

**NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

DIVISION OF AIR RESOURCES

COMPLIANCE AND ENFORCEMENT

SUMMARY

FFY 2013

June 2014

Introduction

This report provides an overview of the Division of Air Resources enforcement activities and compliance monitoring accomplishments during Federal Fiscal Year 2013 (FFY 2013). The FFY 2013 covers the period from October 1, 2012 through September 30, 2013. The purpose of compliance monitoring and enforcement is to maintain an adequate regulatory presence so as to provide a deterrent against non-compliance. Elements of a good compliance monitoring and enforcement program include on-site inspections, review of periodic monitoring reports, performance tests, compliance evaluations and tracking of compliance related activities. When violations are detected, an enforcement response is appropriate and may involve the assessment of penalties. The goal is to achieve compliance with all legal and regulatory requirements.

New York's enforcement program is based in the nine regional offices with support and guidance provided by the Central Office. Federal policy requires states to maintain lists of sources subject to federal Clean Air Act requirements, as well as dates and results of certain compliance activities including all High Priority Violations as defined by EPA policy. New York uses its Air Facility System (AFS) for tracking the compliance of air pollution sources, and for developing permits which provide facilities authority to operate.

A facility's compliance with permit requirements and air regulations is tracked in AFS, including inspections, full compliance evaluations, compliance certifications, stack tests, as well as any notices of violations and subsequent enforcement cases. Compliance and enforcement activities are tracked nationally in the EPA-Aerometric Information Retrieval System (AIRS) database. This data is required to be reported to the EPA-AIRS system and is periodically downloaded from the New York AFS system into batch files which are uploaded to AIRS.

Full Compliance Evaluations

EPA's Compliance Monitoring Strategy (CMS) of April 2001 set minimum standards for state air enforcement programs. The CMS policy requires state agencies to submit a CMS Plan once every two years. Each state must conduct a comprehensive evaluation of the compliance status for each facility targeted on its CMS plan. This "full compliance evaluation" (FCE) must include a review of monitoring data (continuous emission monitors and excess emission reports), Title V annual compliance certifications, appropriate inspections and any other reports required by the permit. Emphasis has been placed on Title V major sources and a limited subset of the largest synthetic minor sources, called SM-80s. SM-80s are facilities with permissible emissions from 80 to 99% of the major source thresholds.

Inspections

On site inspections are one of the main tools used in maintaining the Department's oversight of facilities compliance with air pollution control regulations. Inspections are also an important component of a full compliance evaluation. During FFY 2013, Department

staff conducted over 1100 inspections of air pollution sources. Particular focus was given to inspecting major sources (facilities with actual or permitted emissions greater than Title V thresholds.)

EPA High Priority Violations

An integral part of New York's air pollution control program is the appropriate enforcement of state and federal regulations. Under the EPA-High Priority Violation (HPV) policy, the focus is on the most important and environmentally significant violations at major "Title V" sources of air pollution. The policy contains threshold criteria to determine whether or not a violation is an HPV and sets guidance for addressing cases in a timely and appropriate manner. High priority violations should be addressed within 270 days; however, the more complicated cases often take longer to resolve.

Penalties provide incentive to stay in compliance and take away some of the economic benefit that a firm may have enjoyed by not complying with state and federal regulations. There were 25 active HPVs in legal cases during FFY 2013. Of these active violations, 16 were holdovers from prior fiscal years and nine were new cases initiated between October 1, 2012 and September 30, 2013. Of the nine new HPV cases, four have been addressed with consent orders.

As of January 2014, there were nine new HPV cases entered into AFS out of the 411 facilities on the major source facility class list. Most of these HPV violations were discovered as a result of inspections; others were discovered through alternative methods (i.e., annual Title V compliance certifications, semi-annual monitoring reports, and stack tests).

Enforcement Summary of Consent Orders (FFY 2013)

During FFY 2013, the Department collected over \$1.32 million in payable penalties for stationary source air related cases. These cases were resolved through 167 orders on consent as per data collected from AFS. Twelve (12) of these orders were for HPV cases where \$570,435 was assessed in payable penalties. The other 155 orders on consent were issued for a total of \$752,955 in penalties. These non-HPV cases were generally for non-major sources and were predominantly for permit condition violations, failure to obtain registrations or permits, and violations of the perchloroethylene dry cleaning regulation.

