Alaska Compliance and Enforcement Evaluation
(Clean Air Act (CAA) Program)

Date: February 17, 2005

Program Evaluated: CAA Stationary Source Compliance/Enforcement Program

Information Sources Included in the Review:

The evaluation of the Alaska Department of Environmental Conservation (ADEC) Air Compliance and Enforcement Program was based on information from: ADEC's policies, procedures, and protocols; interviews; source file reviews; the state's database; EPA's national database (AFS); ADEC's Compliance Monitoring Strategy (CMS) Plan; ADEC's annual work plan; the EPA/ADEC Compliance Assurance Agreement; and EPA's national stationary air source policies.

EPA Region 10 selected 15 sources for file reviews, divided into three groups: 5 major sources on the High Priority Violation (HPV) list; 5 non-HPV major sources; and 5 synthetic minor sources (4 of which are SM-80s and 1 is an HPV). Sources were randomly selected within each of the three groups, but were chosen to represent a variety of types and locations of the sources. The time period evaluated was federal fiscal year 2003, but because some of the enforcement actions that were taken in 2003 addressed violations that occurred in earlier years, we reviewed files with information back to 2000, 2001, or 2002, as appropriate. Appendix A lists the sources that were selected for the file reviews.

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Section 1: Review of State Inspection Implementation

1. ***Degree to which state program has completed the universe of planned***

Monitoring Strategy (CMS) expectation because ADEC was focusing its resources at that time on meeting its commitment to issue Title V operating permits. In addition, the fact that many sources are scattered throughout Alaska and may be accessible only by plane due to remote or distant location, increases inspector travel time and expense, and justifies an alternative frequency.

Because of the timing of EPA's on-site file reviews at ADEC's office in the last week of October 2004, we were able to obtain complete information on this metric for FY04 and evaluate performance for the two year period FY03/04. For these two years, the percentage of CAA major sources receiving FCEs by the State increased to **69.7 %**, and combined with EPA-only FCEs results in **71.7 %**. Because issuance of Title V permits was nearing completion, ADEC shifted some resources from permitting into compliance work (e.g., conducting evaluations, noncompliance response actions).

At the start of FY04, ADEC submitted a revised CMS Plan to EPA that proposed to conduct FCEs at all its Title V major sources every two years, including on-site visits to the oil and gas facilities every other year and to the non-oil and gas facilities once every six years. EPA Region 10 approved the plan on the condition that those major non-oil and gas facilities that incur high priority violations in the future, have historically had compliance problems, or may raise concerns for either of our agencies, be included on the next two year CMS Plan for an on-site visit.

For FY03 and FY04, ADEC met its commitments for conducting FCEs, and according to the State's accomplishment in FY04 (obtained from the State's database) and projections for FY05 (in the State's CMS Plan), they are on track to conduct FCEs at 100 % of their major sources every two years and 100 % of their SM-80 sources every six years.

ADEC reviews 100 % of the annual compliance certifications received, in addition to every six-month facility operating report and stack test report.

Corrective action if needed: None needed.

2. ***Degree to which inspection/evaluations reports document inspection findings, including accurate identification of violations.***

Findings:

were very comprehensive, including general and facility-specific information, applicable requirements, and an inventory of regulated emission units. About a third of the evaluations reviewed identified some corrections to the facility's source inventory.

The evaluation reports accurately identified violations of all magnitudes, from high priority violations to deviations from permit conditions (e.g., late reports, incomplete reporting, missed monitoring, inaccuracies, exceeding parametric operating ranges, etc.).

Corrective action if needed: None needed.

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

Findings:

Of the 15 source files reviewed, the average time it took from the beginning date of the evaluation (in some cases this was the inspection date) to completion of the evaluation and final identification of violations was 21 days. ADEC has a goal of completing inspection reports within one week of the inspection, unless more information is needed following the inspection or other events/priorities occur that delay completion of the report. Because the compliance evaluations (FCEs) include a review of all applicable information, which may or may not include an on-site inspection, the time needed to complete FCEs varies.

ADEC is submitting all of EPA's minimum data requirements at least quarterly or more frequently, including violations.

Corrective action if needed: None needed.

Section 2: Review of State Enforcement Activity

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

discussions during the HPV calls.

The rate at which new HPVs were identified (per universe of major facilities) was 1.4 % (2) in FY03 and 3.4 % (5) in FY04. This increase may be attributed to the fact that ADEC doubled its FCEs in FY04 and not that there is an increase in the number of facilities with HPVs.

Corrective action if needed: None needed.

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

Findings:

All of the source files reviewed that had violations identified (10) were addressed with a formal or informal response, that included corrective actions needed and a compliance schedule. In some of the cases, the corrective actions were already implemented by the time that ADEC's response was sent to the facility. For non-HPVs, ADEC typically responds with either a Compliance Letter or a Notice of Violation that includes needed corrective actions. For HPVs, ADEC usually negotiates an enforcement agreement with the facility in the form of a Compliance Order by Consent (COBC), a Settlement Agreement, or a Consent Decree, all of which include corrective actions and a compliance schedule.

Corrective action if needed: None needed.

6. ***Degree to which the state takes enforcement actions, in accordance with national enforcement response policies relating to specific media, in a timely and appropriate manner.***

Findings:

In FY03 there were 16 facilities on the HPV list for which ADEC had the enforcement lead. The HPVs were either addressed prior to FY03 but not yet resolved, or were addressed in FY03 or FY04. Of the 16 addressing actions by the State, 50 % (8) were

For EPA's Watch List, which was introduced at the beginning of FY04, ADEC had two facilities on the list at the beginning of FY04 and no facilities on the list by the end of FY04. ADEC has been successful lately in addressing HPVs in a timely manner.

Regarding appropriateness of enforcement actions, of the 6 source files reviewed that were HPVs with penalty actions, all 6 were appropriately addressed with penalties and corrective actions with schedules. The penalty amounts agreed to in the 5 Compliance Orders by Consent (COBC) and one Consent Decree reviewed included a cash penalty to be paid and a suspended penalty that would be due if the company violated the COBC or Decree. The suspended amounts were typically equal to the amounts paid. Because the State lacks its own penalty policy, penalty amounts are initially calculated using EPA's Civil Penalty Policy and are then negotiated with the company, taking into consideration any mitigating factors and other circumstances of the case. In all settlements, ADEC's Division of Air Quality Director approves the final negotiated settlements.

In some cases, the penalty was mitigated by the company agreeing to perform supplemental environmental projects (SEP). The SEP costs were higher than the amount of penalty mitigated, which is in line with EPA's SEP Policy.

From the information gathered and reviewed, it appears that ADEC is taking timely and appropriate enforcement actions, similar to national enforcement response policies, but consistent with existing state policies and law.

Corrective action if needed: None needed.

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

Findings:

All of ADEC's formal enforcement actions with penalties include calculations for gravity and economic benefit consistent with applicable policies. ADEC uses EPA's Civil Penalty Policy to calculate an initial penalty amount, however, final resolution of a particular violation may differ from the policies employed by EPA. In calculating economic benefit, ADEC may use, but is not limited to using, EPA's BEN model. Of the 6 source files reviewed that were HPVs and had formal enforcement with penalty, all 6

Findings:

Of the HPVs that were addressed with formal enforcement actions in FY03 (7), all included penalties. As discussed above, all of ADEC's formal enforcement actions with penalties included calculations for gravity and economic benefit consistent with applicable policies.

