



June 2011  
PE 11-02-491

## AGENCY REVIEW

# DEPARTMENT OF ENVIRONMENTAL PROTECTION DIVISION OF WATER AND WASTE MANAGEMENT

## AUDIT OVERVIEW

The Division of Water and Waste Management Is In Compliance With All Recommendations Made In the January 2002 Preliminary Performance Review



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WEST VIRGINIA LEGISLATIVE AUDITOR

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## EXECUTIVE SUMMARY

This review is an update of the January 2002 Performance Review of the Division of Water and Waste Management (Division) of the Department of Environmental Protection. The purpose of this update is to determine whether the Division has complied with recommendations made in that review. The Division demonstrated compliance with all the following recommendations made in the 2002 report:

- Recommendation 1: *The DWR should develop a program which will analyze DMR data and provide the DWR with quarterly violators of the fecal coliform standard.*
- Recommendation 2: *The DWR and EE should ensure that all minor facilities submit DMRs as required, and DWR reviews them for compliance before renewal.*
- Recommendation 3: *The DWR should implement a procedure in which minor permittees are notified when DMRs have not been submitted and indicate to permittees that the permit will not be renewed unless DMRs are submitted.*

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***The Division demonstrated compliance with all the recommendations made in the 2002 report.***

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This update uses the following designations for compliance with previous recommendations made by the Legislative Auditor:

<b>Table 1 Levels of Compliance</b>	
In Compliance	The Division has corrected the problem(s) identified in the previous reports.
Partial Compliance	The Division has partially corrected the problem(s) identified in the previous reports.
Planned Compliance	The Division has not corrected the problem(s) identified in the previous reports, but has provided sufficient documentation that the agency will do so in the future.
In Dispute	The Division does not agree with either the problem identified or the proposed solution.
Non-Compliance	The Division has not corrected the problem(s) identified in the previous reports.
Requires Legislative Action	The recommendation was intended to call the attention of the Legislature to one or more issues that may or may not require statutory changes.
Legislation Enacted	The Legislature took legislative action to issues raised by the Legislative Auditor in the previous reports.



## ISSUE 1

### **The Division of Water and Waste Management Is In Compliance With All Recommendations Made In the January 2002 Preliminary Performance Review.**

#### **Recommendation 1**

*The DWR should develop a program which will analyze DMR data and provide the DWR with quarterly violators of the fecal coliform standard.*

#### **Level of Compliance:** In Compliance

In January 2002 the Legislative Auditor released a Preliminary Performance Review of the Division of Water Resources (DWR), which is now the Division of Water and Waste Management (Division). The Division is required to submit Discharge Monitoring Reports (DMRs) to a federal database called the Permit Compliance System (PCS) in order to generate Quarterly Non-Compliance Reports (QNCR) for certain National Pollutant Discharge Elimination System (NPDES) permitted facilities.

While evaluating DMR violations to determine whether DWR was acting on permit violations, the Legislative Auditor discovered that the QNCR program did not retrieve fecal coliform data, which meant facilities could significantly surpass their permit limitations for fecal coliform without the Division being aware of the violations. Of the 10 permittees who had established a trend of noncompliance with permit requirements, 3 had had no enforcement action initiated against them. All three had consistently violated the fecal coliform standard and had remained without disciplinary action because DWR was unaware the violations had occurred since data for this parameter were not retrieved by QNCR. Since fecal coliform is an indicator for the presence of harmful microbes in water that may present health hazards to the public, the Legislative Auditor recommended that the Division develop a program to analyze DMR data and provide quarterly violator reports of the fecal coliform standard.

In response to this recommendation, DWR began developing a supplemental system to ensure that all parameters, including fecal coliform, are examined for compliance. However, the project was eventually put on hold due to staff allocation to another project that was deemed a higher priority. At the same time, the United States Environmental Protection Agency (EPA) replaced its former database system with the Integrated Compliance Information System (ICIS), which recognizes fecal coliform and other violations not recognized by the earlier system.

