



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION 10**  
1200 Sixth Avenue  
Seattle, Washington 98101

Reply To  
Attn of: OCE-127

Toni Hardesty, Director  
Idaho Department of Environmental Quality  
1410 N. Hilton  
Boise, Idaho 83706

Dear Ms. Hardesty:

The purpose of this letter is to transmit EPA Region 10's final report of its review of the Idaho Department of Environmental Quality (IDEQ) Air Compliance and Hazardous Waste Programs in accordance with the EPA/ECOS State Review Framework. Concurrently, EPA Region 10 conducted an evaluation of IDEQ's implementation of the national CAA Compliance Monitoring Strategy (CMS), as called for in OECA's national program guidance to meet the objectives outlined in the CMS. This report documents the results of that evaluation as well, which is not limited to the same time period as the Framework review. This effort began in July 2005. EPA conducted an on-site review in February 2006 in Boise, Twin Falls, Idaho Falls, and Pocatello and shared draft results in July 2006 for your review and comments. Your staff submitted comments and clarifications on the draft report, which we incorporated into the final report. The final report has not substantially changed from the draft report. In consultation with your program managers, the recommendation sections include more specific follow-up actions, along with target completion dates. The recommendations generally focus on ensuring clarity of understanding between our agencies and periodic updates and check-ins.

Thank you for your cooperation and assistance in this review. The Region 10 review team wants to thank the IDEQ 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. We look forward to continuing our positive working relationship with IDEQ. Questions regarding this report and its findings can be directed to Betty Wiese of my staff at 206-553-0695.

Sincerely,

Michael A. Bussell, Director  
Office of Compliance and Enforcement

Enclosure

cc: Jim Wertz, EPA Idaho Operations Office Director

Thank you for your cooperation and assistance in this review. We look forward to working with you to ensure the continued integrity of information collected and reported to our respective data systems. Questions regarding this report and its findings can be directed to Betty Wiese at 206-553-0695.

Sincerely,

Michael A. Bussell, Director  
Office of Compliance and Enforcement

Enclosure

cc: Jim Wertz, EPA Idaho Operations Office Director

bcc: David Bennett, OCE-164  
Mike Slater, OOO  
Rindy Ramos, OCE-127  
Betty Wiese, OCE-127

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<b>CONCURRENCE</b>						
<b>Initials</b>						
<b>Name</b>	David Bennett OCE-164	Betty A. Wiese, Mgr. Air/RCRA Compliance Unit	Lauris Davies Associate Director			
<b>Date</b>						

**State Program Review Framework Report**  
**Executive Summary for Idaho Department of Environmental Quality**  
**Clean Air Act & RCRA Subtitle C Programs**  
**September 29, 2006**

Introduction to the Executive Summary

EPA Region 10 undertook the review of the Idaho Department of Environmental Quality's direct implementation of the Clean Air Act Title V and RCRA Subtitle C programs in the second round of the national State Framework Review process. Region 10 and IDEQ agreed to conduct the review in July 2005 for the federal fiscal year that ended September 30, 2004. Region 10 assembled a review team and to the extent possible used the protocols, guidelines, and reporting formats developed for the State Review Framework published by the EPA Office of Compliance in June 2005. Concurrently, EPA Region 10 conducted an evaluation of IDEQ's implementation of the national CAA Compliance Monitoring Strategy (CMS), as called for in OECA's national program guidance to meet the objectives outlined in the CMS. This report documents the results of that evaluation as well, which is not limited to the same time period as the Framework review.

Region 10 formed a review team staffed from the Office Compliance and Enforcement, the Office of Environmental Assessment and the Office of Air Waste and Toxics. The Region 10 team leader is Betty Wiese, Unit Manager for Air and RCRA Compliance. The air program review staff is Rindy Ramos, John Keenan, Laurie Kral, and Paul Boys. The RCRA program review staff is Mike Slater and Cheryl Williams.

The review team had much assistance from the IDEQ Air and RCRA programs to conduct the review, especially the entrance meeting and on-site file reviews during the week of February 6, 2006. The Region 10 review team wants to thank the IDEQ 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.

The Region 10 team endeavored to follow the review process outlined in the June 2005 Implementation Guidance developed for the State Review Framework workshops and posted on the EPA web site at <http://www.epa.gov/idea/otis/stateframework.html>. The Review was discussed as part of the annual Region 10 and State grant work plan and agreement. The review does not include the NPDES program since EPA retains primacy for that program. Region 10 had recently completed a RCRA program review of all four states and was working with IDEQ to implement the high priority recommendations of that review. Thus, it was agreed that the framework review would take those results into account to reduce the extent of the 2004 review workload. The review began with data analysis in July 2005, which provided the basis for the random file selection protocol in December and the on site file review in February 2006.

The Director of IDEQ hosted the entrance meeting for the Region 10 team's on-site review in Boise on February 6, 2006. The review team presented the data metrics analysis and described the protocol for the file review. There was time for discussion with the IDEQ management team for Air and Hazardous Waste compliance programs about the review format and schedule. The IDEQ managers also provided an overview of state program priorities and resources that provided some context for the review.

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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 IDEQ air and hazardous waste managers and staff during the on-site visit, as well as any subsequent follow-up calls or email communications.

Overall Picture

**Hazardous Waste:** Idaho's 2004 compliance and enforcement program accomplished above-average coverage of the regulated universe, good documentation of violations and timely designation of cases of significant non-compliance. IDEQ was already working to address the recommendations from Region 10's 2000-2002 program review. We found improvements in the coordination with the State Attorney General's Office to follow-up on referrals and we found cases included the calculation of economic benefit from non-compliance in assessing penalties.

**Air Enforcement:** Idaho has not been able to meet its Full Compliance Evaluation (FCEs) commitments since FY03. However, there has been a recent focused effort to correct this situation. Regarding the number of annual certification received and reviewed in the last two fiscal years (FY04 & FY05), Idaho has been either above or slightly below the national average. Concerning the rate at which High Priority Violators (HPVs) have been identified, Idaho was below the national average in FY04 but above the national average in FY05. This increase can partly be attributed to the entering into AFS previously withheld HPV violations in order for the state to notify a source of its pending violation status. In addition, the improvement in Idaho's air enforcement program can also be related to an increase in staff in May 2005.

We believe that it is important for Idaho to maintain the funding and staff they have to implement their programs. It will be important for EPA and IDEQ to ensure the adequacy of IDEQ's Title V fees program in covering all Title V program work, including compliance.

Idaho's Enforcement Priorities

**Hazardous Waste:** Idaho continued to place a high priority on compliance monitoring and enforcement at federal facilities and other permitted Treatment, Storage and Disposal Facilities. This provided a strong core component in the authorized hazardous waste program. In addition, IDEQ had a responsive complaint program that recorded almost as many field visits as the regulatory inspection program. This "state only" program dealt with tips and complaints and provided technical assistance outreach to small businesses to address waste management problems.

**Air Enforcement:** The main focus of the Air Enforcement Program has been to identify facilities which are in violation of the state's permit requirements. Specifically, major sources which have not applied for, and therefore not received, Title V operating permits or state synthetic minor permits.

Program Successes and Major Cases

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Hazardous Waste: Idaho concluded major penalty cases in two enforcement actions at US DOE Idaho National Environmental and Engineering Laboratory facilities with a total over \$180,000. We found this level of enforcement activity consistent with prior reviews. IDEQ closely monitored federal facilities and took appropriate enforcement action for significant non-compliance. The program was successful at returning the facilities to compliance pending settlement of the penalties.

Air Enforcement: The number of actions (with penalties) has greatly increased between FY04 and FY05. Penalty actions were taken against 10 facilities (4 HPVs) in FY04 and against 21 facilities (6 HPVs) in FY05. The total amount of penalties assessed/collected has also increased accordingly.

Overarching Issues Among the Programs

Hazardous Waste and Air Enforcement: Improve coordination with the Attorney General's Office to speed up the return to compliance and completion of formal orders. More consistently calculate, assess, and recover the economic benefit of non-compliance in penalty actions.

Inspection Implementation

Hazardous Waste: We found extensive coverage of the full spectrum of handler categories. IDEQ covered 97% of the handlers they had planned for inspection in the federal fiscal year grants as well as additional "state only" handlers for complaint response and technical assistance.

Air Enforcement: The file review found the inspection reports to be thorough and well documented. We also found the FCEs to be complete, well documented and the files overall well organized.

Enforcement Activity

Hazardous Waste: IDEQ made timely and appropriate designations in cases of significant non-compliance in 2004 that was consistent with findings in the 2000-2002 review. We reached a different finding in one case that IDEQ did not designate a SNC but did resolve through referral to the Attorney General and an enforcement action with penalty. The SNC criteria leave room for different case-specific determinations and IDEQ provided the rationale for their position. We recommend that IDEQ consider making a more consistent correlation in the future between cases that merit referral with penalties and cases that merit SNC designations.

Air Enforcement: Generally, we found the program to be lacking in its timeliness of enforcement actions which can somewhat be attributed to Idaho's lengthy enforcement process. We believe other areas that need improvement are the documentation of penalty calculations

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(including initial and final settlement), the resolution of enforcement actions, and the timely reporting of HPVs.

Commitments in Annual Agreements

Hazardous Waste: IDEQ committed to a substantial compliance and enforcement workload in the state grant work plan and successfully completed the work.

Air Enforcement: There are numerous compliance and enforcement commitments in the Air Base Work Plan for CY05. All of them were completed except for the commitment to implement compliance evaluations pursuant to the Compliance Monitoring Schedule

Data Integrity

Hazardous Waste and Air Enforcement: We found that data was timely entered directly into RCRAInfo and AFS and that the data closely matched the information that we found in file reviews.

Summary

Hazardous Waste: We found that IDEQ implemented a strong compliance and enforcement program in 2004. The program managers have already taken steps to address 2000-2002 review findings and worked cooperatively with Region 10 to identify and address areas that needed improvement. IDEQ pointed out that EPA grant resources have not increased over the years to keep up with higher program costs and the State of Idaho has made up the difference with additional funding to IDEQ. We recognize Idaho's commitment to fund a strong program and support the continued investment in the program to protect human health and the environment from hazardous waste mismanagement.

Air Enforcement: We found the staff to be very knowledgeable, competent, and dedicated to improving the overall health of the state's air enforcement program. The state has already taken steps to improve its efficiency in addressing noncompliance in a timely manner. It has also taken steps to address its difficulty in meeting its CMS plan by developing a 5-year inspection strategy and development of a database for integrating information across the Air Quality Division. These improvements should increase the effectiveness of their enforcement program.

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Program Evaluated: CAA Stationary Source Compliance/Enforcement Program

Information Sources Included in the Review:

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

EPA Region 10 selected 20 sources for file reviews, divided into five groups: Four major sources for which an enforcement action had been taken but no Full Compliance Evaluation (FCE) conducted; one major source with an FCE and an enforcement action; three SM80s with an enforcement action and no FCE conducted; seven SM80s with an FCE but no enforcement action; and five major sources with an FCE scheduled but no enforcement action. Two of the above were High Priority Violators (HPVs) that were determined in FY05. Sources representing all six of Idaho's regional Offices were selected. The time period evaluated was federal fiscal years 2003 and 2004, but because some of the enforcement actions that were taken in 2003/2004 addressed violations that occurred in earlier years, earlier files were reviewed as appropriate.

The SFR File Protocol recommended that 15 to 30 files be reviewed according to the universe of Idaho sources. Region 10 added an additional five files to the minimum recommended number to bolster its evaluation of Idaho's air compliance/enforcement program review and its review of Idaho's CMS program.

