



Permitting for Environmental Results (PER)

NPDES Profile: New York and Indian Country

PROGRAM RESPONSIBILITY

State of New York: NPDES authority for base program, general permitting, federal facilities
EPA Region 2: NPDES authority for pretreatment, biosolids
EPA Region 2: NPDES authority for all facilities in Indian Country

Program Integrity Profile

This profile characterizes key components of the National Pollutant Discharge Elimination System (NPDES) program, including program administration and implementation, environmental outcomes, enforcement, and compliance. EPA considers profiles to be an initial screen of NPDES permitting, water quality, enforcement, and compliance programs based on self-evaluations by the States and a review of national data. EPA will use the profiles to identify program strengths and opportunities for enhancements. For more information, please contact Richard Draper, Chief, Bureau of Water Permits, New York Department of Environmental Conservation, (518) 402-8251 or Jeffrey Gratz, Chief, NPDES Section, EPA Region 2, (212) 637-3873.

Section I. Program Administration

1. Resources and Overall Program Management

The State of New York:

EPA originally approved and authorized New York's State Pollutant Discharge Elimination System (SPDES) program on October 28, 1975; regulation of federal facilities on June 13, 1980; and the general permitting program on October 15, 1992. The Division of Water (DOW) within the New York State Department of Environmental Conservation (NYSDEC) runs the approved programs. NYSDEC does not have authorization or approval for pretreatment or biosolids/sludge.

In addition to NPDES program activities, the DOW is responsible for water quality monitoring, standards, total maximum daily loads (TMDLs), nonpoint source programs, water resource permitting, permitting for discharges to groundwater, and dam safety.

DOW reorganized over the past year. The division's four bureaus are Water Permits (organized geographically, with a focus on permit issuance); Water Compliance; Water Assessment and Management (standards, TMDLs, nonpoint sources of pollution); and Program Services and Flood Protection. According to NYSDEC, the most noteworthy changes were a consolidation of SPDES and water resource permitting activities, the establishment of a section to deal exclusively with general permits, and organization of individual SPDES permit writing on a regional basis (with no change in watershed review of water quality-based effluent limits). In addition, monitoring and assessment activities were consolidated with activities related to water quality management into one bureau.

NYSDEC reports that the program manages 3,485 surface water and 4,784 groundwater permits. These numbers include major and significant minor SPDES permits, which pertain to discharges to surface water and are tracked in EPA's Permit Compliance System (PCS), as well as approximately 6,400 nonsignificant minor SPDES permits and petroleum remediation SPDES permits. Classification as a nonsignificant minor SPDES permit means that the Regional Water Engineer has determined that the discharge poses a minimal water quality risk. Both nonsignificant minor permits and petroleum clean-up permits may be for discharges to surface water or groundwater, and these permits are not tracked in PCS. An additional 8,000 or more activities are covered under general SPDES permits for stormwater discharges, concentrated animal feeding operations (CAFO), or small sanitary discharges to groundwater.¹

NYSDEC reports that it has a staff of 230 (130 in the Central Office in Albany and 100 in nine Regional Offices) to administer the broad water programs in the State. Please see the [current resources](#) (budget and personnel) available to New York for its water program.

NYSDEC's self-assessment acknowledges resource challenges due to the recent economic downturn and recent retirement of senior management. These resource challenges have arisen at the same time that the NPDES universe is expanding rapidly (doubling in recent years, according to NYSDEC).

In the area of training, NYSDEC permit writers and inspectors receive training in EPA courses and through mentoring. In addition, inspectors benefit from the NYSDEC's "Comprehensive Five-Year Training Plan for Wastewater Operators and Inspectors," which includes many workshops and seminars for wastewater professionals. Inspectors also attend EPA-sponsored NPDES inspection workshops when they are offered in the Northeast. Inspection training for emerging programs such as CAFO and Stormwater Phase II are developed and delivered in cooperation with partners such as the New York State Soil and Water Conservation Committee, the Natural Resources Conservation Service, and the Center for Watershed Protection.

Permit writers use DOW's Technical Operating Guidance Series (TOGS) in drafting permits. TOGS covers various procedural and administrative aspects of the program. When a TOGS guidance document is issued or amended, training is provided for staff and affected members of the regulated community. In addition, DOW is developing training modules for permit writing to supplement the TOGS. New permit staff are trained through mentoring, and attendance is encouraged at department-wide training sessions on topics such as computers and public speaking. During their first year, permit writers attend EPA's NPDES Permit Writers' Training Course. New York State staff attend EPA's Water Quality Standards Academy. In addition, Water Quality staff work with other divisions, such as Fish, Wildlife, and Marine Resources, to provide training in toxicology. The whole effluent toxicity (WET) testing program is also outlined in considerable detail in TOGS 1.3.2, and additional training for staff is available as needed or requested.

¹ Note that most of these 8,000 activities are not captured in measure #3 of the Management Report, which includes only non-stormwater discharges to surface water.

EPA Region 2:

Two NPDES program components are not authorized in New York State: pretreatment and biosolids/sludge. EPA Region 2 implements these two programs and oversees the State program. In addition, EPA is responsible for NPDES permitting on Indian lands, and has issued permits to two minor facilities of the St. Regis Mohawk Tribe.²

The pretreatment universe includes 57 approved local industrial pretreatment programs, which regulate over 1,100 significant industrial users (SIUs) and 41 categorical industrial users (CIUs), are not regulated by local programs. Under the biosolids/sludge program, 194 publicly owned treatment works (POTWs) are covered and report to EPA Region 2.

Within EPA Region 2, the Division of Environmental Planning and Protection (DEPP) and the Division of Enforcement and Compliance Assistance (DECA) carry out the bulk of program activities. The Division of Environmental Science and Assessment (DESA) may at times provide support through sampling, analysis, and quality assurance. In addition, the Office of Regional Counsel provides support and input on issues related to policy and enforcement.

Region 2 staff resources used for the pretreatment program in New York State are estimated at four to five full-time equivalent (FTE) staff members. Contract resources used for the New York pretreatment program has averaged about \$25,000 per year in recent years for pretreatment audits. Less than one FTE is used for direct NPDES activities on Indian lands. NPDES resources at Region 2 have changed little in recent years.

2. State Program Assistance

EPA Region 2:

Region 2 is in the development and approval of New York State pretreatment program. State funding for necessary staff has prevented NYSDEC from formally seeking pretreatment program approval. New York State reports that attention to other priorities has hampered pretreatment authorization efforts.

For biosolids, NYSDEC has expressed interest in obtaining partial authorization (for biosolids recycling but not for incineration) but is hampered by a lack of resources to expand in this area. Again, New York State reports that attention to other priorities has hampered biosolids authorization efforts.

3. EPA Activities in Indian Country

EPA Region 2:

Outreach to the seven federally recognized Indian nations and efforts to build the Indian Nation environmental program, have grown in the past several years through the efforts of Indian Nations and Regional program staff and enhanced communication between the Indian Nation leadership and EPA senior managers. Program grants and technical assistance to Indian Nations have increased. Grants under the General Assistance program, as well as program-specific grants, have supported the development of

² The National Data Sources column on the Management Report, measure #2, does not capture these permits because the Region did not provide a list of EPA-issued permits for use in developing the backlog report, which was used for this measure. The permits are entered in PCS, with permit numbers beginning with "SR."

the Indian Nation's environmental capabilities. The Region has a Regional Indian Program Coordinator, an Indigenous Environmental Affairs Specialist, and program staff and managers who carry out activities and outreach efforts for the seven federally recognized Indian Nations located in Region 2.

The Regional Indian Program Coordinator heads up the Regional Indian Workgroup. Each Region 2 program and the Region 2 Office of Regional Counsel have designated a Regional Indian Workgroup member to serve as their primary representative participating in the workgroup to prepare for and schedule meetings between EPA managers and Indian Nation leaders, and develop a Regional Indian Program Strategy. Further, this workgroup identifies key challenges faced in the Region's implementation of the Agency's Indian Policy, and the workgroup has recommended actions to address these issues.

Region 2 has designed a training program entitled Training on Working Effectively with Indian Nations and Indigenous Peoples to provide Region 2 employees with the necessary knowledge and skills to assist them in working with Indian Nations and indigenous peoples and in implementing the Agency's Indian Policy.

In November 2004 the eighth annual EPA Region 2 and Indian Leaders meeting was held. Region 2 remains committed to senior-level communication with Indian Nations.

Region 2 recently developed a tracking system for Indian program action items.

Through the Senior Environmental Employment Program, Region 2 employs two "Circuit Riders," who provide technical assistance and coordination functions.

Region 2 program staff are responsible for permit issuance and compliance activities for two St. Regis Mohawk Tribe facilities that discharge to surface waters: a wastewater treatment plant and a drinking water plant. The NPDES permit for the wastewater plant is expired and is awaiting reissuance. The NPDES permit for the drinking water plant is current. In addition, Region 2 has maintained a current NPDES stormwater general permit for construction activities and has provided periodic mailings to the Indian Nations to keep them up to date on stormwater program developments.

Sovereignty issues are important to all Indian Nations, and this issue is thought to be the primary reason that the Oneida Nation does not actively participate in EPA programs (such as grants).

4. Legal Authorities

EPA is conducting a comprehensive review of the State's legal authorities. This review has not yet been completed. As a result, EPA is reserving this section of the profile; when the legal reviews are complete, EPA will update profiles to include the results of the reviews.

5. Public Participation

An evaluation of the State's legal authorities regarding public participation will be included in the legal authority review. As noted above, the legal authority review section of this profile is reserved pending completion of the legal authority review.

The State of New York:

NYSDEC's public participation requirements for SPDES permits are specified in the Uniform Procedures regulations (contained in 6 New York Environmental Conservation Rules and Regulations (NYCRR) Part 621) and Permit Hearing Procedures regulations (contained in 6 NYCRR Part 624). These regulations ensure that the public has a meaningful opportunity to engage in the permit review process. Pursuant to these regulations, drafts of new SPDES permits and draft modifications to existing SPDES permits (other than minor permits) are available for a public review for a minimum of 30 days. The notification of availability for review is provided to the applicant, EPA Region 2, appropriate health departments, appropriate international or interstate commissions, and parties that have expressed interest in a particular permit.

In addition, the general public is notified about new SPDES permits through local, general circulation newspapers as well as through the State's Environmental Notice Bulletin (ENB). The ENB is an important conduit for public participation. An official publication of NYSDEC, produced since 1976 as required by the Environmental Conservation Law (ECL), it carries official notices regarding permits, declarations, public hearings, rulemaking, and guidance.

