of the few state agencies that actively electronically tracks NPDES permit limits and conditions contained in minor NPDES permits, similar to what it does for major NPDES permits. This information is made available in the PCS. Since this information is not currently required, the state significantly exceeds existing expectations.

Additional minimum data requiring PCS data entry per the CWA §106 workplan reporting schedule include all formal and informal enforcement actions to be entered within 30 days of issuance, assessed and collected penalty amounts to be entered within 30 days of issuance, and inspection data to be entered within 15 days of completion of inspection report, but no later than 90 days from the date of the inspection. The file review discovered that penalty information, formal and informal enforcement actions and inspection documentation were found to be in the facility file but not entered into PCS consistently (see Element 9).

Citation of Information Reviewed for this Criterion:

- FDEP files
- EPA/FL CWA §106 Program Workplan
- CWA State Review Framework Metrics Data
- EPA/FL MOA
- PCS Policy Statement

Recommendation(s): Florida should enter all required minimum data in PCS in a timely manner for inspections, enforcement action, permit limits, penalty information and/or DMR data per the negotiated CWA Section 106 workplan reporting schedule.

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

Findings: The SRF data metrics noted major facilities having correctly coded limits (current) for Florida is at par with the national average of 91%, yet still below the national goal of at or above 95%. The data metric findings were supported by the file review process. DMRs were spot checked during the on-site file review and were compared to the values reported into PCS. Every parameter measurement reported on the DMRs reviewed matched with the measurements entered and recorded in PCS. Florida has several staff responsible for DMR data entry into PCS. Data entry procedures have been developed that account for regular QA/QC reports of data entered into PCS. In an effort to reduce data entry errors, FDEP generates a DMR entry staff error rate report annually. Of the 36 facility files reviewed, two inspection reports were determined to be incorrectly entered into PCS.

The file review discovered several informal and formal enforcement actions as well as numerous inspection reports (including two MS4 audits) were not entered into PCS (see Elements nine and ten). This is both a data accuracy and completeness concern. No

storm water enforcement information has been entered into PCS (see Element 8). It is noted that all storm water formal and informal actions and penalty only actions are submitted quarterly to EPA, but no data is available in PCS.

Citation of Information Reviewed for this Criterion:

- FDEP files
- CWA State Review Framework Metrics Data
- EPA/FL CWA §106 Program Workplan
- PCS Data Pull for IY2006/FY2006

Recommendation(s): FDEP should strive to achieve the national goal of 95% for data quality with respect to DMR and parameter measurement coding into PCS. Data entry procedures should be developed that account for regular QA/QC of data entered into PCS. Florida should re-evaluate and revise, as necessary, current protocols to ensure limits are coded correctly. Pending results of the review, FDEP should develop a plan/schedule to implement actions to improve the timeliness of data entry limits for majors.

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: During the file review, nine informal and seven formal enforcement actions were found to be in the facility file but not accounted for in PCS; ten inspection reports (including two MS4 audits) were found not to be entered into PCS; no storm water enforcement was found in PCS; and no SEVs were reported in PCS.

Although FDEP was able to maintain a DMR and parameter entry rate for majors at an impressive 98.9% (the data entry rate for majors is based on the universe of those majors with limits coded in PCS. The SRF data metrics noted major facilities having correctly coded limits (current) for Florida is at par with the national average of 91%), data completeness is a concern. For FY2006, PCS reported 13 formal actions; however, the State provided data stated 30 waste water formal actions were issued in FY2006. Total penalties reported in PCS for FY2006 was $0, however, FDEP provided information of $168,838. These discrepancies in data indicate that not all required data is being reported and/or accurately reported into PCS.

Citation of information reviewed for this criterion:

- FDEP files
- CWA State Review Framework Metrics Data
- EPA/FL CWA §106 Program Workplan
- PCS Data Pull for IY2006/FY2006
- FDEP provided Data

Recommendation(s): FDEP should institute procedures that assure that all information that should be entered into PCS is routed to data entry staff. Periodic data pulls should be

performed from the state database and PCS for all minimum data required, and reconcile any differences found.

