



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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JUL 23 2014

Ms. Janet Coit, Director  
Rhode Island Department of Environmental Management  
235 Promenade Street  
Providence, RI 02908-5767

*Soer:*  
Dear Ms. Coit:

Please find attached the final State Review Framework (SRF) Round 3 Report for the Rhode Island Department of Environmental Management (DEM) for the review year of 2012. This report was prepared by the Region 1 Office of the U.S. Environmental Protection Agency, in consultation with EPA's Office of Enforcement and Compliance Assurance.

Our key findings are provided in the Executive Summary. We very much appreciate the assistance provided by David Chopy, Chief of the Office of Compliance and Inspection, and the participation of many Rhode Island DEM managers and field staff throughout the review.

EPA will post this Final Report and recommendations on the national State Review Framework Tracker: <http://www.epa.gov/oecaerth/state/srf/index.html>. Region 1 will follow up with Rhode Island DEM related to the recommendations, and will report their progress on the SRF Tracker.

Thank you for your continued cooperation on this project.

Sincerely,

*Susan Studlien*

Susan Studlien, Director  
Office of Environmental Stewardship

Cc: By E-mail

Curt Spalding, Regional Administrator  
Deborah Szaro, Deputy Regional Administrator  
Lisa Lund, Director, Office of Compliance, OECA  
Chris Knopes, Director, Planning, Measuring, and Oversight Division, OECA  
Greg Siedschlag, Regional SRF Liaison, OECA  
Chad Carbone, Regional SRF Liaison, OECA  
David Chopy, Chief of the Office of Compliance and Inspection, RI DEM  
Lucy Casella, Region 1 SRF Coordinator

# **STATE REVIEW FRAMEWORK**

## **Rhode Island**

### **Clean Water Act, Clean Air Act, and Resource Conservation and Recovery Act Implementation in Federal Fiscal Year 2012**

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

**Final Report  
July 23, 2014**

# Executive Summary

## Introduction

EPA Region 1 enforcement staff conducted a State Review Framework (SRF) enforcement program oversight review of the Rhode Island Department of Environmental Management (DEM).

EPA bases SRF findings on data and file review metrics, and conversations with program management and staff. EPA will track recommended actions from the review in the SRF Tracker and publish reports and recommendations on EPA's ECHO web site.

## Areas of Strong Performance

- Rhode Island DEM performs an excellent job of taking timely and appropriate enforcement across all three media programs. Region 1 also commends DEM for its practice of providing an “early warning notice” to facilities with violations to expedite their return to compliance.
- In all three programs at Rhode Island DEM, there is generally strong performance related to inspection coverage, and for timely completion of inspection reports.
- Rhode Island DEM has made substantial progress implementing NPDES data management improvements since the Round 2 SRF review, including the expenditure of significant resources to develop an NPDES Enforcement Management System (EMS), and now consistently assures timely and appropriate enforcement or return to compliance.

## Priority Issues to Address

The following is the top-priority issue affecting the state program's performance:

- The review indicates that significant noncompliance (SNC) violations are not being accurately identified in the CWA and RCRA programs.

## **Most Significant CWA-NPDES Program Issues<sup>1</sup>**

- Significant noncompliance (SNC) violations are not accurately identified and coded into the ICIS-NPDES data system.

## **Most Significant CAA Stationary Source Program Issues**

- Rhode Island DEM has had some issues related to timely and accurate entry of MDRs into the AFS system.

## **Most Significant RCRA Subtitle C Program Issues**

- In three of twenty enforcement cases, Rhode Island DEM did not make an appropriate SNC determination.

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<sup>1</sup> EPA's "National Strategy for Improving Oversight of State Enforcement Performance" identifies the following as significant recurrent issues: "Widespread and persistent data inaccuracy and incompleteness, which make it hard to identify when serious problems exist or to track state actions; routine failure of states to identify and report significant noncompliance; routine failure of states to take timely or appropriate enforcement actions to return violating facilities to compliance, potentially allowing pollution to continue unabated; failure of states to take appropriate penalty actions, which results in ineffective deterrence for noncompliance and an unlevel playing field for companies that do comply; use of enforcement orders to circumvent standards or to extend permits without appropriate notice and comment; and failure to inspect and enforce in some regulated sectors."

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# I. Background on the State Review Framework

The State Review Framework (SRF) is designed to ensure that EPA conducts nationally consistent oversight. It reviews the following local, state, and EPA compliance and enforcement programs:

- Clean Water Act National Pollutant Discharge Elimination System
- Clean Air Act Stationary Sources (Title V)
- Resource Conservation and Recovery Act Subtitle C

Reviews cover:

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

EPA conducts SRF reviews in three phases:

- Analyzing information from the national data systems in the form of data metrics
- Reviewing facility files and compiling file metrics
- Development of findings and recommendations

EPA builds consultation into the SRF to ensure that EPA and the state understand the causes of issues and agree, to the degree possible, on actions needed to address them. SRF reports capture the agreements developed during the review process in order to facilitate program improvements. EPA also uses the information in the reports to develop a better understanding of enforcement and compliance nationwide, and to identify issues that require a national response.

Reports provide factual information. They do not include determinations of overall program adequacy, nor are they used to compare or rank state programs.

Each state's programs are reviewed once every five years. The first round of SRF reviews began in FY 2004. The third round of reviews began in FY 2013 and will continue through FY 2017.

## II. SRF Review Process

**Review period:** Fiscal Year 2012

**Kickoff Meeting at Rhode Island DEM:** February 11, 2013

**CWA File Review Date(s):** May 13, 14, 16, 20 and May 30, 2013.

**CAA File Review Date(s):** March 12, 13, 14, and March 20, 2013.

**RCRA File Review Date(s):** March 11, 12, 13, 14 and March 22, 2013.

### **State and EPA key contacts for review:**

#### ***Clean Water Act***

David Turin, EPA, (617) 918-1598

Sam Kaplan, RI DEM (401) 222-4700 ext. 7046

Joseph B. Haberek, RI DEM (401) 222-4700 ext. 7715

#### ***Clean Air Act***

Thomas McCusker, EPA, (617) 918-1862

Ted Burns, RI DEM, 401-222-2808 ext. 7013

Chris John, RI DEM, 401-222-2808 ext. 7023

#### ***Resource Conservation and Recovery Act***

Richard Piligian, EPA, (617) 918-1757

Tracey Tyrrell, RI DEM, (401) 222-1360 ext. 7407

Sean Carney, RI DEM, (401) 222-1360 ext. 7411

#### ***SRF Contacts***

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

Samuel Silverman, EPA, (617) 918-1731

Lucy Casella, EPA, (617) 918-1759

### III. SRF Findings

Findings represent EPA’s conclusions regarding state performance and are based on findings made during the data and/or file reviews and may also be informed by:

- Annual data metric reviews conducted since the state’s last SRF review
- Follow-up conversations with state agency personnel
- Review of previous SRF reports, Memoranda of Agreement, or other data sources
- Additional information collected to determine an issue’s severity and root causes

There are three categories of findings:

**Meets or Exceeds Expectations:** The SRF was established to define a base level or floor for enforcement program performance. This rating describes a situation where the base level is met and no performance deficiency is identified, or a state performs above national program expectations.

**Area for State Attention:** An activity, process, or policy that one or more SRF metrics show as a minor problem. Where appropriate, the state should correct the issue without additional EPA oversight. EPA may make recommendations to improve performance, but it will not monitor these recommendations for completion between SRF reviews. These areas are not highlighted as significant in an executive summary.

**Area for State Improvement:** An activity, process, or policy that one or more SRF metrics show as a significant problem that the agency is required to address. Recommendations should address root causes. These recommendations must have well-defined timelines and milestones for completion, and EPA will monitor them for completion between SRF reviews in the SRF Tracker.

Whenever a metric indicates a major performance issue, EPA will write up a finding of Area for State Improvement, regardless of other metric values pertaining to a particular element.

The relevant SRF metrics are listed within each finding. The following information is provided for each metric:

- **Metric ID Number and Description:** The metric’s SRF identification number and a description of what the metric measures.
- **Natl Goal:** The national goal, if applicable, of the metric, or the CMS commitment that the state has made.
- **Natl Avg:** The national average across all states, territories, and the District of Columbia.
- **State N:** For metrics expressed as percentages, the numerator.
- **State D:** The denominator.
- **State % or #:** The percentage, or if the metric is expressed as a whole number, the count.

## Clean Water Act Findings

CWA Element 1 — Data						
<b>Finding 1-1</b>	<b>Meets or Exceeds Expectations</b>					
<b>Summary</b>	<p>Rhode Island DEM is entering 100 percent of its permit limits and discharge monitoring reports (“DMRs”) for major facilities. In addition, the data review indicates minor issues of completeness for the data contained in ECHO, as reflected in the Data Metrics Query.</p>					
<b>Explanation</b>	<p>Rhode Island has exceeded the national goal of entering 95% of the data for Metrics 1b1 and 1b2. In addition, Rhode Island has made significant improvements in its entry rate of NOV’s into the ICIS-NPDES data system compared to the Round 2 SRF review, where it was determined that none of the NOV’s issued by DEM had been entered into ICIS. In response to Round 2 finding, on June 7, 2010, DEM submitted to EPA a memo describing procedures that the Water Office had developed and was implementing to enter NOV’s and other formal enforcement actions originating in the Office of Compliance and Inspection into ICIS.</p> <p>In Round 3, a review of the Data Metrics Analysis for FY12 indicates that 5 of 6 Notices of Violation (NOV) issued by DEM were entered into ICIS. Other formal actions appearing on the Data Metrics Query are consent agreements that were developed to address NPDES permit appeals. This improvement reflects data quality system measures that the state is currently implementing.</p>					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	1b1 Permit limit rate for major facilities	95%	98.3%	24	24	100%
	1b2 DMR entry rate for major facilities	95%	97.9%	901	901	100%
<b>State Response</b>	None.					
<b>Recommendation</b>	None.					