Stack Test Program

One of the most effective ways to verify actual source emissions and determine source compliance with emission limits is to conduct a stack test. There were more than 100 stack tests conducted in FFY 2013. Of the 117 stack tests recorded in AFS, five had violations.

Summary (FFY 2013)

- Department staff inspected over 290 major facilities
- Tracked FCEs, HPVs and corrective actions in the EPA-AIRS tracking system
- Issued 12 orders on consent for HPV cases and 155 orders for non-HPV cases
- Collected over \$1.32 million in payable penalties for air enforcement cases
- Identified nine new HPVs as a result of compliance monitoring activities
- Addressed 18 active high priority violations
- Issued 241 Notices of Violation and 87 Warning Letters
- Required more than 100 stack tests
- Received, reviewed and logged over 420 Title V annual compliance certifications
- Received and reviewed over 2400 certification and monitoring reports
- Conducted 399 Full Compliance Evaluations (FCEs)

EPA High Priority Violations - An Overview

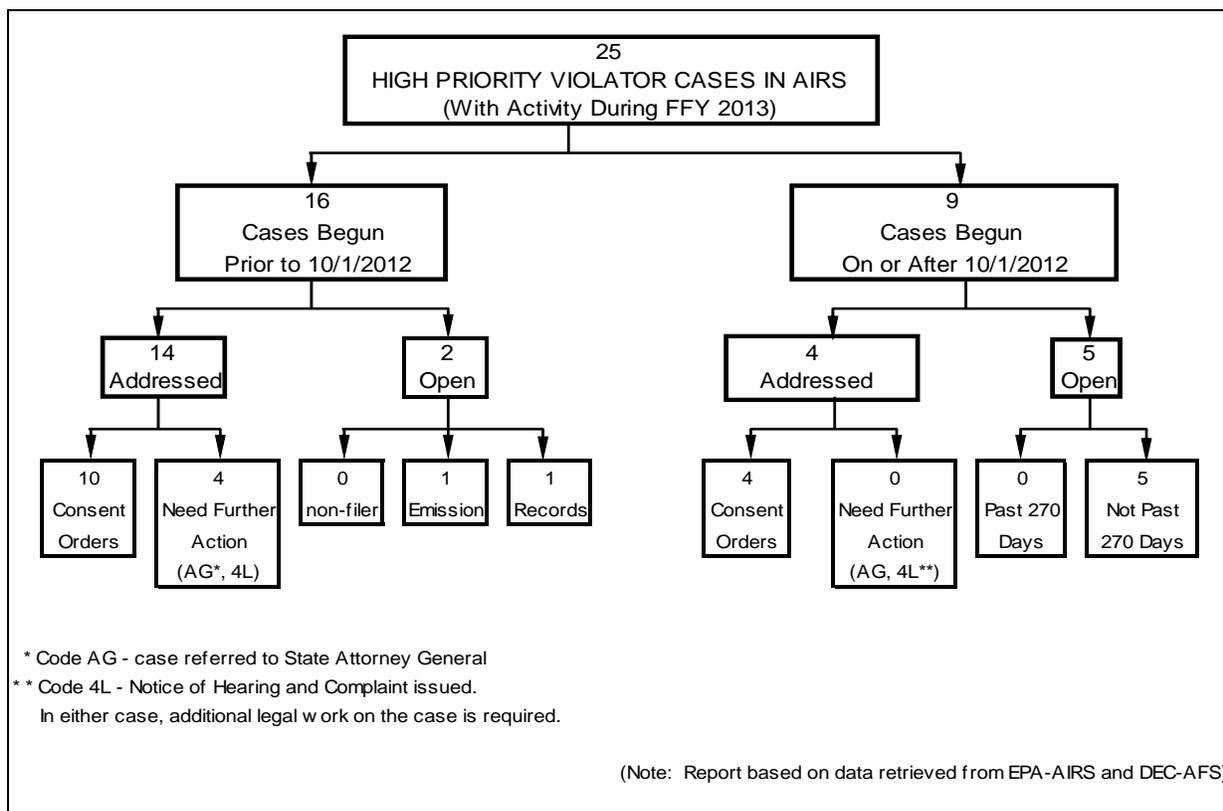
An integral part of New York's air pollution control program is appropriate enforcement of state and federal regulations at major sources of air pollution. Working under the EPA's HPV policy, the focus is on the most important and environmentally significant violations. The policy contains threshold criteria to determine whether or not a violation meets HPV status. It also sets guidance for addressing cases in a timely and appropriate manner. High priority violations should be addressed within 270 days; however, more involved cases take longer to resolve. Often these more difficult cases involve complicated environmental laws, in-depth investigation, and extensive negotiations. As a result, when a facility voluntarily takes measures to come into compliance, the department will consider this in determining the appropriate monetary penalty from the enforcement case. This helps maintain a level playing field between those facilities that are proactive and take measures to ensure compliance with air pollution regulations versus those facilities that choose to ignore known violations and wait for the state to take enforcement action.