Program: RCRA Hazardous Waste Enforcement Program

Background Information:
Authorities - On February 12, 1985, the State of Florida received final authorization to administer a state hazardous waste management program in lieu of the federal hazardous waste management program, established under Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939(b) and codified in 40 C.F.R. Parts 124, 260-265, and 270.

Universe - Florida currently has the following number of facilities in the RCRA regulated universe:

- 25 Operating Treatment, Storage, and/or Disposal (TSD) facilities;
- 440 LQGs of hazardous waste;
- 15,017 Small Quantity Generators of hazardous waste

Review Process: The review period covered by this report was the last full fiscal year, which was FY2006 (October 1, 2005 - September 30, 2006). To initiate the SRF process, a conference call was held between EPA Region 4 and FDEP on March 6, 2007. The SRF RCRA Data Analysis was not sent to the state prior to the file review due to the RCRAInfo translation problems. [1]

Discussions were held with FDEP on the most effective process to conduct the files reviews (for each media); given the fact that Florida has six district offices and six local Clean Air Act programs. It was agreed that the most practical approach would be to review the files at FDEP's main office in Tallahassee, Florida. The RCRA SRF file review was conducted during April 9-12, 2007.

File Selection Process: The files were selected for the FDEP review using the OECA State Framework file selection protocol. The protocol indicates that the number of files to be reviewed should be based upon the selected universe of files. For the RCRA SRF review, the universe of files is the number of facilities that received an inspection during the fiscal year of the SRF review period, and/or were subject to formal enforcement during that time frame. In FY2006, FDEP conducted RCRA compliance monitoring inspections at approximately 1000 facilities and issued 160 formal consent orders in FY2006 (source: FDEP FY2006 RCRA End-of-Year Report). In the OECA SRF protocol, this translates to a range of 25 to 40 files to be reviewed, where 50% are enforcement files and 50% are inspection files. EPA selected a total of 20 enforcement files and 20 inspection files, for a total of 40 files reviewed. Representative files were randomly selected from all six FDEP district offices and across RCRA facility universes

1 At the time of the State Review Framework in the spring of 2007, there was a data translation problem in RCRAInfo between FDEP and EPA. Florida enters the data directly into the FDEP Hazardous Waste Compliance and Enforcement Tracking (CHAZ) database, which is uploaded into RCRAInfo. Following the conversion to RCRAInfo Version 3 in April 2006, RCRAInfo would not recognize FDEP's CHAZ data. This problem was resolved in June 2007, and the data used in this report reflect data pulled from the OECA SRF Data Metrics, available only after the July 2007, refresh date.

(TSDs, LQGs, etc.). Copies of selected files were forwarded from the District offices to FDEP's Tallahassee office, where all of the RCRA files were reviewed.

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

Findings:

Inspection coverage at operating TSDFs: The Solid Waste Disposal Act §3007(e) requires that every operating TSD be inspected once every two years. The State Review Framework Metrics indicate that FDEP inspected 100% of the operating TSDFs in their state in the two-year time period from FY2005 to FY2006, which meets the statutory requirement for inspection coverage.

Inspection coverage at Federal Facility TSDFs: The Solid Waste Disposal Act §3007(c) requires that every TSDF owned or operated by the federal government must be inspected every year to determine compliance with the hazardous waste regulations. There are seven operating federal TSDFs located in Florida, and in FY2006 all seven facilities received a compliance inspection as required by federal statute.

Inspections at State & Local TSDFs: The Solid Waste Disposal Act §3007(d) requires that every TSD facility owned or operated by a state or local government must be inspected every year to determine compliance with the hazardous waste regulations. There is only one operating state-owned TSDF in Florida, and that facility received a compliance inspection in FY2006 as required by federal statute.