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*The Legislative Auditor discovered that the QNCR program did not retrieve fecal coliform data, which meant facilities could significantly surpass their permit limitations for fecal coliform without the Division being aware of the violations.*

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*The Legislative Auditor recommended that the Division develop a program to analyze DMR data and provide quarterly violator reports of the fecal coliform standard.*

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Although West Virginia will not be migrated to the ICIS system until 2013, the Division determined that continuing the development of a state database to track fecal coliform and other violations would be an unwise allocation of funds since the federal system will have that capability. In the meantime, Violations Reports from the PCS system can be run on any parameter, including fecal coliform. Additionally, the Division indicates that DMRs are reviewed manually prior to issuing permits and conducting inspections in order to determine compliance with permit requirements for all reported parameters, including fecal coliform.

In order to determine if the Division is reviewing and acting on these violations, the Legislative Auditor reviewed a list of all fecal coliform violations since the release of the 2002 report and requested data regarding enforcement actions taken for 57 permittees that had 16 or more fecal coliform violations from 2002-2011. These 57 permittees are listed in Appendix C. There was sufficient evidence of both informal enforcement actions, which are warnings or notations on an inspection report or Notice of Violation issued by inspection staff, and formal enforcement actions, which are actions that are elevated to an administrative or judicial (either civil or criminal) proceeding, being carried out against permittees exhibiting frequent fecal coliform violations.

When the Division is integrated into the ICIS system in 2013, it will be utilizing a database that tracks fecal coliform violations as recommended by the Legislative Auditor in 2002. Although the Division does not currently utilize such a system, the manual evaluation of each parameter prior to inspections and permit issuance ensures that the Division is aware of and able to take action regarding any violations, which the Legislative Auditor determines is the intent of the recommendation. Therefore, the Division is in compliance with Recommendation 1 from the 2002 review.

## Recommendation 2

*The DWR and the EE should ensure that all minor facilities submit DMRs as required, and DWR reviews them for compliance before renewal.*

### Level of Compliance: In Compliance

The Division requires minor facilities to provide DMR data. The Legislative Auditor found in the 2002 review that many minor facilities were not submitting DMRs as required, that the DWR was not pursuing DMRs from facilities that failed to provide them, and that DWR was renewing minor facility permits without determining compliance with effluent discharge limitations from previous permits. Based on these findings, the Legislative Auditor recommended that DWR and its

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*When the Division is integrated into the ICIS system in 2013, it will be utilizing a database that tracks fecal coliform violations as recommended by the Legislative Auditor in 2002. The manual evaluation of each parameter prior to inspections and permit issuance ensures that the Division is aware of and able to take action regarding any violations, which the Legislative Auditor determines is the intent of the recommendation.*

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*The Legislative Auditor found in the 2002 review that many minor facilities were not submitting DMRs as required, that the DWR was not pursuing DMRs from facilities that failed to provide them, and that DWR was renewing minor facility permits without determining compliance with effluent discharge limitations from previous permits.*

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Environmental Enforcement Office (EE) ensure that all minor facilities submit DMRs as required and that DWR review the DMR data for compliance before permit renewal.

The Division indicates that, following the 2002 report, all minor individual industrial and municipal DMRs from January 2000 forward began being entered into the PCS system. This system and its replacement system, to which the Division will be integrated in 2013, identify non-submittals. Additionally, the Division began development of a web-based electronic discharge monitoring reporting system (eDMR) in 2007, which was implemented in January 2009. Many permit holders are already using the system and all permit holders are required to use it beginning July 1, 2011. The eDMR allows permittees to electronically sign and submit DMRs to the Division, after which the DMR data are automatically validated against the permittees limits and conditions, then downloaded into the Division's database, and finally, uploaded to the EPA's PCS system.

The Division indicates that all DMRs are reviewed by the permit writer before a permit is reissued and by inspectors prior to facility inspection. Based on the use of the EPA's database to identify non-submittal of DMRs and the review of DMR data before permit reissuance, the Legislative Auditor determines that the Division complies with Recommendation 2 from the 2002 report.