The Metric lists the universe of CAA Major Full FCE coverage at 60. However; six of those facilities are EPA lead (Part 71) tribal sources in Indian Country for which EPA is responsible. Subtracting these six facilities, results in a universe of 54 facilities. Based on the CAA date review period ending in FY04, the review of ten CAA Major FCE files results in 18.5% (10/54) of Idaho's CAA Major sources being reviewed. The review of ten SM80 FCE files results in 13.7% (10/73) of Idaho's CAA SM80s sources being reviewed.

CAA Program Appendix A lists the sources that were selected for the file reviews.

EPA Evaluators:	Rindy Ramos	Region 10, Seattle	Phone: (206) 553-6510
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**Element 1. Degree to which state program has completed the universe of planned inspections/evaluations (addressing covering core requirements and federal, state, and regional priorities).**

Findings

The percentage of CAA major sources receiving FCEs by the State during the two year period FY03/04 was 50.0%. Combined with EPA-only FCEs, the result is 55.0 %. The percentage of CAA SM80s receiving FCEs by the State during the three year period ending FY04 was 24.7%. In FY03 and FY04, IDEQ was to conduct FCEs at major sources at a frequency of once every two years, every three years for mega sources, and once every five years for SM80s in accordance with CMS expectation. However, in FY04 the state and region agreed to change the frequency for some major sources to once every three years. Both of the above FCE rates are below the national average. Please note Idaho's previous CMS plan covered Fiscal years 04 and 05 so a direct comparison to the metric is not possible. For FY04/05, Idaho also fell short of its CMS plan commitment.

IDEQ and EPA management discussed the CMS for major shortfalls and on October 11, 2005, Idaho submitted their FCE schedule for federal fiscal years 2006 and 2007, including an explanation as to why some of their Major "A" sources did not have an FCE completed during 04 and 05. Ten of the twelve sources had FCEs completed by a regional office; however, Idaho's state office felt they were not adequate and therefore returned them for correction. The FCE for the remaining two sources was completed after the end of the fiscal year. The on-site inspection component of the FCEs was delayed to accommodate the scheduling of an EPA lead inspection. The inspections occurred in FY06.

Idaho has conducted additional training in the proper way to conduct and document FCEs to address the issues that arose from incomplete evaluations. The deficient FCEs were discussed during one-on-one training between the appropriate staff and the regional manager.

IDEQ and EPA Region 10 program managers have agreed on the importance of monitoring FCE performance and have instituted periodic progress check-ins during the year (including EPA's mid-year Annual Commitment System (ACS) commitment review cycle); these should continue to occur. Due to a recent cleanup, AFS can now be used as a database of record to assist in the monitoring of planned inspections per the CMS policy. In prior years, it was unknown until almost the end of the Federal fiscal year if the state planned inspection commitments were going to be met. Idaho's two year CMS plan, reflecting the projected state FCEs, are now flagged in AFS. This additional information allows for both the state and EPA to monitor the reportable activities on an as needed basis versus waiting until the mid-year or end-of-year reporting cycles.

For fiscal year ending 04, Idaho reviewed 75.0% of the annual compliance certifications received. This is above the national average of 73.7%. In FY05, Idaho reviewed 33 of

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the 45 (73.3%) of the annual compliance certifications that were received. This is slightly below the national average of 76.2%. In the past, reviews were not a high state priority. The region has reinforced with the state the need to review 100% of the annual compliance certifications received.

Corrective Action

With EPA's assistance, Idaho shall develop a document delineating its understanding of EPA's CMS plan expectations. Idaho will modify the scheduling and reporting portions of their CMS tracking plan from a state fiscal year basis to a federal fiscal year basis to facilitate ease of real time tracking. There will be formal check-ins each July to assess the state's progress in meeting the CMS commitment for that fiscal year. FCE completion to date, as well as the expectation for conducting the remaining FCEs, will be reviewed. The FCE completion status for sources covered under the five-year plan will also be discussed. The above activity will be completed by November 15, 2006.

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

Findings

IDEQ developed and utilizes a Full Compliance Evaluation Report form for documenting FCEs. In addition, there are forms for evaluating annual compliance certifications, facility operating reports, and source tests. The forms include all the various sources of information reviewed for determining the compliance status of the facility. All of the components listed in EPA's April 2001 Clean Air Act Stationary Source Compliance Monitoring Strategy policy are covered. All of the 11 source files reviewed, which included compliance monitoring reports, contained adequate documentation to determine compliance with all applicable requirements. Inspection reports typically used the Title V permits conditions as a checklist, in addition to reviewing records and on-site observations. Most reports were very comprehensive, including general and facility-specific information, and applicable requirements.

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

None needed.

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

Findings

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Although the file review did not generate the average number of days it took from the beginning date of an evaluation to completion of the evaluation, it appeared that all except for one was less than 60 days. The one greater than 60 days, appeared to be due to Idaho waiting for EPA to send them a copy of EPA's inspection report for a particular facility.

The FCE checklist, developed and used by the state during reviews, includes a space for recording the period the FCE covers and when the FCE was completed. All files reviewed by EPA contained this form properly filled out.

Generally, IDEQ is submitting all of their minimum data requirements in a timely manner to EPA.

#### Corrective Action

None needed.

**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's national database in a timely manner.**

#### Findings

High priority violations are reported to, and discussed with EPA during conference calls every other month. Sources that have been identified with violations, but haven't been identified as an HPV yet, are reported to EPA as a potential HPV pending further evaluation and discussion. In this way, HPVs have been reported to EPA in a timely manner. IDEQ sends EPA a computer generated report for each HPV facility that includes a synopsis of the history of activities and actions (including dates and summaries) taken in response to the violations. This report has been very helpful for discussions during the HPV calls.

There was a period of time, prior to FY05, where IDEQ HPVs were not being flagged in a timely manner in AFS. IDEQ was concerned that the information might be made available to the public, prior to the state being able to notify the source of the compliance issue(s) (e.g. issuance of a NOV). Idaho has agreed to flag HPVs promptly and not wait for NOV issuance. This requirement is reinforced during the state's bi-monthly HPV call with the region.

For FY04, adjusting the metric to account for the EPA lead Tribal sources, the rate at which new HPVs were identified (per universe of major sources) was 3.3% (2/61). This number is below the national average of 5.3%. For FY05, adjusting the metric to account for the EPA lead Tribal sources, the rate at which new HPVs were identified (per universe of major sources) was 4.9% (3/61). This number is above the national average

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of 4.4%. Whereas the national average has gone down (5.3% to 4.4%), Idaho's average has improved (3.3% to 4.9%).

According to the file selection protocol, the region reviewed 20 source files. Of these, seven contained enforcement actions for the review period ending FY04 and all were properly evaluated in accordance with EPA's HPV reporting requirement.

We have confirmed with IDEQ management the need for staff to understand the criteria for listing an HPV as a failed source test for a pollutant for which the facility is major in addition to sources that fail to comply with synthetic minor limits and hence should be considered major. IDEQ will reinforce the criteria with the field office staff making the initial determinations of HPV status.

Corrective Action

See discussion above concerning notification of violations.

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

Findings

Seven of the source files reviewed was for sources which had received formal enforcement action in the form of a Consent Order (CO). One consent order was in draft form. Of these seven, and an additional file, all had been issued Notices of Violation (NOVs) prior to the CO. Four of the COs contained timely schedules. Two sources had already returned to compliance. Documentation of the compliance schedule for the remaining source was incomplete. Compliance schedules and a copy of the CO were not always present in the files.

The review indicated that enforcement actions were slow and not well documented in regards to disposition of violations. It was difficult to determine at what point a facility returned to compliance. The file should include an annotation as to when the source returned to compliance or the expected compliant date per a compliance schedule.

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Corrective Action

Idaho shall develop a system to better document and track the status of a source once it has been determined to be noncompliant. The system should allow tracking of enforcement actions initiated (e.g. consent order – compliance schedules), and when and how the source returned to compliance. The system shall be put into place by March 30, 2007.

**Element 6. Degree to which the state takes enforcement actions, in accordance with national enforcement response policies relating to specific media.**

Findings

Timeliness

IDEQ's options for enforcement include administrative, civil, and criminal actions. The administrative enforcement process is most widely used and includes issuance of Warning Letters, NOV's, and CO's. This review did not include any civil or criminal cases, but did include a number of CO's both with and without penalties.

The reason that no reviews were conducted is that IDEQ did not prosecute any civil or criminal actions in state court during the time period under review. It is estimated that the last time Idaho initiated a civil enforcement action was in the late 1990s. The region is not aware of any criminal enforcement actions under the CAA (besides asbestos) in Idaho. EPA did review numerous settlements which were concluded with Consent Orders.

Currently, in order to assess a penalty against a noncompliant source, IDEQ must either file a court action or reach an agreement with the source on an appropriate corrective action and penalty through the issuance of a CO. The negotiation process for CO's has typically resulted in a much lower penalty than was proposed in the NOV.

Recommendations for an enforcement response to violations are usually made by sending an enforcement referral from the Regional Office to the State Air Quality Division. The referral is prepared by a regional inspector and routed through the regional administrator. A team is then assembled for determining the appropriate enforcement response and preparing any subsequent NOV and/or Consent Order. The team usually consists of one representative from the State Program Office, the Regional Office, Technical Services, and the Office of the Attorney General.

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A Deputy Attorney General (AG) is consulted by the air compliance staff and managers, and is assigned to all cases that involve formal Notices of Violation with proposed penalties. The Deputy AG is a member of the enforcement response team and participates in internal meetings, conference calls, compliance conferences with NOV respondents (as appropriate), and settlement negotiations. IDEQ also works with the AG on referrals for civil enforcement actions in district court. Civil enforcement actions must be taken by the AG's office.

This process, although an effective one, tends to be lengthy. In many cases, corrective action(s) are implemented by the source prior to issuance of a NOV or CO.

Ten of the 11 (90.0%) HPVs in FY04 were unaddressed for more than 270 days. The national average was 59.5%. The main reason why most cases took longer than 270 days to be addressed is a result of IDEQ's lengthy enforcement process described above – IDEQ's lack of administrative penalty authority and administrative compliance order authority.

There was however one HPV for which a FCE was conducted in FY03, with the violation being detected, addressed and resolved within 90 days.

An additional impediment to IDEQ's enforcement program is the fact that Idaho Statutes Title 39, Health and Safety, Chapter 1, Section 39-108(4) states "No civil or administrative proceeding may be brought to recover for a violation of any provision of this chapter for a violation of any rule, permit or order issued or promulgated pursuant to this chapter, more than (2) years after the director had knowledge or ought reasonably to have had knowledge of the violation".

#### Appropriateness

Regarding appropriateness of enforcement actions, the file reviewed indicates that the field staff and source test reviewers are very good at identifying violations and determining which ones warrant a referral to the state office. All enforcement actions were appropriate.

As discussed above, due to Idaho's enforcement process, corrective action and penalty assessment (sometimes lower than initially assessed) is normally negotiated in the NOV phase. In many cases, this results in the source returning to compliance thereby reducing the need for formal action.

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Corrective Action

The State is committed to focus their attention on being as timely as possible within their enforcement constraints. They have developed a process to improve the effectiveness of case development and have recently (FY06) hired an additional case developer.

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

Findings

Of the seven files reviewed which identified HPV and non-HPV violations (six in FY 03/04 and one in FY05), some amount of penalty was calculated and assumed collected from the sources. Documentation of penalty calculation and collection was not always included in the file. Generally, IDEQ 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 due to the state's lower statutory maximum.

The State uses EPA's BEN model to calculate an initial penalty amount. In some cases, the penalty was negotiated to a lower amount. In one case IDEQ settled for \$10,000 – one day maximum statutory amount for what was a multi-day violation. The State also uses EPA's SEP policy to mitigate penalties.

Corrective Action

EPA will encourage the use of multi-day violations as not being constrained by the single day statutory maximum.