Corrective action if needed: None needed.

Section 3: Review of Performance Partnership Agreement or State/EPA Agreement

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

Findings:

ADEC has agreed to certain compliance and enforcement commitments in its Performance Partnership Agreement and Compliance Assurance Agreement with EPA. Commitments for conducting compliance monitoring activities (e.g., full compliance evaluations) and taking timely and appropriate enforcement actions are included in the Compliance Assurance Agreement. Annual commitments for conducting FCEs, in accordance with EPA's Compliance Monitoring Strategy have been submitted to EPA in a CMS Plan, which EPA conditionally approved. ADEC has met its commitments in its CMS Plan for FY03 and FY04.

Corrective action if needed: None needed.

Section 4: Review of Database Integrity

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

frame.

Corrective action if needed: None needed.

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

Findings:

ADEC responds to AFS data error messages very timely, usually within 10 days of receiving the error messages.

ADEC reviews all stack test reports and enters the results by pollutant into AFS.

According to the data pull in August 2004, the noncompliance rate for FY03 was lower than the HPV rate, which is not possible. Of the 6 HPVs reviewed, 5 were listed as either "in compliance" or "unknown" under compliance status during FY03. These sources should have been identified as "in violation". Two of these 5 sources were subsequently listed as "in violation" in FY04, however.

Comparing data in AFS with the 6 HPV source files and the State's database revealed a few discrepancies regarding enforcement action information. In both AFS and the State's database, there were a few duplicate entries of actions, a few wrongly labeled or dated actions, and a problem with identifying the proper penalty amounts (i.e., cash penalties assessed/agreed to in settlements). ADEC has been including suspended penalties and SEP credit amounts in the penalty amounts submitted to AFS.

Corrective action if needed: ADEC needs to ensure that data regarding sources' compliance status, enforcement actions, and penalties are accurately recorded in AFS. ADEC should review data in AFS for FY04 and correct all discrepancies. In addition, from now on ADEC should review and verify AFS information at least quarterly for the data uploaded from the State's database to AFS over the preceding quarter. Corrections to discrepancies already identified for FY02 and FY03 data can be mutually resolved by ADEC and EPA data managers.

12. ***Degree to which the Minimum Data Requirements are complete, unless otherwise negotiated by the Region and State or prescribed by a national initiative.***

together in a major effort to fix this problem. Regarding compliance and enforcement data, however, there are still a few discrepancies. In some cases, the information in AFS reflects the State's database, however, the information in the State's database is in error and needs to be corrected. For example, there appears to be some duplicate entries of the same action or activity for FCEs, Notices of Violation, and formal actions. Also, the actual total amount of assessed penalties in FY03 was less than half (44 %) of the amount shown in AFS, which had included suspended amounts and SEP credits.

The formal action counts and actions with penalties include minor sources, such as asphalt plants. ADEC has also assessed penalties against cruise ships for opacity violations of the State Implementation Plan (SIP), but these penalties have not been entered into AFS, partially because marine vessels have not traditionally been assigned an AFS number and tracked in AFS.

ADEC has been successful in uploading the MDRs to AFS using the UI. ADEC currently provides program applicability (i.e., MACT, NESHAP, NSPS, NSR, etc.) and attainment area information for each major stationary source through UI data loads. ADEC is currently investigating the possibility of expanding the data information to include specific subpart applicability for each identified air program.

Corrective action if needed: As stated in element #12 above, ADEC needs to correct deficiencies in its database so that complete and accurate information is uploaded to AFS. Quarterly reviews of AFS data for the uploaded previous quarter are recommended.

Section 5: Optional

13. ***Evaluation of compliance assistance and innovative projects.***

ADEC elected to not include information for this optional evaluation element for this review.

Appendix A

Sources selected for the file reviews:

Major sources on HPV list (2003)	**AFS#**	
1. Conoco-Phillips Petroleum, Tyonek	#0212200009	
2. TDX North Slope Generation, Inc.	#0218500069	
3. Trident Seafoods, Akutan	#0201300005	
4. University of Alaska, Fairbanks	#0209000007	
5. Westward Seafoods, Dutch Harbor	#0201600009	
Major sources, non-HPVs		
6. Barrow Utilities & Electric Coop.	#0218500062	
7. Conoco-Phillips Petroleum, CPF#1	#0218500017	
8. Icicle Seafoods, N. Victor, Unalaska Island	#0201000015	
9. Anchorage Water/Wastewater Utility (Asplund)	#0202000023	
10. Unocal - King Salmon Platform	#0212200008	
Synthetic Minor sources		
11. Alaska Railroad Corp., Fairbanks	#0209000016	SM-80
12. American Presidents Line, Dutch Harbor	#0201600013	SM-80 (HPV)
13. Kodiak Electric Assoc., Port Lions Gen. Sta.	#0215000018	SM-80
14. Petro Marine Services, Kechikan	#0213000028	SM
15. Petro Star, Inc., Valdez Refinery	#0226100020	SM-80

Note: The term “synthetic minor” refers to air pollution sources whose maximum capacity to emit air pollution under their physical and operational design is large enough to exceed the major source threshold but are limited by an enforceable emissions restriction that prevents this physical potential from being realized. Through such synthetic minor permits, sources avoid triggering major source requirements. “SM-80" is a synthetic minor source that emits or has the potential to emit at or above 80 percent of the Title V major source threshold.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

April 13, 2005

MEMORANDUM

SUBJECT: Results of Evaluation of Region 10 CWA/NPDES and RCRA/Subtitle C Programs in Alaska

FROM: Lisa Lund, Deputy Director /s/
Office of Compliance

TO: Mike Bussell, Director
Office of Compliance and Enforcement, EPA Region 10

I am attaching for your review and action the final report of our evaluation of Region 10's direct implementation in Alaska of the Clean Water Act (NPDES) and Resource Conservation and Recovery Act (Subtitle C). This review was undertaken in conjunction with the pilot phase of the State Review Framework. The Headquarters review team worked closely with the Regional review team, whom I want to commend for their courtesy and professionalism during the review process.

The report consists of the Executive Summary, which describes the review process and outlines the most important issues and recommendations of the review team. We have discussed these recommendations with the Regional team and have reached consensus- that these are the main focus areas for improvement that need to be undertaken. In fact, many of these actions are already being implemented by the Region. The remaining two sections are the individual reports on the CWA NPDES and RCRA Subtitle C programs, which contain a more detailed discussion of findings, conclusions, and recommendations.

The findings and recommendations in the Executive Summary are the ones that rise to the top and that the team believes need the Region's most immediate attention. I would ask that you review these recommendations and respond to us as to the steps you plan to take, including milestones and schedules in implementing them. In this way, we will be able to track the Region's progress in making significant changes that we believe will help to improve and strengthen your enforcement and compliance program.

