

U.S. EPA Region 9

**State Review Program Framework
Pilot Phase**

**Arizona's FY2003/2004 Enforcement and Compliance Programs
Review**

**Final Report
February 25, 2004**

Contents

Executive Summary
Air Program Evaluation Review
NPDES Program Evaluation Review
RCRA Program Evaluation Review
State Comments on Air Program Review
State Comments on RCRA Program Review

2/25/2005

**U.S. EPA Region 9
State Review Framework – Pilot Phase
Arizona’s FY 2003/2004 Enforcement and Compliance Programs
Review**

EXECUTIVE SUMMARY

Overall Picture

- Arizona Department of Environmental Quality (ADEQ) met or exceeded all their inspection goals established in agreement with EPA, except storm water. There were some problems identified with timeliness, follow-thru and documentation of enforcement actions which the State is addressing.
- The State received NPDES authority in December 2002 which impacted their FY 2003 performance. Program performance improved significantly in FY 2004 with an increase in staff and staff training.
- The State is committed to improving their Programs. Some major steps they have taken include working with the Arizona Attorney General (AG) to dedicate an attorney for environmental enforcement cases, establishing an Air Enforcement Unit to focus on case development, and they are now entering data directly into RCRAInfo although timeliness is an issue. Also, in 2004, EPA trained ADEQ staff on the BEN model to evaluate economic benefit as part of a penalty calculation.
- Additional Steps ADEQ can take include obtaining administrative penalty authority, finalizing its draft penalty policy, timely entering of RCRAInfo data, and additional management oversight and training of Air Program inspectors.

Information Sources Included in Review

- Information sources included in the review are described in detail in the program specific portions of this report. Sources included EPA national databases, 2003 Water Quality Division Work Plan Report Card, inspection and enforcement files, ADEQ’s Compliance Monitoring Strategy (CMS) plan, and the 3011 Grant and work plan.

Inspection Implementation

- **CAA** — ADEQ conducted Full Compliance Evaluations (FCEs)¹ at 96% of its facilities. Not all potential High Priority Violations (HPVs) were identified, cited,

¹ An FCE is a new evaluation process established in the 2001 CMS Guidance. An FCE is a more comprehensive evaluation than an inspection because it also includes activities such as a review of compliance reports (e.g., continuous emission monitors, excess emissions, stack tests, Title V

and reported. When violations were discovered, they were not always reported to the AIRS Facility Subsystem (AFS) in a timely fashion. The quality of FCEs could be improved with additional inspector training, greater reliance on inspection checklists, and increased management oversight of inspectors.

- **CWA** — ADEQ inspected 41.7% of majors and 38.5% of minors in FY 2003. A significant improvement was noted in FY 2004 (78% of majors and 18% of minors). Minor and Concentrated Animal Feeding Operation (CAFO) reports were very thorough. Storm water inspection reports were not as thorough. As ADEQ has gained program familiarity and knowledge, their inspection process has improved.
- **RCRA** — ADEQ exceeded their inspection goals. They produced high quality inspection reports and did so in a timely manner. The State needs to assess their large quantity generator (LQG) universe which is probably too high because of facilities that are no longer in business or are no longer LQGs.

Enforcement Activity

- **CAA** — Several enforcement actions exceeded the time frames in the HPV policy and no penalties were assessed. In at least one case where a penalty was assessed, ADEQ did not recover economic benefit. To address this, ADEQ created an Air Enforcement Unit that will focus exclusively on case development, and in September 2004, EPA HQ trained ADEQ staff to use the BEN model to evaluate economic benefit as part of a penalty calculation. Additional steps should include obtaining administrative penalty authority and finalizing ADEQ's draft penalty policy.
- **CWA** — During FY 2003, ADEQ did not report significant violations to EPA national databases in a timely manner. Most enforcement actions were timely and appropriate. The State initiated one formal enforcement action which was a major municipality and required significant outlay of resources. The State did not calculate any penalties but has recently received training on the BEN model. ADEQ is increasing trained staff and anticipates significant improvements in their enforcement activities.
- **RCRA** — ADEQ did an excellent job conducting timely informal enforcement actions against facilities. However, the State needs to improve on the timeliness and data collection of their formal enforcement actions. By dedicating an AG attorney timeliness should improve. The State needs to ensure enforcement data is entered into RCRAInfo in a timely manner.

Commitments in Annual Agreements

- **CAA** — EPA Region 9 and Arizona have no Performance Partnership Agreements (PPA) or State Enforcement Agreements (SEA). Region 9 senior staff and State representatives hold annual meetings to share priorities and

annual compliance certifications) and any other reports required by a permit.

strategies, and to explore partnership opportunities. On March 18, 2002, EPA approved ADEQ's FY 2002/2003 CMS Plan.

- **CWA** — The State met all inspection targets agreed to by EPA for major, minors and CAFOs. The State fell short of its storm water inspection target. ADEQ has since received training and is improving in meeting storm water targets.
- **RCRA** — ADEQ surpassed their commitments of inspecting all treatment, storage, and disposal (TSD) facilities every two years and inspecting at least 33 LQG facilities annually.

Data Integrity

- **CAA** — The ADEQ's Inspections, Compliance, and Enforcement (ICE) tracking system will be an efficient, valuable tool for both inspection/enforcement staff and management. It was not clear, however, that ICE relationally tracks four vital Minimum Data Requirements (MDR) – Class Size, Operating Status, Attainment Status and Compliance Status. Therefore, ICE should include both an overall "plant level" screen and a table of each air program/pollutant combination for better relational displays of these important MDRs.
- **CWA** — Arizona did not input MDRs into the Permit Compliance System (PCS) in a timely manner. The data in the PCS is current due to EPA's efforts prior to State authorization for the NPDES program. ADEQ is increasing trained staff and anticipated significant improvements in data integrity and timeliness.
- **RCRA** — ADEQ data is entered in a timely and correct manner from the time of inspection through case development. The State needs to improve data entry of formal enforcement cases completion.

Any Additional Program Elements or Activities Reviewed

- The Region 9 Air enforcement program report includes interviews with Nancy Wrona, ADEQ Air Division Director, and Henry Darwin, ADEQ Air Enforcement Manager.

FORM A - EVALUATION FORM

Date: February 18, 2005

Program Evaluated: Clean Air Act (CAA)

Information Sources Included in the Review

Inspection Only Files for Review:

1. El Paso Natural Gas – Benson
2. Nucor Steel Kingman LLC (Formerly North Star Steel)
3. APS – Yucca Power Plant
4. Snowflake Pulp Mill
5. Gray Wolf Regional Landfill

Enforcement Files for Review:

1. Apache Generating Station
2. American Woodmark Corp
3. Apache Nitrogen Products
4. Coronado Generating Plant
5. Arizona Portland Cement
6. Nelson Lime Plant
7. Phoenix Cement
8. Eurofresh
9. Sierrita Mine (Phelps Dodge)
10. Cochise County Western Regional Landfill

EPA Evaluator:	Dinesh Senghani	Phone: 415-972-3981
	Charles Aldred	415-972-3986
	John Borton	415-972-3985
	Duane James	415-972-3988
	Ken Israels	415-947-4102
	Colleen McKaughan	520-498-0118

State Contact:	Henry Darwin	Phone: 602-771-2328
	Lynn Ott	602-771-4494
	Latha Toopal	602-771-2273

Section 1: Review of State Inspection Implementation

- 1. Degree to which state program has completed the universe of planned inspections/evaluations (covering core requirements and federal, state, and regional priorities).**

Findings (including successful performance and areas for improvements):

Metrics a, b & c

ADEQ's FY 2002/2003 facility universe was determined to be as follows:

- 58 Majors (50 operating, 2 under construction, 5 pending Title V permits, and 1 closed)
- 7 Synthetic Minors² (2-80% Synthetic Minors³ (SM80) and 5 others)

ADEQ's target for its 50 operating majors is required to be no less than one FCE every 2 years. ADEQ actually exceeded that commitment by reporting 2 FCEs at most majors during that time. However, according to AFS, there were two majors that did not receive FCEs: El Paso Natural Gas (Seligman) and La Paz County Main Landfill (Parker). Since these two facilities did not receive reported FCEs, ADEQ's coverage for FY2002/2003 was calculated to be 96%.⁴

For its SMs, the target is one FCE every 5 years. In FY 2002/2003, ADEQ completed FCEs at 4 of its 7 SMs and expects to complete the remainder in the FY 2004/2005 cycle. The remaining SMs to be completed are Eurofresh, North Baja Compressor Station and Praxair.