Idaho shall develop a system to better document and track its penalty actions. The system shall document the amount originally assessed and any assumptions that went into its development (e.g. gravity, economic benefit, cooperation, etc.) It shall also track the final amount collected, when it was collected, and include a discussion if the amount collected differs from the original assessed amount. This system shall be put into place by March 30, 2007.

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**Element 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

In FY04, penalties totaling \$61,200 were collected against ten sources; four of which were HPVs. Of the total amount, \$49,100 was assessed against the 4 HPVs.

In FY05, penalties totaling \$183,486 were collected against 21 sources; six of which were HPVs. Of the total amount, \$149,125 was assessed against the six HPVs.

During the file review, it was difficult to determine the final penalty amount and what portion(s) covered gravity and economic benefit. Better documentation regarding the derivation of a penalty is needed.

Corrective Action

Idaho shall develop a system to better document and track its penalty actions. The system shall document the amount originally assessed and any assumptions that went into its development (e.g. gravity, economic benefit, cooperation, etc.). It shall also track the final amount collected, when it was collected, and include a discussion if the amount collected differs from the original assessed amount. This system shall be put into place by March 30, 2007.

**Element 9. Enforcement commitments in the Annual Air Grant Work Plan and Compliance Assurance Agreement written agreements to deliver product/project at a specified time.**

Findings:

IDEQ has agreed to certain compliance and enforcement commitments in its Air Work Plan (the state has an Air Work Plan – not a 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 CMS have been submitted to EPA in a CMS Plan. The Annual Work Plan also includes a commitment to implement compliance evaluations pursuant to the CMS schedule and report CMS and other compliance activities in accordance with the Compliance Assurance Agreement.

As discussed elsewhere, IDEQ did not meet its CMS commitments for FY02/03 and FY04/05.

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An additional commitment in the Work Plan is to refer cases for enforcement within 30 days of observation for new cases and not later than 75 days if additional information is required. Timely referrals have improved greatly over the past year.

The state conducts permit handoff meetings to ensure facility personnel responsible for compliance, and IDEQ staff, know and understand the permit requirements. An opportunity for a handoff meeting is provided on all pertinent permits, and is scheduled by the facility if they so choose.

Idaho has developed an effective and robust Source Testing Program. The Air Compliance staff in each regional office is familiar with source testing principles and procedures and work closely with a group of highly specialized source test experts in IDEQ's Technical Services Division. The majority of IDEQ permits restrict facility operations based on operating parameters (e.g. throughput) observed during compliance testing. A common example is the on-going limitation of facility throughput to 120% of the throughput documented during a compliant source test. Facility's must retest if they desire to operate at higher throughputs (or other condition limited by the permit) and successfully demonstrate compliance at that new rate.

In June 2005, the stationary source program implemented a newly developed five year inspection plan for all permitted facilities in Idaho. In addition to Title V and SM80 facilities, this plan includes all non-Title V permitted facilities within each regional office.

#### Corrective Action

With EPA's assistance, Idaho shall develop a document delineating its understanding of EPA's CMS plan expectations. Idaho will modify the scheduling and reporting portions of their CMS tracking plan from a state fiscal year basis to a federal fiscal year basis to facilitate ease of real time tracking. There will be formal check-ins each July to assess the state's progress in meeting the CMS commitment for that fiscal year. FCE completion to date, as well as the expectation for conducting the remaining FCEs, will be reviewed. The FCE completion status for sources covered under the five year plan will also be discussed. The above activity will be completed by November 15, 2006.

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

##### Findings

The state currently does not have a statewide database. Therefore, all AFS minimum data requirements are entered directly into AFS by their State Data Manager. Part of the state's 2005-2009 strategic Plan is to continue development of a database for integrating information across the state's Air Quality Division. The database will provide

convenient access to information for staff and other users and will provide a tool for airshed management.

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In FY03, there were 11 sources (Majors and SM80) which had a FCE completion date in that fiscal year. Of the 11, all were entered into AFS with the 90 day requirement. Of the 29 sources in FY04, all but one of the FCE dates was entered within 90 days. Of the six HPV source files reviewed, the average time it took from the beginning date of the activity that triggered HPV (inspection, review, etc.) to completion of the evaluation and determination of HPV was 23 days. This is well within the expected 45 day time frame.

See the discussion under Element 3 for additional information.

Corrective Action

None needed.

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

Findings

Of the 19 Violations identified in AFS in FY04, 12 were HPVs indicating that 63.2% of the violations were HPVs. Since the number of noncompliance sources is lower than the number of HPV sources, i.e. ratio >100%, this is an indicator that violations are being fully tracked in AFS.

IDEQ has been entering the review of all stack tests by pollutant and result of each test, prior to it becoming a MDR in FY06. IDEQ responds to the ECHO data error messages in a timely manner. Data is researched, verified and corrected in AFS if needed.

The region has confidence in the ability and training of Idaho's Data Manager. They have historically entered any activity they have received into AFS in a timely manner.

Corrective Action

None needed.

**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

IDEQ recently underwent an extensive AFS data cleanup effort to verify classification of sources to ensure for proper identification of the CMS universe. As a result of this data

cleanup, AFS can now be used as a management tool to monitor the CMS reportable activities.

Corrective Action

Idaho Compliance and Enforcement Evaluation  
Clean Air Act (CAA) Program  
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Idaho and Region 10 will work together to gain a better, clearer understanding of all CAA MDRs. Idaho shall document, in writing, how its current process shall satisfy EPA's data reporting expectations. This document shall include all ICR reportables. This document shall be developed by March 30, 2007.

Idaho will identify an AFS backup data manager by January 30, 2007. Idaho and Region 10's current AFS manager will initiate training upon appointment of back up manager.

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

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



**Idaho Compliance and Enforcement State Program Review  
Resource Conservation and Recovery Act (RCRA) Hazardous Waste Program  
September 29, 2006**

Introduction and Information Sources Included in this Review

The evaluation of the Idaho Department of Environmental Quality (IDEQ) RCRA Compliance and Enforcement Program for federal fiscal year 2004 was based on information from the RCRAInfo national database, IDEQ facility files for compliance and enforcement, and the state grant work plans applicable to year ending September 30, 2004. The IDEQ program was evaluated using the measures in the 2005 State Review Framework, the Hazardous Waste Civil Enforcement Response Policy (revised December 2003), RCRA Civil Penalty Policy (revised June 2003) and in accordance with the Region 10 Compliance Assurance Program Evaluation Principles (March 1998.)

The IDEQ Hazardous Waste Program had approximately seventeen full time equivalent (FTE) staff in 2004. They regulated over 2,500 hazardous waste handlers registered in Idaho including four operating Treatment, Storage and Disposal Facilities, 26 Large Quantity Generators and 54 Small Quantity Generators. The compliance manager in the Boise headquarters worked with staff in six field offices to evaluate violations and pursue enforcement cases. IDEQ also worked with the Idaho Attorney General's Office to resolve some formal enforcement actions and we did not review the documents of that Office unless they were included in the IDEQ files.

The review team used the Framework file selection protocol to select 17 files to review at the IDEQ offices in Boise during the week of February 6, 2006. The File Selection Protocol and Draft Data Metrics Report were sent to IDEQ in January 2006 for comments prior to the review team's travel to Boise. These preliminary reports are included in Appendix A, including the list of handler files selected for reviews. IDEQ concurred on the file selection and Region 10 incorporated IDEQ comments on the data into this final review report.

Region 10 elected to review a low number of files from the framework guidance for a recommended range of files because the RCRA compliance programs in all four states were recently reviewed. Prior findings for the IDEQ program are available for federal fiscal years 2000 - 2002 in the Region 10 Hazardous Waste Compliance Program Review at:  
<http://yosemite.epa.gov/R10/OWCM.NSF/webpage/Hazardous+Waste+Compliance+Program+Review>

EPA Evaluators:	Mike Slater	Region 10, Portland	Phone (503) 326-5872
	Cheryl Williams	Region 10, Seattle	(206) 553-2137
State Contact:	John Brueck	Boise	(208) 373-0458

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

Findings

IDEQ exceeded the core requirements for RCRA TSD and LQG facility inspections in federal fiscal year 2004. The large and complex TSD facilities in Idaho were inspected multiple times to ensure compliance, over and above the biennial inspection requirement of the RCRA statute. IDEQ inspected 9 of the 26 LQGs (35%, see RCRA Program Appendix A) in the 2004 handler universe. IDEQ also met the national goal of inspecting 100% of LQGs over the five years ending in 2004. However, the EPA data metric was incorrectly calculated as 88% because three LQG cleanup sites that generated hazardous waste only in 2003 and were not inspected should not have been included in the five year baseline (see RCRA Program Appendix A.1.c.)

The rest of the small and other handler universe was also well covered by IDEQ, with 94% coverage of the SQG universe over five years (51 of 54) and a count of 205 other handlers inspected. We did not count handlers with state only identification numbers (IDSTATE) in RCRAInfo because IDEQ issues these numbers for their own tracking. They visited an additional 61 businesses with "IDSTATE" numbers in 2004 to provide assistance or in response to tips and complaints.

Finally, IDEQ inspected 97% (64 of 66) of the handlers that they had planned for and agreed to in the state grant work plans for 2004 inspections.

Recommendations

We recommend that IDEQ maintain the hazardous waste program funding and staff levels that provided this level of compliance monitoring. This should help maintain the high level of inspection coverage that they demonstrated in 2004, which continued the positive trend we found in the previous review of 2000 - 2002 (available at <http://yosemite.epa.gov/R10/OWCM.NSF/webpage/Hazardous+Waste+Compliance+Program+Review> .)

**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

We found 11 of the 15 (73%, see RCRA Program Appendix B, 2A) inspection files reviewed were adequately documented, per the RCRA Inspection Manual (revised 1998). IDEQ provided additional information in response to our draft findings that satisfactorily explained the circumstances of the four files we questioned, as follows.

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- (1) A generator had closed their business at the location identified by the RCRA ID number we found in RCRAInfo and no inspection report was needed. IDEQ subsequently fixed the data.
- (2) The file included a compliance assistance report although a CEI was found in RCRAInfo. We agree with IDEQ that an inspector responding to a complaint may determine that compliance assistance is the appropriate response, however the inspection type in RCRAInfo should have been CAV not CEI for that inspection.
- (3) The file included a warning letter that did not appear to have adequate documentation of the violations in the narrative report and seemed to have been based on the inspector's checklist. IDEQ held that the violations were adequately described for the purpose of the warning letter, even though the documentation was less than was included in the other files we reviewed.
- (4) This was a complicated case involving oversight of an EPA ordered cleanup and subsequent violations based on the cleanup report. There were additional reports from EPA and IDEQ that provided the basis for IDEQ's notice of violation. We found IDEQ's explanation of the chain of events sufficiently identified the violations.

We found that IDEQ maintained good documentation in the majority of their inspection files. IDEQ supported the descriptions and observations of 100% of the files we reviewed with in depth staff knowledge of the facilities. While attention to detail and data reconciliation can always be improved, we recognize that time and resources do not allow for perfection in file documentation.

#### Recommendations

We recommend that IDEQ not enter a CEI inspection type if there is not a thorough compliance evaluation report filed, instead use a CAV or OTH type that more accurately matches the file documentation. IDEQ agreed to make changes after the implementation of RCRA version 3.

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

#### Findings

There were 14 files reviewed that included the required inspection reports. All 14 (100%, see RCRA Program Appendix B, 3A) were completed within the 150 days allowed in the Enforcement Response Policy and included timely identification of potential violations. As noted in Element 2 number (1), an additional file was missing a report but the generator had closed the business at this location and data should have been entered for the new location and no report was needed for the closed location.

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Recommendations

None. We commend Idaho's timely completion of inspection reports and prompt identification and classification of violations.

**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

IDEQ met, and with a referral to EPA, exceeded the national SNC identification rate in 2004. We found that IDEQ routinely made and timely reported SNC determinations in RCRAInfo. Also, the majority (67%) of the state's formal enforcement actions were taken at facilities previously designated SNC (versus 55% national average, see RCRA Program Appendix A.)