High Priority Violations by Region FFY 2013				
	Old HPVs from prior FFY's	New HPVs during FFY 2013	Total Active HPVs FFY 2013	Total HPVs Resolved during FFY 2013
Region 1	1	0	1	0
Region 2	5	1	6	4
Region 3	1	2	3	2
Region 4	3	3	6	5
Region 5	5	0	5	1
Region 6	1	0	1	1
Region 7	0	1	1	0
Region 8	0	2	2	1
Region 9	0	0	0	0
Total	16	9	25	14

Penalties provide an incentive for facilities to stay in compliance and are intended to remove any economic benefit that a firm may have obtained while in non-compliance. AFS reports show the Department collected a total of \$570,435 in payable penalties through 12 consent orders resolving 14 HPVs during FFY 2013.

The Department's objective is to address all HPV cases in a timely manner. As a result, there is no backlog of cases that have exceeded the EPA time frames. Resolution of HPV cases often requires a significant time commitment from both legal council and the Division of Air Resource's professional staff.

The Department tracks both HPV and non-HPV enforcement cases in the AFS Compliance Module. This data must be provided to EPA as part of the delegation agreement with the federal government. HPV cases from AFS are periodically batch loaded to the EPA-AIRS system satisfying this portion of the federal reporting requirements.



The table above shows the case status for all 25 High Priority Violations that were actively worked on during FFY 2013. Consent orders were issued for 14 of these HPV cases.

Holdover Cases - Of the 16 HPV cases begun prior to FFY 2013, 14 have been addressed. Ten of these were resolved with a consent order and the other 4 were referred to the State Attorney General or issued a notice of hearing. The remaining two holdover cases are still open and are overdue under the federal Timely and Appropriate HPV policy.

New Cases - Of the nine new HPV violations discovered between October 1, 2012 and September 30, 2013, four were closed with a consent order. The remaining five are still open and not yet resolved. All of these unresolved cases are still within the 270 days allowed for under the EPA Timely and Appropriate policy.

Inspections

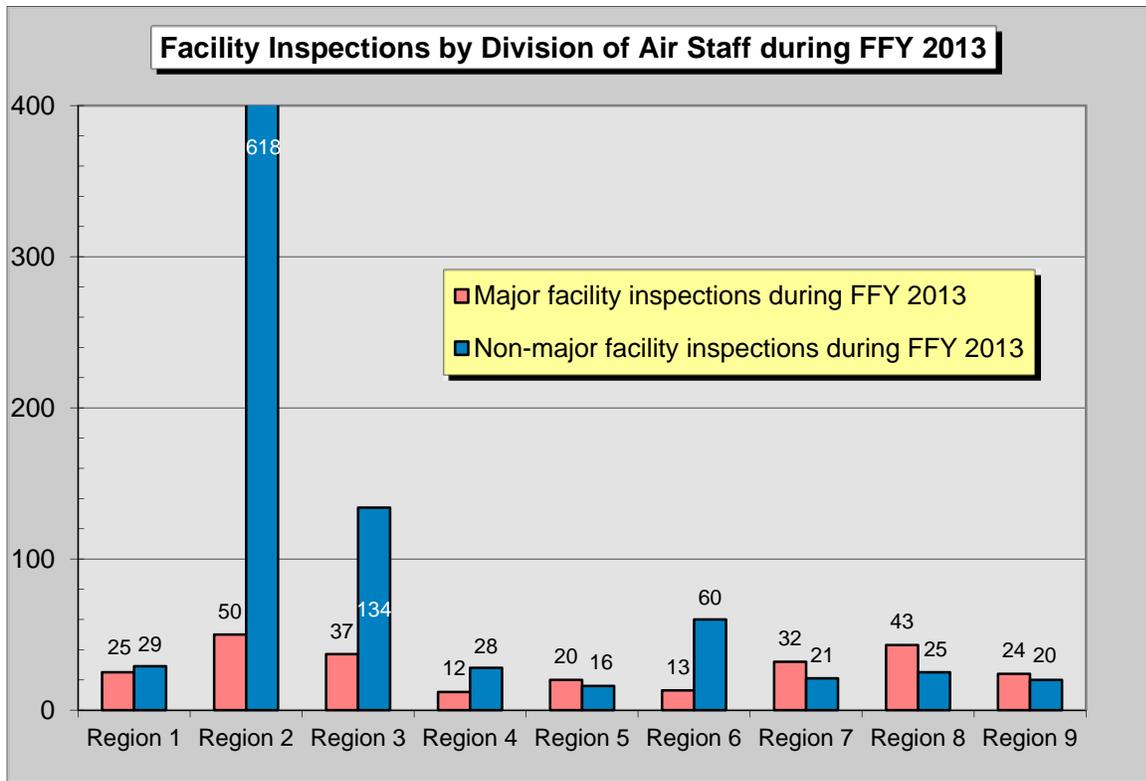
On site facility inspections are one of the main tools used by the Department to enforce compliance with air pollution control regulations. During FFY 2013, 1207 routine inspections were conducted by Department staff at 1142 facilities and other potential air pollution source locations. Particular focus was given to inspecting major sources (facilities with actual or permitted emissions above Title V thresholds) as over 250 inspections were conducted at 247 of the 411 major facilities during FFY 2013.