Metric d

ADEQ reviewed 96% of its Title V certifications (48 of 50). The 2 Title V facilities that did not have certifications reported for FY 2003 were Cochise County Landfill and Snowflake Pulp. Snowflake Pulp was issued a Title V permit in August 2003 so no certification was due within the review period. However, Cochise County Landfill was permitted in 2000, so this facility should have submitted certifications during both FY 2002 and FY 2003. The absence of Cochise County Landfill's certifications calls into

² A Synthetic Minor ("SM") is a facility that has accepted permit conditions (e.g., hours of operation, production limits) that keep its emissions below major source thresholds.

³ An 80% Synthetic Minor ("SM 80") is a SM facility with permitted emissions between 80% and 99% of major source thresholds.

⁴ According to ADEQ, these two FCEs were conducted, but not reported to AFS (See Footnote 5).

question the validity of the FCEs ADEQ reported to AFS for this facility since certification reviews are an integral part of an FCE.

Metric e

ADEQ did not have any facilities triggering “unknown compliance” in the FY02/03 review period because AFS only generates an “Unknown Compliance” status whenever FCEs are missing and overdue beyond their flagged targets. However, the 2 majors missing the required FCEs were not visible to the “unknown flagging generator” because their targets had not been properly identified to EPA. Both were operating majors during the period of our review,⁵ which makes them subject to targeting, but ADEQ did not flag them as targets in AFS. EPA routinely shares facility lists with ADEQ and requests the targets to be updated. ADEQ apparently failed to do so in the case of these 2 majors. ADEQ should review the target list and assure that all operating majors and SMs are properly targeted. Then, as long as ADEQ submits its batch uploads via the Universal Interface (UI) monthly and completes its FCEs at targeted sources, it should continue to have no “Unknowns” generated.

Metric r

ADEQ makes its CMS commitments through its CMS plan as required by Region 9. Where other regions use PPAs or PPGs, Region 9's main document for air compliance/enforcement data commitments are the CMS plans. ADEQ, like others, will be revising their CMS plans as needed to stay current with national minimum data requirements (MDRs). Overall, ADEQ does a better job of meeting the commitments outlined in the CMS now that the Universal Interface (UI) and ICE are being used.

Citation of information reviewed for this criterion: Inspection and Enforcement files, AFS Database.

Recommendations if corrective action is needed:

- (i) ADEQ should complete FCEs at all of its targeted sources.
- (ii) ADEQ should ensure that FCEs reported to AFS meet the minimum requirements of the CMS Guidance (i.e., inspections, stack tests and Title V compliance certification reviews).
- (iii) ADEQ should monitor its universe of FCEs completed and other reported data. EPA recommends that ADEQ run monthly AFS and Online Tracking and Information System (OTIS) reports to accomplish this necessary quality assurance

⁵ Per EPA's Electronic Permit Submittal System (“EPSS”) database, El Paso Seligman (04025Z2453) was permitted 6/22/98 and La Paz County Landfill was permitted 10/2/2000. Therefore, both should have received targets and been flagged during the FY-02/03 period, but were not reported that way in AFS. Thus, they were not visible to the Unknown Compliance utility even when missing their FCEs.

task.

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

Findings (including successful performance and areas for improvements):

Metric a

Based on our file review, ADEQ inspectors prepared inspection reports for 100% (5 of 5) of the inspections they conducted. While most reports contained general and facility information, pertinent information regarding applicable requirements was not included or attached directly to the report; furthermore, violations were not always well documented. At Eurofresh,⁶ for example, unpermitted equipment was not identified until ten years after its installation. The quality of inspections and reports could be improved by the use of checklists.

Due to a recent audit by the Auditor General's Office and relocation of the ADEQ building, ADEQ's filing system was found to be inefficient, which made it difficult at times for EPA to get a clear understanding of how an FCE determination was made. The inspection files did not always contain all the relevant equipment lists, checklists, source test(s), certifications, partial inspection(s), and other appropriate records reviews in one file, nor were they easy to assemble or find during the evaluation. It was only with the substantial assistance from ADEQ staff that our regional reviewers were generally able to piece together the FCE from documents housed in various file collections. Many had to be requested once we were there and faxed from ADEQ's Regional Offices or found in other filing locations. Having all documents supporting an FCE in one location would be much more efficient and helpful during quality assurance exercises such as this review. ADEQ staff is working on reorganizing the files to get them back into order.

Citation of information reviewed for this criterion: Inspection and Enforcement files.

Recommendations if corrective action is needed:

- (i) ADEQ needs to improve the quality of its inspections by increasing its use of checklists in all sectors so that violations are identified.
- (ii) Inspection reports should document all violations.
- (iii) ADEQ should improve its filing system. While its files are supplemented by the ICE database – which is well-organized – EPA recommends co-locating all information relevant to a facility's FCE to help make future file reviews and quality assurance more efficient.

⁶ We reviewed Eurofresh's inspection report as a result of reviewing its enforcement file.

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

Findings (including successful performance and areas for improvements):

Metric a

From our review, we found that some inspection reports were not always completed within 30 days of an inspection, the timeframe established in ADEQ's Enforcement Handbook (Handbook).⁷ We also found that some of the violations discovered did not get a Notice of Violation (NOV) within 45 days of the inspection;⁸ at other times, the inspection reports did not clearly document violations. The inspectors need to follow the Handbook's procedures for ADEQ to satisfy the timely and appropriate requirements of EPA's HPV Policy.⁹ Since many inspection reports did not always follow the Handbook, ADEQ did not issue always timely and appropriate NOV/HPVs. In addition, inspections were not reported to the ICE and AFS databases within the desired timeframes. With the use of the Universal Interface (UI) since April 2004, ADEQ has been able to upload more of its data on a timely basis. With ICE, the UI, and AFS working together, ADEQ management now has the proper tools to verify the status of inspection reports and NOV issued which should result in better overall quality and more timely data. However, continued completeness reviews should be conducted by ADEQ to ensure that all actions are progressing and being reported as they should.

Citation of information reviewed for this criterion: Inspection and Enforcement files, AFS Database.

Recommendations if corrective action is needed:

- (i) To improve the timeliness and completeness of documentation, a manager should hold inspectors accountable to the procedures set forth in the Handbook.
- (ii) Inspectors should complete their reports as soon as possible after an inspection while the facts are still fresh in their memories.

Section 2: Review of State Enforcement Activity

⁷ ADEQ's Enforcement Handbook ("Handbook") does a good job of setting out prompt and reasonable standards for most activities, including timely identification and reporting of violations. It states that the inspection report must "set forth all violations or potential violations identified during the inspection," that it should be issued within 30 working days from the inspection, and that entry of the inspection to the ICE database should also be completed within this time so that management can keep good track of the progress of any violations found.

⁸ ADEQ's Enforcement Handbook describes other timelines and noncompliance issues that will result in NOV's or Notices of Opportunity to Correct ("NOC").

⁹ The timelines of the HPV Policy are as follows: (1) HPV determination and "Day Zero" reporting within 45 days after discovery of a violation (i.e., inspection), (2) NOV issuance within 60 days of HPV determination, and (3) Addressing Action (i.e., complaint, referral, order) within 270 days of HPV determination. The policy also recommends monthly AFS updates with this information to keep the national data current.

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

Findings (including successful performance and areas for improvements):

Metric a & b

ADEQ had a 23% HPV discovery rate (HPVs discovered at 12 facilities out of 52 facilities inspected) during FY 2002/2003. However, the AFS data suggests most of these violations were often found by records review of stack tests and Title V certifications as well as by direct inspections.

Metric c

ADEQ had 8 facilities out of 12 (67%) for which there were HPVs with “no activity” (e.g., addressed without any penalties). The HPV policy expects that most HPVs will get penalties to deter further non-compliance and remove any benefit of non-compliance. With ICE in place, ADEQ assured us that more HPVs would be following the policy and getting penalties.

Metric d

From our initial review of the 14 HPVs at 12 violating facilities and detailed file reviews of 10 of those facilities, we found that ADEQ did not report any of its HPVs to AFS within 45 days. (See Footnote 8.) For example, the AFS entries for American Woodmark and Apache Nitrogen occurred 6 months after discovery of the violation, Sierrita Mine occurred 12 months after discovery, and Arizona Portland Cement occurred 18 months after discovery.

Metric e

A review of the files also showed that some violations may not have risen to an NOV or HPV status; in addition, some HPVs may not have been properly identified. An example is Eurofresh where unpermitted equipment was not cited despite ADEQ’s routine inspections and document reviews over a 10-year period.¹⁰

Another example is Phelps Dodge Sierrita (04019Z2452) where the initial inspection occurred on September 9, 2003, but no inspection report was present in the files. From ICE, we know that some violations were found and an HPV was reported to AFS (key# 083) on September 7, 2004. Without the information from ICE and AFS, it would have been very difficult to tell from the files whether all potential HPVs had been identified

¹⁰ ADEQ eventually collected a \$50,000 penalty from the company.

and reported.