IDEQ made the violation determinations within 150 days and promptly entered SNC data (if applicable) in RCRAInfo for 11 of the 12 files (92%, see RCRA Program Appendix B, 4E) with violations that we reviewed. The one exception was 8 days late due to the extended time needed to validate soil samples from the inspection.

We questioned Idaho's determinations for two violators designated secondary violators (SV) when they appeared to meet the SNC criteria described in the EPA Hazardous Waste Civil Enforcement Response Policy (revised December 2003.)

(1) A small wood treating facility that had not notified IDEQ of their generator status. The handling of wood treating chemicals had caused the likely exposure to hazardous materials at the facility. IDEQ replied that the facility releases may have predated RCRA requirements and opted to deal with the problem by entering a Voluntary Consent Order for cleanup of the property rather than an RCRA enforcement action.

(2) A permitted storage facility with multiple violations and the likely release of hazardous constituents at the facility boundary was not designated SNC. However, IDEQ did complete a referral to the State Attorney General's Office, a formal enforcement action and imposed a \$50,000 penalty for the violations. IDEQ replied that their use of formal enforcement at non-SNC violators is not inconsistent with the ERP and that they did not find the violations reached the level of the SNC criteria.

We found that IDEQ made different interpretations of the Enforcement Response Policy SNC criteria than Region 10 would have given the site specific cases we reviewed. IDEQ responded that the SNC criteria allow for interpretation based on the case facts and that they made reasonable assumptions following the ERP in these cases.

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Recommendations

IDEQ should maintain the degree of timely and accurate use of the SNC determination process to prioritize enforcement responses that we found in 2004 cases and in the prior review.

We recommend that Region 10 and IDEQ confer about any case in which the IDEQ proposes to undertake formal enforcement action without first designating the violator as a SNC to better align their interpretations of the ERP.

Action

IDEQ agreed that the quarterly grant management meetings with Region 10 will include discussion of SNC violators and pending formal enforcement actions for the purpose of reaching agreement on the interpretation of the SNC designation criteria as applied to the facts in specific cases. This recommendation will be implemented in the autumn of 2006 quarterly meeting and tracked in future quarterly meeting notes.

**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

There is room for improvement in the degree to which IDEQ concludes formal enforcement actions with appropriate compliance schedules of required actions. This was one of the recommendations from the 2000-2002 review that IDEQ has been working to resolve since that report was drafted in 2004. We found that 1 of 3 (33%, see RCRA Program Appendix B, 5A) formal enforcement action files that we reviewed from 2004 had appropriate requirements to return to compliance, one was still pending, and another was deferred to a permit requirement.

(1) A mining facility with wastes left on site after it stopped operating was referred to the Idaho Attorney General's Office in December 2004. The draft consent order in the file included a requirement for closure or post-closure permit work if the owner failed to cleanup the facility but not a schedule by which this would be done. IDEQ replied that the consent agreement was never reached and this case is working its way through the courts.

(2) The permitted facility identified above without a SNC designation received a formal enforcement action that did not include requirements to address the release of hazardous materials. IDEQ replied that the release violation was inadvertently left out of the NOV and order (perhaps due to extended time needed to validate sample results) and was instead addressed through the facility's permit requirements. We did not review the permit and IDEQ indicated that it contains a schedule of actions required for investigation and remediation of a solid waste management unit.

On the other hand, we found that IDEQ effectively used informal enforcement to return all four

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(100%, see RCRA Program Appendix B, 5B) of the secondary violator files that we reviewed to compliance within the 240 day time frame of the EPA Enforcement Response Policy.

Recommendations

We recommend that IDEQ continue with the actions taken in response to the 2000-2002 review recommendations, including more systematic post-referral communication with the Attorney General's Office to obtain appropriate injunctive relief and timely return to compliance. IDEQ had also started working to include firm schedules in cleanup agreements with RCRA closure requirements included as necessary.

Action

IDEQ agreed to include SNC violator case development discussions on the quarterly grant management meeting agenda. The intent will be to reach an understanding with Region 10 about the extent of injunctive relief and schedule requirements based upon site specific circumstances. This recommendation will be implemented in the autumn of 2006 quarterly meeting and tracked in future quarterly meeting notes, sans enforcement sensitive details.

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

Findings

We found that IDEQ continued to improve the degree of timely enforcement that we recommended in the 2000-2002 review. All 8 (100%, see RCRA Program Appendix B, 6C&D) of the enforcement files we reviewed showed that IDEQ had issued informal and formal actions within the timeframes of the RCRA ERP. We also found that the 8 addressing actions were appropriate to the violations. Although we disagreed with IDEQ's designation of one violator as an SV rather than as an SNC, IDEQ did make a referral to the Attorney General's Office and concluded a formal enforcement action with a penalty in that case, which we found was the appropriate addressing action.

IDEQ completed six formal enforcement actions in 2004 which was substantially less than the 11 actions per year average we found in the 2000-2002 review. Variations from year to year are not unusual and we did not find a particular reason for this single year drop.

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Recommendations

None - we commend IDEQ's timely and appropriate enforcement responses. Timely referral of cases to the Attorney General's Office is important because of the sometimes long time frames needed to complete actions through negotiation or litigation in that venue.

**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

IDEQ concluded four penalty actions for federal fiscal year 2004. Through our file selection protocol (see RCRA Program Appendix A,) we selected three formal enforcement files for review. Two of the three cases (67%, see RCRA Program Appendix B, 7A) included calculation and documentation of the gravity component and the economic benefit of non-compliance. The 2004 enforcement action we reviewed that didn't include an economic benefit component was originally calculated and assessed in 2000. The mine and mill site in violation had been abandoned and it was a long process to complete the enforcement action following the original case development.

The 2000-2002 review recommended that IDEQ more consistently calculate and assess the economic benefit of non-compliance. We found IDEQ had begun to address this recommendation in 2004 with training and new enforcement procedures. The two enforcement files we reviewed demonstrated that IDEQ had taken the economic benefit of non-compliance into account and included it in penalty calculations that were documented in the files.

Recommendations

None - IDEQ has made improvements since the previous program review in calculating the appropriate gravity and economic benefit amounts to be included in penalty actions.

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

Findings

The federal fiscal year 2004 data for IDEQ included 2 penalties collected out of five final formal enforcement actions for a total of \$180,795. We did not review the files for these two federal facilities' penalties to determine the degree to which they were in accordance with penalty policies. Previous reviews found that IDEQ collected penalties in accordance with applicable penalty policies at federal facilities.

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We found that the IDEQ final penalty to final enforcement rate of 2 in 5 (40%, see RCRA Program Appendix A, 8.b.2.) was below the national average (73%). One reason for this may be that some final actions require violators to conduct cleanups rather than pay IDEQ penalties. Previous reviews found IDEQ believed that, where limited resources were available, their priority was to require violators to pay for cleanup and produce a tangible environmental improvement rather than to collect a penalty for the state that might also reduce the violator's ability to pay for cleanup.

In addition to the data, we reviewed two files that included other final enforcement actions, one action in 2004 for 2002 violations and one action in 2005 for 2004 violations.

(1) This mine and mill site was determined to be in violation in September 1999, paid a penalty in 2000 and entered a consent order to complete a cleanup action. IDEQ completed a final enforcement action in 2004 for violations of the consent order in 2002. There was no additional penalty assessed, however, the file did include documentation that \$50,703 was collected through the Attorney General's Office completion of a court action for the cleanup in April 2004. There was no assessment or collection of the economic benefit of non-compliance in this case which started in 1999 and closed in October 2005.

(2) This permitted storage facility was inspected in June 2004 and the final enforcement action was in March 2005. The penalty calculation documented in the initial action included an economic benefit component of \$2,616 of the total \$52,741 assessed penalty. The penalty was reduced to \$13,724 through a settlement conference prior to the final order and collection. The assessment and cleanup of contamination was deferred to the facility's permit for IDEQ oversight of the corrective action.

### Recommendations

We recommend that Region 10 and IDEQ further monitor the collection of applicable penalties as more cases work through the new process that includes economic benefit and gravity components together in case development. Region 10 and IDEQ have been working together to address a similar finding from the 2000-2002 program review. IDEQ has instituted a consistent process and training, including BEN and ABEL, for calculating and assessing penalties according to applicable enforcement policies.

### Action

IDEQ agreed to include case specific discussions at quarterly grant management meetings, along with more communication with the Attorney General's Office, to help reach an understanding with Region 10 about the level of penalties to maintain in final enforcement actions. This recommendation will be implemented in the autumn of 2006 quarterly meeting and tracked in future quarterly meeting notes, not including the enforcement sensitive details.

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**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

The 2004 IDEQ Hazardous Waste Management Program grant work plan includes enforcement and compliance commitments including inspections (see Element 1, above) and consequent enforcement actions that were met. In addition, IDEQ committed to continue oversight of closure permit and corrective action work that was carried out at TSD facilities, including ground water monitoring, systems operation and maintenance.

Recommendation

None.

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

Findings

IDEQ has good data management support and it appears that, to the extent that data is available, it is entered in a timely manner into RCRAInfo. Our 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. We found in this and the previous review that IDEQ promptly entered SNC determinations when significant violations were identified.

Of the 17 files we reviewed, we found one data discrepancy (94% see RCRA Program Appendix B, 10 B.) IDEQ entered a CEI evaluation type, while the file indicated that the generator had gone out of business at this location and there was no compliance inspection report to match the CEI data. IDEQ reviewed the data provided in the draft data metrics report (see RCRA Program Appendix A,) concurred with our findings, and updated data as needed.

Recommendation

None.

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

Findings

The IDEQ information management staff has exhibited national leadership on the issue of defining active and inactive sources in RCRA. Region 10 appreciates the IDEQ commitment in this area.

We found that IDEQ accurately entered nationally required data elements and also used RCRAInfo to effectively track state only work on non-regulated generators, complaint responses, used oil handlers and other program work that was not extracted to the national databases.

We found 13 of the 17 files (76%, see RCRA Program Appendix B, 11C) we reviewed matched well with the RCRAInfo data we pulled. IDEQ management's response to the 4 discrepancies indicated that there were unusual circumstances about the files and the data that they could explain. We concluded that IDEQ maintained a high degree of data accuracy and knowledge of their files.

There were 3 handlers (out of 2,943 nationwide, see RCRA Program Appendix A, 11.b.) for which violations had been open for more than 240 days without having return to compliance or SNC data entered. When we checked further, we found that all three had scheduled dates for return to compliance, pending completion of cleanup projects.

Recommendations

We recommend that Region 10 and IDEQ discuss options for reporting compliance with a cleanup schedule that will keep handlers with violations open for more than 240 days from showing up negatively on the national performance measure 11.b.

Action

IDEQ agreed to consider a new reporting policy for secondary violators return to compliance in RCRAInfo version 3. Region 10 and IDEQ will discuss this recommendation after the 2006 annual compliance performance reports are available from IDEA/OTIS.

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**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

FY 2004 IDEQ Hazardous Waste Minimum Data Requirements	
Counts Complete	Number
Inspection Counts	117 at 63 handlers
Violation Counts	22
NOV Counts	9 at 7 handlers
SNC Counts	2
Formal Action Counts	6
Assessed Penalties	\$180,795

This is a measure of data quality. The inspection count is consistent with the Region 10 and IDEQ work plan for 2004. Region 10 provided the draft data metrics for IDEQ review in January 2006, for discussion at the file review entrance meeting in February. IDEQ concurred with the data and updated RCRAInfo data as needed.

**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.**

Not included in this review.