<b>CWA Element 1 — Data</b>																		
<b>Finding 1-2</b>	<b>Area for State Attention</b>																	
<b>Summary</b>	The file review indicates minor issues of completeness between the data in ECHO and the data in the files reviewed.																	
<b>Explanation</b>	A review of Metric 2b indicates a number of minor discrepancies between the data in the files reviewed and the data that has been entered into ICIS. In 4 of the 25 facility files reviewed, a small number of inspections and at least 1 informal action were not reflected on the Detailed Facility Reports (DFR). In most cases, these represented follow-up inspections in support of an investigation or enforcement action already underway. A finding of Area for State Attention is based on the fact that these were relatively minor omissions and that RI has made substantial progress implementing data management improvements identified during the previous SRF review. EPA notes that in June 2013, the Office of Water Resources at DEM lost 1 FTE of information technology support for ICIS, which was provided by the State Division of Information Technology (DoIT).																	
<b>Relevant metrics</b>	<table border="1"> <thead> <tr> <th><b>Metric ID Number and Description</b></th> <th><b>Natl Goal</b></th> <th><b>Natl Avg</b></th> <th><b>State N</b></th> <th><b>State D</b></th> <th><b>State % or #</b></th> </tr> </thead> <tbody> <tr> <td>2b Files reviewed where data are accurately reflected in the national data system</td> <td>95%</td> <td></td> <td>21</td> <td>25</td> <td>84%</td> </tr> </tbody> </table>						<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>	2b Files reviewed where data are accurately reflected in the national data system	95%		21	25	84%
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2b Files reviewed where data are accurately reflected in the national data system	95%		21	25	84%													
<b>State Response</b>	None.																	
<b>Recommendation</b>	To maintain the current high level of performance, EPA recommends that DEM work to ensure that the information technology support position is expeditiously backfilled with qualified staff.																	

## CWA Element 1 — Data

<b>Finding 1-3</b>	<b>Area for State Improvement</b>																	
<b>Summary</b>	The review indicates that single-event violations (SEV) and non-DMR significant noncompliance (SNC) are not accurately coded into the ICIS-NPDES data system.																	
<b>Explanation</b>	<p>As discussed further in Finding 3-2, Rhode Island does not have a system for effectively identifying SEVs and non-DMR SNC violations. These issues were raised as an “Area for State Improvement” in the Round 2 SRF review and RIDEM was required to develop procedures to assure that SEVs and significant non-DMR violations were identified and properly coded into the ICIS-NPDES data system.</p> <p>In a response submitted to EPA on June 7, 2010 DEM acknowledged that it did not have the capacity to track its responses to a number of categories of SNC violations, including those associated with pretreatment, schedule violations, bioassay tests, and SEVs, including sanitary sewer overflows (SSO).</p> <p>In a subsequent response, on January 11, 2011, DEM provided a phased-approach to addressing non-DMR single event violations and indicated it would focus on SEVs that are identified through a number of different inspection programs (major/minor CEIs, Construction Activity, etc.) and certain self-reported SEVs, such as SSOs. The plan indicated that these SEVs would be tracked by FY 2012. It appears that DEM has not met this deadline. Implementing this plan will be carried forward as a recommendation in this review.</p> <p>In addition, a review of the Data Metrics Analysis and the selected files indicates inconsistencies between the SEVs that are noted in the files and those tracked in ECHO. Rhode Island’s ECHO data indicated 5 SEVs for major facilities (noted below in metric 7a1), and 9 SEVs for minor facilities for FY12. Seven of these facilities were among the 25 facilities selected by the Region for file reviews. However, the file review indicated that 12 of the 25 of the facility files had SEVs, generally identified through inspections.</p>																	
	<table border="1"> <thead> <tr> <th data-bbox="467 1730 1008 1808">Metric ID Number and Description</th> <th data-bbox="1016 1730 1084 1808">Natl Goal</th> <th data-bbox="1092 1730 1183 1808">Natl Avg</th> <th data-bbox="1192 1730 1260 1808">State N</th> <th data-bbox="1268 1730 1336 1808">State D</th> <th data-bbox="1344 1730 1430 1808">State % or #</th> </tr> </thead> <tbody> <tr> <td data-bbox="467 1818 1008 1852">7a1 Number of major facilities with single event</td> <td data-bbox="1016 1818 1084 1852"></td> <td data-bbox="1092 1818 1183 1852"></td> <td data-bbox="1192 1818 1260 1852"></td> <td data-bbox="1268 1818 1336 1852"></td> <td data-bbox="1344 1818 1430 1852">5</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	7a1 Number of major facilities with single event					5
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #													
7a1 Number of major facilities with single event					5													

	violations
<b>State response</b>	<p>Several findings require DEM's Office of Water Resources (OWR) to develop and implement a plan to expand its efforts to improve accuracy of data tracked in ICIS and made available to the public on ECHO. Specifically the report refers to data related to inspections and informal actions and also implies that OWR should track and manage additional violations essentially expanding the workload from current conditions. The EPA recognizes staffing limitations that prevent DEM from addressing these issues through a State Data Management System. DEM is currently committed as a direct ICIS user and intends to use ICIS to implement it's RIPDES Program. OWR looks forward to working with EPA to incrementally develop the ability to fully utilize ICIS to enter and track the data. This increase in data entry and tracking will increase the workload on data entry staff and technical staff. However, as EPA develops additional ICIS tools DEM will align itself to utilize these tools.</p> <p>At this point DEM cannot commit to any implementation deadline that requires additional resources without the availability of the ICIS tools and the capability of staff. Any deadlines should be consistent with the P&amp;C List and the FY 2015 PPA negotiations. It is anticipated that some resources will be saved by utilizing NetDMR. Although data entry resources will be re-purposed to administer the Net DMR system there should be a tangible benefit to technical staff by making the quarterly non-compliance review process streamlined by improving quality and accuracy of the data. The DEM offers the current example of DEM implementing NetDMR with EPA support as an example of how DEM may be able to address the findings of the audit.</p>
<b>Recommendation</b>	<p>Working jointly, by September 30, 2014, Region 1 and Rhode Island DEM will develop a protocol for DEM to identify SEVs and other non-DMR SNC violations and develop a plan to enter these violations into the ICIS-NPDES data system.</p> <p>EPA will evaluate Rhode Island's implementation of these plans during periodic telephone calls and annual data metric reviews.</p>

## CWA Element 2 — Inspections

<b>Finding 2-1</b>	<b>Meets or Exceeds Expectations</b>																																																																						
<b>Summary</b>	The review indicated a generally strong inspection program for most permit types.																																																																						
<b>Explanation</b>	<p>A review indicated that with the exception of Phase I and Phase II MS4 audits and the Phase I and Phase II construction inspections, the state met the commitments in its Compliance Monitoring Strategy (CMS). These are commitments for conducting specific numbers of inspections at various types of facilities (e.g., pretreatment, SIU, major, minor).</p> <p>Rhode Island met its Compliance Monitoring Strategy commitments for FY12 for everything but MS4, where they committed to 15 and inspected 10 of their 41 MS4s. (Note that the CMS goal for MS4 is 100% over five years, or 20%, and thus Rhode Island exceeded the CMS goal by inspecting 24% of their universe.) Rhode Island committed to inspect 15% of its non-majors and did 16%. The DMA is pulling a universe of 287 general permits (GPs) which mistakenly includes stormwater general permits, which should be counted separately. The state has only 45 non-stormwater GPs. When you divide 12 by 45, the state's GP inspection coverage rate was 26%, well above their 15% CMS commitment and the 20% CMS goal.</p>																																																																						
<b>Relevant metrics</b>	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>4a1 Pretreatment compliance inspections and audits</td> <td>100%</td> <td></td> <td>4</td> <td>4</td> <td>100%</td> </tr> <tr> <td>4a2 Significant Industrial User inspections for SIUs discharging to non-authorized POTWs</td> <td>100%</td> <td></td> <td>1</td> <td>1</td> <td>100%</td> </tr> <tr> <td>4a4 Major CSO inspections</td> <td>100%</td> <td></td> <td>3</td> <td>3</td> <td>100%</td> </tr> <tr> <td>4a5 SSO inspections</td> <td></td> <td></td> <td>0</td> <td>0</td> <td>0</td> </tr> <tr> <td>4a7 Phase I &amp; II MS4 audits or inspections</td> <td>100%</td> <td></td> <td>10</td> <td>15</td> <td>67%</td> </tr> <tr> <td>4a8 Industrial stormwater inspections</td> <td>10%</td> <td>3%</td> <td>5</td> <td>5</td> <td>100%</td> </tr> <tr> <td>4a9 Phase I and II stormwater construction inspections</td> <td>10%/5%</td> <td>7%</td> <td>10</td> <td>10</td> <td>7</td> </tr> <tr> <td>5a1 Inspection coverage of NPDES majors</td> <td>50%</td> <td>58%</td> <td>24</td> <td>24</td> <td>100%</td> </tr> <tr> <td>5b1 Inspection coverage of NPDES non-majors with individual permits</td> <td>20%</td> <td>26%</td> <td>9</td> <td>55</td> <td>16%</td> </tr> <tr> <td>5b2 Inspection coverage of NPDES non-majors with general permits</td> <td>20%</td> <td>6%</td> <td>12</td> <td>287</td> <td>4%</td> </tr> </tbody> </table>					Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	4a1 Pretreatment compliance inspections and audits	100%		4	4	100%	4a2 Significant Industrial User inspections for SIUs discharging to non-authorized POTWs	100%		1	1	100%	4a4 Major CSO inspections	100%		3	3	100%	4a5 SSO inspections			0	0	0	4a7 Phase I & II MS4 audits or inspections	100%		10	15	67%	4a8 Industrial stormwater inspections	10%	3%	5	5	100%	4a9 Phase I and II stormwater construction inspections	10%/5%	7%	10	10	7	5a1 Inspection coverage of NPDES majors	50%	58%	24	24	100%	5b1 Inspection coverage of NPDES non-majors with individual permits	20%	26%	9	55	16%	5b2 Inspection coverage of NPDES non-majors with general permits	20%	6%	12	287	4%
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	6a Inspection reports complete and sufficient to determine compliance at the facility	100%	17	17	100%
<b>State Response</b>	None.				
<b>Recommendation</b>	None.				

## CWA Element 2 — Inspections

<b>Finding 2-2</b>	<b>Area for State Attention</b>												
<b>Summary</b>	A small number of inspection reports did not meet recommended guidelines for timeliness.												
<b>Explanation</b>	While all inspection reports were deemed sufficient to determine compliance, 3 of 17 inspection reports were not signed and/or dated within the 30 days (45 days for a sampling inspection) recommended in EPA guidance. It is noted, however, that the average time to complete an inspection report was well within EPA guidance. This represents a significant improvement over the timeliness of reports noted in the previous SRF review.												
<b>Relevant metrics</b>	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>6b Inspection reports completed within prescribed timeframe</td> <td></td> <td></td> <td>14</td> <td>17</td> <td>82%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	6b Inspection reports completed within prescribed timeframe			14	17	82%
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6b Inspection reports completed within prescribed timeframe			14	17	82%								
<b>State Response</b>	None.												
<b>Recommendation</b>	None.												