In addition to inspections, compliance issues were discovered from stack test reviews and facilities' failure to submit permit applications, reports or certifications. ADEQ did not issue NOVs or make HPV determinations for some of these violations. Therefore, ADEQ did not report to AFS the violations at those facilities.

Citation of information reviewed for this criterion: AFS database, Inspection and Enforcement files.

Recommendations if corrective action is needed:

- (i) Inspectors should prepare sufficiently in advance of an inspection and pay close attention to detail during inspections so that all HPVs are properly found and cited.
- (ii) ADEQ should make prompt HPV determinations and report all HPV activities to AFS consistent with the policy's timeframes. The ICE system can greatly assist ADEQ in improving its AFS reporting.
- (iii) ADEQ should communicate with the EPA data coordinator monthly on any HPV status changes.

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

Findings (including successful performance and areas for improvements):

Metric a & b

ADEQ places a strong priority on returning facilities to compliance (100%). All ten facilities complied with the NOVs ADEQ issued to them. One of the enforcement files we reviewed contained a compliance schedule or injunctive relief.

Citation of information reviewed for this criterion: AFS Database, Inspection and Enforcement Files.

Recommendations if corrective action is needed:

- (i) ADEQ should continue to follow its Handbook and escalate an enforcement response if a facility fails to comply with an NOV.

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 (including successful performance and areas for improvements):

Metric a

ADEQ had 611 facilities on the Watch List: 1) AZ Portland Cement (04019Z0310), 2) Cholla Generating (04017Z2396), 3) Eurofresh (04003Z2463), 4) Phoenix Cement (04025Z0421), 5) Praxair (04015Z2468), and 6) Sierrita Mine¹² (04019Z2452). All have since been reported as addressed. However, several went well beyond the HPV timeline: Cochise (800 days), Eurofresh (454), Praxair (371), Cholla (907) and Phoenix (410, 254, 254), per the national #653 HPV report. ADEQ needs to strive to address its HPVs in a timely manner, per the policy.

Metric b

ADEQ did not always meet the HPV Policy's 270-day timeframe for addressing violations. Of the 10 enforcement files reviewed, ADEQ met the 270-day timeframe for only five of those HPVs (50%).

While expeditious compliance is the goal of any enforcement response, penalties play an important role in creating a deterrent against future noncompliance. ADEQ's response to these 10 HPVs was 3 formal referrals to the State Attorney General and 7 informal "no further action" (NFA) determinations. ADEQ's referrals were against Arizona Portland Cement, Cholla Generating Station and Eurofresh. Of the two, where penalties have already been collected, only the \$200,000 Cholla settlement appears to be consistent with the HPV Policy. Eurofresh's \$50,000 penalty does not appear to create a deterrent for a facility that was operating without a permit for 10 years.

Metric c

ADEQ's NFAs (i.e., an addressing action without a penalty) were written in accordance with its Handbook, which recommends not collecting penalties in certain circumstances. While the Handbook otherwise does a good job of setting out prompt and reasonable standards for many activities, including timely identification and reporting of violations, it recommends addressing most cases without penalties,¹³ which is not consistent with EPA's HPV Policy nor the EPA Penalty Policy. NFA's should be the exception and not the routine method for settlements.

¹¹ In the Framework reports the Region received, only Phelps Dodge Sierrita Mine was identified. However, actual Watch List data for FY04 showed that 6 ADEQ facilities were still showing up in FY 04. Please note that the Watch List did not exist in FY 2002/2003 and is a confidential site that is not available publicly.

¹² Phelps Dodge Sierrita was a joint case with EPA. Only AZ Portland Cement remains on the watch list because of a new violation ADEQ has reported.

¹³ The leadoff sentence of Chapter 6 reads "ADEQ will rarely initiate enforcement with a formal enforcement action."

Citation of information reviewed for this criterion: Enforcement Files and AFS Database

Recommendations if corrective action is needed:

- (i) ADEQ should prioritize its enforcement activities to ensure that it addresses HPVs within 270 days. ADEQ is currently using the ICE database to accomplish this goal.
- (ii) ADEQ should report all data to AFS to meet the national MDR guidelines.
- (iii) ADEQ should obtain administrative penalty authority to pursue penalties for those cases that are better suited for administrative resolution rather than referral to the Attorney General's office.
- (iv) ADEQ should revise its Handbook to be more consistent with the HPV Policy and Penalty Policy. NFA's should be the exception, rather than the rule.

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

Findings (including successful performance and areas for improvements):

Metric a

For the FY 2002/2003 period, only 2 out of 12 HPV facilities (17%) resulted in civil penalties. The remaining cases were settled without any penalty or by NFA determinations. Of the 2 settlements, economic benefit and gravity were calculated for only Eurofresh. However, the penalty calculation sheet was not kept in the enforcement file, and the review team became aware of the sheet only after a discussion with the case developer. So ADEQ documented penalty calculations in 50% (1 of 2) of its formal actions and 8% (1 of 12) of all HPV deserving a penalty.

Citation of information reviewed for this criterion: AFS Database and Enforcement Files

Recommendations if corrective action is needed:

- (i) ADEQ should include a memorandum in enforcement files that documents the calculations and bases for assessed penalties.
- (ii) ADEQ should finalize its draft penalty policy to establish consistency and ensure fairness when assessing penalties.

8. Degree to which final enforcement actions (settlements or judicial results) take appropriate action to collect economic benefit and gravity portions of a penalty, in accordance with penalty policy considerations.

Findings (including successful performance and areas for improvements):

Metric a, b & c

Of the twelve HPVs reported in the AFS database for the FY 2002/2003 period, 7 (58%) were listed with an NFA code, which is not consistent with EPA's Penalty Policy.

Metric d

Of the ten HPV enforcement files reviewed, only two sources paid a penalty: a \$200,000 settlement with Cholla Generating Station and a \$50,000 settlement with Eurofresh. It is not clear that the Cholla settlement included economic benefit since the enforcement file had no penalty calculation documentation. However, it is clear that ADEQ did not recover economic benefit from Eurofresh since the case was settled for less than the bottom line penalty.

Citation of information reviewed for this criterion: AFS Database and Enforcement Files

Recommendations if corrective action is needed:

- (i) ADEQ should collect penalties for HPVs and ensure that such penalties are calculated consistent with EPA's Penalty Policy, including both economic benefit and gravity.
- (ii) ADEQ should obtain administrative penalty authority to pursue penalties for those cases that are better suited for administrative resolution rather than referral to the Attorney General's office.

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 (including successful performance and areas for improvements):

Metric a

EPA Region 9 has no Performance Partnership Agreements (PPA) or State Enforcement Agreements (SEA) with its state and local agencies. The Regional Administrator, Deputy and Division Directors, however, hold annual meetings with the environmental commissioners and directors of these agencies to share priorities and strategies and to

explore opportunities for partnership. One component of this partnership is the CMS Plans that provide agencies' commitments for conducting FCEs (including inspections, Title V certification and source tests reviews), identifying HPVs, and reporting such activities to AFS. ADEQ submitted an adequate CMS Plan for FY 2002/2003, and EPA approved this plan on March 18, 2002.

Citation of information reviewed for this criterion: CMS Plans and the Air Division's Grant and Program Integration Office.

Recommendations if corrective action is needed:

- (i) ADEQ should continue implementing its CMS Plan to ensure its facilities are complying with the Clean Air Act and that compliance and enforcement information are promptly reported to AFS.

Section 4: Review of Database Integrity

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

Findings (including successful performance and areas for improvements):

Metrics a & r

For the historical reporting period we reviewed, ADEQ did not report any of its HPVs to AFS within 45 days of determination as was required by its CMS Plan. We found ADEQ also did not report its FCE activity promptly to AFS. This data gap may be explained by the Universal Interface (UI) converter not being fully operational until January 2005. With the UI system now in place, we are confident ADEQ will be better able to meet the MDR minimum data field reporting requirements as they had intended, in large part because many of the MDR edit checks are fundamental to the UI's design. ADEQ is now well underway in successfully loading basic plant, air program/pollutant, and action level information for the MDRs. Where the national standards for non-enforcement action reporting are 60-90 days, ADEQ is using a more stringent monthly upload as their method.

Citation of information reviewed for this criterion: AFS Database

Recommendations if corrective action is needed:

- (i) ADEQ should report FCEs to AFS within 30 days of determination.
- (ii) ADEQ should ensure that HPVs are reported to AFS within 45 days of determination and subsequent HPV actions are updated promptly.
- (iii) ADEQ should improve the relational links between Air Program and Pollutant in

- its database. EPA will continue to provide technical assistance in this area.
- (iv) ADEQ should compare AFS reports monthly with ICE data to ensure that data continues to be complete and timely in AFS.