State inspection information is entered into the AFS system by regional inspectors. Such information includes the compliance status by regulation or permit condition, operating status, and any specific observations made by the regional inspector. This information helps ensure compliance with state and federal air pollution regulations. Violations discovered through these inspections are followed up with enforcement actions.

AFS Facility Inspection Summary Report						
Routine Inspections Summary for FFY 2013						
Based on AFS data						
	Total	A	SM-80	SM	B	UNK
Region 1	54	25	8	2	4	15
Region 2	668	50	33	85	163	337
Region 3	171	37	16	22	54	42
Region 4	40	12	16	4	4	4
Region 5	36	20	8	1	3	4
Region 6	73	13	20	16	11	13
Region 7	53	32	5	1	7	8
Region 8	68	43	18	6	1	0
Region 9	44	24	13	0	6	1
	1207	256	137	137	253	424

- A Major- Actual or potential emissions are above the applicable major source thresholds
- SM-80 Synthetic Minor- With emissions capped between 80% and 99% of major source thresholds provided that the facility complies with federally enforceable regulations or permit limitations
- SM Synthetic Minor- Facilities with emissions below major source thresholds provided the facility complies with federally enforceable regulations or permit limitations and excluding the SM-80 facilities
- B Natural Minor- Potential emissions below all applicable major source thresholds
- UNK Facility not classified or Classification not determined

The vast majority of permitted or registered air pollution sources are non-major sources. Major sources of air pollution are targeted for inspection at least once every two years. The table below illustrates the number of major and non-major sources inspections conducted in each region during FFY 2013.



EPA Compliance Monitoring Strategy

EPA’s Compliance Monitoring Strategy (CMS) intends to provide a national consistency for stationary source compliance monitoring while allowing states flexibility in addressing air pollution program compliance. States submit a CMS plan to EPA biennially for discussion and approval. The CMS policy focuses on federally enforceable requirements at Title V and SM-80 sources through three categories of compliance monitoring: Full Compliance Evaluation, Partial Compliance Evaluation, and Investigations.