<b>CWA Element 3 — Violations</b>						
<b>Finding 3-1</b>	<b>Meets or Exceeds Expectations</b>					
<b>Summary</b>	Inspection reports reviewed led to accurate compliance determinations.					
<b>Explanation</b>	In 14 of 16 inspection reports reviewed, the reports lead to accurate determinations of compliance. In the two exceptions, SEVs that were observed during inspections were not entered into the ICIS-NPDES data system. The issue of SEV identification and tracking is being directly addressed under Findings 1-3 and 3-2.					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	7e Inspection reports reviewed that led to an accurate compliance determination			14	16	87%
<b>State Response</b>	None.					
<b>Recommendation</b>	None					

## CWA Element 3 — Violations

<b>Finding 3-2</b>	<b>Area for State Improvement</b>																								
<b>Summary</b>	The review indicates that single-event violations (SEV) and significant noncompliance (SNC) violations are not accurately identified.																								
<b>Explanation</b>	<p>This review identifies tracking the state responses to SNC violations as an “Area for State Improvement”. This Finding is consistent with the findings of the Round 2 SRF review, which required RIDEM to evaluate its technical and legal enforcement resources to ensure that SNC violations are addressed in a timely and appropriate manner. In its response to the Round 2 SRF finding, submitted to EPA on June 7, 2010, DEM acknowledged that it did not have the capacity to track its responses to a number of categories of SNC violations, including those associated with pretreatment, schedule violations, bioassay tests, and SEVs, including SSOs.</p> <p>This review finds, however, that through its development of an Enforcement Management System (EMS), DEM has developed and implemented a number of improvements with regard to its ability to evaluate and respond to NPDES and other water quality violations in a timely and appropriate manner. Continuing to develop protocols to ensure that SNC violations are addressed in a timely and appropriate manner will be carried forward as a recommendation of this review.</p>																								
<b>Relevant metrics</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Metric ID Number and Description</th> <th style="text-align: center;">Natl Goal</th> <th style="text-align: center;">Natl Avg</th> <th style="text-align: center;">State N</th> <th style="text-align: center;">State D</th> <th style="text-align: center;">State % or #</th> </tr> </thead> <tbody> <tr> <td>8a2 Percentage of major facilities in SNC</td> <td></td> <td style="text-align: center;">21%</td> <td style="text-align: center;">5</td> <td style="text-align: center;">25</td> <td style="text-align: center;">20%</td> </tr> <tr> <td>8b Single-event violations accurately identified as SNC or non-SNC</td> <td></td> <td></td> <td style="text-align: center;">5</td> <td style="text-align: center;">12</td> <td style="text-align: center;">42%</td> </tr> <tr> <td>8c Percentage of SEVs identified as SNC reported timely at major facilities</td> <td></td> <td></td> <td style="text-align: center;">2</td> <td style="text-align: center;">4</td> <td style="text-align: center;">50%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	8a2 Percentage of major facilities in SNC		21%	5	25	20%	8b Single-event violations accurately identified as SNC or non-SNC			5	12	42%	8c Percentage of SEVs identified as SNC reported timely at major facilities			2	4	50%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																				
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8b Single-event violations accurately identified as SNC or non-SNC			5	12	42%																				
8c Percentage of SEVs identified as SNC reported timely at major facilities			2	4	50%																				
<b>State Response</b>	See response to Finding 1-3																								
<b>Recommendation</b>	Working jointly, by September 30, 2014, Region 1 and Rhode Island DEM shall develop a protocol to identify SEVs and other non-DMR SNC violations and develop a plan to enter these violations into the ICIS-NPDES data system. By December 31, 2014, as appropriate based on the joint EPA-Region 1 protocol development, DEM should review and update the January 11, 2011 memo outlining its plan to identify and enter SEVs into the ICIS-NPDES data system. EPA will evaluate Rhode Island’s implementation of these plans during periodic telephone calls and annual																								

data metric reviews.

**CWA Element 4 — Enforcement**

**Finding 4-1 Meets or Exceeds Expectations**

**Summary** Based on files reviewed, in 8 of 9 cases of facilities in SNC violations, formal actions resulted in a return to compliance; in 19 of 20 cases with SNC and non-SNC violations, timely and appropriate enforcement actions were taken.

**Explanation** Of the 9 SNC violations reviewed, in the one case without a formal action, the facility was returned to compliance through informal action that EPA deems was appropriate in this case.

DEM has expended significant resources developing an Enforcement Management System (EMS) since the Round 2 SRF review. The EMS contains detailed protocols regarding DEM’s response to a range of NPDES and other water quality violations. In many cases, the protocols promote an informal response to quickly return the facility to compliance, such as phone calls and SNC letters. EPA believes that in many cases, this is an appropriate response to an isolated violation. The EMS stipulates that if permittees do not come back into compliance as required by the informal response, and/or there are further occurrences of noncompliance, the facility will be referred for formal enforcement action.

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	9a Percentage of enforcement responses that return or will return source in violation to compliance				8	9
10b Enforcement responses reviewed that address violations in a timely and appropriate manner				19	20	95%

**State Response** None

**Recommendation** While many violations are effectively being addressed through informal enforcement, EPA is concerned that the DEM may not have sufficient staffing to develop CWA Notices of Violation and consent agreements. The State should work to ensure that staffing levels are sufficient to address the need for formal enforcement actions.

**CWA Element 5 — Penalties**

<b>Finding 5-1</b>	<b>Meets or Exceeds Expectations</b>					
<b>Summary</b>	Files reviewed documented the difference between initial and final penalties and the collection of penalties.					
<b>Explanation</b>	All 4 files reviewed with administrative penalty orders contained documentation of final penalty amounts and that the penalty was collected.					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	12a Documentation of the difference between initial and final penalty and rationale			4	4	100%
	12b Penalties collected			4	4	100%
<b>State Response</b>	None					
<b>Recommendation</b>	None.					

## CWA Element 5 — Penalties

<b>Finding 5-2</b>	<b>Area for State Improvement</b>					
<b>Summary</b>	Not all penalty calculations adequately consider economic benefits.					
<b>Explanation</b>	<p>In the files reviewed, penalty calculations were determined in accordance with DEM penalty matrix worksheets, which are appended to the formal action notice. In 2 of the 4 penalty cases reviewed, economic benefits were not included in the penalty calculations. In both cases, there is a memo to the file explaining that economic benefit was not included because its value could not be quantified.</p> <p>This represents an improvement over the finding in the Round 2 SRF review, where only 1 of 6 penalty actions included economic benefit and there was no discussion of the decision not to include an economic benefit in the file. However, EPA believes that in the cases reviewed, the State’s decision does not include an adequate explanation of its determination that economic benefits could not be quantified.</p> <p>As a result of this finding, EPA is requiring that the DEM work with EPA to identify an SOP to document its determination of whether an economic benefit should be assessed.</p>					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	11a Penalty calculations reviewed that consider and include gravity and economic benefit			2	4	50%
<b>State Response</b>	DEM will work with EPA to develop and implement an SOP for calculating economic benefit and include economic benefit penalties into its formal enforcement actions where it is determined that the penalty is defensible. That is, DEM will not include a penalty that is at best a guess.					
<b>Recommendation</b>	<p>By September 30, 2014, DEM shall meet with EPA Region 1 to discuss development of an SOP for documenting economic benefit calculations.</p> <p>By December 31, 2014, DEM shall complete and begin to implement the agreed-upon SOP.</p> <p>EPA will close this action upon successful implementation of the economic benefit SOP. EPA will evaluate Rhode Island’s implementation of this measure during periodic telephone calls and</p>					

annual data metric reviews.

## Clean Air Act Findings

### CAA Element 1 — Data

Finding 1-1	Area for State Improvement
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<b>Summary</b>	Both the file review metrics and the data metrics indicate that RIDEM has had some issues regarding the accuracy and completeness of data entered into AFS.
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<b>Explanation</b>	<p>A comparison of Metric 1h1 of the Data Metric Assessment (DMA) with the RIDEM information for this metric indicates that for FFY 2012 the total amount of assessed penalties in AFS does not correspond with the actual amount of penalties assessed by RIDEM. Most of the penalty amount not reported in AFS was for violations at true minor facilities that are not federally-reportable; however, 1 penalty for a synthetic minor 80 percent source (SM-80) was not entered into AFS. Six out of 7 reportable penalties were entered correctly. RIDEM has since entered the missing penalty information into AFS.</p>
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A comparison of Metric 3b1 of the DMA with the RIDEM information for this metric indicates that 1 inspection activity was entered incorrectly.

A comparison of Metric 5a of the DMA with the RIDEM information for this metric indicates that 6 Title V full compliance evaluations (FCEs) were not conducted as required. The DMA reports that FCEs were conducted for 16 out of 22 facilities. A closer look at this information reveals that 3 of these 6 facilities were permanently shutdown prior to FFY 2012; however, RIDEM did not change the operating status of these 3 facilities in AFS and did not coordinate with EPA to remove the compliance monitoring strategy (CMS) flags for these facilities.

In addition, 2 of the 6 facilities had changed size classification status from Title V sources to SM-80 sources prior to FFY 2012; however, the size classification change was not updated in AFS and RIDEM did not coordinate with EPA to change the CMS flags to the proper classification in AFS. The remaining facility was inspected in FFY 2013. RIDEM has made the applicable changes to “operating status” for the 3 Title V facilities that have permanently shut down and has sent a message to EPA to remove and/or change the associated CMS flags for

these facilities

Taking the above into account, RIDEM conducted FCEs at 16 out of 17 Title V major sources in FFY 2012.

A comparison of Metric 5b of the DMA with the RIDEM information for this metric indicates that ten SM-80 FCEs were not conducted as required. The DMA reports that FCEs were conducted at 18 out of 28 facilities. A closer look at this information reveals that 7 of these 10 facilities were permanently shutdown prior to FFY 2012; however, the RIDEM did not change the operating status of these 7 facilities from “operating” to “permanently shutdown” in AFS and did not coordinate with EPA to remove the CMS flags for these facilities. Taking the above into account and the fact that one SM-80 FCE was entered into AFS incorrectly (inspection activity entered as 1/31/12 instead of 1/31/13) RIDEM conducted FCEs at 17 out of 21 SM-80 sources in FFY 2012.