Inspection coverage at LQGs: The OECA FY2006 National Program Manger's (NPM) Guidance specifies that 20% of the active LQG universe should be inspected every year, with a goal of achieving 100% inspection coverage every five years. The OECA SRF Data metrics indicate that in FY2006 FDEP inspected 31.1% of the active LQG universe, which exceeds the one-year OECA NPM Guidance LQG inspection requirement. During FY2002-FY2006, the metrics indicate that FDEP inspected 70% of the LQG universe, which is below the requirement of 100% inspection coverage over five-years.

Five-year inspection coverage for active Small Quantity Generators: Although the FY2006 OECA Guidance does not specify further inspection coverage requirements, it does recommend that the regions and states determine appropriate levels of inspection coverage for Small Quantity Generators (SQGs). Currently, Florida has more than 15,000 SQGs, and according to the OECA State Framework Metrics, FDEP inspected an average of 5.4% of all SQGs over a five-year period (FY2002-FY2006).

In summary, the FDEP RCRA program met the majority of the statutory and/or OECA FY2006 Guidance requirements for inspections. The only inspection requirement that appears not to have been met is the 100% LQG inspection coverage over a five year period. The SRF data metrics indicate that FDEP inspected 70% of the LQG universe over this time frame.

Citation of information reviewed for this criterion:

- Solid Waste Disposal Act
- OECA FY2006 National Program Manger's Guidance
- FDEP FY2006 RCRA End-of-Year Report
- OECA SRF Data Metrics, and
- RCRAInfo.

Recommendation(s) - There is a probability that data discrepancies in the active LQG universe resulted in the missed requirement of 100% LQG inspection coverage over five years (FDEP data metrics provided by OECA show 70% inspection coverage). Discussions with FDEP indicate data translation problems may exist between RCRAInfo and the state database in the active/inactive LQG field. The OECA data metrics (based on RCRAInfo) show 440 active LQGs, while FDEP reports 359 LQGs in the state database. FDEP is analyzing the LQG universe used in the OECA data metrics to correct the translation problem. Once the LQG universe is corrected, the data metrics can be recalculated to reflect the accurate five-year LQG inspection coverage. In addition, Florida should continue to work with EPA Region 4 during the development of the fiscal year grant workplan to ensure OECA guidance requirements are included in the grant commitments. If it is determined that the shortfall is not due solely to a data translation problem, the Region will work with the State to more closely monitor the number of LQG inspections occurring on a yearly basis.

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

Findings: The majority of FDEP RCRA inspections are documented through a combination of inspection checklist, narratives, and/or supporting information (photographs, copies of manifests, etc). The quality of all of the reviewed RCRA inspection reports is excellent. The inspection narratives were thorough in describing facility processes and waste management activities, and included supporting photographs and documentation. There were two inspections that were documented by solely by checklists which, according to FDEP, is occasionally the method with SQG/CEG facilities with no violations or minor violations. One inspection had no documentation in the file, but was recorded in RCRAInfo. FDEP should ensure that all inspections are documented through inspection checklists, narratives and appropriate supporting documentation even for SQG/CEG facilities with no or minor violations.

FDEP does an excellent job of documenting RCRA inspections. The one instance of a missing checklist appears to be an anomaly, based upon discussions with the state.

Citation of information reviewed for this criterion:

- FDEP RCRA files
- RCRAInfo data.

Recommendation(s): None.

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

Findings: The OECA RCRA Subtitle C Program Guidance and File Review Metrics (dated June 24, 2005) indicate that inspection reports should be completed within 50 days, or other time frames negotiated between the Region and the state. There is no agreed time frame for the completion of inspection reports in the current RCRA MOA between the Florida Department of Environmental Protection and EPA Region 4 (effective August 10, 2001). Of the FDEP files reviewed, the inspection reports were completed within the following time frames:

- 63 % were completed within 50 days from the date of the inspection;
- 14 % were completed between 51 and 100 days from the date of the inspection;
- 23 % were completed greater than 100 days from the date of the inspection.

There did not appear to be a consistent explanation for the inspection reports that exceeded 50 days (i.e., sampling required, more information requested, etc.) or a pattern of late reports with any particular district office. Some of the late reports involved SNCs facilities, while others were RCRA Secondary Violators or did not have any violations identified.

