

12/08/2006
Mr. Clark Duffy
Kansas Department of Health and the Environment
Bureau of Air and Radiation
Curtis State Office Building
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Topeka, KS 66612-1367

Dear Mr. Duffy:

Thank you for Kansas Department of Health and the Environment's (KDHE) response to the Region 7 Environmental Protection Agency's (EPA) recommendations on the 2006 Kansas Program Review, which we received at the Exit Conference on November 6, 2006. EPA has reviewed KDHE's response to our comments and added them to the Executive Summary and Response sections of the program review document.

In light of the new PM coarse standard, the Air Monitoring Branch has included recommendations regarding Hi-vol PM₁₀ monitors and would like to evaluate the National Monitoring Strategy (i.e., NCore) network. Lee Grooms will be contacting KDHE over the next few months to discuss these recommendations.

Again, we greatly appreciate the efforts of you and your staff in assisting EPA with this review. If you have any comments or questions, please contact Gina Grier at (913) 551-7078, or grier.gina@epa.gov, or me at (913) 551-7606, or tapp.joshua@epa.gov.

Sincerely,

Joshua A. Tapp
Branch Chief
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Enclosure: Executive Summary

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Kansas Department of Health and Environment

AIR PROGRAM REVIEW

REPORT

December 1, 2006

Conducted by the
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, KS 66101

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ACRONYMS

ACTS – Asbestos Contractor Tracking System
AFS – Aerometric Facility Data System
ADI – Applicability Determinations Index
APCO – Air Permitting and Compliance Branch
APDB – Air Planning and Development Branch
BAR – Bureau of Air and Radiation
BEFS – Bureau of Environmental Field Services
CAA – Clean Air Act
CAIR – Clean Air Interstate Rule
CAP – Compliance Advisory Panel
CFR – Code of Federal Regulations
CMS – Compliance Monitoring Strategy
CO – Carbon Monoxide
FFY – Federal Fiscal Year
EIU – Emission Inventory Unit
EPA – Environmental Protection Agency
ESD – Environmental Services Division
FCE – Full Compliance Evaluation
FO – Field Office
HAPS – Hazardous Air Pollutants
HPV – High Priority Violator
KDHE – Kansas Department of Health and the Environment
KSU – Kansas State University
ICMS– Inventory, Compliance and Monitoring Section
IPP – Inventory Preparation Plan
LOA – Letter of Agreement
MACT – Maximum Achievable Control Technology
MDR – Minimum Data Requirement
NAAQS – National Ambient Air Quality Standards
NARS – National Asbestos Registry System database
NH3 - Ammonia
NEI – National Emissions Inventory
NESHAP – National Emission Standards for Hazardous Air Pollutants
NIST – National Institute for Standards and Technology
NOIA – Notice of Intended Action
NON – Notice of Non-compliance
NOV – Notice of Violation
NO2 –Nitrogen oxide
NPAP – National Performance Audit Program
NSPS – New Source Performance Standards
O3 – Carbon monoxide
P&A – Precision and Accuracy
PM – Particulate Matter
PSD – Prevention of Significant Deterioration
PTE – Potential to Emit

QAPP – Quality Assurance Project Plan
SBAP – Small Business Assistance Program
SBEAP – Small Business Environmental Assessment Program
SBTCP – Small Business Stationary Source Technical and Compliance Assistance Program
SFY – State Fiscal Year
SGF – State General Fund
SIP – State Implementation Plan
SLAMS – State and Local Air Monitoring Station
SO2 – Sulfur dioxide
SOP – Standard Operating Procedure
SRF – State Review Framework
VOP – Voluntary Operating Permits

CHAPTER 1

EXECUTIVE SUMMARY

Introduction

The following summarizes results from the U.S. Environmental Protection Agency (EPA) program review of the Bureau of Air and Radiation (BAR) of the Kansas Department of Health and Environment (KDHE). The program review took place during March and April of 2006. The exit interview was conducted on November 6, 2006. The agenda, attendees, and EPA notes will be located in Attachment F. The Executive Summary is divided into sections, each applying to a major program area and addresses EPA's findings.

PLANNING

The regulatory portion of the review focuses on two areas: 1) the State Regulatory Process and, 2) Federal requirements for the State Regulatory Process.

Regulatory Development

For this portion of the Program Review, the Air Monitoring and Planning Director, Tom Gross, and Environmental Specialist, Ralph Kiefer, of KDHE were interviewed.

The majority of the funding for KDHE comes from 20/20 (fees). Since State and Federal priorities are not always the same, many of the State Implementation Plans (SIPs) and rules fall under economic scrutiny which causes significant delays at the state level. Rules are reviewed in detail for environmental impact and financial analysis. These analyses, coupled with a legislative environmental committee that consists primarily of members from the agricultural committee who are not familiar with environmental issues, may cause further delays.

Rules were previously assigned to a member of BAR staff. Due to the volume of incoming rules KDHE developed a "rules by committee" approach that involves a group of BAR employees. These actions, coupled with personnel realignments, have improved the efficiency of the rulemaking process. EPA does have concerns with regard to rule tracking.

EPA Recommendation: Although KDHE has no control over their legislative rules process (i.e., the Legislative Environmental Committee), we recommend that they continue to track rules as they proceed outside the BAR.

KDHE Response:

BAR will continue to track any relevant rules as they progress through the legislative process.

EPA has no further comments.

Grants and Work Plan Development

KDHE's air program priorities are budget driven. These priorities are incorporated into two work plans funded under the Clean Air Act (CAA). The section 103 and 105 two-year plans are updated semi-annually to include both state and EPA priorities. KDHE is also working on a comprehensive planning process known as the "Balanced Scorecard". With this approach, KDHE programs will be building measures to be included in the overall agency plan. These measures will be linked to the grant and the budget work plan to minimize unnecessary duplication. KDHE program managers also maintain priority outcomes for their sections or units, which may include activities, not covered by the section 105 work plan.

KDHE annually experiences conflicts due to contracts that cross over the state fiscal year (July 1st to June 30th) and the uncertainty of the congressional budget which starts with the Federal fiscal year (October 1st to September 30th). While KDHE acknowledges that EPA does not control congressional actions, a firm budget amount and timely schedule for the award process would be very beneficial.

EPA Recommendations: No recommendations are noted at this time.

Local Agency Coordination and Contract Analysis

KDHE administratively manages five contracts; Mid-America Regional Council (MARC), Johnson County Environmental Department, City of Wichita Department of Environmental Services, Shawnee County Health Agency and Unified Government of Wyandotte County-Kansas City, Kansas Health (Attachment A: Local Contracts). In managing the contracts, quarterly progress reports from the local agencies are reviewed. Funding is contingent upon a "pay for performance" policy. Local grantees must submit reports on the completed work elements to receive funding. KDHE has also adopted a continuous review process, in which annual audits of the local agencies with contracts are conducted on a rotating basis. One local agency is audited annually by KDHE, repeating every five years (see Attachment N for an example of a local audit report).

Wyandotte County was previously a grantee directly through EPA. At the beginning of fiscal year 2006, they were converted to pass-thru status with KDHE as a pilot. Shawnee and Johnson Counties also ceded their monitoring programs back to BAR at the start of the 2006 fiscal year.

EPA Recommendations: All contracts were found to be acceptable. No recommendations are noted at this time. KDHE and Wyandotte County are still transitioning into their newly formed partnership, but we anticipate that communication will improve as adjustments are made.

EPA and KDHE discussed the working relationship of the locals and state at the exit conference. Contract negotiations with the local governments were in their final stages. Future budget cuts, especially under section 103, may contribute to the difficulty during next years process.

EPA has no further comments.

Training

Each KDHE employee has training needs identified by section rather than by bureau. The training database (Attachment B: BAR Training Plan) is used by BAR to determine employees training needs. The source of funds for training varies with the funding mix associated with each employee. A list of training funded by section 105 funding is provided to EPA at the end of the federal fiscal year (FFY) by the KDHE training officer, but there is not a specific budget set aside for training.

KDHE holds quarterly meetings with the local governments and trainings as needed. During the quarterly Clean Air Advisory meetings, KDHE updates the agencies on draft regulations, fees, guidance documents, state and federal priorities, etc. K-State and KSU are also invited participate in the quarterly meetings (Attachment C: Clean Air Advisory Meetings).

Due to limited funding, KDHE struggles to provide all the training desired for employees. Training availability relies heavily on continued federal support.

EPA Recommendations: No recommendations are noted at this time.