A comparison of Metric 5b for the full five-year Compliance Monitoring Strategy cycle for FCEs at SM80 sources indicates that RIDEM conducted FCEs at 81 out of 85 SM80 sources (95.29%) within the five-year cycle.

A comparison of Metric 7b1 of the DMA with the RIDEM information for this metric indicates that RIDEM did not change the compliance status from “in compliance” to “in violation” for 6 out of 17 facilities issued informal enforcement actions.

The file review also indicated some minor data accuracy issues [e.g., street addresses and zip codes not matching between the OTIS detailed facility report (DFR) and the RIDEM inspection files.] However, the file review did reveal that RIDEM did not enter the final penalty for 1 facility and coded 1 stack test incorrectly. In addition, there were 2 minor discrepancies regarding 2 inspection activities and 2 informal Letters of Noncompliance (LNCs).

**Relevant metrics**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
1h1 Total Amount of Assessed Penalties			6	7	85.7%
2b Accurate MDR data in AFS	100%		19	24	79.2%
5a FCE coverage: majors and mega-sites	100%	90.4%	16	17	94.1%
5b FCE coverage: SM-80s	100%	93.4%	17	21	81.0%
7b1 Violations reported per informal actions	100%	59.7%	11	11	100%
7b3 Violations reported per HPV identified	100%	53.4%	5	5	100%

<p><b>State Response</b></p>	<p>The DEM’s Office of Air Resources (OAR) has had discussions with EPA Region 1 and has agreed to the recommendations for Finding 1-1. However in reviewing the Summary, Explanation, Relevant metrics DEM has the following comments:</p> <ul style="list-style-type: none"> <li>▪ Metric 5b reports that the OAR conducted full compliance evaluations at 17 of 21 SM 80 sources. This shows up as 81% for the Relevant metric. This is a misleading number. The OAR only is required to inspect all SM 80’s within a five year period. The number of SM 80’s in universe of sources in Rhode Island is usually between 80 and 85, depending on sources moving into or out of that category. If you look at the inspection coverage over the five year period ending in FY13 FCE’s were conducted at 81 of 85 sources for a 95% coverage, which is more reflective of our FCE coverage.</li> <li>▪ For the issue of not changing the operating status of sources the OAR must input “not operating” for sources in the AFS data system. We must then contact EPA to have them change the operating status also. This is a bit redundant. Often miscommunications with EPA may lead to the change in operating status not being accomplished.</li> </ul>
<p><b>Recommendation</b></p>	<p>RIDEM has already implemented a procedure to resolve the accuracy issue regarding changes in the operating status of a facility and the associated changes needed to the CMS codes/flags. On an ongoing basis, RIDEM’s Permit Section and Compliance/Inspection Section (both part of the Office of Air Resources) will share information regarding permits relinquished by facilities in the state and changes in permit status from Title V to emission cap (synthetic minor) and vice versa. Any required changes to the operating status of facilities and associated CMS codes/flags will be updated in AFS to reflect these changes.</p> <p>Beginning in March 2014, and for the following 12 months, on a quarterly basis, RIDEM and EPA should meet face-to-face or hold conference calls to check if the Permit Section and Compliance/Inspection Section of OAR are sharing information regarding sources that have relinquished their permits (permanently closed) or changed their size classification and whether all changes have been updated/reflected in AFS. In addition, these meetings or conference calls should be used to check if OAR and OC&amp;I are coordinating and communicating on a regular basis regarding penalty data that needs to be entered into AFS to ensure all penalty data is properly entered into AFS. EPA will close this action once it confirms that RIDEM has sustained complete and accurate data entry of its</p>

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MDRs.

Related to Rhode Island DEM's comments on Metric 5b, EPA Region 1 has amended the explanation section to include the following sentence: "A comparison of Metric 5b for the full five year Compliance Monitoring Strategy cycle for FCEs at SM80 sources indicates that RI DEM conducted FCEs at 81 out of 85 SM80 sources (95.29%) within the five year cycle."

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## CAA Element 1 — Data

### Finding 1-2

### Area for State Improvement

### Summary

Both the file review metrics and the data metrics indicate that RIDEM has had some issues regarding the timely entry of MDRs into AFS.

### Explanation

A review of Metric 3a2 of the DMA indicates that RIDEM had 1 untimely HPV entry entered more than 60 days after the HPV was identified into AFS for FFY 2012. This HPV was entered 85 days after the HPV was identified. One out of 6 facilities and 1 out of 7 HPVs identified in FFY 2012 were untimely.

A comparison of Metric 3b1 of the DMA with the RIDEM information for this metric indicates that 6 compliance monitoring activities out of 64 were entered into AFS in an untimely manner (after 60 days of the activity). In actuality, 5 compliance monitoring activities were entered in an untimely manner. The remaining compliance monitoring activity was entered into AFS incorrectly and was entered into AFS in a timely manner. Taking the above into account, RIDEM entered timely MDRs for compliance monitoring activities for 57 out of 63 such actions in FFY 2012.

A review of Metric 3b2 of the DMA indicates that 8 out of 8 stack tests were reported in a timely manner. The file review portion of the SRF revealed that 1 stack test was not entered into AFS (and over 60 days from the activity date). As a result, 8 out of 9 stack tests were reported in a timely manner. Subsequent to the file review, RIDEM did enter the missing stack test information into AFS.

A comparison of Metric 3b3 of the DMA with the RIDEM information for this metric indicates that 3 enforcement-related MDRs out of 29 were entered into AFS more than 60 days after the enforcement action.

The file review revealed that there were some timeliness issues as well. Specifically, 2 compliance monitoring activities were entered into AFS in an untimely manner.

The numerator and denominator for Metric 2b encompass both the data accuracy/completeness issues and the data timeliness issues. The minor discrepancies found regarding the 2 inspection dates and 2 LNC dates were not considered when populating the numerator directly below for Metric 2b.

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	2b Accurate MDR data in AFS	100%		19	24	79.2%
3a2 Untimely entry of HPV determinations			1	7	14.3%	
3b1 Timely reporting of compliance monitoring MDRs	100%	80.0%	57	63	90.5%	
3b2 Timely reporting of stack test dates and results	100%	73.1%	8	9	88.9%	
3b3 Timely reporting of enforcement MDRs	100%	73.7%	26	29	89.7%	
<b>State Response</b>	The OAR has had discussions with EPA Region 1 and has agreed to the recommendations for Finding 1- 2. RIDEM has no additional comments.					
<b>Recommendation</b>	<p>EPA recommends that after April 1, 2014, RIDEM should on an ongoing basis, but at a minimum once every 45 days, input the required MDRs into AFS for the AFS data forms accumulated over the corresponding time period. This allows field personnel that complete many of the AFS data forms a cushion to submit the completed AFS data entry forms to the data entry person to ensure that MDRs are entered within the required 60-day period.</p> <p>Beginning in April 2014, and for the following 12 months, on a quarterly basis, RIDEM and EPA should meet face-to-face or hold conference calls to check if the AFS data entry form information is being entered into AFS in a timely manner (within 60 days of the completed activity). EPA will close this action once it confirms that RIDEM has sustained complete and timely data entry of its MDRs.</p>					

## CAA Element 2 — Inspections

<b>Finding 2-1</b>	<b>Meets or Exceeds Expectations</b>																							
<b>Summary</b>	RIDEM inspectors write well-documented and comprehensive inspection reports with accurate compliance determinations.																							
<b>Explanation</b>	<p>Of the 24 files reviewed, 20 contained compliance monitoring reports (CMRs). In all 20 of the CMRs, RIDEM generally documented the elements listed in Chapter IX of the CMS. In 2 of the inspection reports, one for a SM-80 facility and one for a Tier II minor source, the class designation was not found in the report or in the inspection file.</p> <p>For those reports where an FCE was done at a Title V major source with a Title V permit issued (7 out of 11 facilities), the inspection file included a completed Title V checklist that lists each condition of a Title V permit, the method used to determine compliance, and the compliance status of each permit condition. This has been considered a “Good Practice” in past SRFs and RIDEM should be commended for taking the initiative to develop and continue to use this checklist.</p> <p>EPA’s Region 1 Air Technical Unit has a general policy that inspection reports should be completed within 30 days of conducting an FCE or PCE (partial compliance evaluation), but in no case later than 90 days. Of the 20 inspections reports completed by RIDEM, 15 of the 20 inspection reports were finalized within 30 days, 3 were finalized within 40 days, 1 was finalized within 41 days, and 1 was finalized within 78 days.</p>																							
<b>Relevant metrics</b>	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>6a Documentation of FCE elements</td> <td>100%</td> <td></td> <td>18</td> <td>20</td> <td>90%</td> </tr> <tr> <td>6b Compliance monitoring reports reviewed that provide sufficient documentation to determine facility compliance</td> <td>100%</td> <td></td> <td>20</td> <td>20</td> <td>100%</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	6a Documentation of FCE elements	100%		18	20	90%	6b Compliance monitoring reports reviewed that provide sufficient documentation to determine facility compliance	100%		20	20	100%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																			
6a Documentation of FCE elements	100%		18	20	90%																			
6b Compliance monitoring reports reviewed that provide sufficient documentation to determine facility compliance	100%		20	20	100%																			
<b>State Response</b>	None.																							
<b>Recommendation</b>	None.																							

## CAA Element 2 — Inspections

### Finding 2-2

### Meets or Exceeds Expectations

#### Summary

RIDEM came close to meeting its CMS Title V and SM-80 FCE inspection coverage for FFY 2012. RIDEM was unable to meet its inspection commitments due to the loss of an injured inspector for a six-month period in FFY 2012.