**Idaho Compliance and Enforcement State Program Review  
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**RCRA Program Appendix A**

**Transmittal of Draft Data Metrics and File Selection Protocol to IDEQ**

Reply To  
Attn Of: OCE-127

Brian Monson  
Hazardous Waste Program Manager  
Idaho Department of Environmental Quality  
1410 North Hilton  
Boise, Idaho 83706

Dear Mr. Monson:

Enclosed is the draft Idaho hazardous waste program data metrics report using the new EPA Office of Enforcement and Compliance Assurance review framework.

The framework recommends using the data metrics as a starting point for discussions between the regions and states about program performance. Region 10 would like you and your staff to have the opportunity to review the draft metrics report prior to the program review entrance briefing for the Idaho air and hazardous waste compliance program file reviews. The briefing will be February 6, 2006, from 1:00 to 4:00 pm at Idaho DEQ.

Also enclosed is the list of hazardous waste compliance files from fiscal year 2004 that the Region 10 review team would like to look at in Boise on February 6th and 7th. The draft list was sent via email to John Brueck in December and no changes were requested. Please let me know if there will be any problem having the files assembled for review when the team arrives.

I appreciate the cooperation that Idaho's hazardous waste program continues to offer to Region 10 to complete the periodic compliance program reviews that help us keep our programs running effectively. Please contact Mike Slater at 503-326-5872 if you or your staff has any questions about the state review framework or the upcoming visit to Boise.

Sincerely,

Betty A. Wiese, Manager  
Air/RCRA Compliance Unit

Enclosures

RCRA Program Appendix A

**DRAFT DATA METRICS REPORT**

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

a. Inspection coverage for operating Treatment, Storage and Disposal Facilities. Idaho met the goal for inspecting each of the four operating facilities at least once in the two years ending September 30, 2004. Idaho conducted multiple inspections at the large, complex TSD facilities with a total of 67 inspections in RCRAInfo over the two year period for which data was pulled.

b. Annual inspection coverage for Large Quantity Generators. Idaho exceeded the goal for 20% coverage of the LQG universe by inspecting 9 of its 26 generators; resulting in a 35% inspection rate during fiscal year 2004.

c. Five year inspection coverage of Large Quantity Generators. Idaho inspected 23 of the 26 generators in RCRAInfo with LQG status as of September 30, 2004. Idaho's 88% coverage rate exceeded the national average of 67%. The 3 generators not inspected were additions to the LQG universe in 2003 and 2004 that resulted from one time cleanup activities, according to the notification info data in RCRAInfo. Therefore, these three should not be included in the total number of LQGs subject to being inspected within 5 years of entering the universe because they were LQGs for less than 2 years. Idaho met the goal of inspecting 100% of its LQG universe within a 5 year period of time after the data were corrected to remove the three ineligible LQGs.

d. Five year inspection coverage for small quantity generators. This is an informational measure and Idaho's 94% coverage exceeded the national average of 90%. Idaho inspected 51 of the 54 handlers with small quantity status as of the end date during the five years ended September 30, 2004.

e. Five year inspection coverage at handlers others than those listed above. This is an informational metric that shows Idaho inspected 205 other handlers in the five years ended September 30, 2004. In addition, Idaho is conducting compliance assistance visits at other handlers that do not get counted in this compliance inspection measure but increase the state's coverage of the hazardous waste handler universe. See measure 13 for more details. The Framework will be modified in the future to calculate percentages of other handlers inspected for a more meaningful informational measure.

R. Percent of planned inspections completed. Regions can track yearly commitments, or multi-year plans. Reserved for inspection plan targets negotiated between the Region and state. **TBD** based on Idaho and Region 10 2004 grant work plan.

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

**TBD - file review**

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

**TBD - file review**

**RCRA Program Appendix A**

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

- a. Significant Non-Complier (SNC) identification rate. The Idaho SNC rate was 3.2% (2 SNC violators of the 63 handlers inspected) in 2004. This was the same as the national rate of 3.2% and met the framework goal. Also, after discussions with Idaho, EPA designated an additional SNC violator for federal enforcement action which pushed the combined rate to 4.4%, which was above the national combined rate of 3.5%.
- b. Timely SNC determinations. Idaho met the framework goal of identifying SNC violators within 150 days of their inspections. For the two SNC determinations Idaho made in 2004, one was made in 30 days and the other in 0 days (i.e., the same day as the inspection.)
- c. No activity indicator - new SNC determinations. The "no activity indicator" is not applicable to Idaho for 2004, since Idaho identified 2 new SNC violators. The national total of new SNC designations in RCRAInfo was 576.
- d. SNC reporting indicator (enforcement actions receiving SNC designation.) Idaho exceeded the national average for this review benchmark. Idaho reported 4 of 6 (67%) formal enforcement actions in 2004 were completed for previously designated SNC violators. The national average was 55%. The Enforcement Response Policy requires that all SNC violators be addressed with formal enforcement actions but not that states take formal actions only at SNC violators.

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

The previous state program review covering compliance and enforcement actions for fiscal years 2000 - 2002 ( available at <http://yosemite.epa.gov/R10/OWCM.NSF/webpage/Hazardous+Waste+Compliance+Program+Review>) found that this area needed improvement and the Framework file review will take those findings into consideration.

**TBD - file review**

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

The previous program review found that Idaho was timely with enforcement actions for violations found. For example, all of the 13 referrals to the state attorney general's office in fiscal year 2002 were made in less than the 210 days allowed in the Civil Enforcement Response Policy.

- a. Timely action taken to address SNC violators. The State Review Framework indicator cannot be calculated nationally until the RCRAInfo version 3 changes have been implemented. However, Idaho has a small enough universe that we were able to estimate the results by pulling

**RCRA Program Appendix A**

the relevant facility data. It appears that Idaho did not meet the Enforcement Response Policy guideline of 80% SNC violators addressed within 360 days of inspection. The Melt Tran and USDOE INEEL actions were completed in less than 360 days but the Antimony Camp and Curlew Gulch actions took more than 360 days to complete. Therefore, if it was calculated for the framework, Idaho's timely SNC rate would have been 50% for 2004.

b. No activity indicator - formal actions. This indicator is not applicable to Idaho as they completed 6 formal actions in 2004. The national total reported from the data pulled by OECA for the 2004 framework metric reports was 1,286.

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

The previous state program review noted that Idaho was not assessing economic benefit nor multiple day penalties in enforcement actions and the framework file review will take those findings into consideration.

**TBD - file review**

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

a. No activity indicator - penalties. This indicator is not applicable to Idaho as they assessed \$180,795 in penalties for fiscal year 2004. The national total reported was \$20,433,300.

8.b.1. Penalties normally included with formal enforcement actions: percent of formal enforcement actions that carry any penalty. Idaho was below the national average for this review framework benchmark. Idaho entered penalties for 2 of the 6 (33%) formal enforcement actions in fiscal year 2004 (at USDOE INEEL BNFL INC AMWTF and USDOE INEEL LAB.) The national average for this indicator was 53%, so Idaho was not one-half below that, thus a specific review is not required under the framework. One non-penalty case was randomly selected for file review and we will consider those results in analyzing this measure.

8.b.2. Penalties normally included with formal enforcement actions: percent of **final** formal enforcement actions that carry any penalty. Idaho was also below the national average when the calculation was narrowed to only final actions. The two penalty cases above were unchanged but the non-penalty enforcement action for Melt Tran Inc. was dropped from this measure because it was not a final action in 2004. Idaho entered 2 penalties of the 5 final actions (40%) and the national average rose to 73%.

**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.**

**TBD - file and work plan review**

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

**RCRA Program Appendix A**

a. Integrity of SNC data (timely entry.) Idaho exceeded this review framework benchmark for entering SNC determinations in RCRAInfo less than 60 days after the determination. From October 19, 2004 to August 9, 2005, when OECA tracked this measure nationally, Idaho entered 100% (1 of 1) of its SNC determinations within 60 days after their determination versus the national average of 53%. The previous review by Region 10 of fiscal years 2000 - 2002 also found that Idaho timely entered SNC determinations.

b. Percent of inspections, enforcement actions, or other compliance related activities for which there is a nationally required data element that are entered into RCRAInfo in a timely manner.

**TBD - file reviews compared with RCRAInfo**

**11. Degree to which the minimum data requirements (nationally required data elements for the RCRA program) are accurate.**

a.1. Integrity of SNC data (correct entry of SNC and determination date.) Idaho met this framework indicator for closeness of SNC determination date and final enforcement action date. Idaho entered 0 SNC determinations **on the same date** as enforcement actions and there were 27 nationally.

a.2 Idaho also met this measure of the closeness as none of Idaho's SNC determination dates were **within one week of the formal enforcement date.** There were 14 reported nationally.

b. Longstanding secondary violations not "returned to compliance" nor designated as SNC violators. Idaho had three handlers for which violations were open for more than 240 days without data for "return to compliance" or SNC entered. There were 2,943 handlers nationally for this data quality measure.

c. We checked the RCRAInfo comprehensive compliance data for the three violators (FMC Idaho LLC, Roundy's Pole and Fence Co, and USEPA Hobson Trust) and found that all three violations have scheduled "return to compliance" dates well beyond the policy's 240 day expectation. We found that Idaho has accurate data for these violators, which are involved with long term cleanup projects in order to "return to compliance." We recommend that Idaho and Region 10 discuss whether there is another way to enter data in these cases so that they won't show up in this data quality measure if they don't belong.

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

a.1. Active\* facility universe counts accurate, number of **operating** TSDf in RCRAInfo. Idaho and Region 10 agree there are 4 known active TSDf in Idaho (J R Simplot Don Plant, US Ecology Site B, Safety-Kleen Boise, and US DOE INEEL LAB.) There are 946 TSDf nationally.

a.2. through a.5. \* Active status will not be calculated nationally until RCRAInfo version 3 is implemented.

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**RCRA Program Appendix A**

b.1. Inspection counts complete; Idaho reported 117 inspections in fiscal year 2004 at handlers with EPA ID numbers. Idaho conducted a number of other compliance assistance visits (see measure 13.)

b.2. Inspection counts complete; the number of facilities inspected by Idaho in 2004 was 63. Idaho visited a number of other handlers to provide compliance assistance (see measure 13.)

c. Violation counts complete; number of facilities with violations during the reporting period. Idaho reported 22 handlers with violations during 2004. There were 6,849 reported nationally.

d.1. Notice of violation counts complete; facilities with state NOV data in 2004. Idaho entered informal enforcement actions for 7 violators in 2004. That produced a non-compliance rate of 11% (7 of 63 inspections.) Idaho's rate should be adjusted by adding 3 notices that were sent in 2005 for 2004 inspections and 2 referrals of violations to EPA Region 10. The adjusted non-compliance rate was 19% (12 of 63.)

d.2. Notice of violation counts complete; total state notices issued. Idaho entered 9 notices at the seven violators in measure 12.d.1.

e.1. SNC counts complete; number of new SNC in fiscal year 2004. Idaho entered 2 new SNC violators in 2004. There were 534 entered by all states.

e.2. SNC counts complete; number of facilities in SNC status in 2004. Idaho had a total of 11 facilities with SNC status at some time during 2004, consisting of 9 carryover violators and 2 new determinations.

f.1. Formal action counts complete; facilities with formal actions in 2004. Idaho entered formal enforcement actions at 6 facilities in RCRAInfo in 2004.

f.2. Formal action counts complete; total formal actions taken. Idaho entered 6 formal enforcement actions in 2004, one at each facility counted in measure 12.f.1.

g. Assessed penalties complete; total amount of final assessed penalties. Idaho entered two penalties in fiscal year 2004, \$18,225 and \$162,570, for a total of \$180,795.

13. Degree to which additional compliance programs and activities improve compliance. **TBD - discuss with Idaho** Does Idaho want to include compliance assistance visits or state-only handler ID numbers? There were 79 additional visits and 76 additional handlers in RCRAInfo for 2004 that weren't included in the elements 1 through 12.