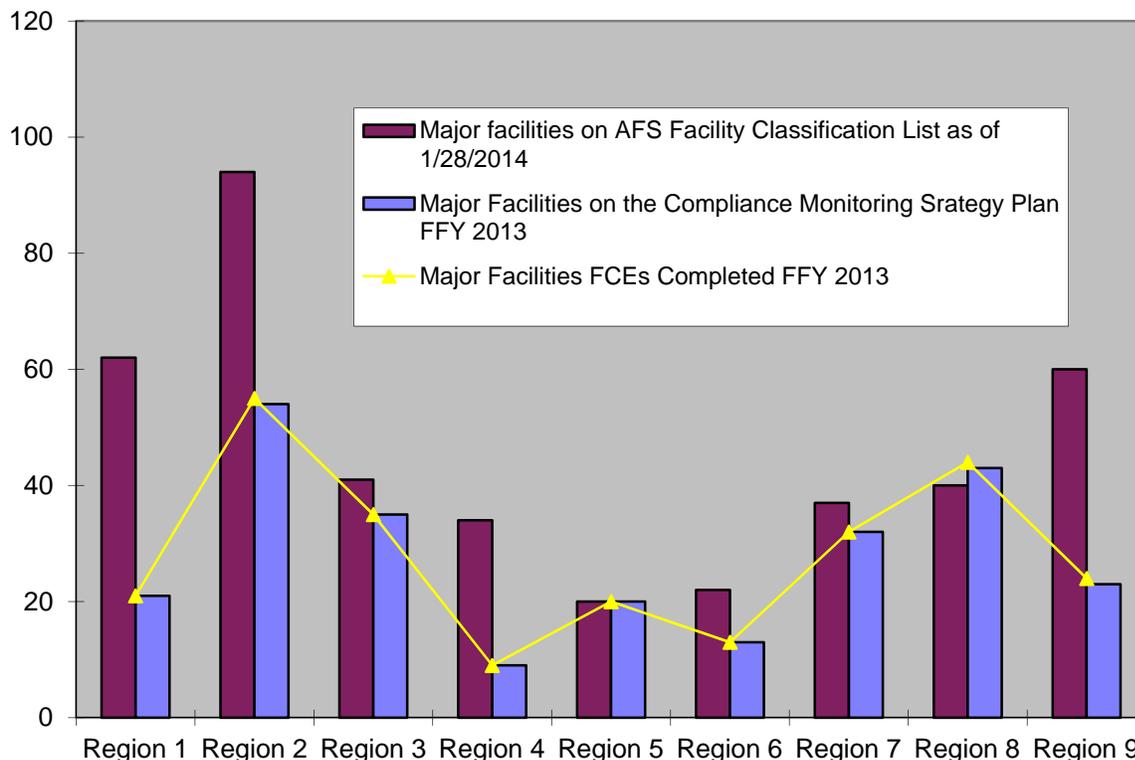
Sources are tracked as “mega,” “major” and “80% synthetic minor” (SM-80) for CMS purposes. A “mega” site is one that is so large in the number and complexity of emission sources that a full evaluation of the facility’s compliance status cannot be reasonably done every two years. Mega sources can be put on a three year schedule for completion of a full compliance evaluation. New York has one facility currently categorized as a mega site. “Major” sources are those facilities with emissions permitted at or above Title V thresholds. An “SM-80” is a facility that is capped out of Title V with a permit that allows emissions of 80% to 99% of Title V thresholds. Such a source should be evaluated at least once every five years whereas major sources should have a full compliance evaluation at least once every two years according to the EPA policy.

The CMS policy establishes a variety of methods available to agencies to determine the compliance status of a source. It requires agencies to review varying sources of information in order to conduct a comprehensive evaluation of a facility's compliance status. Inspections are only a part of the evaluation process. A "Full Compliance Evaluation" (FCE) must include a review of all required reports, monitoring data, stack tests, inspections and any other reporting requirements in a facility's permit. This policy requires that states conduct an FCE at each major source once every two years.

New York submitted the 2012-2013 CMS plan to EPA in 2012. This plan exceeded the CMS minimum requirement for conducting FCE's once every 2 years. As part of this plan, FCE's were scheduled to be conducted once each year for 128 major sources while the remaining 297 majors were placed on a two year schedule. Facilities were placed on the one year schedule where the compliance history or nature of operations warranted an annual review.

AFS data shows that in Federal Fiscal Year 2013 New York conducted 399 FCEs: 242 were conducted for Title V major sources, 126 for SM-80 sources and 31 for sources that are not currently SM-80 or major. The current CMS plan commits the Department to conduct an FCE for all SM-80 facilities within a five year period. In FFY 2013 the Department met its goal of achieving an FCE for all CMS plan sources.

The chart below illustrates the relationship between the total number of major sources, the number of major sources on the 2013 FFY CMS plan, and the number of FCEs conducted at these facilities.



Facility Compliance Tracking in AFS

The Department uses the AFS computer program to issue permits and track facility sources of air pollution. One of the features of AFS allows the tracking and tabulation of facility data by source classification: major source, large synthetic minor (SM-80), small synthetic minor (SM) and natural minor. Facility source classifications are routinely updated by both central office and regional staff. The table below shows the breakdown of facilities by source classification in each region and New York State.