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

Findings (including successful performance and areas for improvements):

Metrics a, b, c, & r

ADEQ starts the NOV clock from the date the NOV is received by the facility rather than the date of NOV issuance, which is what EPA's HPV policy and MDRs require. Fortunately, ADEQ tracks both issuance and mailing dates so it will be relatively easy to provide the issuance date to correct all previously reported NOV's in AFS. Our review also noted that in some files (Eurofresh, Phelps Dodge, Arizona Portland Cement, and Nelson Lime for example), additional NOV's may have been appropriate but were not issued or may have been issued but were not reported as HPV's.

For example, Arizona Portland Cement failed three dioxin stack tests during 2002 and early 2003, but only one of the failed stack tests were reported as an HPV in AFS. ADEQ did report HPV's for other testing violations: failure to conduct a stack test (dioxin for the Portland Cement MACT) and failure to submit test reports within 30 days.

Furthermore, we found AFS entries with incorrect results codes for two facilities. For Asarco Hayden, the results code should have been "passed source test (PP)" instead of "in compliance (25)." The results code for Coronado Generating Station certification should have read "compliance certification (MC)" instead of "passed source test (PP)." The data entered during this review period was manually entered which could have been the result of the error. Currently, the use of UI to upload data to AFS should eliminate such errors.

Regarding the Integrated Error Correction Process (IECP), ADEQ did respond to the website in a timely manner on the one item that was requested as part of that IECP QA effort. In fact, all of Region 9's agencies completed their portion of this project, which was maintained by a contractor and whose website is no longer accessible for viewing. The brief project was considered successful and ADEQ was a good participant.

Citation of information reviewed for this criterion: AFS Database

Recommendations if corrective action is needed:

- (i) ADEQ should report to AFS the date when a document is issued rather than the confirmation of receipt by the facility.
- (ii) ADEQ needs to ensure that it issues NOV's and HPV's consistent with the HPV

- Policy. The ICE system may be used as a tool for this activity.
- (iii) ADEQ should review its data mapping between ICE and AFS to ensure all mappings are equivalent, accurate and consistent with national policies and guidance.
 - (iv) ADEQ should ensure result codes and other reported data are correct and complete in AFS by performing periodic quality assurance, such as by comparing AFS reports monthly with ICE data.

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 (including successful performance and areas for improvements):

Metrics a, b, c, d, e, f, g, h, i, j

ADEQ has repeatedly reviewed and commented on the AFS major and SM facility lists. The lists are now understood to be current and complete with 50 operating majors.

Currently, ICE does not track the overall Compliance Status at the facility level. This MDR, in addition to Air Program and Pollutants, is used by AFS to establish a facility's State Compliance Air Program records and overall plant-wide compliance value. ADEQ needs to modify ICE to collect these MDR's so that they will be able to be brought complete as quickly as possible. Subparts are currently tracked in ICE, but may also be expanded as this other data becomes more complete.

The Permit data MDR's for ADEQ's facilities are also not fully populated in AFS. EPA and ADEQ are working jointly to gather, correlate and enter the Permit data required by the MDR's. Region 9 is working on this issue with all of our 44 state/local agencies as well as seeking to automate data within EPA to accomplish this task as quickly as possible. We appreciate ADEQ's participation and assistance.

ADEQ is investigating and planning to report on the 2 facilities from the review where it believes it conducted FCEs, but they were not fully reported in ICE and AFS. When those documents and data are found they will be promptly entered to correct the inadvertent omission. ADEQ's commitment is to conduct and report FCEs annually at all of its major sources. Inspections, violations, HPVs, and other counts are also discussed in detail in other parts of this evaluation. As indicated previously, the 2 majors lacking FCEs did not trip unknown status because ADEQ did not identify them as targeted sources, though they had been issued permits as operating majors.

Citation of information reviewed for this criterion: AFS Database

Recommendations if corrective action is needed:

- (i) ADEQ should track Compliance Status in ICE and report them to AFS.
- (ii) ADEQ should include an overall "plant level" screen in ICE.
- (iii) ADEQ should add Air Program/Pollutants and results status codes on ICE's "Inspection 'Events'" and "Cases 'Violations'" tabs.
- (iv) On the Permit MDR's, EPA will continue to work closely and jointly with ADEQ to identify and enter this data as quickly as is possible.

13. Interviews of ADEQ Management.

[NOTE: For the Optional 13th Element of this review, Air Division decided to obtain additional information about ADEQ's enforcement program through interviews of Nancy Wrona, ADEQ's Air Division Director, and Henry Darwin, ADEQ's Air Enforcement Manager. The following summaries provide the key findings of and recommendations for the four topics covered during the interviews: Inspections, Enforcement, Settlement/Penalties and Management.]

Inspections

Finding #A: ADEQ has been utilizing resources to conduct annual inspections of its major sources and respond to complaints. Addition of the new Air Enforcement Unit with four new positions should increase enforcement resulting from these inspections.

Discussion: In its Central Office, ADEQ presently has 3 field inspectors (O/M), 3 stack testing observers, 2 asbestos inspectors, and 1 inspector assigned to miscellaneous issues, including agriculture and open burning. ADEQ has 2 O/M inspectors in each of its two Regional Offices. Inspectors do not specialize by source category, though they may have specific facility assignments.

In its present structure and with its current resources, ADEQ is able to perform inspections of its Title V/synthetic minor sources annually and can respond to complaints within 5 days (it gets about 1 complaint per day). ADEQ tries to inspect its portable sources annually, if possible.

Recommendation: None

Finding #B: ADEQ relies on a variety of sources for inspector training.

Discussion: ADEQ relies on CARB training for its inspectors, but also trains other agency (county) inspectors and the regulated community on EPA Method 9 (opacity), conducts one 3-hour training in-house monthly, and uses the EPA Region 10 training website as a resource. Also, at its request, EPA HQ trained ADEQ staff in September 2004 to use the BEN model to evaluate economic benefit as part of a penalty calculation. One limitation identified during the course of our interviews was that ADEQ personnel

rarely travel out of state; as such travel is reviewed by the Governor's office. This limitation has now been lifted. ADEQ identified a need to have HPV training for its staff. Finally, ADEQ suggested the use of joint EPA/ADEQ inspections as a training opportunity.

Recommendation: EPA supports ADEQ's efforts in inspector training. EPA will conduct HPV training for its staff, as well as use joint inspections as a training opportunity.

Enforcement

Finding #A: ADEQ uses both Notices of Violation (NOV) and Notices of Opportunity to Correct (NOC) to address noncompliance situations.

Discussion: Under State law, ADEQ may address noncompliance issues in one of two ways: 1) NOVs for more serious violations, where it reserves the right to seek a penalty after the noncompliance has been addressed (facilities typically have 120 days to document that they have corrected their noncompliance) or 2) NOC's, where the facility has 180 days to correct without penalty. If a NOV is not addressed within 120 days, ADEQ issues an administrative order to correct or allows the facility a 45-day period for it to document compliance.

Recommendation: While EPA generally supports ADEQ's use of NOVs and NOC's to address noncompliance, as described in its Enforcement Handbook, ADEQ should ensure that the issuance of these notices is consistent with EPA's HPV Policy.

Finding #B: ADEQ's ICE system is an effective tool for managing its enforcement program.

Discussion: ADEQ uses the ICE system to track and document facility inspections and compliance. ICE's features include the following: identification of facility name and type, inspection tracking, inspection report preparation within its user interface, inspector recommendations for enforcement action to management, NOV generation based on inspection reports, and NOV receipt tracking to generate unachieved compliance reports. In the future, ADEQ intends to use ICE for targeting. Inspectors use ICE to conduct place-history reports that provide context for their inspections prior to arriving on-site. The ICE system is also able to report data successfully to EPA's data systems.

Recommendation: EPA recommends that ADEQ continue its use of this effective tool for managing the program as well as encourages its development and subsequent use for targeting.

Finding #C: In addition to inspections, ADEQ uses a variety of tools to determine a source's compliance status.

Discussion: In addition to inspections, ADEQ uses excess emission reports, compliance certifications, CEMS, COMS audits, and other information to determine compliance. These tools are used by ADEQ inspectors to prepare full compliance evaluations of facilities. ADEQ also develops facility-specific checklists based on permit conditions to assist in determining facility compliance. As a process matter, staff aside from inspectors may recommend NOV's or NOCs based on the information tools mentioned above.

Recommendation: ADEQ should continue to use these effective tools in compliance determinations. EPA should consider acknowledging the use of these tools in the design of its State Evaluation Framework as it currently does not consider the use of these relevant data. Management oversight is critical to ensure that checklists are being used and followed.

Finding #D: ADEQ presently does not have a self-disclosure policy.