I would be glad to discuss the work of the review team and the recommendations to further clarify the issues and to provide additional context for them. Please feel free to contact me at 202-564-2280 at any time. Again, we appreciate the collaborative approach the Region brought to this review and informative value it has provided to the pilot phase of the State Review Framework.

cc: Lauris Davies, OCE, Region 10
David Bennet, OCE, Region 10
Betty Wiese, OCE, Region 10
Mike Slater, OCE, Region 10
Kim Ogle, OCE, Region 10
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Art Horowitz, OECA
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State Program Review Framework Pilot Phase
Executive Summary for Region 10/Alaska CWA NPDES & RCRA Subtitle C Programs
March 18, 2005

I. Background and Overview

OECA undertook the review of Region 10's direct implementation of the CWA NPDES and RCRA Subtitle C programs in Alaska as part of the State Review Framework evaluation of Alaska, which agreed to be a pilot state during the pilot phase of the Review. Region 10 conducted the review of Alaska's CAA Title V program, which is delegated to the state. To conduct this review, OECA assembled a review team and to the extent possible used the protocols, guidelines, and reporting formats developed for the Review to conduct this evaluation. This was viewed by OECA as an opportunity for headquarters managers and staff to gain first hand experience implementing the Framework.

The OECA review team consisted of managers and staff from the Office of Compliance, the Office of Regulatory Enforcement, the Office of Planning Policy Analysis, and Communications, and Region 8. The review team members are: Lisa Lund (OC), Art Horowitz (OPPAC), Mike Barrette (OC), Rick Duffy (OC), Tom Ripp (OC), Alan Morrissey (ORE), Corbin Darling (Region 8).

Concurrently, Region 10 assembled a parallel review team to work with the headquarters team. The regional team was lead by Lauris Davies and David Bennett of the Office of Compliance and Enforcement (OEC). The lead manager and staff for CWA is Kim Ogle and Rob Grandinetti. The lead manager and staff RCRA are Betty Wiese and Mike Slater. The OECA review team worked closely with the Regional team during the preliminary stage of the review leading to the on-site file review conducted from October 13 to 15. The OECA review team want to thank the Region 10 team for their outstanding assistance to us at each step of the review process. We greatly appreciate their efforts to help make the review as smooth as possible. While the OECA team worked closely with the program office (OCE) team, they did not meet with the Office of Regional Counsel. Most of the work for the review was pertinent to program office activities and the OECA review team relied heavily on the files and interviews with them. In retrospect, inclusion of Regional Counsel staff attorney's during the on-site visit would have leant additional insight into the Region's enforcement program in Alaska. There also would have also been access to additional case file information that would have aided in our understanding of various enforcement actions and determination of SNC.

The OECA team attempted to follow the review process outlined in the June 17, 2004 Implementation Guidance prepared for the State Review Framework. The team contacted the Regional leads and began to discuss how the review would be conducted. There was an initial conference call between the Office of Compliance and Enforcement and OECA to introduce the teams and set the ground rules and expectations for the review. The Region's RCRA program had conducted a review of inspection and enforcement files within the past two years and it was agreed to use that as a starting point for the review. The Region's CWA program had just completed its self-assessment for the Office of Water's Performance for Environmental Results (PER) and it was agreed to use data from that report to the extent possible.

A key activity leading to the on-site review was to select the files for review. For the CWA, seventeen files were selected for review, 13 majors and 4 minors. To select these files, the team used the list of inspection and enforcement files generated for the data review metrics. The team used OTIS to identify a set of major facilities that were indicated as not having been inspected for a relatively long period of time and where there were multiple quarters of noncompliance indicated. Minor facilities with standard permits were selected using similar characteristics. Minors with general permits in Native American villages and two others that appear to be in environmentally sensitive areas were also considered. The Region was consulted to ensure a good sampling of minor facilities. For RCRA, 13 files were selected for review, which represented a mix of TSDs, LQGs, SQGs, and CEGs. These files were chosen from a list of files the Region had previously reviewed as part of its recent evaluation of state programs within the

Region and represented a cross section of inspection and enforcement actions.

The following sections of this summary represent the main findings and issues identified through looking at national and state data, file reviews, negotiated commitments, and the discussions with the Region 10 water and waste managers and staff during the on-site visit, as well as subsequent follow-up calls and email communications.

II. Overall Picture (Key issues for RA/Director's attention)

A. General Observations – The review team commends the Region for taking steps to make improvements in both the CWA and RCRA programs. The CWA program has recently prepared a strategic plan that outlines its priorities and how it will use its resources. The program has also taken steps to improve its filing system, which will increase its ability to manage and track inspection reports and enforcement actions. The RCRA program has already improved its filing system, which proved to be very effective during the review. The program has now begun to create a process for tracking inspection reports and improving how SNC is identified and determinations are made.

B. RCRA/Subtitle C – The Region 10 RCRA program in Alaska maintains good inspection coverage, particularly for the TSDs. Inspection reports tend to be timely and well documented. The main issue identified by the review team concerns SNC and SV determinations. These issues concern the accurate and timely determination, documentation, and reporting of SNC and Secondary Violations. The Region's RCRA compliance unit is in the process of formulating a system for managing SNC/SV identification and tracking, which is a good start. The team recommends that this management system be based on the guidelines in the RCRA Enforcement Response Policy and suggests that the Region consult with RCRA programs in other EPA Regional Offices to assess best practices to help formulate their SNC/SV identification process. It is further recommended that Regional RCRA inspectors receive training on SNC identification.

C. CWA/NPDES – Region 10 has increased its inspection commitments for Alaska, which will help the Region to meet the national standard of 100% coverage of major facilities. The main issues concern the apparent under reporting of SNC. This is manifest in two ways: 1) SNC discovered during inspections as single event violations are not entered and tracked in PCS; and 2) the low rate of permit limit data entry for Alaska means that the compliance is unknown for 36% of the major sources. The Region should have a process for documenting single event violations and entering and tracking them in PCS. Concurrently, the Region needs to continue to work with OECA to improve its permit limit data entry process for Alaska. This should be done in coordination with the Region's overall effort to improve permit limit data entry for all four states in the Region. Limited resources are cited as an underlying problem for the Region to manage the data management and inspection coverage issues. One possible method for attaining additional resources may be for the Region, in consultation with Alaska and the Region's water program unit, to retain a portion of §106 grant funds to obtain additional contractor support for these efforts.

III. Inspection Implementation

A. RCRA/Subtitle C – The Region met its RCRA inspection commitments for Alaska in FY 2003. The Region has also been doing well in identifying and tracking a LQG universe that is constantly in flux. The Region's revised LQG universe and recalculated inspection rate for 2003 is about 17 to 18%. While this is within the normal range for a given year, it may be that a higher percentage of sources needs to be inspected in subsequent years in

order to meet the RCRA program's five-year 100% standard. The LQG universe in Alaska is constantly changing, and the base universe will not be the same from year-to-year. In order to maintain a good inventory of this universe, the Region should institute a procedure to ensure that BRS reports and intelligence from field inspections are used to allow the Region to better monitory which facilities are LQGs.