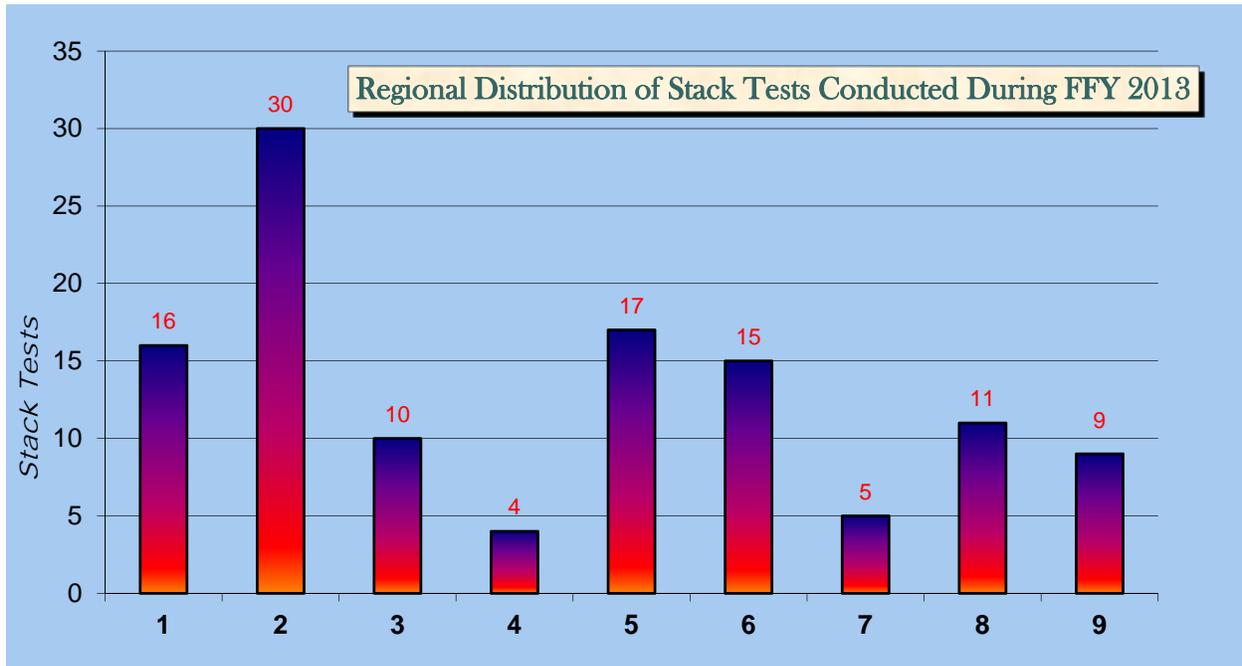
	Total	A	SM-80	SM	B
Region 1	1,673	62	39	519	1053
Region 2	6,461	94	154	3051	3162
Region 3	1,534	41	76	259	1158
Region 4	458	34	58	208	158
Region 5	277	20	43	132	82
Region 6	293	22	59	110	102
Region 7	573	37	42	184	310
Region 8	644	41	61	204	338
Region 9	788	60	64	155	509
Total	12,701	411	596	4822	6872

- A Major- Actual or potential emissions are above the applicable major source thresholds
- SM-80 Emissions below major source thresholds if the facility complies with federally enforceable regulations or permit limitations and the permitted limits are between 80 and 99% of the major source threshold
- SM Synthetic Minor- Emissions below major source thresholds if the facility complies with federally enforceable regulations or permit limitations and the permitted limits are less than 80% of the major source threshold
- B Natural Minor- Potential emissions below all applicable major source thresholds

The number of major sources continues to drop. As of January 2014 there were 411 active facilities listed as major sources. This compare to 425 major sources last year. Some of these facilities have closed while others have chosen to limit emissions below the Title V thresholds.

Stack Test Program

Department personnel spend many days in the field witnessing stack tests to ensure they are conducted in accordance with approved protocols. Stack tests are one of the most effective ways to determine actual source emissions and assess compliance with regulatory emissions limits. Additionally, they are most important for those major sources that have no other reliable method for determining compliance. Many Title V permits require that a stack test be conducted at least once during the term of the permit (five years).



In FFY 2013, 117 tests were conducted and entered into AFS as of 2/12/2014. Since department staff is not required to enter all stack testing data into AFS, it is likely more tests were actually performed. Sixty five of these 117 stack tests were witnessed by department staff.