Discussion: Although ADEQ presently does not have a generally applicable self-disclosure policy, it does have a policy for small businesses. In the 1990s, the state legislature was unable to pass a generally applicable self-disclosure policy, so ADEQ never moved forward on it. ADEQ has had cases where facilities self-disclosed; the fact that the facility disclosed a noncompliance situation was a mitigating factor in penalty calculations.

Recommendation: None.

Finding #E: ADEQ requires facilities to document their return to compliance.

Discussion: In the event that a facility is determined to be out of compliance, ADEQ requires documentation from the source that demonstrates compliance. ADEQ requires noncompliant facilities to document their return to compliance by asking for appropriate documentation (pictures, contracts for control equipment installation, etc). In the case of noncompliance resulting from the failure of a stack test, ADEQ will request additional stack testing to verify compliance. As part of the process of determining the appropriate documentation for an FCE at a Title V source where noncompliance is found, management will debrief the inspector.

Recommendation: EPA generally supports ADEQ's approach. However, ADEQ should consider conducting facility inspections to verify return to compliance as well.

Settlements/Penalties

Finding #A: ADEQ puts a facility's return to compliance and seeking an appropriate penalty on separate tracks.

Discussion: ADEQ places a high priority on returning noncomplying facilities to

compliance and uses a well-defined process to establish appropriate penalties for noncompliers. If the noncompliance situation warrants a penalty, the inspector drafts a 1-page memo for the Air Director. If the Air Director approves the penalty action, a case development memo is prepared for referral to the State Attorney General. The case development memo describes the case, violations, background, injunctive relief sought, the penalty proposed, and the penalty history. The case development memo is routed through the enforcement manager to the Air Director then to the ADEQ Director, and finally to the Attorney General. If no settlement is achieved, another document is drafted for filing a civil action.

Recommendation: EPA supports ADEQ's process, though we believe that it could be made quicker and more efficient by eliminating some of the document routing steps.

Finding #B: The State Attorney General's office is actively involved in ADEQ's enforcement program.

Discussion: ADEQ is using EPA funding to support a dedicated attorney in the Attorney General's office for enforcement. This additional resource allows ADEQ to effectively develop, coordinate, and manage enforcement issues.

Recommendation: EPA supports the effective use of and coordination with the State Attorney General's office in ADEQ's enforcement program.

Finding #C: ADEQ's penalty policy is in draft form.

Discussion: At the time of our review, ADEQ's penalty policy was still draft although it was developed 4 years ago. The enforcement manager indicated that the policy was based on EPA's Penalty Policy and was still undergoing beta testing. The draft policy includes an ad-hoc method of determining economic benefit although ADEQ very recently underwent EPA training on BEN/ABEL methodologies for calculating economic benefit; ADEQ has identified specific resources to perform these calculations. In addition, the draft policy requires that NOVs be issued for repeat violations, even if the violations are minor. A repeat violation of the same regulatory requirement within a 2-year period would deserve a penalty, and penalties would be escalated for additional repeat violations. ADEQ estimates that its use of the draft policy has resulted in an average penalty of \$75,000 to \$100,000 in the last five years, although these results may be skewed by the \$7.75 million settlement with Northstar Steel in 2001. In terms of penalty payment administration, the enforcement office tracks penalty payments.

Recommendation: ADEQ should finalize its penalty policy so that its status as a final agency position can serve as an effective deterrent to noncompliance and be a more useful tool in enforcement negotiations.

Finding #D: Like many other agencies, ADEQ's penalties go to the State of Arizona's

General Fund.

Discussion: None.

Recommendation: None.

Finding #E: ADEQ uses Supplemental Environmental Projects (SEP) judiciously to address noncompliance.

Discussion: The enforcement office recommends the use of SEPs for penalties greater than \$50,000 as part of any negotiation with noncompliant facilities. ADEQ believes that offering SEPs for penalties below \$50,000 would be a significant drain on its enforcement resources.

Recommendation: EPA believes that this approach is a good one given ADEQ's caseload and resources.

Finding #F: ADEQ's statutory maximum penalty is \$10,000/day/violation.

Discussion: ADEQ believes that it comes close to achieving its statutory maximum penalty of \$10,000/day/violation in most cases. In those cases where ADEQ believes an additional deterrent is necessary, it will remind sources that EPA's statutory maximum penalty is higher in the hope that noncompliers will be more receptive to settlement with ADEQ.

Recommendation: None.

Management

Finding #A: ADEQ has created a new Air Enforcement Unit.

Discussion: In the past, ADEQ had only 1 person doing air enforcement coordination (including case development). Over time, ADEQ has discovered that it was finding more violations which increased the case development workload. In the previous structure, the responsibility of case work fell to the person doing enforcement coordination and the inspectors and technical review engineers. ADEQ is moving to a structure where a new unit of 4 people will be doing case development. This new structure should allow for more rapid and efficient case development, coordination, and management.

Recommendation: EPA supports ADEQ's restructuring to address the increasing case load.

Finding #B: ADEQ presently does not have administrative penalty authority.

Discussion: Presently, ADEQ must use its existing authority and processes to administer its enforcement program. ADEQ's existing authority and processes create a limitation that results in minor violations going through a more elaborate process than is necessary and leads to spending more resources on minor violations than most of these situations warrant. If ADEQ obtains administrative penalty authority for air enforcement actions such as it recently got for its Clean Water Act program, it would be able to more easily administer its minor violation enforcement program with an associated cost savings.

Recommendation: EPA supports ADEQ's efforts to obtain administrative penalty authority for its air enforcement program.

FORM A - EVALUATION FORM

Date: February 11, 2005

Program Evaluated: National Pollutant Discharge Elimination System (NPDES)

Information Sources Included in the Review: Paper Enforcement Files (see attached inventory) and the 2003 Water Quality Division Work Plan Report Card

EPA Evaluator: Ellen Blake

Phone: (415) 972-3496

State Contact: Vivian Burns/Mike Traubert

Phone: (602) 771-4525

Degree to which state program has completed the universe of planned inspections/evaluations (covering core requirements and federal, state, and regional priorities) is completed.

Findings (including successful performance and areas for improvements):

The state received program authority December 2002 and consequently only had program authority for 10 months in FY 2003. The state met its target for planned inspections for majors, minors, and Concentrated Animal Feeding Operations (CAFOs), but did not meet its target for storm water inspections. The storm water inspection targets for FY 2003 were ambitious as compared to the resources available to the State of Arizona.

The data metrics provided from the Permit Compliance System (PCS) showed that Arizona had 48 active majors and 135 active minors in FY 2003 and that only 41.7% of majors and 38.5% of minors were inspected. While this fell below the national average (67% of majors and 24% of minors), a significant improvement was noted in FY 2004 (78% of majors and 18% of minors). The discrepancy between the actual inspections performed and those reported were due to data entry timeliness.

Citation of information reviewed for this criterion: Paper Enforcement Files (see attached inventory) and the 2003 Water Quality Division Work Plan Report Card (*PPG reporting*)

Recommendations if corrective action is needed: Program has since been staffed and trained and are closer to meeting targets.

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

Findings (including successful performance and areas for improvement):

Minor and CAFO inspection reports were very thorough in that they fully describe the facility and all observations and sufficiently identify violations. Storm water inspection reports were not as thorough and followed the format of a traditional NPDES inspection which does not fully cover all aspects of a storm water inspection. For instance, very little description about the type and status of Best Management Practices (BMPs) used on site was included. Also, conclusions about categories of BMPs ('Housekeeping was in compliance') were not appropriate for an inspection report.

Citation of information reviewed for this criterion: Paper Enforcement Files (see attached inventory)

Recommendations if corrective action is needed:

As staff knowledge has increased, storm water reports have become more thorough. Arizona should continue to give attention to data entry requirements for inspections performed in a timely manner.

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

Findings (including successful performance and areas for improvement):

Inspection reports for minor and major facilities were issued 2-7 weeks after inspection with a median of 3 weeks. For those facilities with violations, they were noted when the inspection report was sent out. Inspection reports for storm water facilities were issued 3-34 weeks after the inspection with a median of 11 weeks. The 34 week facility was a mine and a second inspection was done 10 weeks before the inspection report went out and included in the report. While violations were noted at most facilities, only one inspection report included a Notice To Correct. The CAFO inspection reports were issued 3 weeks after the inspection. It should be noted that the CAFO reports were very thorough and detailed.

Citation of information reviewed for this criterion: Paper Enforcement Files (see attached inventory)

Recommendations if corrective action is needed:

Through increased staff familiarity with the program, reports are more thorough and timely and informal enforcement actions (NOVs) are issued more readily.