Citation of information reviewed for this criterion:

- OECA RCRA Subtitle C Program Guidance
- File Review Metrics (dated June 24, 2005)
- FDEP RCRA Inspection reports
- Current FDEP/EPA Region 4 RCRA Memorandum of Agreement (effective August 10, 2001).

Recommendation(s): It is recommended that FDEP establish and implement an internal alert mechanism to identify when inspection reports are approaching 50-day time limit.

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

Findings: According to OECA SRF Data Metrics, in FY2006 FDEP had a Significant Noncompliance (SNC) identification rate of 6.0%, which is approximately 1.8 times the national average. A total of 84 new SNCs were identified during FY2006.

In the review of the enforcement files, there were five cases that had final enforcement actions but were not flagged in the FDEP Hazardous Waste Compliance and Enforcement Tracking (CHAZ) database as SNCs (RCRAInfo translation problems were ongoing during the time of the file review, so CHAZ data was reviewed instead). The SNCs were

successfully resolved and returned to compliance according to the RCRA Enforcement Response Policy, but the initial SNC designations were missing from the database. There was also one inspection that was handled informally as a Secondary Violator, but appeared to have had SNC-caliber violations. The facility did not have an EPA RCRA I.D. number, but had been shipping waste offsite in violation of the RCRA regulations.

The data metrics and file review support the finding that FDEP has a responsive and consistent RCRA enforcement program. The facilities that were not flagged as SNCs appear to be data omissions, since there was timely and appropriate enforcement taken in every case. There appears to be one SNC facility that was addressed through informal enforcement.

Citation of information reviewed for this criterion:

- FDEP inspection files
- OECA SRF Data Metrics
- FDEP Hazardous Waste Compliance and Enforcement Tracking (CHAZ) database
- Hazardous Waste Civil Enforcement Response Policy (December 2003)

Recommendation(s): It is recommended that FDEP establish and implement an internal process to ensure that SNC facilities are properly identified and entered into RCRAInfo.

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

Findings: EPA reviewed 20 enforcement files as part of the FDEP RCRA SRF file review. In 18 of the 20 cases reviewed, the facilities returned to compliance before the date of the final enforcement action. In the remaining two cases, both required additional complying actions, with schedules, on the part of the facility before a return to compliance could be achieved (i.e., sampling or the implementation of a Supplemental Environmental Project).

In all of the cases reviewed, FDEP issued an informal enforcement response (i.e., Warning Letter) within 150 days of the initial day of inspection. In 18 (90%) of the cases, the facilities returned to compliance prior to entering into a formal consent order, so there were no compliance actions necessary in the enforcement actions. In the two cases that did require complying actions, these measures were included in the enforcement actions with a schedule for implementation.

Citation of information reviewed for this criterion:

- FDEP enforcement files
- RCRAInfo

Recommendation(s): None.

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: The RCRA ERP designates the following time lines for responding to significant noncompliers (SNCs):

- Day 150 - by this number of days after the first day of inspection, the state (implementing agency) should determine if formal enforcement action is required (identifying the violating facility as a SNC)
- Day 240 - by this number of days after the first day of inspection, the state should issue its unilateral or initial order, if appropriate
- Day 360 - by this number of days after the first day of inspection, the state should enter into a final order with the violator, or make a referral to the State's attorney General office

The ERP recognizes circumstances that may dictate an exceedance of the standard response times, such as multimedia cases, national enforcement initiatives, additional sampling or information needs, etc. A ceiling of 20% of cases per year may exceed the above time lines.

In the twenty FDEP enforcement files that were reviewed, 100% of the enforcement actions met the RCRA ERP time lines.

FDEP has a consistent and timely RCRA enforcement process. Violations are addressed and resolved quickly, and the process is implemented consistently across all FDEP district offices.

Citation of information reviewed for this criterion:

- Hazardous Waste Civil Enforcement Response Policy (December 2003)
- FDEP facility files
- RCRAInfo data

Recommendation(s): None.