#### Explanation

A comparison of Metric 5a of the DMA with the RIDEM information for this metric indicates that 6 Title V FCEs were not conducted as required. The DMA reports that FCEs were conducted for 16 out of 22 facilities. Three of these 6 facilities were permanently shutdown prior to FFY 2012; however, RIDEM did not change the operating status from "operating" to "permanently shutdown" in AFS and did not coordinate with EPA to remove the CMS flags for these facilities. Similarly, 2 of the 6 facilities had changed size classification status from Title V sources to SM-80 sources prior to FFY 2012; however, the size classification change was not updated in AFS and RIDEM did not update CMS flags. The remaining facility was inspected in FFY 2013. RIDEM has made the applicable changes to "operating status" for the 3 Title V facilities that have permanently shut down and have changed the CMS flag for 1 of the 2 facilities that changed from a Title V facility to an SM-80 facility. Taking the above into account, RIDEM conducted FCEs at 16 out of 17 Title V major sources in FFY 2012.

A comparison of Metric 5b of the DMA with the RIDEM information for this metric indicates that ten SM-80 FCEs were not conducted within the required five-year period set out in the CMS plan (i.e., 18 out of 28 facilities). Seven of these 10 facilities were permanently shutdown prior to FFY 2012. As above, the RIDEM did not change the operating status of these 7 facilities from "operating" to "permanently shutdown" in AFS and did not coordinate with EPA to remove the CMS flags for these facilities. Taking the above information into account and including the fact that one SM-80 FCE was entered into AFS incorrectly (inspection activity entered as 1/31/12 instead of 1/31/13), RIDEM conducted FCEs at 17 out of the remaining 21 SM-80 sources required to have FCEs within the past five-year period.

Metric 5e of the DMA indicates that RIDEM did not review all Title V annual compliance certifications. RIDEM did review all Title V certifications received, even as 3 of the 5 certifications were for facilities that had not yet been issued their Title V permits, and thus, no certifications would have been due. The remaining 2 certifications were

not submitted in a timely manner, and thus, could not be reviewed in FFY 2012. The 2 facilities that submitted late certifications were made “High Priority Violators” and the certifications were ultimately received and reviewed by RIDEM in FFY 2013. Taking the above into account, RIDEM reviewed Title V annual compliance certifications for 30 out of 30 certifications received in FFY 2012.

Although RIDEM did not quite meet their Title V and SM-80 inspection commitments for FFY 2012, they did come close. The reason RIDEM did not meet their inspection commitments was because an inspector was injured and out of work for six months in FFY 2012. The injured inspector has since resumed his inspection duties and there is no ongoing issue in this area.

<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	5a FCE coverage: majors and mega-sites	100%	90.4%	16	17	94.1%
	5b FCE coverage: SM-80s	100%	93.4%	17	21	81.0%
	5e Review of Title V annual compliance certifications	100%	81.8%	30	30	100%
<b>State Response</b>	None.					
<b>Recommendation</b>	None.					

### CAA Element 3 — Violations

<b>Finding 3-1</b>	<b>Meets or Exceeds Expectations</b>						
<b>Summary</b>	RIDEM does an excellent job of documenting violations and making accurate compliance and HPV determinations.						
<b>Explanation</b>	<p>In 18 out of the 24 files reviewed, there were some violations noted. In 18 files with violations, RIDEM made accurate compliance and HPV determinations, based on inspections, stack test report reviews, and various other types of report reviews. EPA notes that RIDEM continues to disinvest from observing stack tests due to resource constraints. HPV determinations are a collaborative effort between RIDEM and EPA. On an ongoing basis, at a minimum once per quarter, RIDEM and EPA discuss every enforcement action (informal and formal) taken by RIDEM to determine whether any of the violations meet the HPV criteria. The ultimate HPV determination is mutually agreed by both RIDEM and EPA.</p> <p>In the 6 files reviewed without violations, the compliance determinations appeared accurate based on the CMR reports, where applicable, or other information found in the file. In most cases, information regarding HPVs is entered into AFS in a timely manner.</p>						
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>		<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	3a2 Untimely entry of HPV determinations		0		1	7	14.3%
	3b2 Timely reporting of stack test dates and results		100%	73.1%	8	9	88.9%
	7a Accuracy of compliance determinations		100%		24	24	100%
	7b1 Violations reported per informal actions		100%	59.7%	11	11	100%
	7b3 Violations reported per HPV identified		100%	53.4%	5	5	100%
	8a HPV discovery rate at majors			4.3%	5	36	13.9%
	8c Verify the accuracy of HPV determinations		100%		18	18	100%
<b>State Response</b>	None.						
<b>Recommendation</b>	While the DEM has been able to perform the minimum number of federally required compliance evaluations, due to staff vacancies, it has not been able to observe air emissions (“stack”) tests. In order to maintain a minimum field presence necessary to observe stack tests, EPA strongly suggests that the Air Division fill its inspector vacancy as soon as possible.						

## CAA Element 4 — Enforcement

### Finding 4-1

### Meets or Exceeds Expectations

#### Summary

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

#### Explanation

RIDEM took informal and/or formal enforcement actions against 18 out of the 24 facilities in the files reviewed. Two of the facilities had 2 separate violations with 2 separate enforcement responses. A total of 16 informal and 9 formal enforcement actions were taken against these 18 facilities.

For the 18 facilities with violations, 17 of the 20 violations included corrective actions to be taken in the informal enforcement stage and 3 included corrective actions to be taken in the formal enforcement stage. In 17 out of the 20 violations reviewed, the violating facility had returned to compliance prior to formal enforcement being taken.

RIDEM should be commended for its continued use of an “early warning notice” to violators to help expedite the return to compliance. This has been considered a “Good Practice” in earlier SRFs.

In populating the numerator in Metric 9a below, the corrective actions included in both the informal and formal enforcement actions are counted.

The DMA indicates that RIDEM met the timeliness goal of addressing HPVs (within 270 days of “Day Zero”) in 8 out of 8 cases.

Seven of the 10 HPVs reviewed were identified in FFY 2012. Two of the 10 HPVs were identified in FFY 2011, and 1 of the 10 HPVs was identified in FFY 2010. All 10 HPVs were reviewed as part of the SRF file review for continuity purposes because some relevant information such as addressing and/or resolving actions occurred during FFY 2012.

RIDEM addressed 9 out of the 10 identified HPVs from the file review in a timely manner (within 270 days of “Day Zero”). The one HPV that was not addressed in a timely manner was addressed 403 days after “Day Zero.” The reason this HPV was not addressed in a timely manner is because the case was being assessed by RIDEM’s Criminal Division for investigation. Ultimately, the case was given back to RIDEM’s OC&I for civil enforcement.

Currently, RIDEM has streamlined the enforcement process by issuing

	<p>“Closure Letters” in lieu of Consent Agreements in simple penalty cases requiring no injunctive relief.</p> <p>For the numerator and denominator in Metric 10a below, the HPV information from the SRF file review was used rather than the HPV data from the DMA. In any event, RIDEM does an excellent job of taking timely and appropriate enforcement.</p>																							
<b>Relevant metrics</b>	<table border="1"> <thead> <tr> <th data-bbox="467 506 1008 583">Metric ID Number and Description</th> <th data-bbox="1013 506 1089 583">Natl Goal</th> <th data-bbox="1094 506 1187 583">Natl Avg</th> <th data-bbox="1192 506 1268 583">State N</th> <th data-bbox="1273 506 1349 583">State D</th> <th data-bbox="1354 506 1430 583">State % or #</th> </tr> </thead> <tbody> <tr> <td data-bbox="467 590 1008 688">9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified timeframe</td> <td data-bbox="1013 590 1089 688">100%</td> <td data-bbox="1094 590 1187 688"></td> <td data-bbox="1192 590 1268 688">20</td> <td data-bbox="1273 590 1349 688">20</td> <td data-bbox="1354 590 1430 688">100%</td> </tr> <tr> <td data-bbox="467 695 1008 747">10a Timely action taken to address HPVs</td> <td data-bbox="1013 695 1089 747">100%</td> <td data-bbox="1094 695 1187 747">70.5%</td> <td data-bbox="1192 695 1268 747">9</td> <td data-bbox="1273 695 1349 747">10</td> <td data-bbox="1354 695 1430 747">90%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified timeframe	100%		20	20	100%	10a Timely action taken to address HPVs	100%	70.5%	9	10	90%					
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																			
9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified timeframe	100%		20	20	100%																			
10a Timely action taken to address HPVs	100%	70.5%	9	10	90%																			
<b>State Response</b>	None.																							
<b>Recommendation</b>	None.																							

## CAA Element 5 — Penalties

### Finding 5-1

### Meets or Exceeds Expectations

#### Summary

RIDEM does a very good job of calculating the gravity portion and the economic benefit portion of its penalties, documenting the difference between initial and final penalty amounts, and documenting that penalties have been collected.

#### Explanation

A total of 7 out of the 24 files reviewed included penalties. A total of 2 out of the 7 files with penalties included 2 separate penalties for 2 separate violations. Therefore, a total of 9 penalties were reviewed as part of the SRF file review. Three of the penalties were paid in years other than FFY 2012, but were reviewed for continuity purposes. A total of 7 out of the 9 penalty cases reviewed were resolved using “Closure Letters” and 2 out of the 9 penalty cases were resolved using Consent Agreements.

In all 9 penalty cases, RIDEM calculated both the gravity and economic portions of the penalty. In 1 out of the 9 penalty cases an economic benefit component was assessed and collected. In the other 8 penalty cases, RIDEM reported that the economic benefit was insignificant, and would not be assessed as part of the penalty. In 8 out of the 9 penalty cases, a gravity component was part of the final assessed penalty, except for 1 case where the economic benefit portion of the penalty was assessed and collected.

Seven out of the 9 penalty cases had the initial penalty reduced, and 2 cases did not have a penalty reduction. For the 7 penalty cases with a penalty reduction, RIDEM had a completed penalty justification memo in the enforcement file that offered general rationalizations for why the penalty was reduced (e.g., litigation risk, good faith/cooperation, etc.).

For 1 identified FFY 2012 HPV, no penalty was assessed and collected because the facility had entered into bankruptcy and because there was no ongoing violation. Rhode Island state law prohibits RIDEM from seeking penalties from bankrupt facilities.

At the time of the file review (March 2013), 2 out of the 9 penalty cases had yet to be settled. For the 7 penalty cases that were settled, copies of penalty checks were found in the enforcement files.

<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	11a Penalty calculations include gravity and economic benefit	100%		9	9	100%
	12a Documentation on difference between initial and final penalty	100%		7	7	100%
	12b Penalties collected	100%		7	7	100%
<b>State Response</b>	None.					
<b>Recommendation</b>	None.					