Section 2: Review of State Enforcement Activity

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

Findings (including successful performance and areas for improvement):

During FY 2003, the state did not report significant violations to EPA national databases in a timely manner. The state has been working on this issue and through additional training is now more timely. They have since successfully implemented an electronic uploading procedure for major facilities from the ADEQ state database to PCS, which is expected to significantly improve reporting.

There were seven facilities identified on the EPA OECA Watch List, most of which were federally permitted facilities and tribes.

Citation of information reviewed for this criterion: 2003 Water Quality Division Work Plan Report Card (PPG Reporting)

Recommendations if corrective action is needed:

ADEQ is increasing staff and training, and anticipates reporting violations and corrective actions on a more timely basis.

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

Findings (including successful performance and areas for improvement):

The state initiated only one formal enforcement action in the review period. However, this was with a major municipality in the State and therefore, required significant outlay of resources. That enforcement action has not yet been completed, however the facility has already commenced with the injunctive relief. The state was able to work with the facility during negotiations and, as such, the facility will be in compliance by the time the action is completed. The informal enforcement actions require a facility to furnish proof that they were not in violation or to correct the violation within a specified time frame (up to 180 days).

Citation of information reviewed for this criterion: Paper Enforcement Files (see attached inventory) and the 2003 Water Quality Division Work Plan Report Card (PPG Reporting)

Recommendations if corrective action is needed:

Through increasing the number of staff and improved training it is anticipated that ADEQ will initiate more formal enforcement actions.

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 (including successful performance and areas for improvement):

During the review period the state initiated timely and appropriate enforcement actions in the majority of cases. There were some instances, mostly storm water, where violations were noted and the state exercised its enforcement discretion and formal or informal enforcement actions were not initiated. While the state initiated enforcement in a timely manner, there were issues with follow-up enforcement. In one case (Gamble Quail), the state took over four months to refer the case to the attorney general's office when the permit holder refused to come into compliance. Non-compliance was first noticed by EPA in 2000, the public had been noting the persistent non-compliance since October 2002 and the case was referred in January 2004.

The Gamble Quail facility was the subject of two EPA actions in the past with no effect. ADEQ chose to address this facility as a combined Safe Drinking Water Act (SDWA) and Clean Water Act (CWA) enforcement case.

As reported in PCS, there were zero formal enforcement actions taken by the State during FY 2003. As stated earlier, this was a transition year for the State as they took the lead for the NPDES program.

Citation of information reviewed for this criterion: Paper Enforcement Files (see attached inventory) and the 2003 Water Quality Division Work Plan Report Card (PPG Reporting)

Recommendations if corrective action is needed:

Through increasing the number of staff and improved training it is anticipated that ADEQ will initiate more formal enforcement actions.

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

Findings (including successful performance and areas for improvement):

The state did not calculate any penalties during the review period. The state recently received training from EPA on the BEN model and plans to use it in the future. The state currently includes both gravity and economic benefit in penalty calculations.

Citation of information reviewed for this criterion: Paper Enforcement Files (see attached inventory)

Recommendations if corrective action is needed:

The state currently includes both gravity and economic benefit in penalty calculations.

Degree to which final enforcement actions (settlements or judicial results) take appropriate action to collect economic benefit and gravity portions of a penalty, in accordance with penalty policy considerations.

Findings (including successful performance and areas for improvement):
(See above)

Citation of information reviewed for this criterion: Paper Enforcement Files (see attached inventory)

Recommendations if corrective action is needed: N/A

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

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 (including successful performance and areas for improvement):

The state met all inspection targets for majors, minors, and CAFOs. The state fell short of its target for storm water inspections during the review period. The state has since received training from a variety of sources and currently meets all inspection targets.

Citation of information reviewed for this criterion: Paper Enforcement Files (see attached inventory) and the 2003 Water Quality Division Work Plan Report Card

Recommendations if corrective action is needed: N/A

Section 4: Review of Database Integrity

Degree to which the Minimum Data Requirements are timely.

Findings (including successful performance and areas for improvement):

The State was not entering minimum data requirements into PCS in a timely manner.

EPA was requested to provide state specific training for the state and this took many months to facilitate. The state has since received training from EPA HQ and the Region and is currently working on this issue. The information that is contained in PCS is current due to EPA's efforts before the State was authorized to implement the NPDES program.

Citation of information reviewed for this criterion: Paper Enforcement Files (see attached inventory) and the 2003 Water Quality Division Work Plan Report Card (PPG Reporting).

Recommendations if corrective action is needed:

ADEQ is increasing staff and training and anticipates reporting violations and corrective actions on a more timely basis.

Degree to which the Minimum Data Requirements are accurate.

Findings (including successful performance and areas for improvement):
(See above)

Citation of information reviewed for this criterion: Paper Enforcement Files (see attached inventory) and the 2003 Water Quality Division Work Plan Report Card (PPG Reporting)

Recommendations if corrective action is needed:

ADEQ is increasing staff and training and anticipates reporting violations and corrective actions on a more timely basis.

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

Findings (including successful performance and areas for improvement):
(See above)

Citation of information reviewed for this criterion: Paper Enforcement Files (see attached inventory) and the 2003 Water Quality Division Work Plan Report Card (PPG Reporting).

Recommendations if corrective action is needed:

ADEQ is increasing staff and training and anticipates reporting violations and corrective actions on a more timely basis.

ADEQ File Review Facility List

Major Facilities

Enforcement Actions

Pima County Roger Road (Speedway)
City of Avondale
City of Globe

Minor Facilities

Inspections

Buckskin Sanitary District
Town of Kearny
Northern Gila City (formerly American Gulch Water)
SRP-Santan Generating Station
North Florence Gardens

Enforcement

Gamble Quail

CAFOs

Inspections

Lower River Calf Ranch (Southwest Calf Ranch)

Enforcement

B&K Buckeye Dairy

Stormwater/Mines

Inspections

Centex Anthem Parcel 10
Centex Anthem Parcel 41 A&B
Centex Camden Villas
Centex Eagle Pass
Centex Estrella Villas
Grace Court Bldg. 2
ADOT Ruby Road (Notice to Correct)
Dietz-Crane Sundance Parcel 2 and 36
Kuhl's Capital Iron King

FORM A - EVALUATION FORM

Date: January 12, 2004

Program Evaluated: Resource Conservation and Recovery Act (RCRA)

Information Sources Included in the Review: See below.

EPA Evaluator: James Polek

Phone: 415-972-3185

State Contact: Carol Hibbard

Phone: 602-771-4114

Section 1. Review of State Inspection Implementation

1. Degree to which state program has completed the universe of planned inspections/evaluations (covering core requirements and federal, state, and regional priorities).

Identification and Evaluation Information

RCRA Source Universe Information	Number of Sources in Universe
Universe of TSDs	12 (from RCRAInfo)
Universe of LQGs	238 (from OTIS)
Universe of SQGs	219 (from OTIS)
Total Number of Sources	469
Number of inspection files for review	30

Data Metrics

Metric a	Inspection coverage - Treatment, Storage and Disposal Facilities.	80%
Metric b	annual inspection coverage - Large Quantity Generators.	16%
Metric c	Five-year inspection coverage - Large Quantity Generators.	47%
Metric d	Inspection coverage - Small Quantity Generators.	67%

File Review Metric

Metric r	Reserved for PPA/PPG negotiated inspection plan targets.	33
----------	--	----

Findings (including successful performance and areas for improvement):

Inspection coverage of Treatment, Storage and Disposal (TSD) facilities - The data metric of 80% underestimates the TSD inspection coverage because the TSD universe is currently being adjusted. This adjustment consists of removing the Palo Verde facility from EPA’s permit work load, and transfer it to the authority of the Nuclear Regulatory Commission. With Palo Verde removed from the TSD universe, the inspection coverage for TSD facilities would be 100%.

Annual inspection coverage of large quantity generators (LQG) - The data metric of 16% of the LQG universe inspected annually is low compared to the goal of inspecting 20% of the universe annually, which would result in the entire universe being inspected every five years. However, according to RCRAInfo, ADEQ conducted a total of 45 inspections of LQGs during their 2004 fiscal year

(7/1/03 - 6/30/04), which exceeded their goal of inspecting 33 LQG facilities annually. This number of inspections translates to an LQG coverage for fiscal year 2004 of 19%, which is close to the national standard of inspecting 20% of all LQGs annually.

Five-year inspection coverage of LQGs - The data metric of 47% of the LQG universe inspected over five years is low compared to the national standard of inspecting 100% of the LQGs over five years. According to RCRAInfo, ADEQ has conducted 164 inspections of LQGs over the past five years (FY 2000 - FY 2004). Some LQGs have been inspected more than once over the five-year period, so the actual number of LQG facilities inspected is less than 164. However, the 268 facilities in the LQG universe probably includes facilities that are no longer active. Ignoring the fact that both the number of LQG facilities inspected and the universe of LQGs should be smaller numbers, the ratio of the two numbers is still valid. Using these numbers equates to 61% of the LQG universe being inspected over five years. The national standard is to inspect 100% of the LQGs over five years. ADEQ is below the 100% standard, but above the national average of 46%. The annual percentage of LQG inspections should increase as the LQG universe is revised.