During the Exit Conference, EPA revisited the option of KDHE utilizing the APTI On-line Training Courses and will look into providing training at the region office.

EPA has no further comments.

Emissions Inventory (EI)

KDHE does not complete a nonpoint or area source inventory for all area source categories, but they take steps to ensure that emissions calculated by EPA and reported in the National Emissions Inventory (NEI) are reasonable and acceptable. In some cases, KDHE will also prepare an inventory for area source categories for which they believe they have better surrogate information. Examples of source categories for which an inventory has been prepared by KDHE include residential wood combustion, pesticides, cutback asphalt, wildfires, etc.

EPA Recommendations: Chromium emission numbers submitted by Boeing have been high. EPA Recommends working with OAQPS and Boeing to resolve how these numbers are calculated, and make sure we have the correct numbers in State and EPA databases. Over-all, KDHE does a commendable job when building and quality assuring their emission inventory.

KDHE Response:

KDHE was contacted by Anne Pope, OAQPS, about an emission estimate of Chromium compounds from Boeing in the 2002 inventory year. BAR staff contacted Boeing and Spirit Aerosystems in August 2006 to discuss their reported Chromium emissions. It was determined that the emissions of strontium chromate were being over reported as a result of a very conservative emission calculation method. KDHE provided the corrected information to EPA OAQPS and EPA R7.

EPA has no further comments.

Modeling

The air dispersion modeling review was conducted with Dana Morris, of KDHE, who reviews permit applications. Since, several Prevention of Significant Deterioration (PSD) permit applications were previously evaluated, no additional permit applications were reviewed at this time. The newly approved AERMOD air dispersion model was used for the majority of the PSD applications. In most cases, the KDHE has provided the necessary meteorological data for the modeling.

The modeling of increment consuming sources was a concern in the last program review. Recent modeling for the Coffeyville Nitrogen Fertilizer Facility included a more complete increment analysis with all identified increment consuming sources in Kansas, Missouri, and Oklahoma included in the modeling.

EPA Recommendations: KDHE has the expertise to evaluate air dispersion modeling and should be encouraged to continue to review all permits to ensure that the conditions modeled are included as enforceable conditions in the permits. Special emphasis should be given to evaluating haul roads, increment consumption, and complex wind situations.

(See notes from exit conference)

EPA has no further comments.

Small Business Assistance Program

In the State of Kansas, the Small Business Environmental Assistance Program (SBEAP) includes the Ombudsman, the Compliance Advisory Panel (CAP) and the technical assistance staff. The technical assistance portion of the SBEAP is contracted with the Kansas State University's (KSU) Pollution Prevention Institute which provides information through telephone inquiries, web site, on-site assessments, workshops, seminars, brochures, manuals and a quarterly newsletter. The KDHE/KSU work plan and contract are renewed on an annual basis.

The structure of the program remains the same as the previous program review and no adverse findings were made.

EPA Recommendations: No recommendations were noted at this time.

PERMITTING

The overall scope of the permitting review focused on 1) synthetic minor permitting, 2) application of federal technology standards under the new source performance standards (NSPS), national emission standards for hazardous air pollutants (NESHAP), and maximum achievable control technology (MACT), 3) establishment of enforceable permit conditions, and, 4) the interaction between the Title V and new source review (NSR) programs.

The department runs a capable construction and operating permit programs. We found that all the projects reviewed completed the proper level of permitting with no major institutional gaps, although there are a number of recommendations the department could make that could greatly improve the enforceability of individual permits and the provenance of the permitting record.

EPA Recommendations: Overall strengths outweigh the recommendations. Areas for improvement are discussed in the following:

After reviewing several “synthetic minor” permits, EPA is concerned that federally-approved limits incorporated in the permit, including those from the new source performance standards and the state implementation plan were not sufficient, by themselves, to limit a source from major source review. The permit must clearly establish enforceable caps on emissions, along with the appropriate averaging period (e.g. 12-month), compliance true-up period (e.g. rolled monthly), detailed mass balance accounting procedures and associated testing, recordkeeping and reporting to validate compliance with the caps.

EPA has concerns that opportunities for public participation are inconsistent with the federally approved state implementation plan, K.A.R. 28-19-204(a), the underlying federal rules at 40 CFR 51.161 and the requirement to notice all permit projects.

We recommend that the department prepare summaries of permitting activities, particularly when issuing one or more permits as part of a larger project. These summaries, facts sheets, or statements of basis, helps to clarify decisions for future permitting activities and better explains the project being reviewed.

We recommend that KDHE create an enhanced paper trail either in the “project summary,” “engineering analysis,” or a memorandum to the file detailing why the current project is or is not part of any other permitting action occurring within the past 6-12 months.

Except for PSD permits, we recommend that the state develop a policy for inclusion in its “Permits Writers Guide” that details when a project might benefit from an air quality review.

We recommend that the department adopt a standard practice of evaluating the emission calculations and documenting the analysis as part of the permit record.

We recommend that the department review, evaluate the specific findings in Section IV and take corrective action as necessary for: 1) Empire District Riverton to assure that the “pilot test period” for petcoke is appropriately limited so that PSD is not triggered (or that a PSD permit is obtained), and, 2) Astaris (now ICL Performance Products) to assure that the control device has been properly demonstrated to achieve 99% or better control on HAPs to validate the assumptions used to avoid the MACT.

EPA would like to see the department enhance its use of the internet and the department website by making its permitting activity more publicly accessible.

We encourage the department to further develop the “Permit Writers Guide” to assist new staff and assure experienced staff is consistent.

KDHE’s Response:

- 1. EPA expressed concern that some synthetic minor permit limits were not sufficiently limiting the PTE to below major source thresholds, along with a commensurate level of monitoring, testing, recordkeeping, and reporting.*

KDHE understands the importance of using the appropriate terminology in the permits to effectively limit the PTE to below major source thresholds. Therefore, KDHE believes that any permit conditions that EPA found during the audit that did not effectively limit the PTE would be the exception. KDHE feels the key to alleviating this problem is to maintain a well-trained and knowledgeable permitting staff. With that in mind, KDHE has created the permit development manual and is a formalizing staff development policy.

For ethanol plants, we have made some recent improvements to our permit format. We have established periodic performance testing (with associated recordkeeping and reporting). We also added new wording in the Permit Conditions section of the permit to improve enforceability of control equipment specified in the Technical Specification section. The ethanol plants did, and continue to have, enforceable caps on emissions, along with appropriate averaging periods.

- 2. EPA expressed concern that KDHE was not following its regulations related to the public noticing of minor NSR permits.*

KDHE values the public participation process, and we appreciate EPA’s interpretation of the public notice requirements related to the minor NSR permits. KDHE attorneys evaluated the agency’s interpretation of the public notice requirements for minor source NSR permits and drafted/reviewed a guidance document detailing KDHE’s requirements. KDHE is in the process of modifying the minor source NSR program and as part of that process has entered into discussions with EPA to address the public notice issues. KDHE appreciates the input Region VII has provided related to alternative methods of public noticing and will continue to work with EPA towards a mutually acceptable public notice process. KDHE believes our current policy is consistent with our SIP and with federal regulations.

- 3. EPA recommends that KDHE prepare a project/permitting summary that gives the basis for the permitting action. EPA also included a recommendation that KDHE begin a running total of the PTE of all facilities as KDHE works on a construction permit for a source. This is especially important when it comes to Title V sources – there is really no way to tell if the source is greater than 250 tons per year PTE.*

The description of the project and the rationale for permitting decisions is included in the first section of the construction permit. In addition, KDHE has begun including chronology logs which accompany the draft permit. These chronology logs provide a history of the permitting activity along with some rationale for decision-making although maybe not as extensive as a Title V statement of basis. As KDHE continues to use and improve the chronology log, the log may develop into a summary like EPA is proposing. KDHE does want to make sure that the amount of resources spent on preparing a permit summary is equal to the project's impact on the air quality in Kansas. For that reason, a permit summary may not be an efficient use of resources for very small projects. However, KDHE will consider a permit summary when it adds clarity to permit decisions.

In addition, KDHE evaluated several of Missouri's permit summaries found on their website and did not see any information that was in the summary that was not already included in the permit itself. It appears like this duplication may mean extra work for little benefit. KDHE plans to continue with the chronology log, providing more detail in the permits themselves where there is currently a deficiency (especially related to applicability decisions), and memorandums to the file explaining certain situations.