If there is sufficient public interest in a permit application, NYSDEC may hold a legislative hearing, which is similarly announced to interested parties and the general public. NYSDEC considers public comments on permits and frequently makes changes to permits as a result of public comment. The NYDEC prepares a written response to public comments that explains whether or not modifications are to be made to the permit and why.

The public has access to all permit records, including fact sheets, permits, enforcement actions, and correspondence through the State Freedom of Information Law and NYSDEC's Access to Records regulations (6 NYCRR Part 616). The regulations allow the public to request access to or copies of all documents that NYSDEC has that are not confidential, deliberative, or privileged. NYSDEC does not provide direct access to permits or compliance information through the Internet. Because NYSDEC is a direct user of PCS, compliance information is accessible through EPA's Enforcement and Compliance History Online (ECHO) system.

In 1995, the Discharge Notification Act amended State law to require that surface water dischargers post a sign at their outfalls to identify an SPDES permit number and a local public repository where the public can view the permit and the discharger's discharge monitoring reports (DMRs).

To further ease public access to permit information, NYSDEC is preparing a department-wide, multimedia initiative to improve public access by providing permit information on its Web site. This multiyear project should be completed in 2005.

NYSDEC does not have a definition of “public” in its regulations. When reaching out to the public, NYSDEC tries to be as inclusive as possible. The only limit on public involvement in the SPDES program is when there is an adjudicatory hearing. In this process the Administrative Law Judge has the authority to limit priority status to the permittee and others who demonstrate an interest in a significant issue.

The overall effectiveness of NYSDEC’s public participation process is evident in the strong stakeholder support throughout many of its recent activities, such as the process of codifying the Environmental Benefit Permit Strategy (EBPS) and development of the CAFO and Stormwater Phase II requirements. NYSDEC actively pursues partnerships with stakeholder groups early in the process to solicit input and feedback. For example, since 1979, the Water Management Advisory Committee has provided a focus and a forum for discussing water program policies and issues. Made up of environmental, business, municipal, academic, and citizen interests, the committee serves as a sounding board for evolving policy, as a communications channel on program and regulatory directions to the sectors the members represent, and as a “reality check” to gain perspective and insight on water program priorities.

EPA Region 2:

EPA makes NPDES permit and compliance information available on its Web site. Envirofacts is an online point of access to many EPA data systems, including EPA’s PCS, which is EPA’s national database of information about NPDES permits.

Some individual NPDES permits and fact sheets issued by the state may also be accessed via EPA’s Web site. EPA began an effort to include State permits (in PDF files) on the Internet in 2003. Instructions for accessing these documents are available at <http://www.epa.gov/npdes/permitdocuments>. As of July 2004, only three New York State permits are posted on this site, although more permits will be added over time.

6. Permit Issuance Management Strategy

The State of New York:

In a recent review EPA identified nine major permits (2.5 % of the universe of major permits) that had been expired for more than 10 years. NYSDEC provided explanations for the delays (most of which are related to litigation) and eliminated one permit from this backlog, leaving eight major permits that have been expired for more than 10 years. For minor facilities covered by individual permits, there are 44 permits that have been expired for more than 2 years and 13 permits that have been expired for more than 10 years.

More generally, NYSDEC has been very successful in maintaining a high percentage of current permits in recent years (better than the 90% current national target). In large part, this success results from implementation of the EBPS. In 1994, the EBPS was codified into law (ECL section 17-0817). In its implementation of this strategy, NYSDEC administratively reissues almost all expiring permits without change. Substantive changes to permits are made through permit modifications. Decisions on which permits are to be modified are made on the basis of the State’s EBPS, which is a ranking/scoring system based on the expected environmental benefit of a permit change. Under EBPS, permits are provided with a numeric score for 13 factors, such as the need for toxicity testing, existence of substantial public

concern, or establishment of a new water quality standard. The scoring system also uses multipliers, which provide higher scores for actions that will improve water quality.

NYSDEC, in its self-assessment, identifies the EBPS as an innovation that significantly improves program efficiency.

Over the past 2 years, EPA and NYSDEC have initiated discussions regarding EBPS and conformance with federal NPDES program requirements. EPA and NYSDEC have discussed the fact that the State's "short form" renewal application is inconsistent with federal requirements. EPA has also expressed concern that there may be inadequate opportunity for public participation and possible appeals when a permit is administratively reissued. EPA and NYSDEC have discussed the idea that certain kinds of permits should, in any event, not be subject to administrative reissuance under the EBPS program; specifically, if it is necessary to incorporate into a permit new effluent limits based on a new TMDL or a new or revised effluent limitation guideline, the former permit should not be administratively reissued pending the incorporation of such new limits. EPA Region 2 and NYSDEC are now engaged in an effort to revise how the State implements the EBPS to ensure consistency with federal NPDES requirements, while maintaining the beneficial efficiencies of the EBPS.

Table 1: Percentage of Facilities Covered by Current Permits in New York
(State-Issued Permits)

	2000	Nat'l Avg.	2001	Nat'l Avg.	2002	Nat'l Avg.	2003	Nat'l Avg.
Major Facilities	96%	74%	96%	76%	97%	83%	97%	84%
Minor Facilities Covered by Individual Permits	82%	69%	96%	73%	95%	79%	94%	81%
Minor Facilities Covered by Individual or Non-stormwater General Permits	N/A	N/A	N/A	N/A	96%	85%	95%	86%

Source: PCS, 12/31/00; 12/31/01; 12/31/02; 12/31/03. (The values in the National Data Sources column of the Management Report, measures #19 and #20, are PCS data as of 6/30/04.)

EPA Region 2:

The two permits issued to the St. Regis Mohawk Tribe are minor permits. The wastewater plant permit expired in 2000 and is pending reissuance. The water plant permit is current. Since the universe is so small, no special strategies for management have been developed.³

³ Because the Region did not provide a list of EPA-issued permits for the backlog report, data related to these permits is not captured in the National Data Sources column of the Management Report, measure #20 (see also measure #2 and section I.1). PCS correctly reflects the issuance of the water plant permit.

7. Data Management

The State of New York:

The State SPDES program's reporting system consists of several databases, that, in combination, provide an accurate and up-to-date inventory of sources and compliance information. The five major databases are

- PCS for traditional SPDES facilities (EPA major facilities and State significant minor facilities)
- SPDES Information System (SIS), used to display DMR information
- Bureau of Water Compliance Program, a FoxPro system used to track compliance items for all SPDES facilities
- Water Compliance System (WCS), used to track inspection information for all SPDES facilities
- FEEE System, which is used to maintain data for fee billing (as well as serving some additional purposes)

To determine the complete compliance status of a facility, information from all five of these major databases and information from additional minor systems may be needed. In addition, separate Microsoft Access databases are used to track the CAFO and stormwater programs.

New York State frequently uses EPA's PCS and the State uses it effectively to enhance the SPDES Compliance Monitoring program. EPA Region 2 believes that NYSDEC's maintenance of PCS is an important program strength. NYSDEC exchanges data by either entering the data directly into PCS using PCS ADE or uploading the data in batches in 80 card format. New York is among the top three States in the country for overall data completeness for the facility and pipe data elements tracked as part of the PCS clean-up project. EPA's modernization of PCS is a high priority for NYSDEC, and NYSDEC has been actively participating in EPA's PCS modernization workgroup. NYSDEC has volunteered to be one of 10 State participants in Version 1 of Phase II of EPA's new system, ICIS-NPDES (modernized PCS). Once the new system is available, all data will be entered in ICIS.

In addition, NYSDEC has several data management initiatives under way to integrate databases, enhance public access and monitor compliance more efficiently. One initiative is building WCS, which in Phase I would allow inspectors to input detailed inspection information into the data system. The long-term goal is to include all State environmental and natural resource data.

NYSDEC has also developed a detailed Statewide geographic information system (GIS) with many layers of geophysical and environmental information that can be overlain into a seamless, three-dimensional electronic map of the State. One of the layers developed by NYSDEC in collaboration with the U.S. Geological Survey (USGS) and EPA is a high-resolution version of the National Hydrography Dataset (NHD), and NYSDEC is working to develop the link between PCS and NHD to connect permittees to the water bodies to which they discharge.

Self-monitoring data reported by permittees on their DMRs have been shown through correlative regulatory sampling to provide accurate and reliable discharge information. In FY2002 NYSDEC issued a DMR instruction manual and conducted extensive training to improve the quality of DMRs. The State has a strong laboratory certification program administered by the New York State Department of Health, which helps ensure high-quality water data.

NYSDEC enters the Water Enforcement National Data Base data elements for all the programs the State is approved to administer. NYSDEC collects latitude and longitude data for facilities and outfalls on permit applications. This data are entered into PCS. Several years ago NYSDEC undertook a project to validate locational data using the Global Positioning System (GPS), GIS, and site visits. This project validated 95% of facility locations and over 60% of outfall locations.

NYSDEC enters permitting and enforcement information into PCS daily, and the information is timely and accurate. NYSDEC uses a State system to collect detailed inspection information because PCS tracks only a few items on inspections. NYSDEC uploads the inspection information into PCS monthly. NYSDEC uses EPA's edit/audit reports and the Violation Recognition Report to ensure data quality. Looking ahead, NYSDEC expects to continue to use both PCS and State systems.

EPA Region 2:

Region 2 supervisors use simple tracking logs to monitor and document pretreatment audits. In addition, a correspondence log is maintained for pretreatment program modifications so that supervisors have ready access to the status of any pending program revision. Also, the Region maintains an inventory of CIUs in areas where there is no approved pretreatment program

No data systems have been developed for the Indian NPDES program. EPA Region 2 has coordinated with EPA Headquarters to accommodate input of the two St. Regis Mohawk Tribe permits into PCS using permit numbers beginning with "SR" (to denote the St. Regis Mohawk Tribe). Certain glitches remain and have complicated successful input of DMR data into PCS for these two facilities.

For pretreatment, PCS data input is completed for audits and pretreatment compliance inspections.

Section II. Program Implementation

1. Permit Quality

The State of New York:

State permit application forms are designed to generate information in a format that simplifies permit development. In the late 1990s NYSDEC planned and implemented a comprehensive updating of the permit writers' guidance for POTWs and industrial permits (TOGS 1.2.1, Industrial Permit Writing; TOGS 1.3.3, SPDES Permit Development for POTWs). These manuals are step-by-step guides for permit writers to follow in drafting permits. The SPDES information system database has been updated to provide division-wide desktop access to permit limits and self-monitoring data. Checklists and peer reviews are used in the course of permit development. In addition, supervisors review and approve permits prior to public notice. Complicated permits are written in the central office, sent to the Regional office, where the field inspector conducts a review and a "reality check" (another method of quality assurance), and from there the permit goes to the Division of Environmental Permits, and then to the public.