## Resource Conservation and Recovery Act Findings

<b>RCRA Element 1 — Data</b>	
<b>Finding 1-1</b>	<b>Area for State Attention</b>
<b>Summary</b>	<p>Rhode Island’s inspection counts, documentation of violations found, enforcement action documentation and counts were accurate according to the file review metrics and the Data Metrics Analysis (DMA). Rhode Island has universe counts that are more up-to-date than figures in OTIS for: LQGs inspected, five-year inspection coverage for LQGs, and final penalties collected.</p>
<b>Explanation</b>	<p>Twenty-five files were selected and reviewed to determine the completeness of minimum data requirements. RIDEM RCRA staff spent considerable time assuring a major improvement in data accuracy. All twenty-five files reviewed had data that matched in the file content, RCRAInfo content and OTIS Detailed Facility Reports (DFR). Most of the data analyzed in the DMA was complete and accurate. Areas where discrepancies exist are discussed below.</p> <p>Due to a change in RIDEM policy there are discrepancies in the number of formal cases taken and the total dollar amount of final penalties in the DMA. There were 6 sites with formal actions rather than 3, and RIDEM collected \$56,481 in final penalties instead of \$14,333. These differences are due to the use of a case closure letter in lieu of a CAFO. Thus for cases where this was used, final actions were not logged into RCRAInfo. Final penalty figures are noted under the data for the initial action.</p> <p>Rhode Island conducted 18 LQG inspections in FY2012. These facilities were LQGs at the time of inspection. The difference is due to changes in status between the date of inspection and the date that the data was frozen for review.</p> <p>The five-year inspection coverage number should be 100%. Of the 19 facilities identified as not being inspected in the period, 7 were inspected by EPA. The remaining 12 facilities listed as LQGs not inspected include 10 street manholes that are not generation sites but were the site(s) of a one-time cleanout of sediment. One facility notified as an LQG and then re-notified as an SQG three months later. One facility notified as an LQG and then re-notified as an SQG two years later. Both of these had changed status back to SQG prior to an inspection being scheduled and well within the five-year time frame.</p>

<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
		2b Complete and accurate entry of mandatory data	100%		25	25
	5a Two-year inspection coverage for operating TSDFs	100%	88%	2	2	100%
	5b Annual inspection coverage for LQGs	20%	21.7%	18	70	25.7%
	5c Five-year inspection coverage for LQGs	100%	64.1%	51	70	72.9%
	7b Violations found during inspections	100%		20	20	100%
<b>State Response</b>	RIDEM will adopt the new reporting method for entering final formal actions and reporting final penalties collected within 14 days of notification from EPA that the new data entry code has been created.					
<b>Recommendation</b>	Due to the inability of EPA to readily determine the penalty amount that RIDEM had settled cases for when using an action closure letter, the finding of “Area for State Attention” is appropriate. Regional RCRA and RCRAInfo data management staff are working with HQ data management and program office staff to create a new method for reporting these actions in the RCRAInfo system so that HQ and the Region will be able to retrieve appropriate measurement data. RIDEM will adopt the new reporting method by September 30, 2014.					

## RCRA Element 2 — Inspections

<b>Finding 2-1</b>	<b>Area for State Attention</b>					
<b>Summary</b>	Seven of 25 inspection reports reviewed had some deficiencies.					
<b>Explanation</b>	<p>The areas that were deficient include; the type of inspection conducted, the facility description, a description of all RCRA regulated activities, photographs and maps and drawings. Most of the 7 referenced reports had deficiencies in several of these areas. In spite of the lack of details in some of the overall reports; all of the violations determined by RIDEM inspectors had sufficient details concerning those violations in the report. In addition, complete file reviews showed that there was sufficient documentation to accurately determine facility compliance status. It was also evident in the reports that all appropriate compliance standards were evaluated. Finally, many of the inspections conducted by RIDEM were at facilities that had been inspected numerous times in the past and additional details about the facility were available in other portions of the file. Therefore, all case files reviewed were adequate to determine facility compliance.</p>					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	6a Inspection reports complete and sufficient to determine compliance	100%		18	25	72%
<b>State Response</b>	<p>RIDEM has recently revised and updated the CEI checklist to address these concerns and to address significant modifications to the state's hazardous waste regulations. RIDEM's EPA coordinator reviewed the updated checklist. RIDEM inspectors have been trained on using the new checklist and will be using the new checklist going forward.</p>					
<b>Recommendation</b>	<p>Starting September 1, 2014, RIDEM should include all details in future inspection reports before the lack of details compromise a potential case. If facility details are present elsewhere in the facility case file, then the inspection report should reference the locations in the file where these documents can be found.</p>					

## RCRA Element 2 — Inspections

<b>Finding 2-2</b>	<b>Meets or Exceeds Expectations</b>					
<b>Summary</b>	Twenty-four of 25 inspection reports reviewed were completed in a timely manner.					
<b>Explanation</b>	Twenty-five files were selected and reviewed. The average length of time to complete the inspection reports was 14 days. This included 1 completed in 36 days, 1 completed in 41 days and 1 completed in 100 days. Without these 3 reports, which were outside the norm, the average length of time to complete the remaining 22 reports was 8 days.					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	6b Timeliness of inspection report completion	100%		24	25	96%
<b>State Response</b>	None.					
<b>Recommendation</b>	None.					

## RCRA Element 2 — Inspections

<b>Finding 2-3</b>	<b>Meets or Exceeds Expectations</b>					
<b>Summary</b>	RIDEM met its agreed-upon inspection coverage for FY2012.					
<b>Explanation</b>	A review of Metrics 5a and 5b of the DMA and RCRAInfo data shows that RIDEM met or exceeded their inspection coverage requirements. Metric 5c is discussed in Element 1. See the discussion in Finding 1-1 for additional details.					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	5a Two-year inspection coverage of operating TSDFs	100%		2	2	100%
	5b Annual inspection coverage of LQGs	20%	21.7%	18	70	25.7%
	5c Five-year inspection coverage of LQGs	100%	64.1%	51	70	72.9%
<b>State Response</b>	None.					
<b>Recommendation</b>	None.					

### RCRA Element 3 — Violations

<b>Finding 3-1</b>	<b>Meets or Exceeds Expectations</b>					
<b>Summary</b>	RIDEM does an excellent job of documenting compliance status and determining violations allowing them to make accurate compliance determinations.					
<b>Explanation</b>	Each of the 25 files reviewed had accurate and complete descriptions of the potential violations observed during the inspection. RIDEM inspectors produce inspection reports, violation summaries and penalty calculations all documenting the detailed nature and extent of the violations. All information necessary to make compliance determinations was present. Finally, RIDEM’s violation identification rate is well above the national average.					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	7a Accurate compliance determinations	100%		25	25	100%
	7b Violations found during inspections		35.9%	72	141	51.1%
<b>State Response</b>	None.					
<b>Recommendation</b>	None.					

## RCRA Element 3 — Violations

<b>Finding 3-2</b>	<b>Area for State Improvement</b>					
<b>Summary</b>	A review of the case files and the DMA indicates that RIDEM did not make an appropriate SNC determination in 3 of the 20 enforcement cases.					
<b>Explanation</b>	<p>Seventeen of 20 facilities had appropriate determinations made on their SNC status. Three did not. RIDEM only had 4 formal actions during FY2012 so 3 missed potential cases is significant. If the proper determinations had been made in all cases, then the SNC identification rate would have been double the national average.</p> <p>Due to the DMA data, this review included supplemental file selections designed to evaluate the reason for a lower-than-expected formal case total in FY2012. The 3 facilities identified as having an inappropriate SNC determination had similar characteristics. Each had multiple inspections conducted; each had a violation total that was among the highest for any case reviewed; and each had serious violations of waste management and programmatic standards (such as: failure to notify of hazardous waste operations, failure to conduct proper hazardous waste determinations, failure to adequately train personnel, and failure to have an adequate contingency plan).</p> <p>In 1 case, RIDEM decided on an informal action in part due to the fact that it was the first time the facility was inspected. In the second case, RIDEM did not take into account that the facility had the same violations in the previous RIDEM inspection. That inspection occurred five years previously, and after that inspection, RIDEM issued a Notice of Intent to Enforce (NOI) to the facility. After the NOI was issued, no further enforcement occurred. The most recent inspection determined that the facility did not return to compliance. The third case was not pursued as a formal case due to management decision. No further information on this case was available. The Region disagrees with the decision-making in all 3 of these cases.</p>					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	8a SNC identification rate		1.7%	2	141	1.4%
	8c Appropriate SNC determinations	100%		17	20	85%
<b>State Response</b>	RIDEM has a standard practice and procedure for evaluating each case to					

	<p>determine whether the generator was operating in significant noncompliance (SNC). RIDEM follows the guidance contained in EPA’s Civil Enforcement Response Policy when evaluating a case to make the SNC determination. The RCRA managers meet and discuss with the Office Chief cases that appear to be SNC for a final decision on whether to issue a formal enforcement action. Going forward, RIDEM will include a memo in the file for those cases where the Office Chief decides no formal enforcement action will be taken. RIDEM believes that 1 of the 3 cases identified by EPA involved secondary violations. The remaining 2 cases were, in our opinion, questionable, so RIDEM decided not to issue a formal enforcement action.</p>
<p><b>Recommendation</b></p>	<p>By September 30, 2014, the RIDEM RCRA enforcement office (with EPA concurrence) should have a new SOP in place to review all potential enforcement actions for the possibility of SNC, which would require RIDEM to issue a formal action. This SOP should require a management sign-off on the proposed enforcement response and SNC determination. Meetings with the Region to review these case determinations shall be conducted quarterly. In these meetings, the Region and RIDEM personnel will review each enforcement action from the previous quarter. These meetings can be done face-to-face or via conference call.</p>

**RCRA Element 4 — Enforcement**

<b>Finding 4-1</b>	<b>Meets or Exceeds Expectations</b>					
<b>Summary</b>	RIDEM enforcement actions returned facilities to compliance. Formal actions are taken on a timely basis.					
<b>Explanation</b>	RIDEM enforcement actions returned facilities to compliance. Documentation of that is present in all files except for 1 case where the return to compliance was not documented for a single violation out of numerous violations. The return to compliance for that violation was noted in RCRAInfo, however, documentation in the file was missing. The average length of time to issue a formal action from day zero was 268 days for the six cases involving a formal action. One case exceeded the 360 day timeline by 23 days.					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	9a Enforcement that returns violators to compliance	100%		18	19	94.7%
	10a Timely enforcement taken to address SNC	80%	83.2%	5	6	83.3%
<b>State Response</b>	None.					
<b>Recommendation</b>	None.					