EPA expressed concern that there is no clear indication in KDHE's file whether a facility is major or minor for PSD. Although KDHE generally agrees with EPA's recommendation of maintaining a running PTE total, the problem is not as significant as it may seem. There are approximately 300 Class I sources in Kansas. Many of those sources have actual emissions greater than 250 tons per year for a pollutant (which means their PTE is clearly greater than 250 tons per year). Many of the remaining sources have accepted permit limits to reduce the PTE to below 250 tons per year for all pollutants. There would only be a few sources where it may be initially unknown if the PTE is greater than 250 tons per year.

- 4. EPA recommends that KDHE clearly document why projects that occurred during a short time frame were considered separate projects for PSD purposes.*

Through a recent permit section reorganization, permit engineers are assigned the primary air responsibilities for specific facilities. Therefore, the permit engineer will be familiar with the facility's past projects and their relationship with any current or pending projects. KDHE is aware of the potential for sources to avoid PSD by splitting a major project into two or more minor projects. In situations where this may be of concern, the permit engineer is instructed to thoroughly review that possibility and discuss the issues in the "Description of the Permitting Activity" section of the construction permit. KDHE will continue to be vigilant in this matter.

5. *EPA recommends that KDHE prepare guidance when it is appropriate to conduct an air quality review of a permit application.*

KDHE anticipates improving our modeling capabilities by attending training and increasing the number of staff involved in modeling. KDHE anticipates conducting more modeling of larger emitting non-PSD construction permit projects. We also intend to develop a guidance document to address when modeling is appropriate.

6. *EPA recommends that KDHE develop a PTE guidance document that details the standard procedure for determining PTE. EPA also hinted that the use of AP-42 may not be appropriate (“The department continues to place a heavy reliance on AP-42 emission factors for determining permit applicability.”)*

KDHE does independently review and verify the emission estimates that are provided by applicants. In evaluating the PTE, KDHE uses the best available emission information. KDHE will look into drafting a guidance document that addresses the appropriate procedures for evaluating PTE.

7. *EPA recommends that KDHE review specific determinations KDHE made in the Empire District and Astaris permits.*

We will conduct the reviews.

8. *EPA recommends that KDHE utilize the internet to better inform the public of permitting activity.*

KDHE is working with our information technology group to better enhance our website. KDHE is in the process of putting public notices on the website. BAR is also forming a team to make sure that the website is up-to-date and is as useful to the public as possible.

9. *EPA encourages KDHE to expand the permitting manual by including guidance documents on the following: (1) engine replacement projects, (2) when stack testing or continuous monitoring may be appropriate, (3) when modeling should be required, and (4) procedures for limiting PTE.*

KDHE is in the process of developing an engine replacement guidance document in relation to our adoption of the NSR reform package. KDHE anticipates beginning work on guidance documents for stack testing and modeling soon. KDHE has included in the existing manual the procedures for setting federally enforceable permit limits and it is not clear at this point whether a formal guidance document is warranted.

EPA reviewed the permitting portion of KDHE's Response and believes it is a fair rebuttal to our report. KDHE indicates a willingness to improve in the areas we have identified, so we will continue to watch this effort.

ENFORCEMENT AND COMPLIANCE

The purpose of the review is to ensure that violations are being identified by KDHE, which High Priority Violators (HPV's) are being reported to EPA Region 7, and that timely and appropriate enforcement actions are taken on the violations.

EPA examined 12 critical elements, consistent with EPA's State Enforcement Program Review Protocol, covering inspection implementation, enforcement activity, commitments in annual agreements and data integrity consistent with State Review Framework (SRF). These 12 critical elements: 1) Inspections/coverage of the regulated universe; 2) Documentation of inspection findings; 3) Timely and accurate completion of inspection reports; 4) Timely reporting of violations; 5) Inclusion of injunctive relief and return to compliance; 6) Timely initiation of enforcement actions; 7) Economic benefit calculations; 8) Collection of appropriate economic benefit and gravity portion of a penalty; 9) Meeting PPA/PPG/SEA agreements and commitments; 10) Timely data requirements; 11) Accurate data requirements; and 12) Complete data requirements, compare the actual compliance and enforcement practices of the KDHE with the Clean Air Act (CAA) Stationary Sources Program policies and guidance.

EPA Recommendations: Inspection checklists used by KDHE are not sufficient for collecting information needed to make a compliance determination, or satisfy the definition of "compliance evaluation" (Attachment Z). We recommend that the checklist be supplemented with a brief narrative description describing how the compliance status was determined.

Kansas should take advantage of the enforcement tools available to them (i.e., enforcement orders, penalties, administrative orders), to encourage a rapid return to compliance with minimal delay. In addition, KDHE should verify compliance with existing orders before terminating.

The enforcement files should also include penalty calculations and justifications to explain the settlement terms.

KDHE's Response:

- 1. Inspection checklists used by KDHE are not sufficient for collecting information needed to make a compliance determination, or satisfy the definition of "compliance evaluation" (Attachment Z). We recommend that the checklist be supplemented with a brief narrative description describing how the compliance status was determined.***

Inspection forms (check lists) for synthetic minors and some 'B' sources are developed for consistency with operation permits and source information. The inspection forms include an inspection 'comments' section for a summary of the inspection and input of compliance status information. Title V source inspection form are developed by the field inspectors using the Title V operating permit to develop an inspection form. Field inspectors (6 districts and 4 local agencies) have been asked to assure that comments/summaries are included for each inspection. Some of the inspectors do an excellent job of completing the comments/summary

section, some could use improvement. Improvement on this issue is also a concern of BAR, as we also see this as an area in need of improvement by the field inspectors from KDHE , the locals and the districts.

To improve the contents of the comments/summary section to demonstrate compliance status, a segment on field inspection report requirements will be a part of the semiannual air quality field inspector meeting on November 8 and 9, 2006. This meeting will be attended by all AQ field inspectors as well as the six district administrators and Bureau of Field Services managers. The importance of comments section is for brief comments as to the determination of compliance status will be a part of the presentation as well as a discussion topic. In addition, inspectors will be informed that inspection reports that do not include a brief narrative description of how the compliance status was determined will be returned as ‘incomplete’ to the district/local agency field inspector for completion. Districts and local agencies inspection report will not be credited with a Full Compliance Evaluation (FCE) unless the inspection report is complete with a brief narrative.

In most cases, EPA-developed checklists for NSPS and MACT sources are not generally used by KDHE or EPA inspectors, as they are poorly developed for field use. The exception to this is the EPA Dry Cleaners check lists which have been modified into KDHE Dry Cleaner check lists.

- 2. Kansas should take advantage of the enforcement tools available to them (i.e., enforcement orders, penalties, administrative orders), to encourage a rapid return to compliance with minimal delay. In addition, KDHE should verify compliance with existing orders before terminating.*

KDHE changed its compliance and enforcement policies last year, including realignment of enforcement priorities, penalty matrix and policy, and a SEP policy. These policies are public and listed on the BAR web site.

Priorities realignment included focusing the limited staff resources on the emission-related violations with less emphasis on minor, programmatic violations such as reports and recordkeeping (paperwork violations). BAR began to issue Letters of Warnings (LOW) for minor violations, related to ‘paper work’ in many cases. Repeat minor violation and lower priority violations will receive a Notices of Noncompliance (NON) with a time line for a demonstration of compliance within 30 day. NONs usually include a follow up field inspection to determine compliance. For facilities with a history of noncompliance, failure to respond to LOW or NON, the BAR may issue a Bureau Director’s letter (BD letter). The BD letter requires a short-term response from the facility for repetitive or on-going non compliance – failure to adequately respond to a BD letter will be follow by an Administrative Order.

Compliance assistance to the regulated community is a priority at BAR. BAR is working with facilities to assist them with compliance issues and to reduce the number of LOWs, NONs, BD Letters, Administrative Orders, and Consent Agreements issued. However, BAR will continues its commitment to enforce state

and federal regulations, and issue enforcement actions to deter continuing s, repeat, and significant violations...

Administrative Orders (AO) and Consent Agreements and Final Order of the Secretary (CAO) are issued as appropriate, and is consistent with BAR Enforcement Policy. Over the last year, BAR has worked to reduce it's backlog of enforcement actions, and has made significant progress. Consent Agreements, without an Administrative Order have been issued, BAR will continue to be used these measures where the facility are willing to return to a compliance status and as an enforcement tool for additional reduction of emissions and to fund other environmental projects through SEPs, which are not available through administrative orders. Administrative orders are used where the facility are uncooperative and for repeats violators. A facility's failure to meet commitments in a CAO to resolve past violations, will not be afforded as an initial option in the future, an Administrative Order is issued first.