MACT Compliance / Initial Notifications

The National Emissions Standards for Hazardous Air Pollutants (NESHAPs) regulate 188 hazardous air contaminants from industrial sources under Section 112 of the Clean Air Act. These industry-based NESHAPs are also called Maximum Achievable Control Technology (MACT) standards. The MACT standards are designed to reduce HAP emissions to the maximum achievable degree, taking into consideration the cost of reductions, public safety and other factors.

MACT certifications, initial notifications and conditions are tracked in AFS. This feature lets the user search the permit/registration database by regulatory citation. Facilities must submit Initial Notifications when they become subject to MACT rules. The table below lists the total number of Initial Notifications received, reviewed, and entered into AFS during FFY2013 for every MACT source.

<i>MACT Subparts – Initial Notifications Received in FFY 2013</i>			
BBBBBB – 2 Bulk Terminal Gasoline Distribution	DDDDD – 18 Boilers and Process Heaters	HHHHHH – 24 Misc Surface Coating	JJJJJ – 10 Industrial Commercial Boilers
M – 10 Perchloroethylene Emission Standards	R – 3 Gasoline Distribution	T – 3 Halogenated Solvent cleaning	VVVVVV – 1 Chemical Manuf. Area source
WWWWW – 2 Plating and Polishing Operations	XXXXXX – 3 Metal Fabrication/Finishing	ZZZZ – 6 Reciprocating Internal Combustion	

Title V Monitoring Reports and Compliance Certifications

All facilities in New York State with active Title V permits must submit semi-annual monitoring reports and annual compliance certifications. Semi-annual monitoring reports contain a summary of compliance monitoring activities to be conducted by the facility. Facility operators must then describe the monitoring status and report any deviations of permit limits. Report templates and instructions have been developed by the Department and have been distributed to all holders of Title V permits in the state. Annual Compliance Certifications include an in-depth assessment of a facilities compliance with permit requirements. Facilities must certify compliance.

All semi-annual monitoring reports and annual compliance certifications are reviewed by regional staff to determine if the facility has complied with all applicable requirements and met all reporting requirements. In the past, many facilities were cited for not submitting their certification on time. This is no longer a significant problem.

Reports are tracked in the AFS database. Of the 423 Title V Annual Compliance Certifications that were logged into AFS during FFY 2013, three HPV and 18 non-HPV violations were documented. In accordance with federal policy, the Department reports data regarding each Title V certification received to the AIRS database. This includes the report due date, the date reviewed and the overall compliance status of the facility.

The following table presents a summary of the Annual Certifications entered into AFS by each of the Department's nine regions during FFY 2013.

Region	Certifications		Certifications		Compliance Status For Those Received: -----			
	Total	Facilities	Total	Facilities	In Compliance	Under Review / No Determination	Violation (Non-HPV)	HPV
1	58	56	53	51	39	1	5	1
2	109	97	107	96	76	0	2	0
3	48	43	47	43	45	1	0	0
4	33	28	23	21	18	5	0	0
5	19	19	19	19	13	0	4	0
6	29	24	23	21	18	2	0	0
7	41	36	39	34	31	1	4	1
8	50	41	47	39	40	0	3	1
9	67	57	65	55	60	5	0	0
Totals	451	401	423	379	340	15	18	3

* "Certifications Due" Totals differs from the Facilities column for two reasons. 1) Title V permit renewals cause two certifications to be recorded; one with new permit information, one with old permit information. 2) Violations for non submittal of a scheduled Certification cause a second record to be created in the AFS database.

Periodic Compliance Reporting

Other than the Title V semi-annual and annual reporting requirements discussed above, there are many other compliance reports that regulated facilities must submit periodically. These could be monthly, quarterly, semi-annual or annual reporting requirements depending on the applicable regulations. For example, many Title V and non-Title V facilities are required to submit excess emissions reports on a quarterly basis. These periodic reports are reviewed by the DEC Regional offices. The Central Office develops statewide guidance and provides an auditing function to assist the regions in determining compliance.

The Department's AFS system has the capability of tracking all monitoring reports required in issued permits. Regulatory requirements are set out in monitoring conditions in Title V and state facility permits which specify the appropriate schedule for reporting. While all Title V annual compliance certifications must be tracked in AIRS, there is no requirement that other periodic reports be reported to EPA in AIRS. The decision on whether to track these reports in AFS is made by the regional managers. Statistics are incomplete because of the flexibility allowed for the staff to track the information. Regardless, a combined total of 2445 certification and monitoring reports were received from 741 facilities in FFY 2013. For those reports entered into AFS, 2206 were in compliance and five had HPV level violations.