B. CWA/NPDES – The Region met its NPDES FY 2003 MOA inspection commitments in Alaska; however, its inspection coverage was 32.4%, which is lower than the 70.3% national average. The Region currently has an inspection plan that targets 60% of their resources to inspections at wet weather (i.e., storm water) facilities, an OECA priority, and 40% at core program work. The Region has increased its inspection resources in Alaska, and it has greatly increased its inspection commitments in the FY 2005 on line commitment system. The review team recommends that the Region, in consultation with Alaska, utilize a portion of the CWA §106 grant funds to support the Region's direct implementation of the NPDES program by supporting inspection activities.

IV. Enforcement Activity

A. RCRA/Subtitle C – Most of the RCRA enforcement actions for sources in Alaska are Notices of Violation (NOV), which appear to be effective in returning sources to compliance. The files have letters from the facilities that respond to the NOV and that state that they have returned to compliance. In these instances, there was no injunctive relief. There are few formal enforcement actions where injunctive relief does not appear to play a significant role in the Region's Alaska RCRA cases. As improvements in the SNC determination process, the Region may identify additional enforcement opportunities that include injunctive relief, with schedules for return to compliance. The one penalty order that was reviewed showed that penalties, including economic benefit, were appropriately calculated. It was noted that this case took a very long time to settle, but since the facility has already returned to compliance, no injunctive relief was sought.

B. CWA/NPDES – During the FY 2003 review period, the Region took 12 CWA enforcement actions in Alaska that included penalties. The file reviews indicated that penalties, including economic benefit, were appropriately calculated. Concern is with the potential under reporting of SNC, due to the low rate of permit limit data reporting, there are additional violations that have not yet been identified and are not being addressed. Additionally, the single event violations that are not reported to PCS prevents these violations from being tracked nationally.

V. Commitments in Annual Agreements

A. As noted in section III, the Region met the inspection commitments in its FY 2003 MOA with OECA.

VI. Data Integrity

A. RCRA/Subtitle C – Data on enforcement actions at facilities in Alaska are generally timely and accurate. The Region should continue to closely track the Alaska LQG universe in RCRAInfo. This issue will be helped by the upcoming RCRAInfo changes regarding active/inactive sources.

B. CWA/NPDES – Inspection data for Alaska is generally well maintained in PCS. The main data integrity issues are the lack of reporting single event violations and the low rate of NPDES permit limit data, which potentially allows a certain amount of SNC to go undetected and unreported.

VII. State's/Region's Enforcement Priorities

A. The Region's NPDES Compliance Unit has developed a strategic plan for 2005 – 2007. The Unit Plan specifies the priority sectors and what the Unit plans to accomplish in that time period. After the first cycle, the Unit will revisit the strategic plan and amend it to reflect the current issues and future priorities. The strategic plan is considered a living document that allows the Unit to evolve to meet the needs of NPDES compliance within Region 10 as it changes over time.

VIII. Successes, Initiatives, Major Cases

A. RCRA/Subtitle C – The RCRA program has initiated a toll-free Hazardous Waste Information Line in Alaska to respond to inquiries from the regulated community that responded to over 100 calls during the year.

B. CWA/NPDES – Region 10 began committing resources to the storm water sector. This sector had been largely ignored in the past. In order to develop an effective program, Region 10 decided to develop an integrated strategy. The strategy involved two phases: Phase 1) Compliance assistance and outreach; and Phase 2) Compliance monitoring and enforcement. This strategy directed the Region to focus on the direct implementation states.

Findings (March 18, 2005) State Review Framework
Region 10/Alaska Review
CWA NPDES Program

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

Findings

9. The Region conducted 17 inspections at major sources while Alaska, representing the Region, conducted six for a total of 23 inspections and a coverage rate of 32.4%. In their FY 2003 MOA, Region 10 committed to conducting 11 major source inspections in Alaska. This is consistent with the coverage rate reported by the Office of Water's Permitting for Environmental Results (PER), which used the same selection criteria. The Region agrees with this number and points out that the metric calculated (using ICIS) based on the Federal Fiscal Year (October to September) shows that 24 major sources inspections were conducted, while Alaska inspected seven for a total of 31 inspections, a coverage rate of 43.6%. However, the Region is below the national coverage average of 70.3%. (OECA data comes from OTIS and IDEA, which was calculated for all states during this review period on the Inspection Year – July to June, which is the longstanding metric for measuring NPDES inspection coverage).

10. From the major source inspections noted above, and the 38 minor source inspections conducted in 2003, it appears that the Region has met its MOA inspection commitments for the year. The total count of inspections conducted in Alaska in 2003 was 141. There were also a number of inspections conducted at non-active minor sources in Alaska, which are not accounted for in the database. Relating to minor source coverage, the Region suggested that the minor source inspection rate may be skewed by a large number (1100) of placer mines.

11. The Region has a targeting plan for NPDES sources. In support of the national stormwater sub priority, one focus of the Region has been construction sites, which are minor sources. The Region targets approximately 60% of their inspection resources at wet weather (i.e., storm water) facilities, an OECA priority, and 40% at core work.

12. OECA's On-Line Commitment System shows that for 2005 the Region is committing to 272 major source inspections, with 72 to be conducted in Alaska. This is a considerable increase above the number of major source inspections conducted in 2003. Whether the Region accomplishes all of these inspections will depend on the number of minor source inspections, national guidance allows a 2:1 trade-off between minors and majors, and the number of inspections that Alaska is able to conduct. The Region should be commended for their efforts to reach the program expectation of inspecting 100% of majors in a year. This is further born out by the recent addition of one more compliance officer in the Anchorage field office.

Conclusions

The Region is met its FY 2003 MOA commitments for NPDES major source inspections in Alaska, though those commitments were modest. In setting and meeting those commitments, the Region was below the national average of 70.3% coverage. The Region has a targeting plan to address both national and regional priorities, and they have increased their commitments for FY 2005. The Region should be commended for improving its inspection picture by enhancing its inspection commitments and adding another compliance officer in the field.

Recommendation

1. In order to improve the Region's ability to conduct as many inspections (majors and minors) as

possible in Alaska, it is recommended that the Region, in consultation with Alaska and the program office, explore the possibility of using CWA §106 grant funds. These funds are provided to the states to manage their NPDES programs. It might be appropriate to arrange with the state for a portion of these funds to remain with the Region in order to support additional inspections by Regional personnel or by hiring contractor support.

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

Findings

1. Seventeen files were reviewed, 13 majors and 4 minors. Seven files showed violations detected through inspections that were identified in a timely manner. Six files showed violations that were not identified in a timely manner. Two of the inspection files reviewed did not have adequate documentation (an inspection report, etc.) to support the identification of a violation. The other files showed violations based on DMRs and self-reporting. See Elements 10 and 11.

Conclusions

More than half of the violations were identified and reported into PCS in a timely manner, most of which are from DMRs and self-reported data. SNC identified through inspections is reported timely manner less frequently. The lack of adequate documentation in a few of files may be due to imprecise record keeping and filing. The Region recognizes that problem and plans to improve its filing system for the NPDES program.

Recommendation

The Region should continue to improve its file management system to ensure that inspection files maintain adequate documentation to demonstrate that violations are identified in a timely manner.