Five-year inspection coverage of small quantity generators (SQG) - The data metric of 67% of the SQG universe inspected over five years is high compared to data from RCRAInfo. According to RCRAInfo, ADEQ has conducted 118 inspections of SQGs over the past five years. The SQG universe of 219 facilities is most likely inflated by the presence of inactive or conditionally exempt facilities. Using the number of SQGs inspections conducted and the potentially inflated SQG universe number yields a five-year SQG inspection coverage of 54%. If the SQG universe was better defined then the five-year inspection average would get closer to the national average of 85%.

Arizona Commitments - ADEQ has a commitment to inspect 33 LQG facilities per year and all active TSDs every two years. From 7/1/03 to 6/30/04, ADEQ conducted 45 LQG inspections, which exceeds their commitment. During the same time-frame, ADEQ inspected 10 TSD facilities, which included all of the active commercial facilities.

Citation of information reviewed for this criterion: RCRAInfo/OTIS data compared OECA Data Metrics

Recommendations if corrective action is needed:

ADEQ should be commended for their frequent (yearly) inspection of commercial TSDs. ADEQ inspects active TSD facilities every year, which exceeds their commitment and national standard to inspect TSD facilities at least once every two years.

The status of LQGs that have not been inspected in the past five years needs to be verified and the database needs to be updated. During fiscal year 2005, EPA Region 9 plans to review and update the RCRAInfo LQG universe. ADEQ believes that the actual size of the LQG universe is about 150 facilities.

Region 9 Comments:

The annual LQG inspection percentage provided by OECA seems low compared to the data from RCRAInfo/OTIS. The universe of LQG is most likely smaller than indicated in OTIS; ADEQ and EPA Region 9 are working to update this number during FY05.

- 2. **Degree to which inspection reports and compliance reviews document inspection findings, including accurate descriptions of what was observed to sufficiently identify violations.**

Identification and Evaluation Information

RCRA Source Universe Information	Number of Sources in Universe
TSD Inspections	10
LQG Inspections	45
SQG Inspections	58
Total Number of Inspections	113
Number of inspection files for review	30

File Review Metric

Metric a	Percentage of inspection reports that are adequately documented in files.	100%
----------	---	------

Findings (including successful performance and areas for improvement):

ADEQ's inspection reports were clear and concise. The reports documented the inspection, identified violations, and included photographs of the facilities hazardous waste management practices. During ADEQ's 2002 fiscal year, they completed a Six Sigma project aimed at improving the quality of their inspection reports.

Citation of information reviewed for this criterion: File review.

Recommendations if corrective action is needed:

ADEQ should be commended for the quality of their reports. No improvement is required.

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

Identification and Evaluation Information

RCRA Universe Information	Number of Sources in Universe
TSD Inspections	10
LQG Inspections	45
SQG Inspections	58
Total Number of Evaluations	113
Number of inspection files for review	30

File Review Metric

Metric a	Percentage of Inspection Reports with findings documented within a given time frame established by Region and state.	93%
----------	--	-----

Findings (including successful performance and areas for improvement):

ADEQ did an excellent job of writing inspection reports that documented their findings and doing so in a timely manner. Of the 30 files reviewed, 28 had inspection reports prepared and the other two did not because the type of inspection did not warrant a report, e.g. visiting a facility to see an ADEQ-driven site assessment. Of the 28 inspection reports, 26 were prepared in a timely fashion, i.e. less than 90 days. The preparation time ranged from 14 to 89 days from the time of inspection. ADEQ has an internal policy that inspection reports are to be prepared within 30 days of the inspection date.

Citation of information reviewed for this criterion: File review.

Recommendations if corrective action is needed:

ADEQ should be commended for the timeliness of their reports. No improvement is required.

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.

Identification and Evaluation Information

RCRA Source Universe Information	Number of Sources in Universe
Number of Handlers in SNC	1
Number of Active TSDs & LQGs in SNC	5
Number of SNCs	10
Number of inspection files for review	30

Data Metrics

Metric a	SNC Identification Rate (per 100 inspections).	4%
Metric b	SNC Identification Rate (per universe).	1%
Metric c	Timely entry of SNC determinations.	N/A
Metric d	No activity indicator.	2

File Review Metrics

Metric e	Number of SNC or secondary violation determinations that are reported in a timely manner.	8
Metric f	Number of SNC determinations that are accurately reported.	10

Findings (including successful performance and areas for improvement):

Ten Significant Noncompliance (SNCs) were identified in the files reviewed, but only three of these were identified during ADEQ’s 2004 fiscal year. Given that 113 inspections were conducted over the same time period, the SNC identification rate would be 2.7%. This rate is comparable to the data metric identification rate of 4% and close to the national average of 3%.

Three SNCs were determined during ADEQ’s 2004 fiscal year, which is above the no activity indicator of two from the data metrics.

Of the ten SNC files reviewed, eight of them had notices of violations reported in a timely manner, usually within sixty days of the date of inspection. All ten SNCs were correctly identified as SNCs.

Citation of information reviewed for this criterion: Data from RCRAInfo/OTIS and file review.

Recommendations if corrective action is needed:

During ADEQ’s 2005 fiscal year, they went from a translator state to a direct data entry state. ADEQ directly entering data into RCRAInfo will improve the timeliness of the data EPA receives.

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

Identification and Evaluation Information

RCRA Universe Information	Number of Enforcement Actions
State formal enforcement actions	10
State informal enforcement actions	14
Total number of enforcement actions	24
Number of enforcement files for review	30

File Review Metrics

Metric a	State enforcement actions that contain a compliance schedule of required actions or activities designed to return the source to compliance. This can be in the form of injunctive relief or other complying actions.	24
Metric b	Percentage of formal or informal enforcement responses that return sources to compliance.	75%

Findings (including successful performance and areas for improvement):

ADEQ inspectors identify potential violations during the inspection and review potential violations with the facility representative at the end of the inspection. The inspection report documents the violations. The inspection reports indicate what the facility needs to do in order to return to compliance and specifies a time-frame by which compliance should be achieved. A facility’s return to compliance is documented by either receiving documentation from the facility and/or re-inspecting the facility.

Of the enforcement actions reviewed, 71% of the informal actions and 80% of the

formal actions were returned to compliance. ADEQ specifies a time-frame that a facility needs to meet to return to compliance and identifies appropriate ways that a facility can document its return to compliance.

Citation of information reviewed for this criterion: File review.

Recommendations if corrective action is needed: No improvement is required.

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

Identification and Evaluation Information

RCRA Source Universe Information	Number of Enforcement Actions
State formal enforcement actions	10
State informal enforcement actions	14
Total number of enforcement actions	24
Number of enforcement files for review	30

Data Metric

Metric a	Timely action taken to address SNC.	83%
Metric b	No activity indicator.	0

File Review Metric

Metric c	Percentage of HPFS addressed or resolved appropriately.	93%
Metric d	Percentage of SNCs addressed or resolved appropriately.	10%

Findings (including successful performance and areas for improvement):

According to RCRAInfo, 83% of the formal enforcement actions against SNC facilities taken by ADEQ were done within 360 days of the inspection date. This percentage exceeds both the national goal of 80% and the national average of 30%.

According to RCRAInfo, ADEQ has no penalties resulting from formal enforcement actions. ADEQ had four settlements during its 2004 fiscal year for a total of \$440K.

HPV is not used any more, rather secondary violators (SVs) that result in informal enforcement actions were reviewed. ADEQ returned to compliance 93% of the facilities that had informal actions against them within 240 days of the date of inspection. The average time-frame for an informal action was 144 days.

ADEQ returned to compliance 10% of the facilities that had formal actions against them within 360 days of the date of inspection. The average time-frame for a formal action was 684 days. The primary reason that ADEQ's return to compliance percentage for formal actions is so low is because of the bottleneck of case at the AG's office.

Citation of information reviewed for this criterion: Data from RCRAInfo/OTIS and file review.

Recommendations if corrective action is needed:

EPA and ADEQ discussed the issue of settlement amounts not getting into RCRAInfo. ADEQ will do a better job in the future. The problem in the past has been the long time-frames from the inspection date until a formal action has settled, due to a back log of cases at Arizona's AG office. This problem has been addressed and now an AG attorney is dedicated to environmental cases. Formal actions are now settled in a more timely manner, and all settlement data will be entered into RCRAInfo.