The use of CAOs and well as Administrative Orders, require compliance tracking to determine if and when the facility has meet deadlines contained within the agreement. To assist with this tracking, the section has improved its tracking capabilities by developing a new data base using MS Access, in addition to the current MS Excel spreadsheet used by the section, the district offices and local agencies. In addition, the status of all current and pending enforcement actions are discussed on a monthly conference call with all districts and local agencies field inspectors, providing the staff with a progress update, and providing the central office enforcement staff with feedback from any recent field inspections. File reviews along with input from the field inspectors is used to determine if the requirements of a CAO have been meet prior to termination of CAOs.

- 3. The enforcement files should also include penalty calculations and justifications to explain the settlement terms.*

The Air Compliance and Enforcement Section is routinely sending copies of the penalty calculations and justification to the facility files after the enforcement action is completed, after an Administrative Order is final or resolved by a CAO.

EPA has no further comments.

ASBESTOS

The Bureau of Air Quality and Radiation of KDHE implements a fully delegated Asbestos NESHAP program pursuant to 40 C.F.R. Part 61, Subpart M. The program is responsible for notifications, inspections, enforcement case development, outreach, and data management. Given the limited resources devoted to the program, the level of effort is commendable. KDHE exercises common sense and good judgment in prioritizing inspections and pursuing enforcement actions. The enforcement files are well organized and include adequate documentation to support enforcement actions. KDHE also implements an asbestos licensing program for workers and contractors/supervisors.

EPA Recommendations: A memo should be included in the enforcement file which documents the calculation and basis for the assessed penalty.

KDHE's Response:

KDHE is in the process of developing a form to calculate and assess penalties.

EPA has no further comments from the asbestos NESHAP perspective.

AIR TOXICS

The BAR determines the number of inspections in each of the six field offices. Complaint inspections and other investigations/site inspections are scheduled as soon as practical. The majority of the inspection reports contain a cover sheet, a checklist, and comment sheet to determine basic source information. Central office and district staff use a Complaint Investigation Form for documenting on-site investigations, as well as telephone or written complaints received from any source (public, governmental agencies, industry, etc.). The report is reviewed for completeness and documentation of regulatory compliance.

EPA Recommendations: KDHE should ensure all inspection reports contain a cover sheet, checklist, and comment sheet.

KDHE's Response:

- 1. Air Toxics Inspections: The Dry Cleaner MACT (Part 63, Subpart M) is not tracked by BAR, and only one dry cleaner was inspected for this MACT. Secondary Aluminum MACT sources are inspected only by the Bureau of Waste Management.*

Dry Cleaner MACT: BAR compliance and Enforcement Section has been conducting Dry Cleaners inspection who are subject to the Dry Cleaner MACT (Part 63, Subpart M) since late 2003. The BWM agreement in 1996 produced very few inspections. BAR has been working with the Bureau of Environmental Remediation (BER) on dry cleaner compliance and enforcement issues. BER was an active program, with an industry funded by site abatement program, inspection (18 to 25 per year) and meets with the Kansas Dry Cleaner Industry Advisory group on a regular basis. The Small Business Environmental Assistance Program (SBEAP) has been printing and sending out Dry Cleaner calendars for many years. The calendars were updated last year, with prior review by BAR and EPA (Richard Tripp).

There are approximately 153 dry cleaners in Kansas during 2003 (perc and petroleum solvents), with approximately 125 using perc at their facilities. BAR modified the EPA Dry Cleaner Check Lists and the field inspectors are using these checklists, as a part of the inspections process, including comments and cover page.

BAR has inspected all of the dry cleaner facilities in Kansas, except for Sedgwick County (19 out of 22 inspected) and Johnson County (26 out of 41 inspected). Sedgwick County will complete the three remaining dry cleaners this year, and Johnson County will be inspecting the remaining 15 over the next 2-3 years.

Many of the dry cleaners were not in compliance with the MACT, related to record keeping, leak checks, etc. Accordingly, BAR has issued 41 NONs for noncompliance with the MACT – the majority of NONs are recordkeeping violations. NONs were resolved and the facilities' re-inspected to assure compliance, except for some of the recent NONs. BAR has issued one Administrative Order.

Secondary Aluminum MACT: The known sites in Kansas are routinely inspected as subject to the MACT by BAR field inspectors. BAR work in conjunction with the Bureau of Waste Management, as the slag is often contaminated with enough lead to be classified as a hazardous waste.

All sources subject to the MACT standards are routinely scheduled for inspections, as contained within the district office (BEFS) work plans and contracts with local agency air programs. All MACT source inspection reports are currently required to have a cover sheet, checklist/inspection form, and a comment/summary section in the report. Issues related to the comment sheet, will be the same as other inspection report – see response #1 above. The implementation plan for the Dry Cleaner MACT was addressed between EPA R7 (Richard Tripp) and BAR in 2003, to assure that dry cleaners in the state will be inspected and to determine compliance status.

EPA has no further comments.

MONITORING

An Air Monitoring System Audit of the KDHE was conducted on November 7, 2004. The purpose of the audit was to document the agency's compliance with the EPA ambient air monitoring regulations. The audit information was obtained from on-site monitor performance audits, agency staff interviews, a review of the most recent year of data in the EPA Air Quality System (AQS) and the agency's performance in the National Performance Audit Program (NPAP). \

It should be noted that the technical system audit (TSA) is a requirement of the Clean Air Act, rather than the Region 7 EPA program review. The timing of the TSA was coincidental with the program review, and therefore, will serve as the program review report. Response from the following findings and recommendations were addressed by the BAR Environmental Monitoring Branch on February 8, 2005 (Attachment D: Technical System Audit Report Response).

EPA Region VII audit personnel were able to visit one half of KDHE's air monitoring sites. Half of these sites were chosen using National Performance Audit

Program results, the current Data Completeness Report and the current PARS Report. The other half were randomly chosen.

The Kansas Department of Health and Environment (KDHE) is responsible for conducting the ambient air monitoring program throughout the state of Kansas. This network is designed to meet the EPA sitting regulations and is reviewed annually.

All of the monitors and the laboratory analytical procedures being utilized in this SLAMS network are EPA designated reference or equivalent methods. The standard materials used to calibrate and audit the monitoring systems are properly certified and have the required certification to NIST reference standards.

The agency's standard operating procedures (SOP's) and Quality Assurance Project Plan (QAPP) are in good order and well written. KDHE data completeness has historically been good for all pollutants monitored as have been the precision and accuracy (P&A) results for their monitoring.

EPA Recommendations: The final issued TSA report addressed both commendations and recommendations for its findings. All of the latter have been discussed and/or rectified with KDHE at this time.

For detail and local agency recommendations, please refer to Chapter 7.

KDHE's Response:

- 1. EPA Recommendations: The final issued TSA report addressed both commendations and recommendations for its findings. All of the latter have been discussed and/or rectified with KDHE at this time.*

Many of the recommendations associated with routine ambient air monitoring activities were addressed immediately. The KDHE Quality Assurance Program Plans (QAPPs) and Standard Operating Procedures (SOPs) have been updated, and will be sent to U.S. EPA Region 7 for approval as soon as all internal concurrences have been obtained.

Many of the auditors' recommendations to local agencies are actually KDHE responsibilities. The Shawnee County Health Agency has returned ambient air monitoring duties to KDHE. To address the recommendations to The Wichita Department of Environmental Services and the Unified Government of Wyandotte County – Kansas City, Kansas Department of Air Quality, KDHE ambient air monitoring personnel coordinated efforts with the appropriate local agency personnel.

One finding regarding up to date SOPs required special action: KDHE provides updated versions of QAPPs and SOPs to local agencies at the time of release, with instructions to replace previous editions. Because one local agency was discovered during the audit to be referencing outdated SOPs, current versions of QAPPs and SOPs were redistributed to local agencies, along with a memorandum stating a requirement to replace their existing copies with the new sets.

The complete BAR response to the ambient air monitoring audit was sent to EPA Region 7 in a letter from Scott Weir to Leland Grooms dated February 8, 2005. A copy of that letter is attached for reference.

Additional EPA Comments:

In light of the new PMcourse Standard the following additional recommendations will addresses over the next fiscal year.

Recommendations regarding Hi-vol PM10 are being evaluated in light of the following:

1) We will soon be disinvesting in PM10 samplers to implement the PMcoarse standard; and

2) In conjunction with our on-going National Monitoring Strategy (i.e., NCore) network review, we are seriously considering replacement of Hi-Vol samplers with continuous monitors (i.e., TEOMs).