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

Findings

1. Seventeen files were reviewed. Five files reviewed showed that inspection reports were completed and violations identified in a timely manner, that is, within 90 days of being identified in a timely manner per the EMS. Four files showed violations detected from inspection reports that were not identified in a timely manner. Five files reviewed showed violations identified from DMRs or self-reporting. Three additional files reviewed did not have inspection reports. It should be noted that the Region makes the SNC determination based on the information in the inspection file, but does not record this determination in the inspection files.

Conclusions

Inspection reports in the files reviewed for this evaluation are not uniformly completed within the 90 day of the inspection, although, when they are reported, violations are identified accurately. The lack of inspection reports in some cases may be caused by the files being handled by multiple Regional staff. This is an indication that the Region lacks an adequate filing system for tracking files and reports. There is no routine system for follow-up inspections or for passing the file on to

other Regional staff.

Recommendation

The Region is currently developing and implementing a file system to improve the management of the NPDES files. This system will help in the management of inspection files and making SNC determinations. The Region should ensure that this file system has sufficient controls to show who checks out a file, when reports and documents become part of the file, and the general progress of the case. Documents should be a permanent part of the file and not removed from the file.

Element 4 – Degree to which significant violations (e.g., significant noncompliance and high priority violations) and supporting information are accurately identified and reported to EPA national databases in a timely and accurate manner.

Findings

2. From the files reviewed for the FY 2003 evaluation period, one SNC was reported to the database came from information reported through the DMRs. Several SNCs identified through inspections (i.e., single event violations) were not entered into PCS to be tracked as SNC.

3. In five files of the program offices's enforcement actions (separate Regional Council files were not reviewed) violations were being pursued while the violations were not reported in PCS. In three inspection files violations were identified as SNC, but not reported in PCS.

4. Through the file reviews and discussions with regional staff, it was learned that single event violations were not routinely reported to the database as SNC.

5. Two enforcement files did not have copies of DMRs to reference to confirm that the proper determination was made.

Conclusion

The Region does not routinely track violations and SNC found through inspections in PCS, these cases do not show up in ICIS as being in the enforcement pipeline. These cases then are effectively being tracked outside of the timely and appropriate guidance.

Recommendation

The Region needs to have a process for identifying and reporting single event violations into PCS. All violations need to be entered into PCS even if they are not SNC. The SNC flag can be set later if it is indeed a SNC. Lack of resources may be a real issue in entering SNC data into PCS. The Region should look into the possibility of utilizing §106 grant funds for this purpose.

Element 5 – The degree to which state enforcement actions include required corrective or complying actions (injunctive relief) that will return facilities to compliance in a specific time frame.

Findings

1. Four of the 17 files reviewed showed that formal enforcement actions were issued. One file showed that injunctive relief was assessed. Penalty justifications reviewed for three cases were administrative orders were issued in which injunctive relief was not assessed because the facility had already returned to compliance. One file only had a draft CAFO. The review team reviewed

ICIS reports for 2003 and noted that injunctive relief was reported in the final orders for the Alaska Railroad Company (a file not reviewed for this review) and for Trident Seafoods Corporation cases.

Conclusion

It appears that the injunctive relief was appropriately assessed in the enforcement file reviewed for this evaluation.

Recommendation

No recommendation.

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

Findings

1. The file review indicates that Region 10 does not routinely address SNCs in a timely manner. Four of the 17 files reviewed indicated possible violations that are pending enforcement actions have not been addressed. Some of the files have several inspection reports over a period of several years that documented violations. Essentially, violations, and possible SNC, are being discovered through inspections that appear to go undefined and therefore unaddressed, for some period of time. Since these violations are not generally reported in the database as SNC, they remain out of sight outside of the Regional Office.
2. Data review metric 6a, in Alaska, shows that only one of the 13 SNCs reported in PCS is over the timely and appropriate criterion. This count may be low because data for violations discovered during inspections is not always entry into PCS.

Conclusion

The Region's enforcement actions for violations discovered through inspections at facilities in Alaska are not always taken in a timely manner.

Recommendation

The Region needs to improve the timeliness of taking appropriate enforcement actions.

Element 7 – Degree to which a state includes both gravity and economic benefit calculations for all penalties, using the BEN model or similar state model (where in use and consistent with national policy).

Findings

3. Four cases reviewed assess penalties. It has been determined by OECA/ORE attorneys that given the information in the files the gravity and economic benefit were properly calculated.

Conclusion

The Region calculated economic benefit as part of the penalty calculations for CWA enforcement cases that were reviewed by the review team.

Element 8 – The degree to which penalties in final enforcement actions include economic benefit and gravity in accordance with applicable penalty policies.

Findings

1. The data review metric 8a indicates that 12 CWA enforcement actions taken by the Region in 2003 assessed penalties. The four files with enforcement actions, out of the 17 files reviewed, had documentation of the penalty calculations and justifications for the final penalties. This included additional documentation on two cases sent to us after the review.

Conclusions

The Region documented the calculation of gravity and economic benefit as part of each enforcement case for the enforcement cases reviewed by the team. The records appear to be accurate.

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

Findings

1. The Region does not have a PPA, but did make inspection commitments with OECA in the 2003 Memorandum of Agreement. It is documented in Element 1 that these commitments were met. There are no further findings or conclusions.

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

Findings

1. DMR entry rate is considered good. However, there was more than one instance where PCS indicated a "no report" violation (non-receipt of the DMR) or that a facility had not been inspected in the past 5 years, but the file for the facility indicated that there was no noncompliance or that an inspection had been performed. Discussions with Region 10 indicated that the Region had not been entering information from some DMRs into PCS in a timely manner causing violations to be generated when in fact there were no violations for the facility. Lack of timely DMR entry could place a facility in noncompliance when that may not be the case.

2. Permit limit data entry for Alaska is 64%, which is below the national average of 95%. This could mean that it is not possible to know the compliance status of 36% of the major facilities in Alaska and potential SNC may not be identified. The Region states that the majority of the 36% of the facilities not entered into PCS represent the major facilities that are covered under general permits in Alaska. These permits have not been entered into PCS, because there were no effluent limits, and the permits in the past have been such that they were not easily entered into PCS. These permits have either expired or will expire in the next year, so the Region is committed to entering the permit into PCS once those new permits become effective. The Region recognizes that the 36% is not all due to the major facilities covered under general permits. For the data that cannot be explained by the major facilities covered under the general permit, the Region is confident the information will be corrected by the end of the 2005 calendar year. The reason the Region is confident the information will be corrected is the Region volunteered to pilot the transfer of AK data from PCS to ICIS-NPDES. This pilot project has created a massive amount of data clean up and the Region is currently performing a gap analysis for the data entered for Alaska. Moreover, the Region has identified $150,000 for contract help in inputting and enhancing PCS data for

Alaska. The Region is confident that the data entry for Alaska will be in a much better situation at the end of 2005.

Conclusions

1. One of the consequences not having complete permit limit data in PCS is that there may be low SNC identification for majors in Alaska, which may cause SNC to go undetected or missed and thus not having timely and appropriate enforcement. The Region has until recently been responsible for entering these data for the four states in the Region. Because of resource constraints the Region has committed to concentrate on performing the data entry for the non-authorized states while the authorized states will enter their own data. The Enforcement, Targeting, and Data Division (ETDD) of OECA will continue to work with the Region as a whole on this problem.