EPA Region 2 conducts periodic Permit Quality Reviews (PQRs). The most recent review was conducted in December 2003 and the previous review in July 1993. One weakness identified in both PQRs and not yet been successfully addressed is a lack of information in fact sheets regarding development and calculation of water quality-based limits. EPA and NYSDEC plan follow-up discussions about the December 2003 PQR in fall 2004.

EPA Region 2 completes a cursory review of all permits provided. More detailed review is completed for certain permits (for example, all permits for combined sewer overflows (CSOs), and all permits that implement approved TMDLs). Over the past few years, EPA Region 2 has provided a few comment letters with questions or recommendations regarding draft permits.

NYSDEC's implementation of the EBPS (previously described) has resulted in fewer opportunities for EPA to review State permits. In general, NYSDEC administratively reissues most permits without change, and EPA Region 2 does not review these permit actions for adequacy. Instead, Region 2 has focused oversight activities in priority areas.

In addition to communicating on specific permits, EPA and NYSDEC work together on policy matters (such as CSOs, sanitary sewer overflows, phased TMDLs) that affect how the State develops permits.

EPA Region 2 has made some use of the standardized national permit quality review tools (i.e., permit quality checklists and central tenets) in oversight activities, primarily during the completion of periodic PQRs.

PQRs: NYSDEC's permitting program addresses whole effluent toxicity (WET). Although the State has not imposed WET limits in permits to date, it does have a WET program, which includes WET testing in permits, Toxicity Identification Evaluation/Toxicity Reduction Evaluation requirements, a quarterly report developed by the State summarizing toxicity activities, and potential imposition of WET limits. As

addressed more fully below, NYSDEC is working on revisions to its TOGS dealing with WET to include how incorporating WET limits into permits would be addressed.

New York State regulations at 6 NYCRR 703.2 have several narrative standards, including regulating no toxics in toxic amounts. Numeric guidance values and standards interpret the “no toxics in toxic amounts” parameter. The SPDES permit Drafting Strategy requires that aquatic toxicity testing be considered when certain questions arise concerning the setting of water quality-based effluent limits (WQBELs) for specific chemicals. The authority to require toxicity testing is found in 6 NYCRR 702.16 (b). The intent of toxicity testing is to ensure that no chemicals are discharged to surface waters in amounts toxic to aquatic life. The following factors may determine the need for consideration of effluent toxicity testing:

- The presence of substances for which ambient water quality criteria do not exist.
- Uncertainties in the development of TMDLs, wasteload allocations (WLAs), and WQBELs, caused by inadequate ambient data and/or discharge data, high natural background concentrations of pollutants, and available treatment technology.
- The presence of substances for which WQBELs are below analytical detectability.
- The possibility of complex or synergistic interactions of chemicals.
- Observed detrimental effects on the receiving water biota.
- Toxicity testing done by NYSDEC or EPA that indicates a problems
- Municipalities with industrial waste pretreatment programs.

TOGS 1.3.2 is being revised to conform with the Great Lakes Initiative, primarily to address when a WET limit based on “reasonable potential” should be developed. Some of the changes are already being implemented. New York State expects to finish this revision in early 2005. New York State uses various application factors in the TOGS, which refers to and conforms with EPA methods in its Technical Support Document for Water Quality-Based Toxics Control. Water quality engineers determine when WET testing is necessary. New York started as a chemical-specific program, and WET testing is used as a backup when chemical-specific guidance does not protect against toxicity. Approximately 150 dischargers in the State go through WET testing.

EPA Region 2:

Staff and management have worked together to develop quality permits for the two St. Regis Mohawk Tribe (SRMT) plants. For example, for the water treatment plant, significant efforts were made to develop permit limits based on best professional judgement by evaluating other permits and performance for similar plants in the Region. Regarding water quality, the discharge of pathogens and ammonia from the wastewater treatment plant is being evaluated.

Region 2 has not imposed WET requirements to date in any permits issued to Indian nations.

2. Pretreatment

The State of New York:

NYSDEC is not authorized to implement the pretreatment program and has not sought such authority due to resource constraints and other priorities. EPA Region 2 is the approval authority in the State. For certain POTWs that have design flows of less than 5 million gallons per day (MGD)—for example, those with industrial wastewater contributions, New York State implements “mini-programs,” which are not approved by EPA. These mini-programs for POTWs develop local limits and a pretreatment sewer use ordinance to protect against pass-through and interference due to industrial user discharges. EPA Region 2 maintains a list of the SIUs discharging to POTWs without EPA-approved pretreatment programs. Currently, there are 41 known SIUs on this list.

Over the past year, NYSDEC has reduced its support to EPA’s implementation of pretreatment activities by eliminating pretreatment compliance inspections.

EPA Region 2:

The EPA Regional Office has responsibility for both implementation and oversight of the pretreatment program in the State. On November 24, 1992, EPA Region 2 and NYSDEC entered into an interim memorandum of understanding (MOU) for shared pretreatment program oversight activities in New York State. In accordance with the current work plan agreement, NYSDEC has drafted a proposed revision to the MOU, which reflects the reduced level of State support noted above.

Of the 605 NPDES-permitted POTWs in New York State, 89 are addressed under 57 approved pretreatment programs. The majority of the SIUs in New York State are covered under the approved pretreatment programs. Under these approved programs, permits have been issued to 1,136 SIUs. The pretreatment program in Region 2 is administered by two of the Region’s divisions. The DEPP performs pretreatment program audits and is responsible for the review and approval of general program changes, sewer use ordinance changes, local limits, fundamentally different factor requests, and removal credit requests. The DECA performs pretreatment compliance inspections, provides compliance assistance, initiates enforcement actions (including issuance of administrative orders and penalty orders), participates in multimedia industrial user inspections, reviews annual reports, reviews and approves enforcement response plans, coordinates with the State and POTWs, coordinates with the DESA for industrial user sampling inspections, and performs oversight of CIUs that are not in an approved pretreatment program.

Region 2 provides outreach to the POTWs by conducting an annual workshop in which program updates are provided. The workshops also serve as a forum for POTWs to raise technical questions. Because the State is so geographically large, the workshops are provided in three different locations.

The Region maintains an inventory of CIUs discharging to POTWs without approved pretreatment programs, and as of October 2003, the Region had identified 41 SIUs that are not covered by an approved pretreatment program. The Region does not have legal authority to issue permits to industrial users covered under the pretreatment program; instead, when necessary, the Region uses its information gathering authority under 308 letters to require reporting and issues administrative orders and administrative penalty orders to ensure compliance with all of the reporting requirements of 40 Code of Federal Regulations (CFR) 403.12 (which requires baseline monitoring reports, twice per year

compliance reports, and other reports). The Region also conducts compliance and sampling inspections at selected industries.

The SIUs and CIUs are primarily regulated by the approved pretreatment programs. For smaller POTWs, New York State also has “mini-programs,” which are not approved by EPA. The mini-programs include the development of local limits and a sewer use ordinance.

DEPP staff members perform pretreatment program audits a minimum of once every 5 years. Most audits include inspections of industrial users. Pretreatment audit reports are generally completed within 90 days of the field work. Responses to the audit reports are requested within 60 days of the report. Outstanding deficiencies identified by DEPP during audits are referred to DECA for formal enforcement (e.g., administrative orders).

POTWs submit pretreatment reports annually or semiannually. Reports are usually reviewed within 60 days of receipt. Follow-up actions are conducted through phone calls, emails, and subsequent inspections.

Of the 605 NPDES-permitted POTWs in New York State, 526 POTWs (87%) have a design flow of less than 5.0 MGD and do not meet the flow threshold to require a pretreatment program. EPA Region 2 has identified one additional POTW that will expand its design flow to more than 5 MGD. EPA is working with NYSDEC to add a schedule for the development of the pretreatment program to the POTW’s NPDES permit so that the program should be approved within 1 year of the completion of the plant expansion as required by 40 CFR 403.8(b). DEPP staff members work on new program approvals and modifications to existing programs as time permits with assistance from the Office of Regional Counsel.

For Indian lands, Region 2 does not need to implement pretreatment. According to the NPDES permit application for the St. Regis Mohawk Tribe, there are no industrial discharges to the wastewater treatment plant. The system’s contributors are only domestic dischargers and food establishments.

3. Concentrated Animal Feeding Operations

The State of New York:

In the mid-1990s, NYSDEC developed a CAFO permitting program in conjunction with various agricultural partners. A general permit, issued in July 1999 with broad support from stakeholders, included the following elements:

- Permit coverage required for all medium and large CAFOs
- Permit implemented the current effluent guideline waste retention requirement
- Comprehensive nutrient management plans must be certified by a certified Agriculture Environmental Management planner

As of June 2004, there were 656 permitted CAFOs in the State⁴, and about 350 of them had management plans as of that date. All large CAFOs (136) have developed plans. The State's general permit established a compliance date of no later than June 30, 2004, for the completion of management plans.

New York reissued its CAFO general permit in July 2004. The permit includes all nine minimum standards, consistent with the current federal rules. NYSDEC has broad, general legal authority to impose requirements in permits, and this authority was used to justify imposition of the new federal rules. The prior permit included eight of the minimum standards. Revision of State regulations to adopt the revised federal rules is under way, and it will provide a strengthened basis for the State's current CAFO general permit. Adoption of revised rules is scheduled for 2005 (the target date of November 2004 in measure #26 of the Management Report was estimated, March 2004, which has not been achieved).

Regarding inspections, NYSDEC reports that 69 large CAFOs have been inspected to date (there are 135 large CAFOs under the permit). Completion of additional inspections at large CAFOs is an opportunity for enhancement of the State program. Thirty-nine medium CAFOs have been inspected.

In conjunction with the New York State Department of Agriculture and Markets, NYSDEC implements a voluntary Agriculture Environmental Management (AEM) program which promotes effective use of best management practices (BMPs) at animal feeding operations that are not subject to CAFO permitting requirements.

State agricultural agencies developed a comprehensive, voluntary, site-specific tiered process for evaluating environmental risks on a farm. This work culminated in guidance detailing a number of BMPs for protecting water quality to give added assurance that smaller farms have an effective, scientifically based procedure to follow even if they are not required to obtain an SPDES permit. The New York State Department of Agriculture and Markets also developed a program to qualify and certify both private and public sector planners for the agricultural and environmental fields. As a result of this teamwork, Soil and Water Conservation District (SWCD) staff are available to investigate complaints and offer technical assistance to resolve issues. This "helping" element of compliance has greatly increased the overall rates of success for CAFO compliance.

In concert with the New York State Department of Agriculture and Markets, NYSDEC is encouraging animal feeding operations to participate in the five-tier assessment and implementation process outlined in the voluntary AEM program to further protect water quality from agricultural activities.