If it is determined that the current Hi-vol PM10 network will be continued, these recommendations will be reevaluated and addressed.

For detail and local agency recommendations, please refer to Chapter 7.

TITLE V FEE REVIEW

The purpose of the Title V Fee Review was to assure that KDHE was collecting adequate fees and accounting for the direct and indirect costs associated with Title V and non-Title V activities. The review team evaluated the interaction between the minor source review and Title V programs to assure that preconstruction permit terms were properly being incorporated into Title V permits. During the 2003–2005 evaluation period, KDHE issued nine PSD permits, three modifications to existing PSD permits, 108 initial Title V permits, 170 Title V permit renewals and three Title V permit modifications. A fee review was not performed during this program review.

EPA Recommendations: No recommendations are noted at this time.

CHAPTER 2

INTRODUCTION

PURPOSE:

Many governmental and nongovernmental entities are responsible for ensuring environmental protection throughout the nation. The majority of environmental programs are carried out through the shared responsibility of the EPA and its non-Federal partners.

In Region 7, EPA has delegated a large share of its authority to the states. After delegation, EPA maintains responsibility for overseeing delegated programs and continues to be accountable for progress toward meeting national environmental goals and for ensuring that Federal statutes are fulfilled. EPA is responsible for ensuring the fair and equitable application and enforcement of Federal environmental laws, regulations, and standards, and to provide its partners with the necessary assistance, tools, methods, and back-up support to solve environmental problems.

In delegated programs, the goal of oversight is to strengthen the relationship between EPA and its partners to ensure that the national environmental goals expressed in the EPA Strategic Plan are attained. Effective oversight helps to ensure adequate environmental protection through continued development and enforcement of national standards, and the use of direct enforcement action against polluters as necessary to reinforce the action and authority of EPA's partners. Oversight also helps to enhance a partner's capabilities to administer sound environmental protection programs through increased communication and a combination of support and evaluation activities. Finally, Federal oversight seeks to describe and analyze the status of national and regional environmental quality, through continued collection and distribution of information from governmental agencies and other major sources. EPA is fully committed to the success of its partners' environmental programs. A clear expectation for program performance is a crucial factor in achieving an effective partnership.

Fostering quality delegated programs is not a static activity, and will vary across the different delegated entities. Conditions change, and program activities must change to respond to new environmental problems and challenges. Consequently, the methods used to oversee delegated programs must change over time, depending on the maturity and complexity of national programs and on the capability of EPA's delegated partners.

PROCESS:

The 1984 “EPA Policy on Oversight of Delegated Environmental Programs” provides the foundation for structuring a Program Review. Starting with this policy, EPA Region 7 staff developed a *Program Review Protocol* document, which provides the justification and framework for conducting program reviews in the Air, RCRA, and Toxics Division (ARTD) of Region 7.

The protocol establishes a minimum frequency for conducting program reviews within the Division, defines the scope of full and partial reviews within each program, and provides a consistent basis for determining which type of review is appropriate. The protocol also provides a way to document the rationale for determining whether or not any program review effort is needed in a particular program. In addition, the protocol includes a summary of the regulatory requirements for the major programs within ARTD, a discussion of oversight policy, and a differentiation between the requirements of grant close-out reviews and program reviews.

The ARTD staff subsequently issued a second document, *Operating Principles for Conducting Program Reviews*. This is primarily an internal planning document which lays out the process for providing consistent internal procedures for Program Reviews.

Finally, the EPA staff developed the *Program Review Criteria Notebook*, which was used as the basis for the Kansas Program Review. This notebook contains the criteria and checklist for each of the program areas being reviewed. This notebook was provided to all of Region 7's state partners in January 2000.

Prior to 2000, only partial program reviews were conducted. As stated in the Program Review Protocol, Region 7 plans to conduct a program review in each state once every four years.

PROCEDURE:

The EPA state manager coordinated with the KDHE primary contact person in January 2006 to select a mutually agreeable date for the review. Considerable lead time was necessary considering the number of staff involved in both agencies. On Dec 16, 2005, EPA mailed KDHE a ‘kick-off’ letter (Attachment E: Program review Kick-off Letter) which contained a detailed schedule for the February thru April review, provided checklist information, requested that the air program respond to several pre-review questionnaires and listed a schedule for completion of the draft and final reports. EPA received all requested information in ample time to review prior to the entrance conference.

EPA staff was periodically on-site at the Topeka KDHE office throughout the months of March and April of 2006. A face-to-face Exit Conference was scheduled in September of 2006 to discuss findings and recommendations from the review. The meeting consisted of the EPA staff providing a verbal summary of their results. The KDHE staff provided additional information as necessary for clarification, as well as

closing remarks (Attachment F: Exit Conference List of Attendees).

The EPA staff received the full cooperation and assistance of the KDHE staff throughout the on-site visit. Supervisors and individual staff members made themselves available as necessary to answer questions or to otherwise assist the EPA staff. EPA fully appreciates this assistance and spirit of cooperation.

CHAPTER 3

PLANNING AND PROGRAM DEVELOPMENT

The areas of review in this section include the following:

1. **Regulatory Development**
2. **Grant and Work Plan Management**
3. **Local Agency Coordination**
4. **Training**
5. **Emissions Inventory (EI)**
6. **Modeling**
7. **Small Business Assistance Program (SBAP)**

The organizational structure of the KDHE air program is:

Kansas Department of Health and Environment

Bureau of Air Quality and Radiation (BAR):

- Administration Unit
- Radiation and Asbestos Control Section
- Air Monitoring, Inventory & Modeling Section
- Air Operating Permit & Compliance Section
- Air Construction Permit Section

A Personnel/Organization Chart is included in the attachment section (Attachment G: KDHE Organizational Chart) for this section to further illustrate the program staff working in each area.

As described in the introduction, the on-site portion of the Program review took place in March and April of 2006. EPA personnel visited the Bureau of Air and Radiation in Topeka, KS, and conducted file reviews and face-to-face conversations with the BAR staff.

EPA specialists in the EI, and asbestos programs interviewed the respective KDHE program specialists during the on-site review. The SBAP information was gathered through a telephone interview. The remaining information was gathered by the EPA's Air Planning and Development Branch (APDB) state coordinator (Attachment H: APDB Review Checklist) and through interviews with the KDHE's BAR and other staff.

REGULATORY DEVELOPMENT

BAR has a development and review process for developing regulations (Attachment I: Policy and Procedure Manual). Most regulations are adopted by reference and the regulation is reviewed by the appropriate supervisory and legal staff. Rules that involve emission guidelines reviewed by technical workgroups are addressed (Attachment J: Regulatory Process). A checklist is maintained by the Division of Environment and is made available to the public in a quarterly newsletter.

The progress of rule actions is tracked by the person responsible for developing the rule and reported on the checklist.

Two rule files were reviewed for content:

K.A.R. 28-19-350 (2002) PSD

- Regulatory Impact Statement
- Public Hearing Record
- Public Hearing Notice
- Misc. communication
- Mailed notices (i.e., to EPA)
- Letter of Adoption
- Joint Committee on Administrative Rules and Regulations (JCARR) comments
- Hearing Officer's report
- Published Regs
- EPA Comments
- Background documents (i.e., what other states have done)
- Approved and Stamped Regs

K.A.R. 28-19-714 (Solvent Metal Cleaning RACT rule)

- Takings Analysis (file empty)
- SIP submittal
- Public Hearing Record
- Public Hearing Notice
- Responsiveness Summary (empty)
- Public Comments
- Misc. Comments
- Mailed notice
- Letter of Adoption
- JCARR comments
- Hearing Officer's report
- Final Published Regs.
- Federal Register Notices
- EPA Comments
- Our approval notice
- Concurrence sheets
- Background documents
- Checklist
- Approved stamped Regs

EPA noted that although the Economic Analysis is important to Kansas, there was not copy in either file. After conversation with KDHE, we discovered that the files which we reviewed were the administrative files and the Economic Analysis is located in the regulatory files along with draft rules, published final rule (copy), public hearing notices, public comments and KDHE’s response, and joint committee notes. In the interest of time, we did not review the regulatory files.

Most regulations are adoptions by reference with the process consisting of a review. For more complex rules, technical workgroups are formed. Rules are not assigned to any particular person and there are inconsistencies in tracking. The Kansas “rules by committee” approach involves anyone and/or everyone, which may contribute to the confusion. However, during FFY 2006 the efficiency of regulatory actions has improved with personnel realignments.