Recommendation

2. The Region needs to have a management plan for ensuring that DMR data are entered in a timely manner into PCS so that all reports are handled appropriately.

3. The Region needs to continue improve its data entry for permit limits for facilities in Alaska. Since permit limit data entry is a Region-wide issue, the problems relating to Alaska should be considered within the context of a Region-wide approach to the issue.

4. The team commends the Region for identifying $150,000 in contract funds as a first step to improve entry of permit limit data for permitees in Alaska.

Element 11 – Degree to which Mandatory Data Elements are accurate.

Findings

5. In PCS, 12 enforcement actions are listed without identifying a violation type.

Conclusion and Recommendation

It is a requirement that the type of violations are identified when an enforcement action is entered into PCS. This needs to be corrected.

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

Findings

1. Since violations identified through inspections or single event violations are routinely not reported into PCS, there is an undercounting of violations reported in the database. This effects metrics g and j, which relate to SNC counts. This has been discussed above. The EMS states that these SNCs should be reported to PCS.

2. Another significant data quality and reporting issue concerns entering permit limits into PCS. The Region has entered the permit limit data for 64% active major sources, while the national average is 92%. This appears to be a longstanding issue with the region.

Conclusion

The Region enters DMR data into PCS on a regular basis, data for single event violations and permit limits continues to be incomplete. The effect of this is that there could be a significant

undercounting of SNC in Alaska. This under reporting needs to be corrected.

Recommendation

1. The Region needs to have a plan for entering and tracking single event violations in PCS.

2. Related to the recommendation in Elements 10, the Region needs to finalize a plan for ensuring that permit limit data are entered into PCS.

Element 13 – Optional Evaluation Element could include program areas such as compliance assistance, pollution prevention, innovation, incentive or self-disclosure programs, outcome measures, environmental indicators, relationships with state Attorneys General or other legal offices, etc.

A number of factors have recently influenced the enforcement direction of Region 10's NPDES Compliance Unit. These factors are not easily categorized under the 12 metrics provided by headquarters and are identified as follows: (1) Increased activities under the storm water construction sector; and (2) The development of NPDES Compliance Unit's strategic plan for 2005-2007. Each of these factors will be further explained below.

Increased activities under the storm water construction sector. In 2000, Region 10 began committing resources to the storm water sector. This sector had been largely ignored in the past. In order to develop an effective program, Region 10 decided to develop an integrated strategy. The strategy involved two phases: Phase 1 - Compliance assistance and outreach; and Phase 2 - Compliance monitoring and enforcement. The strategy specifically focused on the construction sector rather than all of storm water. This decision was made because of the large number of facilities in the construction sector and it was a sector that was never addressed in the past (as opposed to CSO, SSO, MSGP, and MS4s). The strategy directed Region 10 to focus on its direct implementation states (Alaska and Idaho). Because little enforcement had occurred in this sector in the past, it was decided that compliance assistance and outreach would be performed in 2002 and 2003 before Region 10 began enforcing in 2004. Region 10 performed 18 workshops for the construction industry in Alaska and Idaho. In addition, two rounds of mass mailings were delivered to those industries in Alaska and Idaho who were identified by SIC codes as potential permittees requiring coverage under the Construction General Permit (CGP). Local planning departments and state agencies were sent the same information and extra copies delivered for distribution to those seeking building permits. Every brochure contained contact information specific to the state, along with Region 10's storm water coordinator's work phone number, and Region 10's Storm Water website. The website contained all information and application forms necessary to comply with the requirements under the CGP. After the compliance assistance and outreach phase, Region 10 then directed its resources in 2004 to compliance monitoring and enforcement. Between April and November of 2004, Region 10 performed 91 inspections, issued 57 complaints, and, to date, issued 39 consent agreements. Another important aspect of Region 10's increased efforts in the construction storm water sector is the increase in the amount of construction sites that have applied and received coverage under the General Permit since this last years enforcement round. In the fall of 2003 there were 335 and 450 permittees in Alaska and Idaho respectively, and in mid-summer of 2004 the number of permittees jumped to 608 and 726 in Alaska and Idaho respectively. The time frame of fall 2003 and mid-summer 2004 brackets the time when our enforcement work was the heaviest. This jump in new permittees clearly shows that our enforcement work had a positive dramatic affect on the regulated community.

The development of NPDES Compliance Unit's strategic plan for 2005-2007. The Unit's first ever strategic plan was recently developed to identify the NPDES Compliance Unit's work priorities for 2005-2007. This was the result after it became clear that the Unit had limited resources to do all the work it needed to accomplish. The Unit and management had to make some hard decisions on where to focus its resources and, ultimately, what sectors to drop. The Unit Plan specifies the priority sectors and what the Unit plans to accomplish in that time period. After the first cycle, the Unit will revisit the strategic plan and amend it to reflect the current issues and future priorities. The strategic plan is considered a living

document that allows the Unit to evolve to meet the needs of NPDES compliance within Region 10 as it changes over time.

Findings (March 18, 2005) State Review Framework
Region 10/Alaska Review
RCRA Subtitle C Program

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

Findings

6. The Region's 2003 MOA RCRA commitment in Alaska was to conduct 22 inspections at TSDs, LQGs, SQGs, and other sources. In Alaska, the Region accomplished 61 RCRA inspections at 55 facilities. Most of the 39 additional inspections were at sites classified as "other." All 6 identified TSDs in Alaska were inspected. Five of 6 TSDs had an on-site inspection, and the sixth facility received a financial record review, which is the only type of inspection or review conducted within the past five years at that facility due to its remote location in the state. There were 11 inspections at LQGs and 9 inspections at SQGs.

7. The Region indicates that the LQG universe has substantially changed since 2003 and thus the universe in RCRAInfo for the review period is inaccurate. The LQG universe has changed substantially, with only 10 LQGs in today's universe that were in the universe five years ago. The revised universe and recalculated inspection rate for 2003 is about 17 to 18 percent, which is within the normal range for a given year. The Region has provided an updated list of LQGs based on the most recent census. As of 2003, the Region's five-year inspection rate for LQGs is 23.8%, which is much less than the 50% national average. The Region believes that this statistic may be due to the fluctuations in universe of sources in the database, in which new sources are continually added while few inactive sources are removed.

Conclusions

1. While the revised LQG universe and recalculated inspection rate for 2003 is about 17 to 18%, which is within the normal range for a given year, it may be that a higher percentage of sources needs to be inspected in subsequent years in order to meet the RCRA program's five-year 100% standard.

2. It is not clear to the review team that the LQG universe in Alaska has been adequately identified. For example, currently, only one oil refinery, only one university campus, and no major hospitals show up on the LQG facility lists. This situation needs to be further assessed to see what LQGs still need to be identified.

Recommendations

1. The Region should continue to closely track the LQG universe in RCRAInfo to minimize the problem of determining the correct sources in the LQG universe. In addition, the Region should institute a procedure to ensure that BRS reports and intelligence from field inspections are used to allow the Region to better monitor which facilities are in the LQG category.