Nutrient management plans are developed by certified planners. SWCD oversees the certification process and carries out inspections. The AEM certification committee has established a rigorous process to train and certify planners.

NYSDEC developed a pilot CAFO Compliance Assurance Strategy (CAS) in 2001. Compliance assessment is performed in accordance with CAS. The purpose of CAS is to distinguish animal feeding

⁴ This is a small increase from the number of CAFOs (651) identified in 2003 and reported in measure #11 on the Management Report, which was as of March 2004.

operations that do not require a permit, from CAFOs, which must obtain a permit; ensure that all CAFOs obtain general permit coverage, guide NYSDEC field staff on responding to complaints and non-compliance at permitted CAFOs; guide staff on complaint investigation on animal feeding operations that have the potential to be CAFOs; and specify when DEC staff should seek technical assistance from Agriculture service agencies. Also included are sample notices of violation (NOV) and a pilot inspection report. The initial goal of the CAS was to ensure that all CAFOs were permitted. DEC is now addressing more complex issues such as the effectiveness of NMPs and staff training as well as the impact of the new EPA regulations. Neutral and targeted inspections are implemented through the work planning process. DEC's goal is to inspect all large CAFOs by March 31, 2004. To date 78 inspections have been conducted at 69 large CAFOs. DEC has conducted 46 inspections at 39 medium CAFOs in response to complaints or that were targeted based on facility density. Upon request by DEC staff, SWCD staff investigate complaints and provide technical assistance to help agricultural operations comply with proper management practices.

New York State and its partner agencies conduct monitoring to measure the effectiveness of nutrient management plans in a number of areas on a pilot as well as research basis. In particular, in the New York City Watershed and Lake Champlain basin, NYSDEC either conducts or supports monitoring of nutrient management plan effectiveness.

EPA Region 2:

To the best of Region 2's knowledge, there are no CAFOs on Indian lands requiring NPDES permits.

4. Stormwater

The State of New York:

For Phase I, all large and medium-sized municipalities, except New York City, were excused from permitting because of the CSO exemption. NYSDEC incorporated stormwater requirements into the 14 New York City POTW permits to satisfy Phase I permit requirements. Phase I industrial and construction general permits have been issued. The Phase I industrial permit that expired in late 2003 is expected to be reissued in 2005.

For Phase II, in January 2003, NYSDEC issued a municipal separate storm sewer system (MS4) general permit and a construction general permit (covering sites down to 1 acre) that replaces the original Phase I construction general permit (which covered sites greater than 5 acres), thereby providing the opportunity for timely permit coverage for all Phase II dischargers. In addition to automatic designations, NYSDEC implemented municipal designation criteria, which resulted in permit requirements for the entire New York City "east of Hudson" watershed, most of eastern Long Island, and all of eastern Westchester County.

All Notices of Intent (NOIs) (for all general permits) are tracked electronically (but not DMR data collected under general permits).

In its self-assessment for this NPDES integrity effort, NYSDEC made the following additional points regarding stormwater:

- Stormwater runoff is a primary source of water quality impairment for 51% of waters requiring a TMDL and for 95% of impaired shellfish waters.
- About \$25 million in State funding has been provided since 1996 to assist communities with stormwater programs.
- NYSDEC highlights the success of its stormwater program through effective partnerships and strong stakeholder support.
- All but one of the 465 municipalities regulated under Phase II have obtained permit coverage.

EPA Region 2:

For Phase I, Region 2 issued construction and industrial general permits for Indian lands. However, no facilities or projects filed for coverage under these permits. Despite this lack of activity, Region 2 chose to reissue the construction general permit to provide an opportunity for projects to comply with Clean Water Act (CWA) requirements without undue delay. Region 2 modified the construction general permit to conform with the Phase II threshold of 1 acre. The National NOI Center is used for the construction general permit. The State issues all other permits for stormwater discharges associated with industrial and municipal activities (that is, for all areas of New York State except Indian Country).

5. Combined Sewer Overflows/Sanitary Sewer Overflows

The State of New York:

Combined Sewer Overflows: With few exceptions, the combined sewer systems in New York are operated by municipal entities or sewer districts, which are responsible for both the collection systems and treatment plants. NYSDEC has implemented the combined sewer overflow (CSO) program through individual permits issued to these municipal entities or sewer districts. NYSDEC has developed 15 BMPs, which cover EPA's nine minimum controls. For most of the large CSO communities, New York has imposed all 15 BMPs in its SPDES permits, but permit actions are still needed for many smaller CSO communities to include all the applicable BMPs. EPA Region 2 and NYSDEC expect to develop a strategy by December 2004 that will outline permit actions needed to finish the BMP permitting effort (as well as certain LTCP actions).

Regarding long-term control plans (LTCPs), there is a wide range of progress. Notable successes include the Monroe County/Rochester tunnel system, which has been operating successfully for years; the Westchester County/Yonkers swirl concentrators; and the 6.8-million-gallon CSO storage tank in Auburn. However, some communities have resisted State efforts to impose LTCP requirements in permits (in particular, the Albany area). Some communities are actively developing LTCPs (Niagara Falls, Buffalo, and Binghamton). In New York City, significant progress is being made (construction of retention tank at Flushing Creek), but other elements of the NYC CSO program (embodied in a consent order) are far behind the original schedule. A revised consent order for New York City is pending final signature by the State and City (as of late July 2004). In the Albany area, issues related to regional/local responsibilities and funding have delayed LTCP development, but progress is being made. Over \$2 million in State funding has been secured, and issuance of final State permits to impose LTCP development obligations are expected in 2005.

EPA Region 2's records show the LTCP status statewide for the universe of 75 permittees to be as follows as of July 2004: 9 have implemented LTCPs; 15 are currently required to develop and implement an LTCP; and an additional 17 are required to develop an LTCP. Compared with the CSO measure in the Management Report (item #25, which shows 53.3%), this accounting reflects one additional accomplishment (41 out of 75, which is 54.7%).

NYSDEC completes detailed reviews of LTCPs submitted by permittees before LTCP implementation is required.

Incorporation of LTCP requirements into SPDES permits is a priority for both EPA Region 2 and NYSDEC, and additional progress is expected in 2004, 2005, and 2006. As noted above, EPA and NYSDEC are coordinating the development of a strategy that will address nine minimum controls and LTCP permitting. Senior managers from both agencies are engaged in this effort, which the Region views as an important opportunity for enhancement of the CSO program.

In order to enhance EPA's understanding of water quality impacts of CSOs and the status of permit, orders, and local CSO mitigation efforts, EPA Region 2 is compiling a "CSO Compendium," which will summarize relevant CSO information and allow for informed discussions between EPA and the State about LTCP development and implementation status. Completion of this effort could result in agreement between EPA and NYSDEC that LTCPs are not needed for certain small CSO systems. In other words, the Region seeks to closely track all State CSO permits; CSO enforcement orders; and CSO planning, design and construction activities.

For one basin in New York City (Paerdegat Basin, a tributary to Jamaica Bay), New York City has completed an analysis that addresses compliance with water quality standards, and the City has concluded that even with the construction of a CSO retention facility costing \$300 million, certain criteria (e.g., dissolved oxygen and bacteria) would not be met at all times. As a result, the City has submitted a use attainability analysis (UAA) to NYSDEC for review.

Finally, in its self-assessment for this NPDES integrity initiative, New York State has made these additional points regarding CSOs:

- The CSO problem is vast. It is estimated that in New York City alone, \$2 billion is needed to mitigate adverse impacts.
- New York State has made funding available, but federal financial assistance is needed, especially for hardship communities.
- EPA support and assistance are needed to address legal issues in multijurisdictional situations.
- New York State law (and permits) require posting of signs at CSO outfalls.

Permit conditions require that dischargers notify NYSDEC of any bypasses, treatment reductions, process upsets, or chlorination interruptions, except that wet-weather CSO discharges in accordance with a wet-weather operating plan need not be reported. Permittees are also required to post signs at all outfalls (including CSO outfalls) that ask the public to report any discharge observed during dry weather.

Sanitary Sewer Overflows: NYSDEC has incorporated certain SSO points into permits for the past 15 years and has regulated their use through SPDES permit conditions. Currently, there are 36 such SSO permittees, with a total of 269 SSO points regulated through permit requirements. NYSDEC has an SSO Compliance and Enforcement Response Guide, which provides guidance on the various types of SSO discharges and appropriate permit and enforcement responses. The SSOs identified in permits are of three types: (1) permanent emergency pump station overflow structures (69 as of May 2004); (2) overflow retention facilities (ORFs) (11 as of May 2004), and: (3) any other SSO discharge that requires abatement (189 as of May 2004).

NYSDEC's SSO permit conditions identify all SSO discharges, prohibit Type I SSO discharges except under emergency conditions, place limitations on Type II SSO discharges, require abatement of Type III SSO discharges, require the reporting of SSO discharges, require BMPs for the collection system, and require a collection system monitoring and maintenance program. NYSDEC is working to remove Type III SSO discharges from permits and to incorporate their abatement requirements into enforcement actions.

NYSDEC identified 36 additional SSO cases in the SSO Enforcement Strategy (submitted by EPA Region 2 to EPA's Office of Enforcement and Compliance Assurance (OECA) in 2000) for which SPDES permit conditions did not exist. Of these 36 SSO cases, NYSDEC has taken enforcement actions (18 cases), is in the process of developing an enforcement action (2 cases), or is addressing them through appropriate permit conditions (16 cases).

On the basis of SSO inspections conducted by Region 2, NYSDEC is preparing several SSO enforcement cases. NYSDEC is also using 104(b)(3) funds to track down SSO problems in satellite communities and require correction through permit requirements.

Finally, regarding overflow retention facilities, it is noted that the facilities have historically been permitted to discharge under the SPDES program at levels less stringent than secondary treatment. In the recent past, Region 2 and NYSDEC have generally agreed that any new wet-weather treatment facilities must be subject to secondary treatment standards. Looking ahead, Region 2 expects to initiate discussions with NYSDEC regarding the historical ORFs. Region 2 will seek development and implementation of policies and programs to reduce pollutant discharges and to ensure conformance with applicable regulatory standards.

The State Environmental Conservation Law mandates public notification during SSO events. Also, municipalities are required to post a sign at outfalls providing local and State contacts for the public to call for additional information.

EPA Region 2:

There are no CSOs on Indian lands in Region 2.

There are no documented SSOs. There was one allegation of an untreated discharge a few years ago. Region 2 coordinated with the relevant Indian Nation, but confirmation of the discharge could not be provided.

6. Biosolids

The State of New York:

The State of New York is not authorized for biosolids.