### **Recommendation 3**

*The DWR should implement a procedure in which minor permittees are notified when DMRs have not been submitted and indicate to permittees that the permit will not be renewed unless DMRs are submitted.*

#### **Level of Compliance:** In Compliance

As discussed under Recommendation 2 above, all DMRs are reviewed for compliance before the reissuance of a permit. This means that permits will not be renewed if no DMR data have been received. As also established under Recommendation 2, minor facility DMR data are now submitted to the EPA's database, which identifies non-submittals. The Division indicates that when a non-submittal has been identified, the following actions are taken:

*Facilities that are identified as having missing DMR data are first called by telephone and asked to submit. If they still do not submit, a letter is mailed to the facility. Typically, the facility complies; however, if they do not, the problem is resolved through EE.*

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*Based on the use of the EPA's database to identify non-submittal of DMRs and the review of DMR data before permit reissuance, the Legislative Auditor determines that the Division complies with Recommendation 2 from the 2002 report.*

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*Based on the required review of DMR data before permit renewal and the establishment of a notification procedure for indicating to permittees when DMRs have not been received, the Legislative Auditor determines that the Division complies with Recommendation 3 of the report.*

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Based on the required review of DMR data before permit renewal and the establishment of a notification procedure for indicating to permittees when DMRs have not been received, the Legislative Auditor determines that the Division complies with Recommendation 3 of the report.

Appendix A: Transmittal Letter

**WEST VIRGINIA LEGISLATURE**  
*Performance Evaluation and Research Division*

Building 1, Room W-314  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-6110  
(304) 347-4890  
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John Sylvia  
Director

May 23, 2011

June Casto, Chief  
West Virginia Department of Environmental Protection  
Office of Administration  
601 57<sup>th</sup> Street  
Charleston, WV 25304

Dear Ms. Casto:

This is to transmit a draft copy of the Compliance Review of the January 2002 Performance Review of the Division of Water and Waste Management. This report is scheduled to be presented during the June 13-15, 2011 interim meetings of the Joint Committee on Government Operations and Joint Committee on Government Organizations. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committees may have.

We will need a written response from your agency by noon on June 2, 2011 in order for it to be included in the final report. If you would like to schedule a meeting to discuss any concerns you may have with the report, please contact Brian Armentrout or Tina Baker at 304.347.4890. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 304.340.3192 by Thursday, June 9, 2011 to make arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,

Handwritten signature of John Sylvia in black ink.  
John Sylvia

Enclosure

*Joint Committee on Government and Finance*



## Appendix B: OBJECTIVE, SCOPE & METHODOLOGY

### **Objective**

A compliance review of the Division of Water and Waste Management (Division) of the Department of Environmental Protection (DEP) was conducted as part of the Agency Review of DEP pursuant to West Virginia Code §4-10-8. The objective of this review was to determine the Division's compliance with recommendations made in a Performance Review issued by the Legislative Auditor in January 2002.

### **Scope**

The scope of this report is actions taken by the Division between the release of the Legislative Auditor's 2002 report and April 2011.

### **Methodology**

In order to determine the Division's compliance with previous recommendations, the Legislative Auditor corresponded with and reviewed supporting documentation provided by Division staff. After a review of the Division's information, a determination was made concerning the level of compliance the Division has with each recommendation. In order to determine whether the Division carries out enforcement actions in response to fecal coliform violations, the Legislative Auditor reviewed a list of all fecal coliform violations since the release of the 2002 report; requested data regarding enforcement actions taken for 57 permittees that had 16 or more fecal coliform violations from 2002-2011; and reviewed these data for evidence of enforcement.