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**File Selection Protocol**

1. Identify the review period: Federal Fiscal Year 2004: October 1, 2003 through September 30, 2004

2. Identify the universe of files: Handlers with EPA ID numbers with a compliance inspection or enforcement action date during the review period (list attached.)

3. Determine the number of files to select:

Handlers with inspection activity = 67 (63 from IDEA/OTIS report R04ADS + 4 more only in RCRAInfo)

Handlers with enforcement activity = 11 ( 7 NOV's from IDEA/OTIS report R012D + 4 more only on R012F)

Only 2 handlers with enforcement activity aren't on the list with inspection activity (Antimony Camp Mine & Mill, Thermo Fluids Inc, Nampa).

Total number of files (handlers) in universe = 69

Range of files selected for review = 15 to 30

Factors affecting number of files to select: Data metrics are mostly above average.

Previous review of 2000-2002 included ~40 files and Idaho is already addressing those review recommendations.

A minimum number of files will be adequate.

4. Identify the categories of RCRA files to review:

	Files	Handlers	% of H	Proportional
Operating TSDF	= 4	6%	1	
Large Quantity	= 4	6%	1	
Small Quantity	= 16	23%	3	
Conditionally Exempt	= 19	27%	4	
Non-Regulated ID#	= 24	35%	5	
Enforcement only	= 2	3%	1	
-----				
Total		= 69	100% r	15

5. Randomly select files for each category.

An EPA colleague randomly selected handlers from the categories identified above. The list of handlers is presented in number 8 below.

6. Approximately half of the files should include some form of enforcement activity.

The initial file drawing included six handlers with enforcement activity. Two additional handlers were selected from the set of handlers with enforcement activity and added to the attached list. The result is that 17 files will be reviewed and 8 of those have some enforcement activity. Files with enforcement activity are noted with an (E) on the list.

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7. It is not necessary to have exact proportions of types or categories of files. The attached list is being sent to Idaho DEQ and Region 10 hazardous waste managers for review. Either agency may propose to add or remove a few files to obtain a representative selection. Such proposal needs to be completed by December 9, 2005.

8. Review all files selected for all applicable elements.

The following handler files will be reviewed:

1.(E)	Operating TSDF.....	Safety Kleen Systems IDD981770498
2.	Large Quantity .....	FMC Idaho IDD070929518
3.	Small Quantity (3).....	Custom Trailer IDR000200824
4.(E)		Idaho BSU IDD072995848
5.		Northwestern Parts Washer IDD984668749
6.(E)	Conditionally Exempt (4)....	Boise Hydraulics IDR000201434
7.		Poles, Inc. IDD009061714
8.(E)		Simplot Soilbuilders IDD000223859
9.		Trails West Manufacturing IDR000001883
10.	Non-Regulated Gen (5).....	B&A Automotive IDD059517540
11.		Corbridge Bros Property IDR000200188
12.		Larson & Associates IDR000201061
13.		R&R Hardwood Floor IDD984674028
14.(E)		Western Construction IDR000201772
15.(E)	Enforcement only	Antimony Camp & Mine IDR000003426
16.(E)	50% enforcement activity (2)	Mominee Property IDR000202135
17.(E)		Sunshine Mining IDD085197747

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8 (E) files with enforcement activity.

9. If necessary, the reviewers should select additional files to ensure that they examine an adequate number of cases for each specific review metric.

To be determined...

10. Files selected for review will be identified to the state agency at least two weeks before the review to give the state the opportunity to locate the files.

The draft list above will be sent to IDEQ and Region hazardous waste managers for review. Proposals for additions and deletions are requested by December 9, 2005 and the list will be final at least two weeks before a review site visit is scheduled in January 2006.

11. Where there are local or contract agencies with authorized or delegated programs...  
Not applicable.

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**Region 10/Idaho Review**

**Review Place and Date**

EPA Region 10 Office, Seattle, Washington

January 22-23, 2007

**EPA Evaluators:**

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Andy Hudock	OECA/OC	202-564-6032
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**Regional Contacts:**

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**Background**

**Process for SRF Review**

This is a review of Region 10's direct implementation of CWA NPDES program in Idaho using the State Review Framework process. OECA conducted this review because Idaho is not authorized for the CWA NPDES program. Region 10 conducts the enforcement and compliance program for this program from the Regional Office in Seattle and has a field office in Boise.

The on-site review was conducted in the Seattle office on January 22 – 23, 2007. This review is based on FY 2005 data, which was the last year of complete data available at the time of the review.

Prior to the on-site visit, the review team conducted several preliminary calls with managers and staff in Region 10 to obtain preliminary information and to organize the review. The review team then obtained and analyzed the data metrics from OTIS, which at the time used data from PCS since it was not interfacing with ICIS-NPDES, to select the inspection and enforcement files for review. The preliminary data findings and the file list were shared with the Region for their input. A conference call for the review team and Region 10 was conducted on January 18, 2007 to discuss the initial

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findings. The on-site portions of the review focused on the file review. There were subsequent follow-up calls and email communications with the Region to gather additional information.

### **Organizational Structure**

Region 10's Office of Compliance and Enforcement (OCE) coordinates all enforcement activities for the Region. OCE has six units to cover media programs and general compliance monitoring and program management, including data management. The NPDES Compliance Unit manages compliance and enforcement with NPDES permits and programs such as wet weather enforcement. The Office of Regional Counsel (ORC) is divided into three multimedia units. Multimedia Unit Three is responsible for CWA enforcement work.

### **Summary of Findings**

- Between Region 10 and the Idaho DEQ, two-thirds of the NPDES major sources in Idaho were inspected in FY 2005. Region 10 appears to meet its inspection commitment. Although they did not meet the national goal of 100% they did inspect twice as many non-major sources in Idaho, which is consistent with national guidance.
- The inspection and enforcement files were well organized and easily accessible, which is a significant improvement since the previous NPDES review in 2005 conducted for the non-authorized program in Alaska. Inspection reports were well documented and generally complete. The files that were not complete usually lacked a manager's signature.
- The expedited settlement penalty calculations for storm water cases were accurate and the files contain certification of compliance from the sources.
- Region 10 does not generally use compliance orders to address significant noncompliance (SNC) at municipals. The one compliance order reviewed was used to set permit limits and it was noted that compliance orders should not be used as permits.
- Data appears to be well managed. There is a process for inspection data to be entered into PCS and ICIS-NPDES. Enforcement actions appear to have accurate and timely data in PCS. However, it appears that enforcement actions are not linked to facilities and Single Event Violations were not being reported.

### **Summary of Major Recommendations**

- Region 10 should prepare a standard operating procedure to ensure a process is in place for managing inspection files and ensuring there is management review of the inspection files and timely and accurate data entry.
- Region 10 should begin to use compliance orders to ensure return to compliance of municipal facilities to ensure that enforcement actions are appropriate.
- Region 10 should ensure that the CWA Civil Penalty Policy is followed when

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calculating penalties. This includes calculating and justifying economic benefit as part of the enforcement settlements.

**File Selection for Region 10/Idaho CWA NPDES Program**

There is a universe of CWA 689 facilities in Idaho (54 NPDES major sources, 164 NPDES non-major sources with individual permits, 172 NPDES non-major sources with general permits, and 299 other sources). The universe of files to be reviewed was 158, which included 110 inspection files and 48 enforcement files. According to the File Selection Protocol, the number of files to review falls in the range of 15 to 30 files. The Protocol suggests that half of the files should be inspection files and half should be enforcement files. The review team decided to look at the following categories of files: NPDES majors, NPDES non-majors, and stormwater. The team also decided to select files that corresponded to problem areas identified in the data metrics such as major sources in SNC (4b), and majors without timely enforcement actions (6a). The team randomly selected 14 inspection files and 15 enforcement files within those categories for a total of 29 files. The numbers of inspection files break out as 9 major sources, 5 minors with two minors being a stormwater facility and one a CAFO. The number of enforcement files breaks out as 2 major sources and 13 non-majors including 10 stormwater cases.

**Idaho CWA NPDES Element by Element Review**

***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) is completed.**

Findings:

Metric 1a – 63% (34 of 54) of the major sources in Idaho were inspected in FY 2005 by EPA Region 10 and Idaho DEQ. Seventeen inspections were conducted by Region 10 and 17 by Idaho DEQ. This is below the national average of 69.4% and the national goal of 100%.

Metric 1b – 3% (5 of 164) of non-major NPDES sources in Idaho were inspected in FY 2005 by Region 10.

Metric 1b is the combined number of inspections. OTIS shows that one inspection was conducted by the Idaho DEQ and four by EPA. The Region indicates that the Idaho DEQ conducts a number of NPDES inspections, which are commitments in the PPG with the department.

Metric 1c – 25.4% (76 of 299) of other NPDES sources in Idaho were inspected in FY

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2005 by Region 10, which are all stormwater inspections at industrial facilities.

Metric 1r – In FY 2005 Region 10 committed to conducting 272 NPDES major source inspections and 10 oversight inspections in the Annual Commitment System (ACS). These inspections were not broken out by state because this system was not yet able to manage this level of detail. State breakouts will be available from FY 2006 onward. The FY 2005 end of year ACS results show that Region 10 and its states conducted 60 NPDES major source inspections in FY 2005. This number is not broken out by state in the ACS Region 10 reported to ACS that a total of 126 inspections (broken out as major and non-major sources) were conducted in Idaho. According to Metric 1a 34 major sources inspections were conducted in Idaho, 17 by EPA and 17 by the Idaho DEQ. Metric 12d in the OTIS report shows that Region 10 conducted a total of 126 inspections in Idaho and that the Idaho DEQ conducted 39 inspections during FY 2005. This would include inspections at majors, non-majors, pretreatment, and stormwater.

OECA guidance has a provision for Regions to trade off non-major for major sources at a two to one ratio. That the number non-major inspections conducted by both Region 10 and the Idaho DEQ were twice as many as the number major source inspections, it appears that Region 10 was consistent with the national inspection guidance.

The data show that in Idaho, there are 195 non-major sources that have never been inspected and nine non-majors that have not been inspected within two years. Some of these facilities could have been inspected by either EPA or the Idaho DEQ but not reported to PCS or ICIS-NPDES. The Region indicates, however, that while entry of minor data is not WENDBE, they do have the practice of entering all minor and non-major inspections into the national data base. This may not in the end be a major problem, but it should be assessed.

Citation of information reviewed for this criterion: **ICIS NPDES and OTIS**

***Recommendations:***

***Region 10 should conduct an assessment of the non-majors that have not been inspected or that have not been inspected within two years to determine if any them have been inspected and not reported to the database and to determine if there are any that need to be inspected in the near future. Region 10 indicates that this has already been accomplished. The Region should provide this assessment to OECA by October 31, 2007.***

***Region 10 should provide in the ACS a breakout of NPDES inspection commitments in Idaho, which was not required in FY 2005. The Region indicates that this will occur on all future ACS bids. OECA will follow up on this by reviewing the ACS bids.***

**2. Degree to which inspection/evaluations reports document inspection**

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**findings, including accurate identification of violations.**

Findings:

A total of 32 inspection reports were reviewed. These reports were in the 14 inspection only files and 15 enforcement files selected for review.

Metric 2a – 34% (11 of 32) inspection reports were complete.

The review team found the inspection files, though only one-third were complete, were well organized and easily accessible, which is a significant improvement since the previous NPDES review in 2005 conducted for the non-authorized program in Alaska.

The 11 complete inspection reports contained the elements of a complete report including the form 3560, a narrative statement, and photographs. Fifteen inspection reports were incomplete because they lacked a manager's signature to indicate that the reports had been reviewed by management. The remaining five incomplete inspection reports did not have a 3560 form or a narrative description of the findings. Finally, one of these reports that did not contain a 3560 form (Georgetown) was prepared by an Idaho DEQ inspector: the report contained a complete narrative that led the Region to issue an EPA formal enforcement action.