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

Findings: Of the twenty enforcement files reviewed, FDEP had calculated and documented a penalty in eight cases (40%) that addressed both the gravity component and economic benefit, where appropriate. An additional eleven cases (55%) had penalty calculations that contained a gravity component, but did not include economic benefit calculations. One case did not have any penalty calculation documentation in the file, although the penalty was recorded in RCRAInfo.

FDEP asserted that they consider the economic benefit from noncompliance in each penalty calculation. However the consideration was not always stated in the penalty documentation.

Citation of information reviewed for this criterion:

- FDEP RCRA enforcement files

Recommendation(s): FDEP should document the consideration of the economic benefit of noncompliance in each enforcement action. The documentation should take place even in cases where no economic benefit was realized by the facility.

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: As mentioned in Element 7 above, 55% of the final enforcement actions had penalty calculations that contained a gravity component, but did not include economic benefit calculations. One case did not have any penalty calculation documentation in the file, although the penalty was recorded in RCRAInfo

FDEP considers the economic benefit from noncompliance in each penalty calculation. However the consideration was not always stated in the penalty documentation.

Citation of information reviewed for this criterion:

- FDEP enforcement files and RCRAInfo data

Recommendation(s): FDEP should document the consideration of the economic benefit of noncompliance in each enforcement action. The documentation should take place even in cases where no economic benefit was realized by the facility.

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

Findings: In a report dated December 20, 2006, FDEP submitted an End-of-Year Report for the hazardous waste management program describing the progress toward meeting the RCRA FY2006 grant commitments. The compliance and enforcement commitments and work achievements are shown in the attachment titled "Table 1."

FDEP met or exceeded the vast majority of the enforcement and compliance-related commitments in the FY2006 RCRA grant workplan. The exception to this was certain compliance evaluations at LDFs. Specifically, 69% of the Comprehensive Groundwater Monitoring Evaluations (CMEs) and groundwater Operation and Maintenance (OAM) inspections were completed and 87% of planned inspections at LDFs were completed.

The End-of-Year report did not refer to the specific reason for the shortfall. In FY2006, there was no specific OECA NPM Guidance requirement for the frequency of CMEs/OAMs at LDFs.

In the FDEP FY2006 grant workplan, there were also enforcement related commitments for Warning letters/NOVs, consent orders, enforcement negotiation meetings, etc. Regional EPA/state grants often include activities beyond the statutory and national guidance requirements in order to give a better representation of the state's workload in implementing the RCRA enforcement and compliance program. Many enforcement grant commitments could be viewed as "work projections" rather than actual commitments required by statute/guidance. In many areas, especially enforcement, it is difficult to project exactly how many enforcement cases will develop during any fiscal year. In the FY2006 End-of-Year report, FDEP completed 70% of the grant workplan commitment for NOVs.

Citation of Information Reviewed for this Criterion:

- FDEP RCRA FY2006 End-of-Year Report (dated December 20, 2006)
- OECA FY2006 NPM Guidance

Recommendation(s): It is recommended that the grant workplan be updated annually to reflect any changes in guidance/policy for that fiscal year.

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

Findings: The RCRA Enforcement Response Policy states that SNC data should be entered when compliance determinations are made, but no later than 150 days from day zero or the first day of the inspection. This provision is included so that no SNC entry is withheld until enforcement is completed, and therefore not tracked for timely enforcement response. However for the purposes of the SRF review OECA has set a benchmark of sixty days as an indicator of timely data entry. The OECA SRF Data Metrics indicate that 38.7% of SNCs were entered greater than 60 days.

Even though the OECA SRF Data Metrics show that FDEP entered 38.7% of the FY2006 SNCs into RCRAInfo after sixty days, the file review did not support the finding of an objective to withhold data to avoid the tracking for timely enforcement response. All of the SNC facilities received a Warning Letter/Notice of Violation within 150 days. Also, 100% of the cases were settled within 360 days, reflecting timely enforcement in all cases reviewed. Rather, it appears that the SNC determinations are often entered after FDEP has received a response to the Warning Letter/Notice of Violation and/or has met with the facility to discuss the alleged violations. This process of confirming violations can frequently exceed 60 days.