EPA Region 2:

EPA Region 2 has the full authority to administer the sludge program. Responsibility for this program within Region 2 resides with the DECA. NYSDEC has not sought approval to administer the Part 503 sewage sludge program. NYSDEC administers its own sewage sludge program through its Division of Solid Waste and Hazardous Materials. NYSDEC has incorporated the 40 CFR Part 503 land application requirements into the State's solid waste regulations at 6 NYCRR Part 360. The NYSDEC issues permits with sludge requirements to facilities that land apply their sludges.

EPA Region 2 receives annual sludge reports every year from 194 POTWs. The reports cover more information on biosolids management. Of 584 POTWs in the State of New York, 158 (27%) in New York State beneficially use their sludge. During calendar year 2002, New York generated 327,300 dry metric tons (DMT) of sludge, 166,350 DMT (of which 50.8 % of the total sludge generated in New York) were beneficially used or applied to agricultural land.

DECA tracks submittal of the annual sludge reports through a word-processing document with a table of facilities and dates of reports received. Annual sludge reports are reviewed for compliance with the Part 503 regulations. Region 2 has not used the Biosolids Data Management System (BDMS) because of a lack of resources and concerns that data in BDMS might not be converted into PCS. DECA mails notice letters to the 194 POTWs covered by the biosolids program informing them of their responsibility to submit the annual sludge report to EPA on February 19 of every year.

DECA has issued enforcement actions (administrative orders and penalty orders) to different POTWs for violating the 40 CFR Part 503 land application requirements. Following EPA compliance assistance efforts and enforcement actions in 2000 and 2001, POTW compliance with applicable requirements improved.

Section III. NPDES Compliance Monitoring and Enforcement Response

In a separate initiative, EPA's Office of Enforcement and Compliance Assurance (OECA), EPA Regions, and the Environmental Council of the States have developed a tool for assessing State performance in enforcement and compliance assurance to ensure that States meet agreed-upon minimum performance levels and provide a consistent level of environmental and public health protection nationwide. OECA will use the State profiles to focus these efforts and identify areas needing further discussion and evaluation.

1. Enforcement Program

The State of New York:

New York State has for many years implemented an effective compliance monitoring and enforcement program. New York State's enforcement policies and procedures are consistent with national guidance and policies.

New York State's Enforcement Management System is composed of several documents. The overall framework is established in NYSDEC and EPA enforcement memorandum of agreements (MOA) for water. The MOA outlines and defines the responsibilities of DEC and EPA related to identification of the regulated community, data management and exchange, inspection protocols, creation of enforcement management systems, violation response guidance, lead agencies for NPDES enforcement, and EPA's oversight of the state's implementation of its compliance and enforcement program pursuant to NPDES authorization. TOGS 1.4.2, Compliance and Enforcement of SPDES Permits, defines NYSDEC's policy on compliance and enforcement activities relative to the NPDES and SPDES program, delineates the available enforcement options, and provides operating guidance needed by NYSDEC staff to implement the policy.

TOGS 1.4.1, "Water Integrated Compliance Strategy System" (WICSS), establishes criteria for identifying priority violations against the State's water resources and establishes procedures to ensure integrated responses to violations in a timely manner as well as establishing conditions to prevent their recurrence. The WICSS process ensures that NYSDEC compliance and enforcement resources are directed toward the violations that pose the greatest threats to public health and the environment.

TOGS 1.4.2 includes NYSDEC's water violation "Enforcement Response Guide", and penalty assessment guidance. NYSDEC uses a variety of responses to violations as appropriate, including oral communications, letters of notice, uniform administrative notices with or without an offer of settlement, uniform appearance tickets, consent orders, contested orders, referral to the Attorney General, and other specific actions such as sewer moratoriums as described in TOGS 1.4.2. Factors for penalty calculation include the significance of the violation in the regulatory scheme, environmental significance, economic benefit, violator culpability, cooperation, and recidivism. Economic benefit is calculated by using BEN, an EPA-designed program that considers the net present value of delayed capital investment, one-time non-depreciable expenditure, and avoided operations and maintenance expenses. NYSDEC maintains data on the number of actions completed and penalties collected in PCS.

The TOGS guides provide information on program delegation, special assignments, and explanation and technical detail for day-to-day operation of the DOW's responsibilities. The memos provide information for new employees; for interested, regulated, or otherwise affected members of the public; and for communication between the Albany Central Office staff and the nine Regional staff and local environmental agencies. TOGS is not a policies and procedures manual system, but rather a vehicle to provide timely, detailed guidance to water program staff.

TOGS guides are distributed so that each NYSDEC regional water engineer, bureau director, section chief, and the program attorney can maintain a complete set, including responsiveness summaries. In addition, TOGS that cover a technical, nonadministrative subject matter are also distributed without the responsiveness summary to county environmental agencies that provide support to the DOW's programs, county health departments, and EPA Region 2.

The TOGS guides are numbered and arranged by subject matter. For example, subjects related to the SPDES are grouped first, followed by groupings related to groundwater, water quantity, other technical subjects, and administrative subjects.

TOGS 1.4.1 and 1.4.2 mentioned above are the NPDES/SPDES program-specific compliance monitoring and enforcement management tools that specify NYSDEC's approach to identifying, prioritizing, and addressing corrective actions for a wide range of noncompliance problems (including significant noncompliance (SNC) violations, citizen concerns, wet weather [CSO, CAFO, stormwater, SSO, and the like]) in a timely and appropriate manner.

Through its enforcement guidance documents, procedures, and policies, NYSDEC factors in environmental impacts of enforcement actions through the penalty calculation process. Post-enforcement action ambient environmental assessment is not generally done. In a couple of cases New York has conducted before-and-after surveys. For example, in central New York, the Gloversville-Johnstown treatment plant discharges to the Cayadittan Creek, a small tributary of the Mohawk River. This plant had problems with industrial waste resulting in poor effluent quality, which caused severe water quality impacts. Intensive stream surveys were performed before and after permit renewal. As a result of NYSDEC action and plant construction, water quality improved dramatically and the State was able to upgrade the stream's classification. There are similar examples in Long Island Sound. In New York Harbor, permits and enforcement drove New York City to take action, and significant improvements have been documented in the annual harbor survey. Generally, New York relies on its comprehensive ambient monitoring program to assess the effectiveness of the NPDES program as a whole.

EPA Region 2's oversight of NYSDEC's compliance and enforcement program related to SNC, which represents a small fraction of the State's priority violations, are addressed through the NYSDEC and EPA Significant Noncompliance Action Program (SNAP). The SNAP process creates a structured dialogue between EPA and NYSDEC water compliance and enforcement staff on a quarterly basis, to ensure that timely and appropriate action is taken to address SNC.

WICSS (described above) is the primary process by which NYSDEC's central office oversees, assists, and tracks statewide water compliance activities. Every quarter, NYSDEC reviews PCS data for the State's 1,700 significant dischargers. Facilities in SNC are identified and the list is provided to the Regional Offices. NYSDEC staff then develop strategies for each facility in SNC to address

noncompliance. Facilities remain in WICSS until they return to compliance or a formal enforcement action is taken. WICSS is modeled after the SNAP program. The SNAP and WICSS processes factor in all available compliance assurance and enforcement measures to ensure effective and expeditious remedies for attaining compliance. They allow NYSDEC to consistently meet EPA criteria for timely and appropriate response to SPDES violations. New York State has not had a notice of violation (NOV) in 13 years for failing to take timely and appropriate enforcement action.

New York's response to SNC rates, compared with national rates, appears low. A major contributing factor is that New York translates a narrative standard for settleable solids into a numeric limit, which many municipal permittees find difficult to meet consistently. Two daily exceedances of the settleable solids parameter over a 6-month period can trigger SNC. Many times the appropriate response to these exceedances, if short-term, is not enforcement but technical assistance to the POTW. New York escalates cases to the State Attorney General where appropriate. New York has referred four cases in all to the State Attorney General from FY2001 to FY2003.

As New York redirects its compliance monitoring resources into wet-weather areas, additional enforcement work is needed, and this has increased the State's inspection activity over the past few years. Use of County Health Departments to do conduct some inspections has also increased the inspection numbers in past 3 years, notably in minor inspections involving sampling.

Regarding municipal wet-weather matters, New York recognizes that there is a need for an approach similar to CMOM for municipal long-term compliance. (CMOM is EPA's acronym for Capacity, Management, Operation, and Maintenance, which is a comprehensive approach to managing sewage flows during wet weather.) New York has initiated a survey of all permitted facilities and will undertake a second survey of satellite communities. The goal is to incorporate CMOM requirements in permits and to follow up with compliance monitoring and enforcement where needed.

All enforcement orders are entered into PCS and become subject to routine screening, detection, and enforcement response processes as described above. This includes tracking compliance with interim effluent limits and controls, reports, and compliance schedule actions due.

EPA Region 2:

As explained above, in the area of pretreatment, Region 2 has a comprehensive compliance monitoring program (audits, pretreatment compliance inspections, and inspections and sampling of industrial users in non-approved areas). Region 2 has taken a number of enforcement actions, as part of its program of escalating enforcement, to obtain compliance with program requirements. For example, in recent years judicial enforcement has been taken against Onondaga County for pretreatment violations. Administrative actions have been taken against New York City, Newburgh, Batavia, and Suffolk County.

Highest priority is given to instances of pass-through/interference caused by industrial users that a control authority has not appropriately addressed. SNC violations for pretreatment program implementation are addressed in a timely and appropriate manner.

The Region adheres to all national pretreatment enforcement and implementation guidance documents, including the CWA Penalty Policy. Region 2 internally tracks completion of all order and judicial decree

milestones through a local database. All submittals from the control authorities are reviewed for completeness. The Region uses a penalty escalation procedure.

2. Record Keeping and Reporting

The State of New York:

NYSDEC's SPDES program uses several data systems to manage and ensure that accurate, reliable, and complete information on compliance by NPDES facilities is maintained. In accordance with its NPDES Authorization and Enforcement MOAs, NYSDEC uses PCS to detect violations, maintain information on discharger compliance status, and report and track formal enforcement actions. PCS is the primary data system for this information.

NYSDEC's Regional Offices maintain facility files. NYSDEC's Central Office and Regional Offices maintain DME files. When formal enforcement is pursued, NYSDEC technical staff prepare a case report for use by the legal staff. The case report must include the rationale for any penalties sought, which would be used if it were necessary to resolve the enforcement action in court. The vast majority of enforcement actions are settled out of court.