Region 10 identifies potential violations based on inspection reports, as well as the QNCR which we run for both majors and minor dischargers. Ten of the reports from the inspection only files identified potential violations such as confirming lack of DMR reporting and violating permit conditions. This identification of potential violations led to six follow-up actions (2 NOVs, 3 letters of violations, and 1 warning letter) for the 14 inspection reports reviewed. Discussions with Region 10 CWA compliance and enforcement personnel and material in the files indicate that the narrative reports were complete and that compliance determinations could be made based on the report findings.

The Region 10 process for handling the inspection reports is to provide them first to the data steward, who inputs the data into ICIS-NPDES, then sends it to the NPDES compliance unit manager. The compliance unit manager indicated that the process is changing to ensure that she reviews the inspection reports first, to be consistent with current NPDES management practice, before they go to the data steward for processing. The NPDES inspection manual does not clearly specify that a manager's signature is required; however, the Form 3560 is identified in the manual as necessary for a complete inspection report and there is a specific space on the form for a manager's signature to show that the report has been reviewed by a manager. The updating of the Region's procedure for reviewing inspection reports will ensure complete inspection reports.

Citation of information reviewed for this criterion: CWA EMS

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**Recommendations:**

***Region 10 should have a SOP for managing and ensuring the completeness of the inspection reports to include a management review of the reports. The Region indicates that it has already developed an SOP to ensure management review of EPA generated reports. Beginning in August of 2007, all inspection reports will be QA's by a manager and the 3560's will reflect this. By October 31, 2007, the Region should provide OECA with a copy of the SOP.***

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

**Findings:**

Metric 3a – 72% (23 of 32) of inspection reports were timely. Twenty-one of the inspection reports were CEI or reconnaissance inspections completed within 30 days. Two additional sampling inspection reports were completed within 45 days. The average time to complete a non-sampling inspection report is 24 days. There were only four inspection reports that took a long period of time to complete. One was a CEI that took 71 days and one was a stormwater inspection that took 79 days. Two other reports were for reconnaissance inspections that took 64 and 62 days to complete.

As noted in Element 2, Region 10 identifies potential violations in these inspection reports. Violations are reported back to the facilities through a Letters of Violation/Warning. The standard for reporting violations to the database relate to Single Event Violations, which are reported in the database within 14 working days of notification of the event. The Letters of Violation/Warning are sent to the facilities from between 30 and 90 days after the inspection, then the data is entered into the database.

Citation of information reviewed for this criterion: CWA EMS, "Relationship between three NPDES Policies: the ICIS-NPDES Policy Statement, the Wet Weather Significant Non-Compliance Policy, and the NPDES Compliance Monitoring Strategy" (April 30, 2007)

**Recommendations if corrective action is needed:**

***Region 10 should have a SOP to ensure that all inspection reports are completed in a timely manner. In addition, determinations of violations (i.e., SEVs) should be also made and reported in a timely manner according to ICIS-NPDES policy, and should be included in the SOP. The manager of the NPDES Compliance unit indicates that not all inspectors in the region are under her management. Many of the inspectors are not comfortable declaring an observation as a "violation," and they feel that this job should be done by the Compliance Officer. The region will work on an SOP to address this issue by***

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***COB FY 2008.***

- 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 manner.**

Findings:

Metric 4a – No single event violations are reported in the database at major or non-major facilities in Idaho in FY 2005.

Single event violations are violations of the CWA's NPDES requirements that are documented during a compliance inspection, reported by the facility, or determined through other compliance monitoring methods by the permitting authority. Entry of single event violations is required (WENDB) for majors in the PCS Policy Statement, and is expected to become required for non-majors once the ICIS-NPDES Policy Statement is finalized. While not every SEV is SNC, they should still be entered into the data systems. The Final Single Event Violation Data Entry Guide for PCS sent out in June 2006 contains the latest guidance on the subject. Single Event Violation tracking is critical to forming an historic electronic record of inspection and compliance determinations. Tracking inspection results can impact future enforcement decisions, particularly when a permittee continues to exhibit the same violation over the course of several years. Electronic documentation of violations also improves the accuracy of public information.

Metric 4b – 18.2% (10 of 55) of major sources were in SNC in FY 2005. This is according to the data metrics. Six of these ten major sources were in SNC for four quarters, two were in SNC for two quarters, and two were in SNC for one quarter. A review of the data (based on data in PCS and ICIS) by the review team, conducted after the on-site review, shows that two of these ten major sources (Meridian Beartrack and City of Soda Springs) are still in SNC and unaddressed, four of the sources (Coeur Sliver Valley, South Fork Coeur D'Alene, City of Moscow, and the City of Coeur D'Alene) are in Reportable Noncompliance (RNC) and four sources (Blue Trout Farm, City of Gooding, City of Burley, and Hecla Mining) are now in compliance.

Files for four of these sources (two inspection and two enforcement files) were identified and selected for the review to assess this metric. The file review shows that two of the sources reviewed (Gooding and Burley) were issued enforcement actions in the form of Class II APOs and have returned to compliance as indicated in the database. The two inspection reports reviewed by the review team indicate that no potential violations were found although they remain in either SNC or RNC in the database. The issues are the timeliness of returning facilities to compliance, which should be tracked on the Watch List and possibly data entry. If these facilities are still on the Watch List, then Region 10 needs to be taking actions to return those sources to compliance. The Region agrees with this observation.

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Citation of information reviewed for this criterion: **CWA EMS**

***Recommendations if corrective action is needed:***

***Region 10 should begin to enter Single Event Violations into ICIS.***

***Region 10 should appropriately address noncompliance at the two facilities that are in SNC. The Region indicates that one of these facilities (Beartrack) was in active negotiations with the Region at the time of the review. The Region should also work with the other four facilities that are in RNC to ensure that they return to compliance as well. The Region states that they will address these facilities as soon as headquarters is able to run the Watch List for Region 10. The Region will also evaluate the QNCR each quarter and take appropriate enforcement. Region 10 should not wait for the Watch List in order to address the facilities listed in OTIS as being in either SNC or RNC. The Region should propose a timeframe and milestones for addressing these instance of non-compliance, especially the ones that are in SNC or RNC for more than two or three quarters, per the requirements of the CWA EMS.***

- 5 The degree to which the Region enforcement actions include required corrective or complying actions (injunctive relief) that will return facilities to compliance in a specific time frame.**

Findings:

Fifteen enforcement files were reviewed for this element. Five were actions at municipalities and ten were actions at stormwater sites.

Metric 5a – 7% (1 of 15) of the enforcement actions reviewed had a compliance schedule of required actions or activities designed to return the source to compliance.

The one compliance order was issued against a municipality. Class II APOs were issued to two stormwater facilities and the four other municipalities, none of which were issued a compliance order with a return to compliance schedule. The Region indicated that this is not typically done by the Region. They do not believe that it is appropriate when the injunctive relief is only to “comply with the permit.” Other regions have done this and have been accused of “double dipping”. In most of their APO cases, the injunctive relief is only to comply with the permit.

Seven actions were expedited settlement offers (ESO) for stormwater facilities. ESOs are penalty orders only and achieve compliance on a voluntary basis that is verified through self-certification. Each of these seven files contained the certification from the facilities, but there was no additional verification by the Region. The Region indicates that verification is not always possible due to constraints on travel budgets. The

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proposed ESO against one of the stormwater facilities (a construction site) was withdrawn when it was learned that the source was not the permit holder.

Metric 5b – 0% (0 of 1) of the files with return to compliance orders documented that the sources had returned to compliance. The one facility with a compliance order was a municipality. This facility (Georgetown) was issued a compliance order, but there was no documentation of return to compliance in the file, although the Region indicated that this municipality has applied for the permit and has returned to compliance.

Citation of information reviewed for this criterion: **CWA EMS, Expedited Settlement Policy, Section 309(a) of the CWA, CWA Penalty Policy.**

**Recommendations if corrective action is needed:**

***Region 10 should conduct spot check inspections at some number of facilities that have issued ESOs against them in order to verify their return to compliance. The verification should be included in the enforcement file. The Region has indicated that this will only occur when they are in these areas for other activities. OECA recognizes that a lack of travel funds is a constraint to complying with this recommendation. However, Region 10 should still provide OECA an indication of when they will conduct at least one of these verification visits within the next fiscal year.***

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

Findings:

Metric 6a – 7.3% (4 of 55) of the major sources in SNC in FY 2005 did not have timely enforcement compared with the entire universe of major sources in Idaho. This is below the national average of 7.7%, but above the national standard of 2%.

Three of these four sources were in SNC for effluent violations and one for DMR non-receipt for four quarters in 2005 and files for each of these sources were reviewed during the on-site visit: two as enforcement files (Gooding and Burley) and two as inspection files (Moscow and Meridian Beartrack). The files verify the facility reports that Class II APOs were issued against Gooding and Burley, a warning letter was issued against Moscow, and has subsequently issued an APO to the city. No compliance orders were issued against any of these sources. The FY 2006 data in OTIS shows that three of these facilities (Burley, Moscow, and Meridian Beartrack) were still in SNC for the first two quarters of the year. These instances of SNC should be appearing and tracked on the Watch List and they need to be addressed.

Metric 6b – This is a no action indicator and a zero indicates a lack of formal enforcement by Region 10. The OTIS data show that there were no formal enforcement

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actions issued in Idaho during FY 2005. This metric should not be zero since there are clear indications that Region 10 took a number of enforcement actions that year. Since the logic for this metric is set to address state data, the review team ran the data to include Regional data. This time, metric 6b shows that there are 39 unique EPA actions at 40 PCS NPDES permit records.

Metric 6c – 100% (10 of 10) of the stormwater enforcement actions reviewed were appropriate. Seven of the actions were Expedited Settlement Offers, two of the actions were Class II penalty orders, and one of the actions, as noted in Element 5, was withdrawn when it was learned that they were not the permit holder.

None of the actions at the five municipalities reviewed were totally appropriate. Four of the actions against the five municipalities reviewed were not appropriate and one was partially appropriate.

Four of the actions were not appropriate because the facilities were issued a Class II penalty order, but not a compliance order. The inspection file and facility report for the City of Moscow shows that a warning letter was issued in 2005 with no further enforcement to date. The Region told the reviewers that they believe that in working with the municipalities, which are mainly minor sources, issuing penalty orders or warning letters is potentially more effective in returning a source to compliance than issuing a compliance order. The NPDES Compliance Unit linked their response to noncompliance at the municipalities to the Region 10 strategy for updating the permits at these facilities. The review team reviewed the Region 10 municipal strategy and determined that it addresses the permitting issue but does not address noncompliance at those sources. As shown in metric 6a, three of these facilities remained in noncompliance from 2005 through the middle of 2006.

One of the actions against a municipality (Georgetown) was only partially appropriate. The compliance order was intended to address the facility's failure to obtain an NPDES permit. The compliance order for this facility to obtain an NPDES permit and to return to compliance was appropriate. The part of this action that included using an order to set permit limits was not appropriate. The Region agrees with this finding and they will no longer use compliance orders for this purpose. The Region explained to the review team that this facility had told the IDEQ it was discharging to land and did not require an NPDES permit. When it was learned through a state inspection that the facility was in fact discharging to water, they were put back on the list for permitting, but at the end of the queue. The compliance order was a remedial solution to this very serious problem. Region 10 should not use a compliance order to serve as a permit. The Region should have sought other strategies for this problem rather than use this compliance order to serve as the permit. In such an instance, the Region could use its section 308 authority to require DMR like reports during the interim period before the issue is resolved. It was reported to the review team that although not documented in the file, the facility has applied for a permit and is now in compliance.