Citation of Information Reviewed for this Criterion:

- OECA SRF Data Metrics
- FDEP Files
- RCRAInfo data.

Recommendation: None.

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

Findings: The following discussion addresses the findings of the RCRA State Review Framework Metrics for data accuracy.

Metric 11(a)(1) - This metric measures the "closeness" between SNC determination and formal enforcement actions. The ERP states that the data should be entered when the determination is made, and SNC entry should not be withheld until the action is completed. The metric indicates that during FY2006, there were no FDEP RCRA SNC determinations made on the same day as formal enforcement actions.

Metric 11(a)(2) - This metric also measures the "closeness" between SNC determination and formal enforcement actions. The metric indicates that during FY2006, there were no FDEP RCRA SNC determinations made within one week of formal enforcement actions.

Metric 11(b) - This metric measures the longstanding secondary violations that are not "returned to compliance" or redesignated as SNC. According to the data metric, in Florida there were 17 facilities that were in violation for greater than three years.

The data metrics do not indicate that SNC determinations were being withheld from entry into RCRAInfo until enforcement actions are complete. There are, however, a significant number of Secondary Violators that appear to have longstanding violations without being re-designated as SNC facilities.

Citation of Information Reviewed for this Criterion:

- RCRA State Review Framework Metrics

Recommendation(s): It is recommended that FDEP review the SV facilities and determine if the appropriate next steps are in accordance with the RCRA Enforcement Response Policy. FDEP should share the results of their review and analysis with the Region.

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: This element provides data metrics on active facility universes in Florida, inspection, violation and SNCs counts for FY2006, as well formal enforcement actions and penalties. Since the OECA RCRA SRF Data Metrics was not available until mid-August, FDEP did not have time to review the data prior to the issuance of the draft SRF report. A placeholder is being provided below for the state's comments on the data metrics.

Citation of Information Reviewed for this Criterion:

- OECA RCRA State Review Framework Metrics

Recommendation(s): (placeholder for FDEP response)

Table 1 - FDEP RCRA 2006 End-of-Year Report (excerpt)

Statewide	*20% LQGs*	*SQGs (3%) + CEGs (1%)*	*Inspect all Fed TSDs*	*Inspect all State and Local TSDs*	*Inspect 50% Used Oil Processors*	*Conduct 33% HSWA Only Facilities*	*Inspect 50% Oper-ating TSDs*	*Inspect 50% Non LDFs*	*Inspect 33% CME and O&Ms at LDFs*	*Inspect 50% Remaining LDFs*	*Inspect 33% Formal Enforce-ment Facilities*	*Inspect 25% Trans-porters*	*CAVs*	*Total Inspections Planned*
Planned for FFY2006	52	568	10	5	14	11	9	6	13	15	54	33	100	890
Year End Achieve-ments	62	741	10	5	19	15	13	7	9	13	57	38	107	1096

Notes:

1. In addition to above inspections 267 CEIs were conducted at facilities that notified under RCRA but were non-handlers of RCRA waste.
2. Two hundred ninety six (296) facilities were inspected randomly as non-notifiers
3. To avoid double counting, CEIs that were counted towards TSD inspections were not counted in regular LQG, SQG, CESQG, and Transporter universe.

Inspection Commitments	*TSDs*	*CMEs & OAMs*	*HSWA only Facilities*	*Used Oil Processors*	*LQGs & Transporters*	*SQGs & CESQGs*	*Formal Enforcement Facilities*	*CAVs*	*Total*
Year End Commitments	45	13	11	14	85	568	54	100	890
Year End Activities	48	9	15	19	100	741	57	107	1096

Enforcement Commitments	*Warning Letters*	*NOVs*	*Consent Orders*	*Enforcement Meetings*	*Ground-water Record Reviews*	*Financial Record Reviews*
Year End Commitments	200	10	20	200	48	63
Year End Achievements	363	7	160	376	144	300