3. Inspections

The State of New York:

New York State prioritizes inspection and compliance monitoring through its discharger classification process. Classifications are assigned based on public health concerns, environmental conditions, and potential risk. This discharger classification system divides the universe into significant and nonsignificant facilities, which is broader than EPA's major and minor facilities (all major facilities are State-significant, plus others). EPA Major facilities and State significant facilities receive higher priority for inspections and compliance monitoring. In addition, there are different compliance monitoring strategies for different types of permits, such as SPDES construction activities and CAFOs, and these strategies are tailored to the universe of facilities. For traditional SPDES facilities, New York uses a Neutral Surveillance Plan (NSP), a routine inspection regardless of the compliance status of the facility, plus additional inspections if probable cause exists. Consistent with EPA's nutrient compliance priorities for 2005–2007, NYSDEC is developing expertise and is shifting some of its resources to the inspection of wet-weather sources such as SSOs, CSOs, CAFOs, and stormwater. These wet-weather sources have been identified as major causes of the remaining water quality problems in New York.

File reviews and field inspections are integral components of New York's compliance monitoring program. A facility file contains permit applications, NYSDEC sampling, SPDES permits, DMRs, and compliance information (prior inspection reports, NOVs, and consent orders). NYSDEC also reviews self-monitoring data (reported in DMRs) when received; violations identified on the report may individually trigger a compliance inspection. A facility's file review is part of the preparation for a comprehensive inspection. Additional file reviews are conducted when needed through the implementation of WICSS and SNAP processes, which help identify facilities that are in violation of their permits. Inspections are based on a number of items, including violations of permit limits, consent orders, and prior inspection data.

Different inspection and monitoring strategies are established for broad classes of facilities such as municipal and industrial facilities, CAFOs, stormwater MS4s, and stormwater construction activities. Priorities are set annually in collaboration with EPA Region 2 through the PPG. New York has an aggressive inspection program for significant dischargers, conducting 2,440 inspections in FY2003, up 7% from the 2,283 inspections reported in FY2002. New York also relies on partnerships, especially with the New York City DEP, local health departments, and the Interstate Environmental Commission (Long Island Sound). These partners help conduct inspections in various parts of the State for NYSDEC. This allows NYSDEC and its partners to expand their inspection coverage to more facilities, which ensures better compliance. NYSDEC inspects at least 80 percent of EPA major facilities and 60 percent of State significant facilities annually. Regional inspection priorities are established in the annual work plan. Factors considered in determining inspection priorities include the time elapsed since the last inspection and compliance status. A host of other factors are outlined in New York's inspection guidance.

EPA Region 2:

In the area of pretreatment, audits and PCIs generally are scheduled in order to meet overall national expectations (e.g., each program is audited every 5 years) without regard to risk. However, Region 2 does target some pretreatment compliance inspections to programs with a history of implementation problems.

4. Compliance Assistance

The State of New York:

Compliance assistance and pollution prevention are strategies that may be pursued on a case-by-case basis as determined through the WICSS and SNAP processes. NYSDEC has developed training and outreach modules for several industrial sectors. Pollution prevention strategies and concepts are integrated into these training modules. In addition, NYSDEC has a Pollution Prevention Unit that works with small industries to identify and implement pollution prevention strategies.

NYSDEC's wastewater operator outreach and assistance program is a key component of the WICSS. Compliance assistance is a tool that is integrated and coordinated with enforcement and facility monitoring. The delivery of training and seminars follows the approach set forth in the "Comprehensive Five Year Training Plan for Wastewater Operators and Inspectors." This plan calls for 100 seminars, workshops, and presentations to over 4,000 professionals in the regulated community over 5 years. On-site technical assistance is conducted at about 15 facilities each year to achieve SPDES permit compliance and improve effluent quality. The quarterly outreach newsletter, Operator Facts reaches 3,000 wastewater professionals. The publication covers the latest regulatory information, operational approaches, upcoming training, and resource materials. The outreach Web site is also an effective tool for communicating timely information to operators. Operator training seminars and workshops, on-site technical assistance, the Operator Facts newsletter and the Operator Outreach Web site focus on assisting communities to comply with regulations, improving plant performance, and ensuring long-term compliance.

EPA Region 2:

Two Regional initiatives that relate to pretreatment are sector efforts with hospitals and with colleges and universities. Both of these initiatives involve compliance assistance and self-audits, as well as an EPA enforcement component. In addition, as noted above, Region 2 has provided annual workshops for pretreatment program representatives for the past few years.

Section IV. Related Water Programs and Environmental Outcomes

1. Monitoring

The State of New York:

New York State has comprehensive ambient water quality monitoring that has evolved to include all the waters throughout the State and relies on extensive biomonitoring.

The Statewide Waters Monitoring Program (SWMP) is a conglomeration of various component monitoring programs: the long-running program for rivers; the Rotating Intensive Basin Studies (RIBS) sampling program; the Lake Classification and Inventory; the Citizens Statewide Lake Assessment Program, which uses volunteers to conduct additional lake monitoring; the Stream Biomonitoring Program and Toxicity Testing Program, which provide biological monitoring components; a Regulatory Sampling Program to monitor point source compliance; and other efforts.

The objectives of the SWMP include the comprehensive assessment of water quality of all waters of the State, including the documentation of good-quality waters; analysis of long-term water quality trends; comprehensive and integrated multimedia sampling; the characterization of naturally occurring or background conditions; and the establishment of baseline conditions for measuring the effectiveness of site-specific restoration and protection activities.

The SWMP is designed around three separate types of monitoring networks and activities: (1) water quality screening is conducted to provide a qualitative assessment of water quality at a large number of sampling sites; (2) intensive basin monitoring employs more frequent as well as more comprehensive and integrated multimedia sampling to provide more detailed water quality information for a smaller number of targeted water bodies; and (3) routine trend monitoring provides annual sampling of water quality and conditions at fixed sites across the State.

NYSDEC's database of water quality assessment information is the Waterbody Inventory/Priority Waterbodies List (or WI/PWL), which consists of data collected through the SWMP. It tracks the degree to which specific water bodies do or do not support designated uses. The WI/PWL serves as the basis for the water quality inventory prepared under CWA section 305(b) and the list of impaired water bodies prepared under CWA section 303(d). Segments are georeferenced through linkages to the National Hydrography Dataset (NHD) and through latitude/longitude data. Both linkages are cross-referenced in NYSDEC's corporate database. The WI/PWL database is continually updated. Each year, two or three of 14 drainage areas are updated with new monitoring data and information. These updates are scheduled to coincide with the conclusion of the statewide monitoring program that is also implemented on a rotating basin schedule. This approach provides monitoring and assessment coverage of the entire State over a 5-year cycle. The update process also includes a public participation component that provides opportunities for local partners and agencies to contribute information to be included in the update.

New York's monitoring program is designed to assess current conditions and long-term trends in water quality. The monitoring conducted by NYSDEC is in some cases sufficient to be used to establish

TMDLs, but for complicated TMDLs more intensive data must be collected or other data must be obtained from other sources such as EPA or the U.S. Geological Survey.

Concerning probabilistic approaches, NYSDEC has evaluated this concept through two pilot projects and found that probabilistic design was useful for CWA section 305(b) purposes, but that it did not provide the necessary information regarding location of impaired waters necessary for updates of the CWA section 303(d) list.

In the 2004 Performance Partnership Agreement workplan, EPA and NYSDEC have agreed to include a task for NYSDEC to evaluate its monitoring program and develop a strategy that will allow consideration of changes necessary to address all 10 elements in EPA's March 2003 guidance. The target date for completion of this task is February 2005. The comprehensive monitoring strategy will address the manner in which it will increase the number of State waters assessed to enhance the understanding and characterization of surface water quality throughout the State.

EPA Region 2:

Given the small universe of permitted facilities, coordination with NYSDEC's monitoring program has not been found necessary.

2. Environmental Outcomes

The State of New York:

Rivers and Streams: The most recent New York State section 305(b) report shows that nearly 80% of the State's assessed river and stream miles are considered to support their designated uses. A recent biological assessment effort focusing on aquatic life support uses found that 86% of the 1,532 sites monitored statewide fully support healthy aquatic communities. In addition, the percentage of sites assessed as having the most severely impacted water quality has steadily decreased, from 8% of assessed waters in the 1970s, to 4% in 1992, to 1% today.

Lakes and Reservoirs: About three-quarters of New York State lake and reservoir acres have been assessed⁵; 28% of lake acres support uses, while 46% are listed as impaired. (About 25% are currently unassessed.) However, much of the lake impairment in the State is due to a few large water bodies that support many uses but have lake-wide restrictions on fish consumption. Mercury (primarily atmospheric) and PCBs (historical/sediment contamination) account for 35% of lake impairments.

Estuary/Marine Waters: About 59% of New York State estuary and marine waters fully support their designated uses. Impairments to the other 41% of these waters are associated in large part with fish consumption advisories (70% of impaired waters) and shellfishing restrictions (26% of impairment).

⁵ While this appears to differ from the numbers in the Management Report, measures #49 and #50, the difference is that in the Management Report the waters are assessed for particular uses, while the narrative includes waters assessed in general (i.e., for one or more uses combined).

3. Water Quality Standards

The State of New York:

New York's water quality program predates the CWA, and NYSDEC has been addressing potential standards violations in its permitting program for many years. New York has established numeric water quality standards recognized for their scientific integrity and high data quality for over 400 substances. This includes health standards for carcinogens that are an order of magnitude more stringent than the minimum federal requirements.

New York has adopted uses for the majority of its waters and these uses are consistent with the CWA "fishable/swimmable" goals. Best uses include source of drinking water, swimming, boating, fishing, and shellfishing. The letter classifications and their best uses are described in 6 NYCRR Part 701. The classification of individual bodies of surface water is found in 6 NYCRR Parts 800–941. All groundwater in New York State is Class GA (best use: source of drinking water). Where waters are not designated for "fishable/swimmable" use, the State completes UAAs.

To protect these uses, New York has adopted numerous standards and guidance values. New York has also adopted an antidegradation policy to protect high-quality waters. Standards of the appropriate type are adopted as needed to protect the best uses of the waters. These standards are in 6 NYCRR Part 703. Waters that have more than one best use will have more than one type of standard. In the absence of standards in regulation, the NYSDEC can establish "guidance values." Although authorized by regulations, the guidance values themselves are not in the regulations. However, they do go through public review, and are compiled in the DOW's TOGS No. 1.1.1. Guidance values can be established more quickly than standards and are used, along with standards, to implement the NYSDEC's water program. The methodologies used to derive standards and guidance values are included in the State regulations or in TOGS.

NYSDEC has both narrative and numeric standards for nutrients. The State has submitted a draft nutrient plan that is under review by EPA Region 2 and EPA Headquarters. The State is in the process of establishing criteria for pathogens consistent with EPA's 1986 criteria recommendations. While triennial reviews to address designated uses or criteria/policies are generally held, the last time that NYSDEC completed such a review was in 1998. NYSDEC are scheduled to complete its next triennial review in early 2005.