2. The Region needs to identify the number of oil refineries, universities, hospitals, or any other sector which the Region believes may have the potential for generating waste and might be LQGs. The Region should evaluate these sources. There should be a follow-up response to let OECA know what new sources may have been identified.

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

Findings

1. Thirteen inspection files were reviewed. Twelve files had adequate inspection report documentation. Only one of the files did not have an inspection report. The reports are complete

and cover the basic information required of a RCRA inspection. Violations are identified and noted in the files. While violations are noted, none of them are clearly identified as either SNC or SV and there is nothing in the inspection reports or files to document that internal discussions on whether any of these violations rose to the level of SNC took place within the Region. It is noted that SNC determinations are not maintained in the inspection files. The Region indicated that they do not believe that there is a program requirement to have such a document. Subsequently, it was learned during the on-site visit that the Region does not have a decision making process for making routine SNC determinations. The RCRA manager told the review team that this is an issue in the Region. Additionally, it is not clear that all of the RCRA inspectors are familiar with the new RCRA Enforcement Response Policy and are able to make adequate SNC determinations.

Conclusion

1. While violations are generally well identified and documented in RCRA inspection reports, the Region does not have a process for reviewing violations and documenting SNC on a consistent basis. If the Region is not reviewing inspection findings and reports on a consistent and systematic basis, and documenting the findings, then they may be missing violations that rise to the level of SNC. There are experienced staff inspectors in the Region who can make these determinations, but there are some newer inspectors who have less experience and training. The Region should have a procedure in place for making and documenting SNC determinations that is based on requirements in the RCRA Enforcement Response Policy. This should include a provision for placing a note or memo to the file indicating the appropriate action or non-action to be taken by the Region. The RCRA manager indicates that the Region is currently formulating a process for making SNC determinations and improving the skills of staff inspectors.

Recommendations

1. The Region should continue to formulate procedures for making and documenting SNC and SV determinations based on violations identified during inspections. This should be a management system based on the time frame in the Enforcement Response Policy. Each Region should have a SNC identification process that fits their specific organizational structure, and the review team recommends that the Region consult with the RCRA compliance programs in other Regional Offices to see if there are processes and procedures (i.e., best practices) that can be adapted to fit Region 10.

2. One file in thirteen reviewed did not contain an inspection report. This indicates that the Region generally keeps good inspection records. It is important to document each inspection or investigation so that each file is as complete as possible. The Region should ensure that inspection reports are present in each file.

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

Findings

1. The violations identified in 10 out of the 13 inspection files reviewed were identified within 90 days, per the ERP in effect at the time.

2. In Alaska, the Region completed inspection reports and identified violations in a timely manner at a rate of nearly 80%. The expectation is that inspection reports are completed and violations

identified in a timely manner 100% of the time.

Recommendation

1. The Region should improve its ability to complete inspection reports and identify violations in a timely way. The Region should try to understand why this is not consistently achieved and take steps to correct the problem.

Element 4 – Degree to which significant violations (e.g., significant noncompliance and high priority violations) and supporting information are accurately identified and reported to EPA national databases in a timely and accurate manner.

Findings

1. The files reviewed lack documentation that the Region made any internal determination regarding the SNC or SV status of the identified violations. This relates to the issue noted above about having a process for making and documenting SNC determinations.

2. The Regional Office did not identify any RCRA SNCs in Alaska in 2003, though inspection and case files reviewed indicated that problems identified at sources may in fact be SNC. In some situations it appeared that the Region was pursuing some of these cases. In several other instances, the lag time between when the inspection report was sent to ORC and when the decision was made to take the case greatly exceeded the guidelines of the ERP. Two case files were reviewed that indicated violations and possible SNC that have not been acted on. In one case, fourteen violations were identified on the inspection report, but no determination had been made and no action has been taken to date. In another case, an inspection conducted by NEIC identified several RCRA and air violations. An NOV was issued in 2002 for four of the RCRA violations and an information request letter was sent out for the other three violations relating to one of the points. The Region states that it followed up on the NEIC inspection report and has taken appropriate enforcement action for the violations that warranted them. This type of closure needs to be indicated in the files to close the loop and show that the has taken appropriate action for the RCRA violations.

3. Most of the violations are reported to the national database in a timely manner. However, the file review indicates that there were three violations that may not have been accurately reported to the database as SNC. While the identification of violations appears to be timely, it is not clear that the Region is properly identifying these as SNC when appropriate. The indication from regional staff is that they are not always clear about the definition of SNC.

Conclusion

It is not clear that SNC or SV determinations are made properly based on inspections conducted in Alaska. This may result from a lack of training in the previous and current RCRA ERP. Nor is it clear that there is adequate follow-up to inspections that have reports indicating potentially significant problems. The indication is that the newer RCRA inspectors need training on how to identify SNCs. The Region indicates that they expect to take four enforcement actions based on inspections conducted last summer. This will improve the overall enforcement picture, but it does not speak to the issue of timeliness of identifying violations and taking appropriate action.

Recommendations

1. Regional staff, would benefit from additional training, especially in how to identify SNCs based on the guidelines in the new RCRA ERP. This would be a catalyst for the Region to eliminate

uncertainty in determining the difference between SNC and SV. Both the Region and OECA need to ensure that the Region has adequate tools and training to properly identify SNCs. The review team recommends that OECA provide or help coordinate training to the Region inspectors to help them make better compliance determinations and to reflect those determinations properly in RCRAInfo.

2. Based on the national RCRA policies, the Region should ensure that all cases in the pipeline are against facilities with their violations and/or SNC listings present in the database. The process proposed by the Region for making compliance determinations should help to fulfill this recommendation.

Element 5 – The degree to which state enforcement actions include required corrective or complying actions (injunctive relief) that will return facilities to compliance in a specific time frame.

Findings

1. The file reviewed with a formal enforcement action was for an action taken against the University of Alaska, Fairbanks. The file indicates that the source returned to compliance before the case was finally settled. There was no indication in the file or in the order that injunctive relief was part of the settlement. Since the source had already returned to compliance and the order issued was a penalty order, it would appear that injunctive relief was not required.

2. NOVs, were issued in seven of the cases reviewed. The files indicate that each of these facilities returned to compliance based on letters from the facilities. Because only NOVs were issued, no injunctive relief was required.

3. The 2003 RECAP measures show that the Region assessed just over $28,000 in injunctive relief in the RCRA program, which is about 11% of the injunctive relief assessed that year among all programs in the region. This is an aggregate number for the Region and does not break out specifically for Alaska.

Conclusion

Injunctive relief does not play a large role in Region 10 RCRA enforcement cases. This is because nearly all the RCRA enforcement cases are informal actions or penalty orders. There are three possible reasons for this: 1) SNCs are not being properly identified by the Region based on inspections reports; 2) Violations that would be SNCs are not being found during inspections; and 3) The facilities the Region is inspecting do not have SNC-level violations. Under the first two possible reasons, the Region may be missing potential opportunities to take formal enforcement that could recover injunctive relief. This may not necessarily be the case, but better SNC identification may bring this about. The Region has a track record of assessing injunctive relief in formal enforcement actions as part of its overall penalty assessments in enforcement actions in other media. If more SNCs are identified through a new compliance determination process, then it is assumed that the Region will take appropriate enforcement actions, including penalty calculations and assessment of injunctive relief.