The excessive (greater than 365 days) average time-frame of formal actions has been addressed by assigning a dedicated AG attorney for environmental cases. Future formal actions will be completely in less time than in the past. Also, facilities are typically returned to compliance before a formal action is finalized.

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).

Identification and Evaluation Information

RCRA Source Universe Information	Number of Enforcement Actions
State formal enforcement actions	10
State informal enforcement actions	14
Total number of enforcement actions	24
Number of enforcement files for review	30

File Review Metric

Metric a	Percentage of formal enforcement actions that include calculation for gravity and economic benefit.	10%
----------	---	-----

Findings (including successful performance and areas for improvement):

ADEQ's penalties are calculated on a gravity basis. Economic benefit is either not calculated or it is not clear that it was calculated from the materials in the case file.

Citation of information reviewed for this criterion: File review.

Recommendations if corrective action is needed:

EPA Region 9 has directed ADEQ to consider economic benefit in all future penalty assessments.

Degree to which final enforcement actions (settlements or judicial results) collect appropriate (i.e., litigation risk, ability to pay, SEPs, injunctive relief) economic benefit and gravity portions of a penalty.

Identification and Evaluation Information

RCRA Source Universe Information	Number of Enforcement Actions
State formal enforcement actions	10
State informal enforcement actions	14
Total number of enforcement actions	24
Number of enforcement files for review	30

Data Metrics

Metric a	No activity indicator - actions	6
Metric b	Penalties normally included with formal enforcement actions.	0%

File Review Metric

Metric c	Percentage of final enforcement settlements incorporating penalties that account for economic benefit.	25%
Metric d	Number of final penalties collected	4

Findings (including successful performance and areas for improvement):

As described previously, ADEQ did not enter settlement amounts into RCRAInfo. All four of the formal actions that were settled had appropriate penalties associated with them.

Only one of the settlements accounted for economic benefit, which included a note that the economic benefit was not significant.

Citation of information reviewed for this criterion: Data from RCRAInfo/OTIS and file review.

Recommendations if corrective action is needed:

In September 2004, ADEQ staff attended BEN Training and will use this software to estimate economic benefit when appropriate. EPA and ADEQ discussed the lack of information in the files regarding the penalty calculation. ADEQ agreed to include penalty calculation information in the case files of future formal action.

ADEQ collects penalties and/or Supplemental Environmental Projects (SEPs) on its formal cases that settle. No improvement is necessary.

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

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.**

Identification and Evaluation Information

RCRA Source Universe Information	Number of Agreements
Performance Partnership Agreements	
Performance Partnership Grants	
PPA/PPGs	
Categorical Grants (SEAs)	
Other applicable agreements (enforcement agreements, etc)	3011 Grant and work plan
Total number of agreements	

Number of agreements reviewed	1
-------------------------------	---

File Review Metric

Metric a	State agreements (PPA/PPG/SEA, etc.) contain enforcement and compliance commitments that are met.	100%
----------	---	------

Findings (including successful performance and areas for improvement):

The 3011 Grant authorizes Arizona to run the RCRA program. The work plan associated with the 3011 Grant has two enforcement and compliance commitments. The first is that ADEQ inspects all active TSD facilities every two years. ADEQ surpassed this commitment by inspecting all of the active commercial TSDs during its 2004 fiscal year. The second grant commitment is that ADEQ inspects at least 33 LQGs. ADEQ inspected 45 LQGs during its 2004 fiscal year.

Citation of information reviewed for this criterion: File review.

Recommendations if corrective action is needed: No improvement is necessary.

Section 4. Review of Database Integrity

--

10. Degree to which the minimum data requirements are timely.

Identification and Evaluation Information

RCRA Source Universe Information	Number of Sources in Universe
TSD Inspections	10
LQG Inspections	45
SQG Inspections	58
Total Number of Inspections	113
Number of inspection files for review	30

File Review Metric

Metric a	Regions should evaluate what is maintained in RCRAInfo by the State and ensure that all minimum data elements are properly tracked and entered according to accepted schedules.	80%
----------	---	-----

Findings (including successful performance and areas for improvement):

ADEQ enters information regarding the inspection, inspection report, violations, and enforcement actions in a timely and consistent manner. However, the return to compliance information is less consistent and settlement data is not entered.

Citation of information reviewed for this criterion: File review.

Recommendations if corrective action is needed:

ADEQ is working to improve their performance on entering return to compliance and settlement information. As the average case life-cycle decreases, the likelihood of this information being added to RCRAInfo will increase.

During ADEQ's 2004 fiscal year, they went from a translator state to a direct data entry state. ADEQ directly entering data into RCRAInfo will improve the timeliness of the data EPA receives.

11. Degree to which the minimum data requirements are accurate.

Identification and Evaluation Information

RCRA Source Universe Information	Number of Sources in Universe
TSD Inspections	10
LQG Inspections	45
SQG Inspections	58
Total Number of Inspections	113
Number of inspection files for review	30

Data Metrics

Metric a	Response to RCRAInfo data errors from Integrated Error Correction Process (IECP) averages less than 60 days.	Not available
Metric b	Violation/noncompliance data are accurate.	29

File Review Metric

	Facility Universe Data and Overall Uploads from	
--	---	--

Metric c	States/Locals Produce Accurate Data	100%
Metric d	Accuracy of data reporting	87%

Findings (including successful performance and areas for improvement):

Integrated Error Correction Process (IECP) data was not available for the pilot program. ADEQ does make timely corrections to errors brought to its attention by the ECHO error reporting function.

EPA and ADEQ discussed the appropriate time to flag a SNC in RCRAInfo. ADEQ expressed concerns about entering the SNC flag into RCRAInfo prior to a facility being informed about action being taken against them. Once the SNC flag is entered into RCRAInfo it becomes public information, which may alert the facility of pending action by ADEQ. Additionally, when ADEQ refers a case to the AG the case information becomes confidential and any communication becomes attorney-client privileged. If the SNC flag is entered too early then enforcement confidential information may get into the public record. During settlement negotiations, information considered confidential that ends up in the public record could potentially hurt a case. ADEQ would like to keep the SNC determination date in the case file and enter into RCRAInfo when public knowledge will not hinder a case.

The SNC flag should be removed once the facility returns to compliance.

ADEQ enters information directly into RCRAInfo, so there are no data errors associated with uploads.

Citation of information reviewed for this criterion: Data from RCRAInfo/OTIS and file review.

Recommendations if corrective action is needed:

EPA agreed to ADEQ's approach on when to enter the SNC flag, but warned ADEQ that there may be future discussion of this issue within EPA.

ADEQ agreed to improve their results in removing the SNC flag in a timely manner.

Overall, the data in RCRAInfo has an excellent correlation with the information found in the project files. As mentioned previously, ADEQ needs to improve upon entering into the system the return to compliance dates, settlement dates, and penalty amounts.

12. Degree to which the minimum data requirements are complete, unless

otherwise negotiated by the region and state or prescribed by a national initiative.

Identification and Evaluation Information

RCRA Source Universe Information	Number of Sources in Universe
TSD Inspections	10
LQG Inspections	45
SQG Inspections	58
Total Number of Inspections	113
Number of inspection files for review	30

Data Metrics

Metric a	Active Facility Universe Counts Accurate for TSD, LQG, SQG, All Handlers.*	N/A
Metric b	Inspection Counts Complete	89
Metric c	Violation Counts Complete	92
Metric d	Notice of Violation Counts Complete	93
Metric e	SNC Counts Complete	2
Metric f	Formal Action Counts Complete	6
Metric g	Assessed penalties complete	0

Findings (including successful performance and areas for improvement):

The active facility universe counts were not available for the pilot program.

The inspection count number of 89 seems low, compared to 113 inspections reported in the 2004 annual evaluation report of ADEQ's RCRA program.

The violation count of 92 seems high, compared to 75 inspections with violations reported in the 2004 annual evaluation report of ADEQ's RCRA program. The violation number also seems high when compared to the inspection count of 89.

The notice of violation count of 93 seems high, compared to 75 inspections with violations reported in the 2004 annual evaluation report of ADEQ's RCRA program. The violation number also seems high when compared to the inspection count of 89.

The SNC count of two is comparable with three new SNCs identified during the file review.

The formal action count of six seems low compared to 10 identified during the file review. This discrepancy may be from ADEQ not entering final actions into RCRAInfo.

The assessed penalty is low because ADEQ did not enter penalty amounts into RCRAInfo.

Citation of information reviewed for this criterion: RCRAInfo/OTIS data compared OECA Data Metrics

Recommendations if corrective action is needed:

As discussed previously, the issue of ADEQ not entering final actions and penalty amounts into RCRAInfo has been identified and will be corrected.

Region 9 Comments:

The inspection, violation, and notice of violation counts provided by OECA do not compare well to the data from RCRAInfo/OTIS.