**RCRA Element 4 — Enforcement**

<b>Finding 4-2</b>	<b>Area for State Attention</b>					
<b>Summary</b>	RIDEM took appropriate enforcement actions to address violations.					
<b>Explanation</b>	RIDEM enforcement actions were appropriate for the compliance status (SNC or SV) determined by the program. The file review showed that RIDEM was successful in getting facilities to return to compliance and conduct all injunctive relief required; whether the mechanism used was a Notice of Non-Compliance or a Notice of Violation. However, with 3 improper determinations made that reduces the overall percentage for this metric to 85%. The Region has addressed this issue/finding in Element 3, Finding 3-2.					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	10b Appropriate enforcement taken to address violations	100%		17	20	85%
<b>State Response</b>	See response to Finding 3-2 above.					
<b>Recommendation</b>	No new recommendation - see Element 3, Finding 3-2.					

## RCRA Element 5 — Penalties

<b>Finding 5-1</b>	<b>Area for State Attention</b>					
<b>Summary</b>	RIDEM’s penalties collect gravity and economic benefit appropriate to their penalty policy in most cases.					
<b>Explanation</b>	In all cases RIDEM appropriately considered and incorporated where necessary, economic benefit. In 1 case, the calculated gravity penalty appeared to be artificially low due to calculation anomalies. Groups of violations had penalties calculated for them as a single count and at the lowest penalty levels available. There was no explanation for this deviation from normal protocol.					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	11a Penalty calculations include gravity and economic benefit	100%		3	4	75%
<b>State Response</b>	RCRA managers met with the EPA coordinator to discuss this recommendation and explained the process that was used to calculate the penalties. The EPA coordinator was satisfied that RIDEM calculated the penalties appropriately, however, RIDEM needs to be clearer in how it presents the calculation. RIDEM will evaluate how it presents the calculations in an effort to make it clearer.					
<b>Recommendation</b>	After September 1, 2014, if RIDEM needs to make adjustments in the manner that penalties are calculated, then those adjustments must be explained and documented in the case file.					

## RCRA Element 5 — Penalties

<b>Finding 5-2</b>	<b>Area for State Attention</b>					
<b>Summary</b>	RIDEM’s rationale for changes in penalties between the initial penalty and the final penalty collected are documented in most cases. RIDEM uses a penalty settlement policy that is designed to encourage quicker settlements in formal cases.					
<b>Explanation</b>	<p>In 1 case, the penalty that the facility agreed (in writing) to pay was later reduced by RIDEM without documentation in the file of why or how that change occurred.</p> <p>The negotiation and settlement of formal enforcement cases can be a long, complicated and time consuming portion of the enforcement program. In an effort to streamline this process, RIDEM has begun to implement a policy of aggressive penalty reductions if the violating facility will quickly return to compliance and agree to settle the case. In their case conclusion settlement documents, RIDEM includes a justification memo that states the reasons for a reduction in the final penalty from the initial. Where this penalty reduction policy has been used, the rationale for the reduction has been “departmental resources”. The Office of Compliance and Inspection needs to be able to bring a higher level of resources to bear in cases of environmental significance, high priority and/or complex actions. To achieve this, RIDEM needs additional resources to process, negotiate and finalize these types of enforcement cases.</p>					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	12a Documentation on difference between initial and final penalty	100%		3	4	75%
<b>State Response</b>	None.					
<b>Recommendation</b>	Beginning September 1, 2014, RIDEM must document in all cases, adjustments made to calculate the penalties that are assessed and collected. Additional resources for the Office of Compliance and Inspection specifically for the bolstering of the formal enforcement process should be a priority for the Agency.					

## RCRA Element 5 — Penalties

<b>Finding 5-3</b>	<b>Meets or Exceeds Expectations</b>					
<b>Summary</b>	RIDEM effectively collects penalties after the completion of an action.					
<b>Explanation</b>	In all cases RIDEM collected penalties after the completion of an action. All penalty files had documentation of the penalty collection.					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	12b Penalties collected	100%		4	4	100%
<b>State Response</b>	None.					
<b>Recommendation</b>	None.					

# Appendix A

## Background Information on Rhode Island State Program and Review Process

***NOTE:*** The background information provided below was provided by RIDEM. EPA included this information here without programmatic edits.

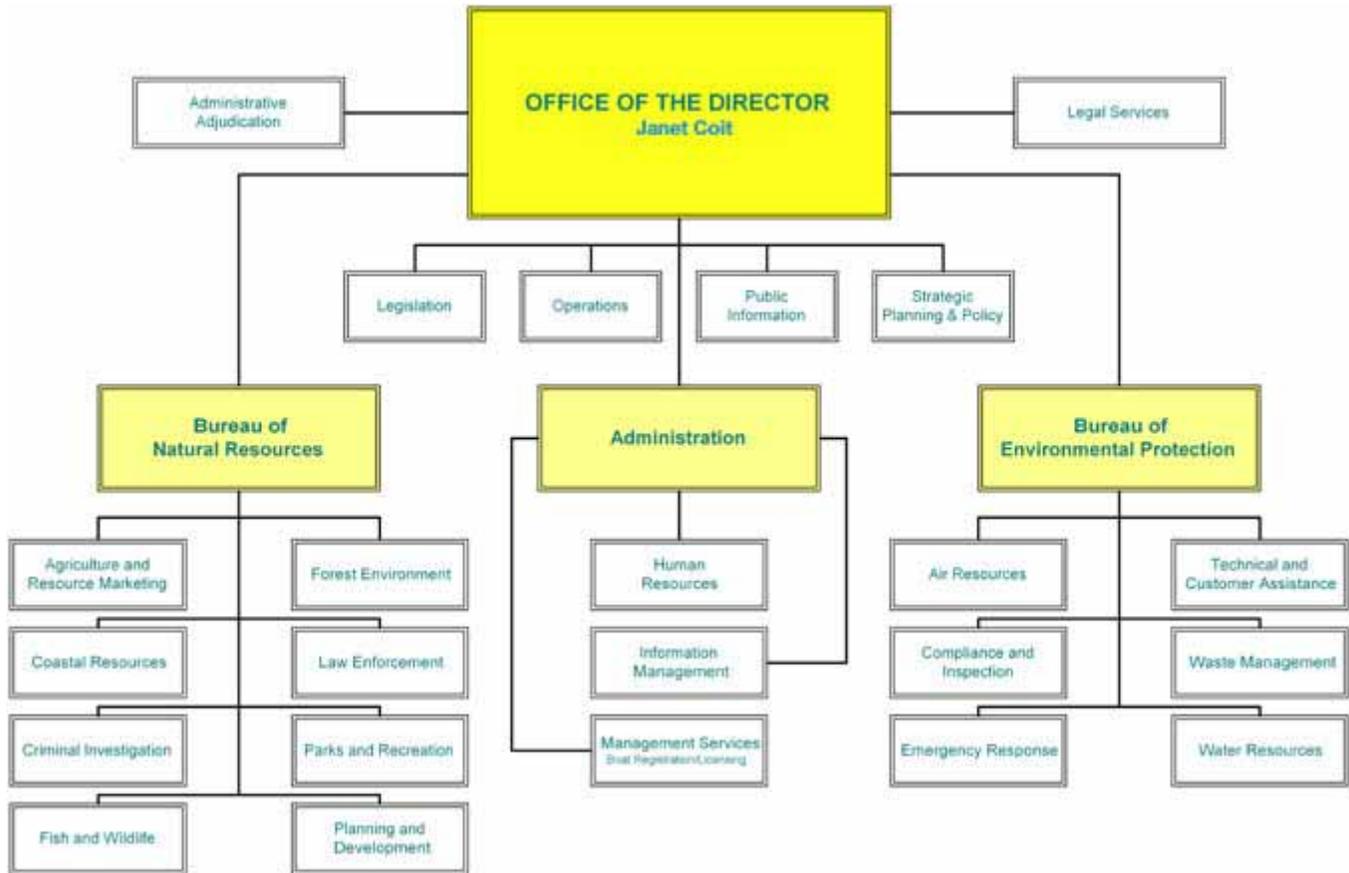
### A. General Program Overview

#### *Agency Structure*

The Department of Environmental Management (DEM) manages and protects Rhode Island's public and common natural assets, including land, air and water resources. It manages state-owned lands, including state parks and beaches, forests, port facilities, and fish and wildlife management areas. The DEM administers a capital management program financed by general obligation bonds, funds from the Rhode Island Capital Plan Fund, federal funds, restricted receipts and third-party sources (for land acquisition). Capital program activities include: acquisition and development of recreational, open space and agricultural lands; municipal and non-profit grant programs for land acquisition and development; improvements to state-owned ports and recreation facilities; Superfund federal mandates; construction of new state environmental facilities; municipal wastewater facility construction grant programs; and grants to non-governmental entities for specified water quality improvement projects. The DEM also monitors the use and quality of state groundwater; regulates discharges and uses of surface fresh and salt water; enforces game, fishing and boating regulations; coordinates a statewide forest fire protection plan; regulates air quality; and monitors the disposal of solid and hazardous wastes.

## Organizational Chart

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



## Mission

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

- Enhance the high quality of life for this and future generations by protecting, managing, and restoring the environment, enhancing outdoor recreation opportunities, and protecting public health.
- Guiding utilization of Rhode Island’s resources to provide for sustainable economic opportunity while protecting our natural environment.
- Motivating the citizens to practice an environmental ethic based on an understanding of their environment, their own dependence on it, and the ways in which their actions affect it.

## ***Budget***

The Governor's revised FY 2013 budget for the DEM was \$99.5 million, including \$34.2 million in general revenue, \$36.7 million in federal funds, \$15.4 million in restricted receipts, \$7.0 million in capital funds and \$6.2 million in other funds. This represents a total increase of \$0.7 million from the enacted budget of \$98.8 million. For revised FY 2013, the Governor recommended 399.0 FTE positions for the DEM, a decrease of 8.0 FTE positions from the enacted level of 407.0 FTE positions. The Governor's recommended FY 2014 expenditures for the DEM are \$106.6 million, including \$34.9 million in general revenue, \$35.1 million in federal funds, \$15.9 million in restricted receipts, \$15.2 million in capital funds and \$5.4 million in other funds. This represents a total increase of \$7.1 million from the FY 2013 revised budget. The Governor recommended 400.0 FTE positions for FY 2014, which is an increase of 1.0 FTE position from the revised level of 399.0 FTE positions.