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

Findings

1. One file was reviewed where a formal enforcement action was taken and reported in a timely

manner. Most of the enforcement actions identified in the files were reported in a timely manner. The one formal enforcement action reviewed in the files took nearly seven years to resolve or address with an order. The final penalty was settled at less than one-tenth of the initial assessed penalty of $9,000 from $104,000.

Conclusions

1. The Region is relatively timely in its reporting on enforcement actions. The team reviewed a small sample of cases, but while reporting on the one formal enforcement action in the sample was timely, it was not timely in negotiating the final penalty order.

2. Recognizing that formal enforcement actions are not always concluded in a short amount of time, the seven years to negotiate and finalize the compliance order for the University of Alaska, Fairbanks, should be noted. As noted in Elements 5 & 8, the penalty calculations and justifications are in the file and appear to support the outcome. This may be an adequate outcome, but it still appears to have taken a very long period of time to resolve. During the time these negotiations took place, the university came into compliance for this particular violation, but was cited for other violations and responded to at least two NOVs from the Region. It is difficult to draw a strong conclusion from this, and it may be moot since all of these violations appear to have been resolved. Nevertheless, the Region needs to be careful not to exceed the RCRA ERP time frame for resolving formal enforcement cases and having them drag on for such a long period of time.

Recommendation

Timeliness for taking formal enforcement actions needs improvement.

Element 7 – Degree to which a state includes both gravity and economic benefit calculations for all penalties, using the BEN model or similar state model (where in use and consistent with national policy).

Findings

1. One enforcement case assessed a penalty that included gravity and economic benefit. This case was initiated with an inspection in 1997. The original penalty assessment was over $104,000. The final penalty was reduced to just over $9,000 in 2003. The file documentation indicates that the penalty was calculated according to the penalty policy and that economic benefit was calculated using the Ben model. There were several memoranda in the file that described the penalty negotiations with the sources and the justification for the final penalty assessment.

Conclusion

The Region appropriately uses the Ben model for calculating economic benefit and applies it to formal enforcement actions.

Element 8 – The degree to which penalties in final enforcement actions include economic benefit and gravity in accordance with applicable penalty policies.

Findings

1. Penalties were collected for the one formal enforcement action reviewed during the review period. The case was against the University of Alaska, Fairbanks. There was an appropriate or adequate amount of documentation about the penalty negotiation in the file. There were several

memoranda that discussed the penalty calculations that were used in negotiating the final penalty, including economic benefit (see above), with the source.

Conclusion

The Region appears to appropriately calculate and assess penalties based on national policy.

Recommendation

No recommendation

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

Findings

1. The Region does not have a PPG or PPA with headquarters, but has made RCRA inspection commitments in previous MOAs with OECA. Below are the Region's 2003 RCRA MOA inspection commitments and the actual inspections accomplished. This was revised and updated by the Region.

Region 10 RCRA Inspection Commitments and Actual Inspection Counts for Alaska *

	FY03 Commitments as Previously Submitted	*Updated FY03 Commitments of Facilities to be Inspected*	FY03 Actual # of Facilities Inspected	FY03 Actual # of Inspections	Total of Facilities in Universe
TSD - Federal Facilities	6	3	3	4	4
TSD - Non-Fed. Facilities	2	2	2	6	2
LQG'S	6	6	11	11	57
SQG'S	3	3	9	9	137 **
Others	8	8	30	31	N/A
Totals	25	22	55	61	

* The data in this table are the most recent numbers provided by the Region. The Review is based on FY 2003 data and as the report indicates the RCRA universe for TSDs and LQGs shifts from year-to-year. This will account for slight variations from the Data Review Metrics analyzed under Element 1.
** The number 137 is based on SQG's queried as of 1/5/05. There is no way to reconstruct the SQG database of FY2003 end date.

As noted in Element 1, the Region met its MOA inspection commitments for Alaska. In fact, the Region more than doubled the number of inspections it committed to conducting during FY 2003. Most of those additional inspections were in the "Other" category.

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

Findings

1. The Region has good data management support. It appears that to the extent that data is available, it is entered in a timely manner into RCRAInfo. The file reviews were aided by data

retrievals from RCRAInfo, which helped facilitate the review. These data were helpful and indicated that minimum data requirements were in the system. While violations are generally reported in inspection files SNC identification is not a routinized activity, therefore that data are not being entered in a timely manner.

Conclusions

Inspection case resolving data are well maintained, with a good flow of RCRA data into the system. SNC identification data needs to be entered on a more timely basis. This would be a function of the Region's process for identifying and reporting SNC. Subsequently, it can be assumed that additional SNC identified by the Region through improved identification process will be entered into RCRAInfo in a timely manner like other RCRA data.

Recommendation

The SNC identification procedures being formulated by the Region should have provisions for ensuring that these data are entered into RCRAInfo in a timely manner.

Element 11 – Degree to which Mandatory Data Elements are accurate.

Findings

1. The Region's data entry staff has done a good job of turning violations off at the appropriate time.

2. The Region 10 data entry staff have exhibited national leadership on the issue of defining active and inactive sources in RCRA. OECA appreciates the Region's time commitment in this area.

3. Tracking of the LQG universe is critical to understanding how well the Region is conducting inspection coverage. The review team found that many updates to RCRAInfo were made on the day of the review.

Conclusion

Better and more timely tracking of the LQG universe in the database is needed. This issue will be helped by the upcoming RCRAInfo changes regarding active/inactive sources. The Region needs to ensure the current level of data quality in RCRAInfo will be maintained, which appears to be the case.

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

Findings

1.

FY 2003 Region 10 Alaska Minimum Data Requirements	
Counts Complete	Number
Inspection Counts	61
Violation Counts	7
NOV Counts	15

FY 2003 Region 10 Alaska Minimum Data Requirements	
SNC Counts	0
Formal Action Counts	2
Assessed Penalties	$9,350

This is a measure of data quality. The inspection count is consistent with the RECAP numbers reported in Element 9.

Element 13 – Optional Evaluation Element could include program areas such as compliance assistance, pollution prevention, innovation, incentive or self-disclosure programs, outcome measures, environmental indicators, relationships with state Attorneys General or other legal offices, etc.

EPA Region 10 Alaska Compliance Assistance

During the period covered by the review, EPA Region 10 continued to respond to inquiries from the regulated community through its toll-free Hazardous Waste Information Line. On average, EPA responded to over 100 calls from Alaska per year through this hot line. With the assignment of a full-time RCRA staff person to EPA's Anchorage, Alaska Office, more and more calls have been directed to that staff person to provide compliance assistance – estimated to be at least 50 callers/year. The toll-free hotline number was discontinued in 2004 but between our Seattle and Anchorage staff, we continue to respond to telephone inquiries about the requirements and how to comply. We also seek other opportunities to provide information about the requirements and how to apply, such as participation in the annual Alaska Forum on the Environment. We have submitted a proposal to provide a seminar on the RCRA requirements at the Tribal Leader's summit to be held in Sitka, Alaska in the spring of 2005.