GRANT and WORKPLAN MANAGEMENT

The state incorporates an annual planning process into the budget cycle. EPA priorities are taken into consideration in developing the work elements to be included in the budget document. KDHE has work plans associated with the annual budget process which is comprehensive and associated with the CAA section 103 and 105 grants (Attachment K: CAA Section 103 and 105 work plans for FFY-07). Program managers also maintain priority outcomes for their section or units, which may include activities, not covered by the section 105 work plans.

The following is a timeline that EPA Region 7 has developed to coordinate with the states to implement effective strategies in addressing air quality issues. KDHE is actively working with EPA, regional states, local governments and tribes to implement these milestones.

2006

- September 27 Final Notice of Revised PM NAAQS to be published
- November 25 110(a)(2)(d) transport SIP due for NE and KS
MO and IA participate in CAIR
- November/
December OAQPS- state/local workshop on PM 2.5 and Regional Haze

2007

- March 28 Proposed rulemaking published for the review of the ozone NAAQS.
- April 5 PM 2.5 Inventory SIP due
- May 25 110(a)(2)(d) SIP FIP deadline of May 25, 2007
- June 15-
December 8-hour Ozone maintenance plan Kansas City due
Submittal of the infrastructure SIP
(meaning the remaining requirements of section 110(a)(2)) for ozone)
- December 17 Regional Haze SIPs due from all four states
- December 19 Final rulemaking published concerning the review

of the ozone NAAQS

2008

December 31 15% VOC and/or NO_x reductions
for 8-hour ozone are achieved in St. Louis.

2009

March 15 RACT compliance date

2013

5 year Regional Haze Update, which is equivalent
to a mid-course correction

2014

Last year Kansas City must demonstrate maintenance
of the 8-hour ozone standard.

The continued cuts in funding over the past few years, coupled with the proposed funding cuts for the upcoming year will make balancing state and federal priorities difficult to accomplish. KDHE indicated they may reach the point where the federal contribution to funding the overall program is relatively small. When federal contribution to the program substantially decreases, effort toward accomplishing federal priorities will presumably be proportionately decreased.

There is little distinction between use of state matching funds and CAA section 105 grant funds. An employee is generally funded from a mix of funding sources, and many purchases and operational expenses are funded from both state and federal funds. Capital expenditures such as, monitoring and calibration equipment are ultimately funded with CAA section 105 grant dollars.

For additional planning information, see the attachment section (Attachment L: BAR Strategic Plan, July 2005).

LOCAL AGENCY COORDINATION

KDHE administratively manages five contracts with the local entities; Mid-America Regional Council (MARC), Johnson County Environmental Department, City of Wichita Department of Environmental Services, Shawnee County Health Agency and Unified Government of Wyandotte County-Kansas City, Kansas Health (Attachment A: Local Contracts). The Wyandotte County grant was previously managed directly through EPA. As of fiscal year 2006, they were converted to pass-through status under KDHE's oversight. All local contracts for 2006 are for reimbursement and are paid on a quarterly basis.

In managing the contracts, quarterly progress reports from the local agencies are reviewed. Funding is contingent upon a "pay for performance" policy. Local grantees must submit reports on the completed work elements to receive funding. KDHE has also adopted a continuous review process, in which annual audits of the local agencies with contracts are conducted on a rotating basis (Attachment N: Local Program Reviews). One local agency is audited annually, repeating every five years (Attachment M: Local Performance Reports).

KDHE holds quarterly meetings and/or conference calls with the local agencies in order to track progress on work activities, to update the local agencies on policy issues and to review any contract related issues that arise. KDHE also meets with the local agencies as the needed to develop contract language or to discuss specific program issues in greater detail. A bureau and local agency liaison is identified for each contract activity.

TRAINING

Each KDHE employee has training needs identified by section rather than by bureau. The training database (Attachment B: BAR Training Plan) is used by BAR to determine employees training needs. The source of funds for training varies with the funding mix associated with each employee. A list of training funded by section 105 funding is provided to EPA at the end of the federal fiscal year (FFY) by the KDHE training officer, but there is not a specific budget set aside for training.

KDHE holds quarterly meetings for the local governments and trainings as needed. K-State and KSU are also invited participate in the quarterly meetings (Attachment C: Clean Air Advisory Meetings).

KDHE is not able to provide all the training desired for employees and requests continued federal funding for the training activities. Consistent training is crucial for the bureau to stay current on federal rules and regulations, employee health and safety and technological advances.

EMISSION INVENTORY

Introduction:

A technically defensible emission inventory (EI) serves as the foundation of sound public policy. The Air Monitoring, Inventory and Modeling Section within the Bureau of Air and Radiation (BAR) of the Kansas Department of Health and Environment (KDHE) has the responsibility to ensure that the level of quality needed from an emission inventory is achieved. Four people from this section are responsible for collecting emissions data, entering that data into I-Steps, implementing the emission inventory quality assurance project plan (QAPP) and submitting data to EPA's National Emissions Inventory (NEI). The 2003 program review conducted on this section was focused on ensuring that KDHE was on its way to developing the proper quality assurance/quality control methods to be implemented in future emission inventory efforts. At that time, KDHE was in the process of obtaining approval on their draft Emission Inventory Quality Assurance Project Plan. The emphasis of the 2006 Program Review will be on verifying that the steps outlined in KDHE's Emission Inventory QAPP were followed and determining if recommendations offered during the previous program review were addressed.

During the program review the following elements were reviewed: (1) EIQ files, (2) quality assurance reports, (3) checklists, and (4) knowledge of staff in regards to the methods

established in the QAPP (Attachment O: EI Checklist). This was accomplished by choosing random EIQ files to verify that the appropriate checklists were filled out and that the file was in order, obtaining copies of the different quality assurance reports and interviewing staff.

Quality Assurance Activities:

The data quality objectives outlined in KDHE's QAPP are designed to ensure that the emissions and fee data is complete, accurate and comparable. The accuracy and completeness of the emission inventory questionnaires (EIQs) is accomplished and documented by completing the *QC Checklist for Class I Inventory and Fee Forms* (Attachment: O) for each EIQ. This checklist ensures that staff verify that the facility's information is correct, that the facility used the appropriate methods and emission factors to calculate emissions, that operating rates and emissions are reported for all required units and that the facility report on all required pollutants, etc.

In addition, an in-depth review is conducted on 5-10% of the EIQs by preparing reports on the QC checks outlined in the *QC Checklist for YEAR Emission Inventory* (Attachment: O). The quality assurance measures in this checklist allows KDHE to verify if emissions from the previous and current year are comparable by facility, source categories, similar processes, etc. It also ensures that the staff verifies that the location and stack parameters reported by the facilities are accurate. Results from this review are documented through reports that include, but are not limited to, the following: *2002/2003 Facility Total* (Attachment: O), *Emissions by Pollutant Comparison, 2002/2003 Facility Total emissions by SIC comparison* (Attachment: O), *Particulate Matter QA for: PT, PM 10 and PM 2.5* (Attachment: O), *Stack Parameter QA* (Attachment: O). Also, follow-up letters are sent to the facilities whose EIQs have been audited. These letters are meant to continually improve emission inventory data by notifying the data submitters of deficiencies found in their EIQ and by telling them what corrective actions need to be taken to improve their submittal. If the errors found in the EIQ are minimal, the facility is told to correct their error in future submittals. On the other hand, if significant errors are found, meaning errors that alter fees significantly, corrections are required during that same year. The results from these in-depth reviews are documented and the data entry staff is instructed to verify that past observations have been addressed with that year's submittal.

Finally, although KDHE does not complete a nonpoint or area source inventory for all area source categories, they do take steps to ensure that emissions calculated by EPA and reported in the NEI are reasonable and acceptable. In some cases, KDHE will also prepare an inventory for area source categories for which they believe they have better surrogate information. Some area source categories for which an inventory has been prepared by KDHE includes residential wood combustion, pesticides, cutback asphalt, wildfires, etc.

Elements Reviewed:

During the program review, the EIQ files were reviewed to verify how they were organized and bound and to ensure that the *QC Checklist for Class I Inventory and Fee Forms* (Attachment: O) was filled out for each EIQ. Four EIQs were randomly chosen and

the above referenced checklist was filled out for 100% of the EIQs reviewed. To the extent that it was under KDHE's control, the EIQs files were bound and organized; however, the organization of the EIQ itself was greatly dependent on the source. Based on this review, it appears that KDHE has addressed a concern expressed during the previous program review on the organization of the EIQs. Also, five facilities were randomly chosen to verify emissions reported to the 2002 NEI against emissions found in the I-Steps database. This review did not result in any differences between the emissions found in the 2002 NEI and the emissions found in KDHE's database for the year 2002.