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Citation of information reviewed for this criterion: **CWA EMS**

**Recommendations if corrective action is needed:**

***Region 10 should include as part of its municipal strategy the practice using compliance orders for returning the municipalities to compliance. These orders should determine a reasonable time period for compliance, i.e., applying for permit or complying with an existing permit, and require timely performance. The region does not agree with this recommendation and will use compliance orders when determined to be appropriate, and not as a common way of dealing with noncompliance at none sophisticated entities. The Region believes that such practice only seems to prolong the facilities getting appropriate funding to correct the problem. The review team discussed this issue with the director of WED. OECA disagrees with the Regions position on the use of compliance orders and would like to discuss this further with the Region. By November 30, 2007, the management of WED and Region 10 should discuss and resolve this issue.***

***Region 10 needs to ensure that facilities that are in long term SNC or RNC are addressed as quickly as possible and that instances of SNC are addressed with a formal enforcement action. Region 10 states that they will continue to review the Watch List on a quarterly basis and compare their other case load with the subject facility to determine if it they can refocus their resources. As noted in the recommendation under Element 4, Region 10 needs to address these longstanding instances of SNC and RNC per the requirements of the CWA EMS. The Region should propose a timeframe and milestones for addressing and implementing this recommendation.***

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

Findings:

Metric 7a – 93% (13 of 14) enforcement actions in the enforcement files reviewed assessed penalties.

Nine of these penalty actions were included in Expedited Stormwater Orders. The nine expedited settlements calculated the penalties in accordance with the expedited penalty policy. The additional four penalty orders reviewed were actions issued to municipalities.

Two files contained the documentation of how the Region derived the penalties. One of these files (Buhl) assessed a final penalty of \$38,000. Another file (Burley) the Region documented a \$45,000 penalty for over 2,000 NPDES violations.

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Two files did not accurately calculate or assess economic benefit. One file (Gooding) shows a penalty settlement of \$7,500 and indicated that there was no economic benefit. The file review indicates that there was at least minimal economic benefit for lack of operation and maintenance. The other file (St. Anthony) indicated that, based on the Phase 1 calculation of the economic benefit component of \$280,000, the final penalty should have been over \$47,000. The data shows that the final penalty was \$33,000 although the final CAFO was not in the file. The penalty justification in the file was for the \$47,000 calculation. The regional counsel informed the review team that the justification memo was revised a month later, but it was not in the file.

Citation of information reviewed for this criterion: **CWA Civil Penalty Policy, Expedited Stormwater Policy** and **BEN Model**

**Recommendations if corrective action is needed:**

***Region 10 should ensure that it is using the CWA penalty policy in determining penalties and properly documenting penalty assessments, including calculations for economic benefit, in the files. The Region indicates that this practice has now been institutionalized.***

- 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:

Metric 8a – 93% (13 of 14) the final enforcement files assessed penalties.

Metric 8b – 92% (12 of 13) of the files with penalty actions contained a photocopy of the check to show that the penalty had been collected.

Citation of information reviewed for this criterion: **CWA Civil Penalty Recommendations if corrective action is needed:**

***No recommendation needed.***

Section 3: Review of Performance Partnership Agreement or State/EPA Agreement
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**9. Enforcement commitments in the Annual Commitment System .**

Findings:

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Metric 9a – In FY 2005 Region 10 committed to conducting 272 NPDES major source inspections and 10 oversight inspections in the Annual Commitment System (ACS). These inspections were not broken out by state. The FY 2005 end of year ACS results show that Region 10 and its states conducted 60 NPDES major source inspections in FY 2005. This number is not broken out by state in the ACS. Region 10 reported to ACS that a total of 126 inspections (broken out as major and non-major sources) were conducted in Idaho. According to Metric 1a 34 major sources inspections were conducted in Idaho, 17 by EPA and 17 by the Idaho DEQ. Metric 12d in the OTIS report shows that Region 10 conducted a total of 126 inspections in Idaho and that the Idaho DEQ conducted 39 inspections during FY 2005. This would include inspections at majors, non-majors, pretreatment, and stormwater. These inspections are not broken out by these categories. Based on these data, it is difficult to know what were Region 10's inspections commitments for Idaho, and difficult to compare them to the results. Region 10 should provide a better breakout of its NPDES inspection commitments in Idaho.

Citation of information reviewed for this criterion: **FY 2004 MOA Guidance and the FY 2005 National Program Guidance**

Recommendations if corrective action is needed:

***Region 10 should provide in the ACS a breakout of NPDES inspection commitments in Idaho. The Region indicates that this will occur on all future ACS bids. OECA will follow up on this by reviewing the ACS bids.***

Section 4: Review of Database Integrity
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**10. Degree to which the Minimum Data Requirements are timely.**

Findings:

Metric 10b – The purpose of this metric is to evaluate what is maintained in PCS by the State and ensure that all minimum data elements are properly tracked and entered according to accepted schedules.

During the on-site review, the team used the PCS data shown in OTIS facility reports for each of the sources used in the file reviews. The data in the files were compared with the data in the reports. This included the dates for inspections and the enforcement actions, as well as the types of actions. Overall, the data in the OTIS reports corresponds with the data in the files, indicating that data requirements are reported accurately into PCS. There are other types of data errors identified during the review, which are discussed in the findings under Elements 11 and 12.

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Timeliness of entering the data requirements into PCS or now ICIS-NPDES can be assessed for Region 10 since the data steward signs and dates each inspection report to show after entering the data. The inspection reports are provided to the data steward as soon as they are completed, which ensures timely entering of data.

As noted above under Element 3, the system for managing inspection reports in the Region 10 NPDES unit is being updated so that the inspection reports go through a management review before going to the data steward. This should improve the process for reviewing and assessing inspection reports.

Citation of information reviewed for this criterion: **PCS, OTIS, File Reviews**

***Recommendations if corrective action is needed:***

***Same as recommendation in Element 3.***

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

Findings:

Metric 11a – No actions were found to be linked in FY 2005 according to the OTIS metrics.

Linked actions are required information, and can be accomplished through the use of the EVTP field (a WENDB required element) in PCS and other means in ICIS-NPDES. Without this data, OECA cannot determine with any certainty why an action was taken. In addition, if the action includes a compliance schedule, it is impossible to tell which monitoring periods, parameters, or events are associated with the compliance schedule if EVTP and other applicable fields (EVMD, EVPR, EVSC, EVSD, etc.) are not entered. Linking an action to a violation has the additional benefit of resolving RNC/SNC at the violation level, and may result in fewer facilities on the Watch List and under metrics 4b and 6 as described earlier in this report.

While the data in the OTIS facility reports corresponds to the information in the inspection and enforcement files, some data is not making it into the OTIS SRF data metrics. For instance, metric 12h shows that there were no formal enforcement actions and metric 12i shows that there were no penalties assessed in FY 2005. There may be a disconnect based on the transition from PCS to ICIS/NPDES.

To further assess metric 11a, the review team took another look at the linking issue looking in PCS and ICIS-NPDES ensuring that the select logic included EPA data. The results still show that violations are linked to enforcement actions. Region 10 assured the review team that they are linking the data. This may be a problem relating to the migration from PCS to ICIS-NPDES. Region 10 is probably now linking violations to enforcement actions and this may not be represented in the data systems prior to FY 2007.

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A data issue was found in one of the stormwater enforcement actions (Harrison Heights). This enforcement action was a Class II APO settled in January 2005 that was based on an inspection report from February 2003. There were two subsequent inspection reports from 2004 that resulted in a warning letter. Two OTIS facility reports were located that document the inspection and enforcement activity at this stormwater facility: one of them documented the inspection and the other one documented enforcement. The facility report documenting the 2003 inspection documents the 2004 enforcement actions, but not the penalty order. The facility report documenting the 2004 inspection documents the settlement of the 2005 penalty order. The problem may be that these facility reports use slightly different Source Identification Numbers. This error appears to be the exception to the rule in Region 10, but it should be corrected.

**Citation of information reviewed for this criterion: PCS, OTIS**

***Recommendations if corrective action is needed:***

***Region 10 should correct the identification numbers and any other data errors associated with the Harrison Heights facility and the associated inspections and enforcement actions. Region indicates that data is quality assured on a periodic basis. This is a specific issue that should not wait for period data clean up. It should be addressed by November 30, 2007.***

***Relating to the issue of linking enforcement actions to violations, metric 11b, OECA should look at this metric by the end of January 2008 to ensure that the linking is taking place. If that is the case, then this recommendation will close. If it looks like the linking is not taking hold, then OECA and Region 10 will need to set up a process for assessing the problem further and determining the nature of the problem.***

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

Below is a list of data elements listed in the OTIS data metrics table. This shows a high accuracy of data reporting. There are exceptions already discussed under Element 11 and highlighted below. They are metrics 12h & I for number of formal enforcement actions and penalties collected.

Metric	Measure Type	Metric Type	National Goal	National Average	Idaho (Metric=x/y)*	Count (x)	Universe (y)	Not Counted (y-x)
A Active Facility Universe: NPDES Major Individual Permits	Data Quality	State			55	NA	NA	NA

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						Idaho	Count	Universe	Not Counted
	(Current)	Data Quality	State			<a href="#">164</a>	NA	NA	NA
B	Majors: Correctly Coded Limits	Goal	Combined	≥ 95%	88.80%	98.10%	<a href="#">53</a>	54	<a href="#">1</a>
	(Current)								
	Majors: DMR Entry Rate based on DMRs expected (1 Qtr) **	Goal	Combined	≥ 95%	95.50%	94.80%	NA	NA	NA
	(1 FY)	Data Quality	Combined			0.00%	0	10	<a href="#">10</a>
C	Non-Majors: Correctly Coded Limits	Informational-Only	Combined			75.00%	<a href="#">123</a>	164	<a href="#">41</a>
	(Current)								
	Non-Majors: DMR Entry Rate based on DMRs expected (1 Qtr) **	Informational-Only	Combined			69.90%	NA	NA	NA
D	Compliance Monitoring: Facilities Inspected (1 NPDES Insp Yr)*	Data Quality	State			<a href="#">39</a>	NA	NA	NA
	(1 FY)		Regional			<a href="#">116</a>	NA	NA	NA
	Compliance Monitoring: Number of Inspections (1 NPDES Insp Yr)*	Data Quality	State			<a href="#">39</a>	NA	NA	NA
	(1 FY)		Regional			<a href="#">126</a>	NA	NA	NA
E	Linked Violations^	Review Not Required	State			0	NA	NA	NA
	(1 FY)		Regional			0	NA	NA	NA
F	NOV: Number of Facilities	Data Quality	State			0	NA	NA	NA
	(1 FY)		Regional			<a href="#">31</a>	NA	NA	NA
	NOV: Number of NOV's	Data Quality	State			0	NA	NA	NA
	(1 FY)		Regional			<a href="#">31</a>	NA	NA	NA
G	Violations at Non-Majors: Noncompliance Rate	Informational Only	Combined			68.90%	<a href="#">113</a>	164	<a href="#">51</a>
	(1 FY)								

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					Idaho	Count	Universe	Not Counted
		Informational Only	Combined		92.00%	115	125	10
	(3 FY)	Informational Only	Combined		0	NA	NA	NA
H	Formal Action: Number of Facilities (1 FY)	Data Quality	State		0	NA	NA	NA
	Formal Action: Number of Actions (1 FY)	Data Quality	State		0	NA	NA	NA
I	Penalties: Actions with Penalties (1 FY)	Informational-Only	State		0	NA	NA	NA
	Penalties: Total Penalties (1 FY)	Informational-Only	State		\$0	NA	NA	NA
J	Major Facilities with Compliance Schedule Violations							
	(1 FY)	Data Quality	Combined		13	NA	NA	NA
K	Major Facilities with Permit Schedule Violations							
	(1 FY)	Data Quality	Combined		5	NA	NA	NA

**Citation of information reviewed for this criterion: PCS, OTIS**

***Recommendations if corrective action is needed:***

***Refer to the recommendation under Element 11.***