New York's implementation procedures address the protection and maintenance of high-quality waters through the implementation of the State Environmental Quality Review (SEQR) process. Both the reclassification of a water body and the issuance of an SPDES permit are subject to the SEQR requirements. In summary, the SEQR process is parallel to the antidegradation tier 2 procedures for determining whether or not a lowering of water quality should be allowed. The first step in the SEQR process is for NYSDEC to determine whether or not the proposed action is "significant" with respect to potential environmental impact. If an action is considered to be significant, an environmental impact statement (EIS) must be prepared by the applicant and submitted to NYSDEC. Such an EIS is subject to full public participation, which would be conducted by NYSDEC. The EIS must address potential impacts; alternatives to the proposed action; mitigation measures; and, socioeconomic factors. Following a review of the EIS, as well as public response, NYSDEC would determine whether or not the lowering of water quality would be allowable. NYSDEC has also established antidegradation implementation

procedures consistent with the Great Lakes Water Quality Guidance for the waters in the Great Lakes Basin.

During permit development, when a water quality review is requested, staff complete a reasonable potential analysis for all pollutants. If there is a reasonable potential to exceed an ambient water quality criterion, wasteload allocations (WLAs) for point sources and load allocations for nonpoint sources are established. The following is New York's explanation of the process followed for water quality-based permitting (from the State's self-assessment):

In the permit review process technology-based effluent limits are developed, and a water quality engineer reviews the fact sheet containing all monitoring information and parameters. If the technology-based limits are not adequate to protect water quality, the water quality engineer proposes WQBELs on a basin basis. These WQBELs take into account permitted loads from other discharges, actual loads based on discharge monitoring, non point source contributions and background concentrations of pollutants reflecting ambient monitoring data. Although the level of monitoring data varies from case to case, all available data and information is considered. The final proposed WQBELs are based on waste load allocations the watershed reflects and are protective of the most critical water quality considerations. The specific processes for the development of WQBELs are described in TOGS 1.3.1. These procedures use the same scientific and technical basis as are used for TMDL development. Much of the background information that provides the basis for the WQBELs is recorded on the SPDES Permit Fact Sheet. Additional information is maintained in the files of the Water Quality Evaluation Unit.

New York has procedures in place for developing WQBELs in the absence of a TMDL.

EPA Region 2:

Region 2 has provided general advice and technical assistance to Indian Nations that are considering developing of water quality standards. To date, none of the Indian Nations has adopted standards.

4. Total Maximum Daily Loads

The State of New York:

The NYSDEC TMDL program routinely works with the SPDES program in water quality-based permitting. It is also important to note that the EBPS system results in a high priority for permit action when there is a new TMDL. EPA and NYSDEC have active communication about permit actions needed to implement TMDLs (such as the Long Island Sound nitrogen TMDL and the New York City watershed TMDL for phosphorus).

In the MS4 general permit issued by NYSDEC in 2003, a special condition was included to address TMDLs. Municipalities and others covered under the permit must ensure that their stormwater management program includes the required controls that are contained in any TMDL. If not, MS4s are obligated to revise their programs to conform with the TMDL.

In addition, the General Permit for Construction Activity requires that activities in a TMDL watershed have a stormwater pollution prevention plan (SWPPP) prepared by a licensed professional who certifies

that the SWPPP has been developed in a manner that will ensure compliance with water quality standards. The SWPPP must also include post-construction stormwater control practices.

New York State considers a wide range of responses to water quality problems and the restoration of impaired water uses. For some of these problems and impairments, TMDLs are judged to be the most reasonable and effective response. New York State has focused its most recent TMDL efforts on larger (and generally more complicated) priority watersheds, rather than establish large numbers of TMDLs for large numbers of small, individual water bodies. These larger watershed efforts have produced TMDLs for Lake Champlain, Long Island Sound, the New York City Water Supply Watershed and Onondaga Lake. Current TMDL efforts are aimed at other water quality priorities including pathogen contamination that results in shellfishing restrictions, acid rain deposition that is the source of impairment to nearly half the waters on the State's section 303(d) list, and development of a template for small lake TMDLs to address nutrient impacts. NYSDEC is developing a long-term schedule to evaluate the most effective response to water problems on the section 303(d) list. While TMDLs are one possible response, New York State will continue to look at all options in its efforts to address water quality problems and impairments in the most resource-effective manner available.

EPA Region 2:

With respect to the NYSDEC's program, Region 2 works with the State and monitors progress. Region 2 and its contractors work with the State to establish TMDLs. NYSDEC has focused on large interstate waters, such as the New York – New Jersey Harbor (for metals), and certain important state waters, such as Onondaga Lake, where management programs drive the research and modeling needed to establish complex TMDLs. At present, NYSDEC, EPA, and its contractors are working on the establishment of large groups of TMDLs, such as TMDLs for pathogens in shellfish waters (67) and acid rain (more than 400 TMDLs), and NYSDEC is developing a method to address nutrient impacts on numerous small lakes. NYSDEC and EPA are working to finalize a revised MOA outlining a schedule for short- and long-term establishment of all TMDLs listed on the State's 2002 and 2004 CWA section 303(d) list.

EPA has approved 100% of the TMDLs established and submitted by NYSDEC. NYSDEC has submitted 70 TMDLs (water/pollutant combinations) through fiscal year 2004. A total of 832 listed water/pollutant combinations were on the State's 2002 section 303(d) list, two of which were removed because TMDLs were completed by the end of fiscal year 2003, for a total of 830 TMDLs, which were in the docket at the end of 2003.⁶ In 2003, NYSDEC was scheduled to submit 25 TMDLs. With EPA and EPA's contractor's assistance, NYSDEC established and submitted, and EPA approved, five TMDLs. While NYSDEC has fallen behind in its TMDL establishment goal, it has been working with EPA and its contractors toward the development of over 400 TMDLs (or other appropriate actions) for waters listed for acid rain impacts and 67 waters listed for pathogen impacts on shellfish waters. NYSDEC is working internally on a strategy to address nutrients in a number of small lakes. Although, NYSDEC is behind its TMDL schedule, once TMDLs are established or other measures taken to bring these waters back into compliance with applicable water quality standards, over half the State's 2002 section 303(d) list will have been addressed.

For Indian lands, Region 2 has not actively considered TMDL development.

⁶ As indicated in the Management Report

5. Safe Drinking Water Act

The State of New York:

New York has ambient water quality standards that are protective of surface water intakes (Class A and AA waters) and all fresh groundwater (Class GA). Those ambient standards are either derived from the State's drinking water standards or provide equivalent or in some cases higher protection. Permits to discharge surface water are based on a water quality review, as explained above. Where warranted, permits to incorporate a wasteload allocation translated into a WQBEL. Discharge permits are also required for discharges to groundwater, which include limits protective of drinking water and are often more protective than UIC regulations. The State Consolidated Assessment and Listing Methodology (CALM) includes a review of water segments designated for drinking water use. Those segments, that are demonstrated by water quality monitoring as not attaining standards are included as impaired on the State's section 303 (d) list. CALM also includes a procedure for using Source Water Assessment Information to designate water segments as threatened or stressed on the Priorities Waterbodies List.

EPA Region 2:

In addition to the assistance provided by EPA's "Circuit Riders" to the Indian Nations, other technical assistance has been offered and provided. For example, EPA has assisted with inspections and evaluations of underground storage tanks.

In May 2004, Region 2 became aware of concerns regarding contamination of a small public water supply system serving a mobile home community in Oneida County. One potential source of contamination that was identified was a nearby construction site for an Indian Nation project. As of this writing, coordination continues between various parties to establish a safe water supply and to investigate potential contamination sources.

Section V. Other Program Highlights

The State of New York:

As noted above, NYSDEC, in its self-assessment, identifies the EBPS system as an innovation that significantly improves program efficiency. By streamlining the processing of SPDES permit renewals, NYSDEC has been better able to focus resources on important initiatives, such as the Long Island Sound nitrogen reduction program.

The State is implementing an innovative permit approach in Long Island Sound. Following TMDL establishment, NYSDEC developed SPDES permits for POTWs in New York City, Westchester County, and Long Island.

Through the use of aggregate nitrogen limits for groupings of sewage treatment plants, the State has established opportunities for dischargers (such as New York City and Westchester County) to target the location and level of nitrogen removal upgrade projects at facilities that will most cost-effectively meet nitrogen reduction requirements. First, aggregate WLAs are assigned for 11 watershed management zones in addition to the individual WLAs. Each management zone is treated as a “bubble” within which individual discharges can vary as long as the aggregate zone WLA is attained. This provides flexibility for a discharger to optimize treatment investments to meet the overall pollution reduction goal. Second, the TMDL assigns each watershed management zone an equivalency factor that identifies the relative impact that sources from that zone have on water quality. The WLAs can be reallocated between management zones as long as the new allocations result in equal or greater water quality improvements, as defined by the use of equivalency factors. This provides flexibility for the State and dischargers to optimize treatment investments to meet the overall water quality goal. For example, for New York City, attaining the aggregate zone WLA using equivalency factor adjustments is projected to save up to \$600 million compared with attaining the WLA requirements at each facility. The savings result from implementing additional nitrogen removal at sewage treatment plants in the upper East River management zone to compensate for no nitrogen removal upgrades at sewage treatment plants in the lower East River management zone. The actual cost savings will depend on the effectiveness of nitrogen removal treatments implemented at the sewage treatment plants.