KDHE has done a good job a documenting the activities outlined in their emission inventory QAPP and making those available to the necessary staff. Checklists, Plans for reviewing EIQs, Plans for reviewing the emission inventory, QA Checks reports and the emission inventory QAPP are all located in a shared drive which allows all employees to have access to all the necessary information. Also, hard copies of the emission inventory QAPP and some of the reports are kept in the unit's library.

Finally, interviews conducted on the staff responsible for emission inventory activities demonstrated the staff possessed a comprehensive understanding of the data entry and quality assurance process, as well as the location of important quality assurance documentation and the I-Steps database.

Conclusion:

High chromium emission numbers submitted by Boeing are of concern. EPA Recommends working with EPA OAQPS, Boeing, and KDHE to resolve how these numbers are calculated, and make sure we have the correct numbers in State and EPA databases.

Overall, EPA concludes that KDHE does a commendable job when building and quality assuring their emission inventory. KDHE has a number of methods in place to verify and document the accuracy, completeness and comparability of their emissions data from year to year. It was found that KDHE follows the quality assurance steps outlined in their QAPP and they also actively participate in NEI improvements and developments. Because KDHE only prepares a mobile source inventory to support special studies or the development of State Implementation Plans or Maintenance Plans, the next program review will include a component that touches on the process followed to develop and quality assure the mobile source inventory for the Kansas City Maintenance Plan. Also, if the 2008 NEI reengineering efforts have been implemented and these have resulted in changes to KDHE's quality assurance and inventory development process when the next program review is conducted, these will be revisited to determine how these changes have impacted KDHE's emission inventory work.

MODELING

The air dispersion modeling review was limited to discussions with Dana Morris who reviews permit applications. No permit applications were reviewed during the Program Review. Several Prevention of Significant Deterioration (PSD) permit applications had been

reviewed previous to the program review. The newly approved AERMOD air dispersion model was used for the majority of the PSD applications. In most cases the KDHE has provided the necessary meteorological data for the modeling.

A recommendation made in the 2002 Program Review was that KDHE should evaluate the procedure in which increment analyses are conducted. The recent modeling for the Coffeyville Nitrogen Fertilizer Facility included a more complete increment analysis. All identified increment consuming sources in Kansas, Missouri and Oklahoma were included in the modeling.

The general discussion included modeling for complex wind situations including stagnant situations. These situations are not new in our region but with the approved CALPUFF model it is now possible to more accurately model these situations. In our region these situations occur in river valleys and complex terrain. Representative “on-site” meteorological data and/or grided meteorological data are necessary to model these situations. This means that during the pre-application meeting between a regulatory agency and the company/consultant, that the possibility of requiring “on-site” meteorological data must be discussed as well as determining what model should be used.

The modeling of haul roads was another subject that we discussed. Haul roads have not been modeled in all situations. The concentrations from haul roads and other fugitive sources can be high close to the source and often result in violations of the PM₁₀ NAAQS or PSD increment standards. Haul roads should be modeled.

KDHE is also involved in regional modeling. The regional modeling was not reviewed, but Andy Hawkins is very active in CENRAP and Kansas City ozone modeling.

KDHE has the expertise to evaluate air dispersion modeling and should be encouraged to continue to review all permits to ensure that the conditions modeled are included as enforceable conditions in the permits. Special emphasis should be given to evaluating haul roads, increment consumption and complex wind situations.

SMALL BUSINESS ASSISTANCE PROGRAM (SBAP)

The Small Business Air Quality Liaison Program was established in 1994 and is located in the Kansas Department of Health and Environment’s Bureau of Environmental Field Services. One FTE has been established to fulfill the duties of the Small Business Ombudsman. The Liaison is Cathy Colglazier, who has been in this position since October 2002; her direct supervisor is John Mitchell. The Liaison is also referred to as the Ombudsman in this report.

The technical assistance portion of the SBEAP is contracted with the KSU Pollution Prevention Institute. KSU provides individual assistance to small businesses affected by environmental regulations through telephone inquiries, Web site, on-site assessments, workshops, seminars, brochures, manuals and newsletters. The work plan and contract between KDHE and KSU is renewed on an annual basis and is designed to provide

comprehensive services to small businesses, but funding dictates project work and drives technical assistance focus. The Ombudsman provides oversight for the contract.

On request, the SBEAP works with the business (usually one-on-one) to help determine appropriate permits, requirements, etc., as well as on-site assessments. SBEAP follows up with written reports or by providing the business with the necessary permit applications or forms. Whatever help the business needs with environmental issues can be requested through the SBEAP. In addition, the ombudsman publishes a document “Roadmap to Environmental Permits” which can be found at www.kdheks.gov/environment. All services are free and confidential.

The Compliance Advisory Panel (CAP) meets on a regular basis and has indicated that the SBEAP is providing good service. Recently, the CAP has been involved in discussions regarding the multi-media status of the SBEAP and funding issues.

The 2004 SBEAP survey data below indicates clients have made regulatory changes and reduced emissions as a result of SBEAP hotline and on-site services.

Hotline calls:

- 91% of callers have a compliance question
- 100% say they now understand the regulations better
- 61% say they will make changes as a result of what was learned on the call

On-site assistance:

- 35% survey rate
- 91% call with compliance concerns
- 85% of compliance-related recommendations were implemented or planned
- Rated reports 8.8 on scale of 1-10
- Average dollar value \$3200

EPA requested a breakdown of the \$410,220 SBEAP budget and the response is as follows:

Title V fees	\$	272,615
Solid Waste Fee Fund	\$	50,000
Hazardous Waste Fee Fund	\$	12,500
Tire Fee Fund	\$	12,500
319 (NPS) Fund	\$	46,605
Aboveground Storage Tank	\$	3,000
Underground Storage Tank	\$	3,000
Dry Cleaning Fee Fund	\$	<u>10,000</u>
	\$	410,220

For additional information see the SBAP checklist (Attachment P: SBAP Checklist).

CHAPTER 4

PERMIT PROGRAM REVIEW

Introduction:

On March 27 – 29, 2006, EPA Region 7 performed an evaluation of the Kansas air permitting programs. We conducted the review in part to fulfill a regional office commitment with EPA Headquarters to perform an annual comprehensive review of at least one state or local agency permitting program, and in part to satisfy EPA Region 7's policy on periodic review of state and local programs. The overall scope of the review focused on 1) synthetic minor permitting, 2) application of federal technology standards under the new source performance standards (NSPS), national emission standards for hazardous air pollutants (NESHAP), and maximum achievable control technology (MACT), 3) establishment of enforceable permit conditions, and, 4) the interaction between the Title V and new source review (NSR) programs.

The EPA review team was comprised of Tamara Freeman, Jon Knodel, Patricia Scott and Bob Webber. Debbie Bishop and Althea Moses with Region 7's environmental justice group also assisted in the review for a half day. During the review, the team discussed a number of program elements with the permit program managers and concluded the review with a brief exit interview. The exit interview provided an opportunity for the EPA and KDHE staff to meet and discuss our general findings. Overall, we found that the department runs a capable construction and operating permit program but could benefit from the recommendations described in this report. The review team appreciates the cooperation shown by the department during our visit.

The permitting group reviewed the Wyandotte County Department of Air Quality permit program in July, 2002, so no additional review was conducted at this time. The final Wyandotte County report was included with the final 2003 KDHE program review and is available at http://www.epa.gov/region07/programs/artd/air/st_local/reviews.htm.

EPA initiated its review process by letter to the department dated January 5, 2006, followed by a series of emails dated January 24 and 31, 2006, requesting specific detailed information about the NSR and Title V programs, respectively. The department provided a timely and comprehensive response for each request.

The team evaluated 31 source files containing approximately 150 permit projects. Most of the projects reviewed were permitted in either 2003, 2004, 2005 or early 2006 and represent about 13% of the 1,200 plus projects evaluated by the department during the review period. Of these 1,200 plus projects, 497 were issued as "approvals", 233 were issued as "permits" and 478 required no decision by the department.

The major findings, including both commendations and recommended program recommendations are described in the following section (i.e., Summary of Findings and Conclusion). The Source Permit Files table and Attachment Q and R, includes a summary of

source files reviewed, a spreadsheet documenting which permit elements were found in each source file, and a detailed compendium for each file reviewed. Lastly, Attachment S contains the NSR and Title V questionnaires completed by the department. About two-thirds of the source files were selected randomly from the list of permitting activities provided by the state. The remaining files were selected based on the type of project permitted or because it appeared the source had a significant number of discrete projects over a short period of time. Approximately six of the source files reviewed are in areas that the Region characterizes as “environmental justice” communities. Since the majority of files were randomly selected, our findings should generally be representative of KDHE’s air permitting program as a whole.