## Appendix C: Permittees With 16 or More Fecal Coliform Violations From 2002-2011

<b>Permittees With 16 or More Fecal Coliform Violations From 2002-2011</b>	
WV0020621 MONTGOMERY CITY OF	WV0040541 PAX TOWN OF
WV0020630 SUMMERSVILLE TOWN OF	WV0045730 CRAIGSVILLE PSD
WV0021822 GRAFTON CITY OF	WV0070190 BAKER OIL TOOL, INC.
WV0021849 MASON TOWN OF	WV0081001 ENLARGED HEPZIBAH PSD
WV0021865 FARMINGTON CITY OF	WV0081124 WV DIVISION OF NATURAL RESOURCES
WV0021989 RAVENSWOOD CITY OF	WV0082759 BERKELEY COUNTY PSSD
WV0022349 CHARLES TOWN CITY OF	WV0084000 WHITE SULPHUR SPRINGS CITY OF
WV0023205 CHARLESTON CITY OF	WV0084182 BROOKE CNTY PSD
WV0023230 WHEELING CITY OF	WV0084301 GREATER HARRISON CNTY PSD
WV0024473 MARLINTON CITY OF	WV0084425 PAGE-KINCAID PSD
WV0024562 WAYNE TOWN OF	WV0084433 PINE GROVE TOWN OF
WV0024589 WELCH CITY OF	WV0084450 SALT ROCK SEWER PSD
WV0024848 DAVIS TOWN OF	WV0084824 STANAFORD ACRES SEWERAGE SYSTEM
WV0024945 BURNSVILLE PUBLIC UTILITIES	WV0085359 FORT GAY TOWN OF
WV0024953 MANNINGTON CITY OF	WV0088013 CHARLES TOWN CITY OF
WV0025101 PRESTON COUNTY SEWER PSD	WV0088897 KNOBLEY ESTATES SANITARY CORPO
WV0025739 PENNSBORO CITY OF	WV0100285 WORTHINGTON TOWN OF
WV0025925 BRADLEY PSD	WV0101443 UNION-WILLIAMS PSD
WV0026271 WILLIAMSON CITY OF	WV0101524 MOUNTAIN TOP PSD
WV0027022 ARBUCKLE PSD	WV0101702 MT ZION PSD
WV0027138 CENTER PSD	WV0101729 HANCOCK CNTY PSD
WV0027308 ELLENBORO-LAMBERTON PSD	WV0103161 BERKELEY COUNTY PSSD
WV0027481 ROWLESBURG TOWN OF	WV0103748 GILBERT, TOWN OF

WV0027740 NORTH BECKLEY PSD	WV0105406 FLEMINGTON TOWN OF
WV0027791 RIPLEY CITY OF	WV0105651 TUNNELTON TOWN OF
WV0028088 WESTON CITY	WV0105732 PRICHARD PUBLIC SERVICE DISTRICT
WV0032131 COLFAX PSD	WV0105813 ASHTON ESTATES & TOWNHOUSES
WV0032531 NEW HAVEN TOWN OF	WV0105830 BERKELEY COUNTY PSSD
WV0040177 AGC FLAT GLASS NORTH AMERICA	

## Appendix D: Agency Response



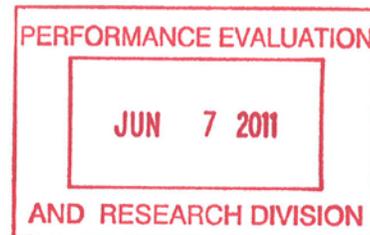
west virginia department of environmental protection

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Earl Ray Tomblin, Governor  
Randy C. Huffman, Cabinet Secretary  
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May 23, 2011

John Sylvia, Director  
Legislative Post Audit Division  
Building 1, Room W-314  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0610



Dear Mr. Sylvia:

Please consider this the Department of Environmental Protection's response to the report of the Compliance Review of the January 2002 Performance Review of the Division of Water and Waste Management (formerly DWR). The three recommendations from the 2002 review were:

*Recommendation 1: The DWR should develop a program which will analyze Discharge Monitoring Report (DMR) data and provide the DWR with quarterly violators of the fecal coliform standard.*

*Recommendation 2: The DWR and EE should ensure that all minor facilities submit DMRs as required, and DWR reviews them for compliance before renewal.*

*Recommendation 3: The DWR should implement a procedure in which minor permittees are notified when DMRs have not been submitted and indicate to permittees that the permit will not be renewed unless DMRs are submitted.*

*The report issued found that the Division demonstrated compliance with all the recommendations made in the 2002 report.*

We concur with the report issued for the Division of Water and Waste Management by the Performance Evaluation and Research Division.

Should you need additional information or have any questions regarding our response, please let me know.

Sincerely,

June A. Casto, Chief  
Office of Administration

Promoting a healthy environment.





WEST VIRGINIA LEGISLATIVE AUDITOR

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