Vapor Recovery from Gasoline Dispensing Sites

Approximately 7450 gasoline dispensing facilities (GDF's) exist in New York State. Of these, about 3200 GDF's have throughputs of 1.2 million gallons per year or greater and were previously required to install and test Stage II vapor collection systems prior to January 1, 2011. In FFY 2011 the Department issued an Enforcement Discretion Directive to discontinue the requirement for Stage II on GDF's in ozone non-attainment areas. This directive allows facilities to remove existing Stage II systems. In FFY 2013 Department staff reviewed and approved 198 Stage II removal reports in accordance with decommissioning protocol to bring the statewide total to 406 decommissioned facilities. In FFY 2013, staff reviewed 956 Stage I and Stage II vapor recovery test reports. Of these, 55 enforcement cases were initiated, of which five were settled for \$8,500. To date, 1064 stations have complied with federal Stage I regulations.

Dry Cleaners

State regulation 6 NYCRR Part 232 requires third-party inspections of dry cleaners using perchloroethylene (perc). The department reviews hundreds of inspection reports each year and issues NOV's when violations are reported by the third-party inspector. During FFY 2013, 42 orders were issued to dry cleaning establishments. Payable penalties totaled \$39,050 and suspended penalties totaled \$23,250.

Outdoor Wood Boilers

The department received and investigated dozens of complaints about outdoor wood boilers (OWB) during FFY 2013. These complaint responses are labor intensive and can require multiple site visits to determine compliance with opacity and nuisance provisions. Resolutions of documented violations have ranged from ensuring that appropriate fuel is combusted in the OWB to signed agreements requiring removal of the violating OWB.

Enforcement Summary of Consent Orders FFY 2013

Below is a summary of enforcement actions recorded in AFS for FFY 2013. During this time period, stationary sources were assessed a total of \$1,323,390 in payable penalties through 167 orders on consent. High Priority Violators accounted for \$570,435 of this total.

HPV & non-HPV Order Summary

The table below shows the number of consent orders issued and the total payable penalties entered into AFS. It is broken down by HPV and non-HPV consent orders.

<i>Region</i>	<i>HPV Orders</i>	<i>Penalty Amount</i>	<i>Non-HPV Orders</i>	<i>Penalty Amount</i>
1	0	\$0	22	\$20,325
2	4	\$194,195	36	\$53,355
3	2	\$62,500	73	\$386,400
4	3	\$232,500	9	\$36,275
5	1	\$50,000	4	\$54,000
6	1	\$3,740	2	\$2,000
7	0	\$0	5	\$90,000
8	1	\$50,000	2	\$95,000
9	0	\$0	2	\$15,600
Totals	12	\$570,435	155	\$752,955

Consent orders were issued to 155 Non-HPV level violations. This includes facilities with emissions below the major source threshold and those major sources with violations not considered gross as defined by the general HPV criteria or the High Priority Violation Matrix.

Most of the consent orders were issued for Part 201 permitting violations. Many others addressed excessive smoke (opacity); Stationary Combustion Installations (Part 227); Perchloroethylene Dry Cleaning Facilities (Part 232) for record keeping and monitoring requirements; Sulfur in Fuel Limitations in Part 225, and the Acid Deposition Reduction rules in Parts 237 and 238.

Major Facility Cases for FFY 2013

1. NYS Office of Mental Health (Bronx Psychiatric Center and Manhattan Psychiatric Center) was issued a consent order for 6 NYCRR Part 227.2 (b) (1) violations. Both facilities are required to perform particulate emission testing. The order included a civil penalty of \$25,000.
2. A consent order was issued to SI Group, Inc. for 40 CFR 63 Subpart OOO and 6 NYCRR 212.10 emission standard and control requirement violations. The order included a civil penalty of \$112,500.
3. Finch Paper LLC was issued a consent order for excess emissions documented in the Semi-Annual Compliance Report. Excess emissions of nitrogen oxides (NOx) from the recovery boilers were measured by continuous emission monitors (CEM). The order included a civil penalty of \$50,000.
4. NYCHHC (Harlem Hospital Center) was issued a consent order for a 6 NYCRR Part 201 violation requiring an annual compliance certification. The order included a civil penalty of \$10,000.
5. SABIC Innovative Plastics US LLC was issued a consent order for 40 CFR 63 Facility Specific Monitoring and 6 NYCRR 200.7 Maintenance of Equipment violations. The order included a civil penalty of \$95,000.00.