EPA Region 2 believes that the following additional items, identified by NYSDEC, reflect program strengths or innovations:

- Strong outreach during program development for CAFO and stormwater permit programs, which resulted in credible programs with broad support
- Effective technical assistance to the regulated community through DMR Manual training and training for wastewater treatment plant operators
- SNAP program of quarterly coordination meetings between EPA and NYSDEC for compliance program oversight
- State Bond Act funding for wastewater treatment plants
- Multi-faceted nonpoint source control program

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**Bureau of Program
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- * Floodplain Management Section
- * Watershed Geographic Information Technology Section
- * Flood Protection Structural Programs Section
- * Resource Management and Partnership Section

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- * Wastewater Permits, Central Section
- * Wastewater Permits, West Section
- * General Permits Section
- * Water Quantity Section

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- * Statewide Waters Monitoring Section
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- * Priorities Waters Research Section
- * Sediment Assessment & Management Section
- * Quality, Standards and Analytical Management Section
- * Water Quality Management Section
- * Nonpoint Source Management Section

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- * SPDES Compliance Information Section
- * NYC Watershed Section
- * Facility Operations Assistance Section
- * Compliance Assurance Section

NPDES Management Report, Fall 2004

New York

			Profile Section	GPRA Goal	Nat. Avg.	National Data Sources		Additional Data	
						State Activities	EPA Activities	State Activities	EPA Activities
NPDES Progress									
Universe	1	# major facilities (6,690 total)	I.1		n/a	352	0		
	2	# minor facilities covered by individual permits (42,057 total)	I.1		n/a	1,515	0		2
	3	# minor facilities covered by non-storm water general permits (39,183 total)	I.1		n/a	638	0		
	4	# priority permits (TBD)	I.6			--	--		
	5	# pipes at facilities covered by individual permits (142,761 total)	I.7		n/a	6,842	--		
	6	# industrial facilities covered by individual permits (32,505 total)	I.1		n/a	1,230	0		
	7	# POTWs covered by individual permits (15,197 total)	I.1		n/a	613	1		
	8	# pretreatment programs (1,482 total)	II.2		n/a	n/a	57		
	9	# Significant Industrial Users (SIUs) discharging to pretreatment programs (22,158 total)	II.2		n/a	n/a	1,136		
	10	# Combined Sewer Overflow (CSO) permittees (831 total)	II.5		n/a	75	--		
	11	# CAFOs (current and est. future) (17,672 total)	II.3		n/a	651	--		
	12	# biosolids facilities (TBD '05)	II.6			--	--		
NPDES Program Administration	13	State or Region assessment of State NPDES program (none (N)/assessment (A)/profile (P))	I.1	50 states 2004	n/a	A, P	P		
	14	% pipes at facilities covered by individual permits w/ lat/long in PCS	I.7		46.3%	97.9%	--		
	15	State CAFO legal authority expected (mo/yr)	II.3	2005	n/a	11/04	n/a		
	16	# Withdrawal petitions/legal challenges (22 total)	I.4		n/a	0	n/a		
	17	DMR data entry rate	I.7		95%	100%	--		
	18	# permit applications pending (1,011 total)	I.6		n/a	22	--		
NPDES Program Implementation	19	% major facilities covered by current permits	I.6	90%	83.7%	96.0%	n/a		
	20	% minor facilities covered by current individual or non-storm water general permits	I.6	90% 12/04	87.0%	94.6%	n/a		50.0%
	21	# major facilities w/permits expired >10 yrs. (56 total)	I.6		n/a	8	0		
	22	% priority permits issued as scheduled (TBD '05)	I.6	95% 2005		--	--		
	23	% pretreatment programs inspected/audited during 5 yr. inspection period	II.2		85.3%	n/a	100.0%		
	24	% SIUs w/control mechanisms	II.2		99.2%	n/a	99.0%		
	25	% of CSO permittees with long-term control plans developed or required	II.5	75% 2008	82.2%	53.3%	--		
	26	% CAFOs covered by NPDES permits	II.3		35%	100%	--		
	27	% biosolids facilities that have satisfied part 503 requirements (TBD '05)	II.6			--	--		
	28	# Phase I storm water permits issued but not current (76 total)	II.4		n/a	1	0		
	29	# Phase I storm water permits not yet issued (5 total)	II.4		n/a	0	0		
	30	Phase II storm water small MS4 permits current (Y/N/D (draft) (35 States)	II.4	100% states 2008	n/a	Y	n/a		
	31	Phase II storm water construction permit current (Y/N/D (draft) (49 States)	II.4	100% states 2008	n/a	Y	Y		
NPDES Compliance Monitoring and Enforcement Response	32	% major facilities inspected	III.3		71%	80%	18%		
	33	(inspections at minors) / (total inspections at majors and minors)	III.3		76%	77%	32%		
	34	% major facilities in significant non-compliance (SNC)	III.1		20%	23%	--		
	35	% SNCs addressed by formal enforcement action (FEA)	III.1		14%	10%	--		
	36	% SNCs returned to compliance w/o FEA	III.1		70%	85%	--		
	37	# FEAs at major facilities (666 total)	III.1		n/a	25	8		
	38	# FEAs at minor facilities (1,660 total)	III.1		n/a	54	12		

Explanation of Column Headers:

Profile Section: For each measure, this column lists the section of the profile where the program area (including any additional data for the measure) is discussed.

National Data Sources: The information in these two columns is drawn from two types of sources:

(1) EPA-managed databases of record for the national water program, such as PCS, the National Assessment Database, and the National TMDL Tracking System. NPDES authorities are responsible for populating PCS with required data elements and for assuring the quality of the data. EPA is working to phase in full use of NAD and NTS as national databases.

(2) Other tracking information maintained by EPA Headquarters for program areas such as CAFOs, CSOs, and storm water.

The [definitions document](#) accompanying this Management Report provides a detailed definition of each data element in the National Data Sources columns.

Additional Data: These columns provide additional data in cases where information from other data sources differs from information in the National Data Sources column for reasons such as different timing of the data "snapshot." Additional data should generally adhere to the same narrative definitions as data in the National Data Sources, and should be derived using similar processes and criteria. Our goal is to work with the States on these discrepancies to ensure consistent and accurate reporting. A State contact is available who can respond to queries. The profiles discuss each additional data element.

State Activities: Information in these columns reflects activities conducted by the State program. (Shaded cells in these columns indicate that the work may not be entirely the State's responsibility, but a breakdown of the data into EPA and State responsibilities is unavailable.)

EPA Activities: Information in these columns reflects activities conducted by the EPA Region within the State.

NPDES Management Report, Fall 2004

New York

		Profile Section	GPRA Goal	Nat. Avg.	National Data Sources		Additional Data		
					State Activities	EPA Activities	State Activities	EPA Activities	
Water Quality Progress									
Universe	39	River/stream miles (3,419,857 total)	IV.2		n/a	51,271	n/a		
	40	Lake acres (27,775,301 total)	IV.2		n/a	782,485	n/a		
	41	Total # TMDLs in docket at end of FY 2003 (52,795 total)	IV.4		n/a	830	--		
	42	# TMDLs committed to in FY 2003 management agreement (2,435 total)	IV.4		n/a	25	0		
	43	# Watersheds (2,341 total)	IV.2		n/a	--	--		
Water Quality Administration	44	On-time Water Quality Standards (WQS) triennial review completed (42 States)	IV.3		n/a	N	n/a		
	45	# WQS submissions that have not been fully acted on after 90 days (32 total)	IV.3	<25% submissions	n/a	n/a	0		
Water Quality Implementation	46	State is implementing a comprehensive monitoring strategy (Y/N) (TBD)	IV.1	all states 2005	--	--	--		
	47	% river/stream miles assessed for recreation	IV.2		13.8%	18.0%	n/a		
	48	% river/stream miles assessed for aquatic life	IV.2		22.0%	18.0%	n/a		
	49	% lake acres assessed for recreation	IV.2		49.4%	32.0%	n/a		
	50	% lake acres assessed for aquatic life	IV.2		48.5%	32.0%	n/a		
	51	# outstanding WQS disapprovals (23 total)	IV.3		n/a	0	n/a		
	52	WQS for E. coli or enterococci for coastal recreational waters (12 States)	IV.3	35 states 2008	n/a	N	n/a		
	53	WQS for nutrients or Nutrient Criteria Plan in place (13 States)	IV.3	25 states 2008	n/a	N	n/a		
	54	Cumulative # TMDLs completed through FY 2003 (10,807 total)	IV.4		n/a	59	--		
	55	# TMDLs completed in FY 2003 (2,929 total)	IV.4		n/a	5	0		
Environmental Outcomes	56	# TMDLs completed through FY 2003 that include at least one point source WLA (5,036 total)	IV.4		n/a	50	--		
	57	% Assessed river/stream miles impaired for swimming in 2000	IV.2		--	2.3%	n/a		
	58	% Assessed lake acres impaired for swimming in 2000	IV.2		--	30.9%	n/a		
	59	# Watersheds in which at least 20% of the water segments have been assessed and, of those assessed, 80% or more are meeting WQS (440 total)	IV.2	600 2008	n/a	--	--		

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**New York State Department of Environmental Conservation
SFY 02/03 (April 1, 2002 - March 31, 2003)**

STATE AND FEDERAL OPERATING COSTS

	<u>FTEs</u>	<u>Associated</u>	<u>Nonpersonal Services</u>	<u>Total Operating</u>
<u>Water Quality Base Program Activities</u>				
N/SPDES Permitting	21.51	\$2,270,940	\$54,510	\$2,325,450
N/SPDES Permitting & Compliance Assurance	91.64	9,674,985	473,754	10,148,739
Water Quality Assessment and Reporting	27.55	2,908,619	1,166,636	4,075,255
Groundwater Activities	10.24	1,081,098	323,930	1,405,028
Watershed Implementation	19.82	2,092,516	286,947	2,379,463
TMDL and 303(d) Requirements	4.81	PS,FB&ICR 507,821	18,779	526,600
Non Point Source Management Program	9.24	975,522	3,827,088	4,802,610
Water Quality Management Planning & Implementation	9.40	992,414	641,231	1,633,645
Water Quality Standards	<u>2.55</u>	<u>269,219</u>		<u>274,339</u>
Subtotal Water Quality Base Program Activities	196.76	\$20,773,134	\$6,797,995	\$27,571,129
<u>Water Quality Geographic Initiatives</u>				
NYC Watershed	20.41	\$2,154,806	\$3,964,905	\$6,119,711
Great Lakes	4.98	525,768	13988	539,756
Lake Champlain	<u>2.56</u>	<u>270,275</u>	<u>106,941</u>	<u>377,216</u>
Subtotal Water Quality Geographic Initiatives	27.95	\$2,950,849	\$4,085,834	\$7,036,683
<u>Water Resources Activities</u>				
Water Supply, Flood Control, Shore Protection, Dam Safety, Floodplain Management	42.33	\$4,469,032	5,120 \$2,154,000	\$6,623,032
TOTAL DOW Federal and State Water Quality and Water Resources Operating Costs	267.04	\$28,193,015	\$13,037,829	\$41,230,844

NYS CAPITAL APPROPRIATIONS

Clean Water/Clean Air and Environmental Protection Fund Water Quality Project Announcements

Wastewater Treatment			\$108,027,197	\$108,027,197
Non-Point Source			4,102,511	4,102,511
Water Quality Management Planning			<u>1,300,000</u>	<u>1,300,000</u>
			\$113,429,708	\$113,429,708

Water Resources Project Appropriations

Water Supply, Flood Control, Shore Protection, Dam Safety, Floodplain Management			\$7,835,000	\$7,835,000
--	--	--	-------------	-------------

TOTAL DOW CAPITAL

\$121,264,708 **\$121,264,708**

TOTAL DOW Federal, State and Capital Costs

267.04 **\$28,193,015** **\$134,302,537** **\$162,495,552**