## ***Compliance/Enforcement Program Structure***

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

## ***Roles and Responsibilities***

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

**Formal enforcement** typically involves the issuance of a Notice of Violation (NOV). A NOV advises the respondent of the alleged facts surrounding the case, the statutes and regulations that are basis of the alleged violations, the requirements to meet compliance and usually includes an administrative penalty. The requirements to return to compliance are set forth in the order portion of the NOV. The assessed penalty is developed in accordance with the administrative penalty regulations, and the NOV includes worksheets providing information on how the penalty was determined. The maximum penalty for violations is derived from the legislative statute providing DEM with the authority to assess and collect a penalty for civil (non-criminal) violations of laws or regulations. Since formal enforcement actions contain enforceable orders and assessments of penalties, such actions are subject to appeal with the DEM's Administrative Adjudication Division (AAD). Respondents have 20 days to appeal the NOV to the AAD. Prior to or even after a hearing commences, the parties may finalize a settlement of the outstanding enforcement action. In a change to the statute that was enacted in 2010, upon completion of a hearing, a final decision is issued by the AAD hearing officer. Respondents and DEM may file an appeal to contest the AAD decision to Superior Court. In the event that an administrative hearing is not requested, the NOV becomes a final order of the Director and is enforceable in Superior Court.

### **Office of Air Resources**

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

Air pollutants fall into two broad categories— criteria pollutants and air toxics. National Ambient Air Quality Standards have been set for criteria pollutants. In general, criteria pollutants are irritants or have other minor and/or acute health or environmental effects. Examples are ground level ozone and carbon monoxide. Air toxics are pollutants that, for example, are carcinogens, or have other major and/or chronic health effects. Examples are benzene and trichloroethylene. Rhode Island and most of the Northeast United States do not meet the health-based air quality standards for ozone. Much of the work of the OAR is related to assuring that Rhode Island improves its air quality to attain the standards on the schedule required by the federal Clean Air Act. A number of toxic air pollutants are present in Rhode Island's air that are above acceptable levels. The OAR works to reduce emissions of air pollutants in Rhode Island and works with other states to secure emission reductions that will help Rhode Island solve its air quality problems. Compliance with environmental laws, rules, regulations, permits and licenses is enforced through **informal enforcement**.

## Office of Water Resources

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

## Office of Waste Management

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

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

These functions are divided into four programs as listed below:

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

Compliance with environmental laws, rules, regulations, permits and licenses is enforced through **informal enforcement**.

## Office of Compliance and Inspection

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

## **Office of Technical and Customer Assistance**

The Office of Technical and Customer Assistance (OTCA) provides assistance to the general public, state and local governments, and the business community concerning compliance with rules, regulations, environmental standards, and the permitting process. One aspect of this service is to coordinate pre-application assistance to companies and to individuals seeking permits. Prospective applicants for environmental permits will be able to have a single point of contact who will provide information on permits required, including permits for large facilities where more than one type of environmental permit is required. Another service is to coordinate the application review process for projects that require more than one environmental permit such as the permitting of large facilities that involve air emissions as well as construction that involves more than five acres (which requires a stormwater permit). Part of this coordination function is to track projects that the Economic Development Corporation's Board has determined to be of Critical Economic Concern. OTCA also serves as an information repository for DEM's regulations and policies so that the public can easily access these regulations and policies. The DEM's web site is coordinated and maintained by OTCA. In addition, OTCA maintains user-friendly descriptions of the regulations so that the public can easily determine the requirements associated with the regulations. To improve compliance among several business and industry sectors, OCTA also manages several industry-wide Environmental Results Program (ERP) initiatives. ERP is a comprehensive, "evidence-based" industry compliance certification program using guidebooks and checklists. Facilities certify to DEM that they are complying with environmental protection requirements every three years. ERP is currently used as a compliance improvement tool in the automotive refinishing, auto yard recycling, underground storage tank, green hospitality, golf course and MS4 sectors.

## **Office of Emergency Response**

The Office of Emergency Response (OER) is Rhode Island's first line of defense in protecting public health, safety, and welfare in an environmental emergency. Like police and fire fighters, DEM's emergency responders are prepared to handle incidents of great variety - everything from a spill of a few gallons to a whole tanker-full of petroleum, from a single abandoned drum to biological and chemical weapons. Highly trained first responders are on-call 24-hours a day, 7 days a week. These responders spend the bulk of their time remediating a stream of manageable mishaps that could otherwise pose a significant danger. Nearly every day of every year, despite preventive measures, hundreds of incidents threaten the public as well as the environment. Emergency responders are prepared to limit the risks from oil and chemical spills, failed tanks or pipes, fires or fumes, overturned trucks, sunken vessels, litter, WMD (weapons of mass destruction), abandoned drums, and the like. Compliance with environmental laws, rules, regulations, permits and licenses is enforced through **informal enforcement**.

## ***Resources/Staffing/Training/Data Reporting Systems***

### **Office of Water Resources**

#### *Resources*

OWR has 12.0 FTEs to implement the Clean Water Act NPDES Enforcement Program (which includes Permitting, Pretreatment, O & M, and Sludge Management programs), 2.3 of the FTEs are supervisors/program managers. The FTEs work on both permitting and compliance monitoring and enforcement. There have not been resource constraints in OWR that present major obstacles to implementing compliance monitoring and enforcement with the NPDES Enforcement Program (see additional clarification under Staffing/Tracking). It is important to note that a substantial amount of compliance monitoring and enforcement is undertaken by OWR in other federal and state programs that were not subject to the EPA State review. These programs include Freshwater Wetlands, On Site Wastewater Treatment Systems, Underground Injection Control, and Water Quality Certification. The FTEs assigned to these programs have not been included in this summary.

#### *Staffing/Training*

Compliance monitoring and enforcement has not been impacted by vacancies. However the RIPDES program uses the EPA Integrated Compliance Information System (ICIS) for compliance monitoring and enforcement tracking. In June 2013, the program lost 1 FTE of information technology support for ICIS which was provided by the State Division of Information Technology (“DoIT”) and is not included in the FTE totals listed above. At this time, it is not clear when or how DoIT will fill this need and at a minimum, short term impacts to the program are expected. There is no specific state program for hiring and maintaining qualified staff. When vacancies occur, managers determine whether the position is critical and, if so, prepare a critical need form that is forwarded to the DEM Director and the Department of Administration for approval. Depending on availability of funds, managers may authorize staff to attend training programs or technical conferences to refresh their knowledge or gain new knowledge.

#### *Data Reporting Systems*

OWR inputs all data directly into the EPA ICIS national data system.

## **Office of Air Resources**

### *Resources*

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

### *Staffing/Training*

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

### *Data Reporting Systems*

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

## **Office of Waste Management**

### *Resources*

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

### *Staffing/Training*

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

### *Data Reporting Systems*

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

## **Office of Compliance and Inspection**

### *Resources*

OC&I currently has 1.1 FTEs assigned to the Water Enforcement Program. The FTEs work on compliance monitoring and enforcement. 0.6 FTEs are inspectors and 0.5 FTEs are supervisors/program managers. There are resource constraints in OC&I that present obstacles to implementing enforcement with the NPDES Enforcement Program. The program manager splits his time managing this program and the DEM's onsite wastewater management system (OWTS) program. As such, he often does not have time to draft formal Notices of Violation and consent agreements, so this is being done by the Chief of OC&I. It is important to note that a substantial amount of enforcement is undertaken by OC&I through its citizen complaint response program that was not subject to the EPA State review. The FTEs assigned to this program are included in this summary.

OC&I currently has 4.0 FTEs assigned to the Air Enforcement Program. The FTEs work on compliance monitoring and enforcement. 2.0 FTEs are inspectors and 2.0 FTEs are supervisors/program managers. There are no resource constraints in OC&I that present major obstacles to implementing compliance monitoring and enforcement with the Clean Air Act Stationary Source Enforcement Program. It is important to note that a substantial amount of compliance monitoring and enforcement is undertaken by OC&I through its citizen complaint response program that was not subject to the EPA State review. The FTEs assigned to this program are included in this summary.

OC&I currently has 4.2 FTEs to implement the RCRA Enforcement Program. The FTEs work on compliance monitoring and enforcement. 3.0 FTEs are inspectors (although .25 FTEs are used for database entry and management) and 1.2 FTEs are supervisors/program managers. There are no resource constraints in OC&I that present major obstacles to implementing compliance monitoring and enforcement with the RCRA Enforcement Program.

### *Staffing/Training*

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

### *Data Reporting Systems*

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

## **Office of Legal Services**

The Office of Legal Services (OLS) has 6.0 FTEs to manage all of the legal work within the DEM. No FTEs are specifically assigned to any one office or program. Compliance monitoring and enforcement has been significantly impacted by vacancies within the OLS and there are resource constraints that present major obstacles to implementing compliance monitoring and enforcement.

## **Administrative Adjudication Division**

The Administrative Adjudication Division (AAD) has 3.0 FTEs to manage all of the administrative appeals within the DEM. No FTEs are specifically assigned to any one office or program. There are no resource constraints that present major obstacles to implementing compliance monitoring and enforcement.

## **B. Major State Priorities and Accomplishments**

### *Priorities*

The Offices of Waste Management, Air Resources, and Compliance and Inspection have all undergone significant reductions in staff over the last several years. Given these reductions and the current budget, DEM's priorities are to maintain compliance and enforcement activities in its core programs.

One area that DEM has identified as a priority is implementation of LEAN techniques. In 2009 the Offices of Compliance and Inspection, Water Resources, Waste Management, and Air Resources completed an effort to streamline the process for referral of cases for **formal enforcement** to Compliance and Inspection. In 2011 Compliance and Inspection and Legal Services completed an effort to streamline and shorten the time to issue a **formal enforcement** action. Our current focus is to streamline and shorten the time to issue storm water and freshwater wetland permits in Water Resources, site remediation permits in Waste Management and air permits in Air Resources.

### *Accomplishments*

The DEM's major accomplishments over the last 1-2 years have been to maintain compliance and enforcement activities in its core programs.