The review team did not look at the Prevention of Significant Deterioration (PSD) permitting program in any substance since we evaluate and comment on these projects in real-time as they are issued. We also did not focus detailed attention to the Title V permitting program since the region receives notice of these projects and has an opportunity to comment and review at any time. Instead, the review team evaluated the interaction between the minor source review and Title V programs to assure that preconstruction permit terms were properly being incorporated into Title V permits. During the 2003–2005 evaluation period, KDHE issued nine PSD permits, three modifications to existing PSD permits, 108 initial Title V permits, 170 Title V permit renewals, and three Title V permit modifications.

Summary of Findings and Conclusions:

On balance, the department runs capable construction and operating permit programs. In general, we found that all the projects reviewed completed the proper level of permitting with no major institutional gaps. As described in more detail below, though, we believe there are a number of program recommendations the department could make that could greatly improve the enforceability of individual permits and the provenance of the permitting record, with little or no impact on permitting resources.

We encourage the reader not to over-emphasize or compare the number of strengths to areas for improvement or the breadth of discussion in this section. Overall strengths outweigh the program recommendations. By necessity, the basis for these recommendations requires a more comprehensive analysis. Our recommendations for the program are generally listed in priority order, from most concern to least. The first four recommendations should be considered high priority; the last four as medium.

Commendations:

The files were well maintained and contained all of the information one would expect to find for a pre-construction review. All included comprehensive permit applications, review notes, records of conversations with the source and their consultants, draft permits, and final permits. The source files also contained compliance inspections, NSPS, NESHAP and MACT notifications, so all relevant source information was easily found.

We found many telephone conversation records, written correspondence and emails between the permit review staff and sources and their consultants throughout the files. This is a good indication that staff is conducting comprehensive reviews and are not necessarily taking the information in permitting applications at face value.

We noted that the majority of permits correctly documented applicability of NSPS, NESHAP, or MACT standards.

Our review revealed that only seven of 150 projects involved “after the fact” or “as built” permitting activity. This is a good indication that companies throughout the state are aware of the permitting requirements and applying for timely approvals. The department’s use of the internet to distribute permit forms and instructions may have helped to better educate those who must make use of the program.

Based on the significant number of “no action required” and “approvals” (or simple registrations) issued during the review period, constituting about 80% of the department’s review activities, it appears that recent efforts to evaluate where best to place valuable staff resources is worthwhile.

The department maintains a very detailed database of construction and operating permitting actions and has been very responsive to all requests made by EPA Region 7. The department should continue to evaluate its capability to report the new operating permit milestones required for upcoming FY-2007 reporting year.

The review team found no evidence that the department is issuing pre-construction waivers or using variances to allow a source to construct prior to obtaining an approval or permit.

The department is developing a “Permit Writer’s Guide” which contains policy, guidance and procedures for handling different permitting situations that might arise. We encourage the department to continue this effort to assist new staff in learning the permitting program and to assure that trained staff consistently applies these procedures.

The inspection checklists, developed by the permit engineer at the time of the permit review, is a helpful tool for inspectors and compliance staff who must understand the permitting record to properly carry out their oversight responsibilities. While we understand the extra time it takes to develop the checklist, it appears to be a worthwhile effort and we encourage the department to continue.

EPA Recommendations:

A recent review of three “synthetic minor” permits, two for proposed ethanol-related projects and another for a refinery project, along with one MACT-avoidance permit evaluated during the program review, highlight the importance of setting practicable, enforceable permit limits on emissions, along with a commensurate level of monitoring, testing, record keeping and reporting. In the absence of such conditions, a source may be at

risk for not having the right kind of permit or approval. In the actions described above, the federally-approved limits incorporated in the permit, including those from the new source performance standards or the state implementation plan were not sufficient, by themselves, to limit a source from major source review. For permits where a plant-wide emission cap is determined to be the best method to limit emissions below the major source thresholds, the permit must clearly establish enforceable caps on emissions, along with the appropriate averaging period (e.g., 12-month), compliance true-up period (e.g., rolled monthly), detailed-mass balance accounting procedures and associated testing, recordkeeping and reporting to validate compliance with the caps. Equipment descriptions and the summary of air pollution controls and anticipated effectiveness that appear in the “air emission unit technical specifications” portion of the permit, while informative, do not by themselves establish the necessary conditions for major source avoidance.

Approximately 14 of 24 project permits and seven of 76 project approvals reviewed were accompanied by an opportunity for public participation. These projects typically involved construction of new ethanol plants, acceptance of limits to avoid a MACT standard, or were otherwise requested by the source. We encourage the department to continue the opportunity for public participation for these types of projects. But, we have concerns that these few select opportunities for public participation are inconsistent with the federally approved state implementation plan, K.A.R. 28-19-204(a), the underlying federal rules at 40 CFR 51.161 and the requirement to notice all permit projects. The current federal rule in 40 CFR 51.161 requires opportunity for public comment for any project subject to the state's preconstruction review program whether the particular source is subject to the "approval" procedures or the minor source permitting procedures. We understand that the department, as part of its recent efforts to develop streamlined revisions to its minor source permitting rules, has adopted a new policy on opportunity for public notice. However, until KDHE submits its new permitting rules, its interpretation of when public notice is required by Kansas statute, and obtains approval from EPA that these new rules are consistent with the requirements in 40 CFR 51.161, we encourage the department to follow the procedures under the federally-approved SIP. We believe that the federal rule provides flexibility regarding the form of the notice and the timing (e.g., internet posting, and an abbreviated period of time for the public to state whether they want to comment on a particular project), but does not allow the state to dispense with public comment altogether. Failure to provide for public comment could be a basis for a citizen to challenge the permit and for EPA to make a finding that the minor source construction program is deficient.

We found very few permit review summaries, statement of basis or other project or source fact sheets in the project files reviewed. These summaries like those used by all of the Region 7 States provide an opportunity to clearly document the record for future permitting and actions. The summaries contain a detailed explanation of the project under review, anticipated and potential emissions from the project and source as a whole, any associated impacts analyses, a list of historical permitting actions taken and a clear rationale for why any stack testing, monitoring, record keeping, or reporting is required (or not). While the files contained a lot of information and permits for individual emission units, there appeared to be no single document that brought the projects together into a cohesive review. The permit history is a particularly useful tool for understanding the pace of source expansion and

whether new emission units have been properly permitted. The history also provides a mechanism to document the existing emission potentials to help the engineer review the source, and the public understand what level of permitting is necessary. For example, while it was relatively easy to determine if a source is major at the 100 ton per year threshold if they have a Title V permit, it was often unclear whether “unnamed” major sources were at or above the 250 ton per year threshold necessary for PSD review. We understand that documenting the project history for each source file can be a time-consuming process, but the approach helps to provide a clear basis for the current activity at a plant and puts a comprehensive project history in place for future permit writers. Taken in small pieces over the next 3-4 years, as new projects are evaluated, the department could begin documenting the permit history and establish a comprehensive baseline for future permitting actions. We encourage the department to look for opportunities to enhance the description of its permitting activities, especially when issuing one or more permits as part of a larger project. For an example of an approach we think works well, you might see a “Permit Summary” from one of the minor source permits issued by the Missouri Department of Natural Resources, or the Nebraska Department of Environmental Quality.

Except for PSD permits, we found little or no evidence in the source files that the department performs air quality analyses for approval or permit projects. Permit applications prepared by applicants or their consultants also lacked any air quality analysis. While most projects evaluated had de minimis emissions and may not create adverse “real world” impacts, several others were very large emitters permitted at or near the PSD thresholds. In particular, we noted several ethanol projects, which are typically permitted as synthetic minor facilities to avoid PSD review, had no air quality analysis. Based on analyses we have seen in other states, these larger projects often emit at or near the National Ambient Air Quality Standards (NAAQS) and most often exceed the levels for PSD increment. While such analysis is not “required” by the states approved minor source permitting rules, it would be prudent to perform an air quality analysis in potential high growth areas such as industrial parks or where the emissions are close to the PSD thresholds. In addition, the Kansas rule (consistent with 51.160) clearly requires that no permit or approval may be issued if the department determines that emissions from the source or modification would interfere with attainment or maintenance of a NAAQS. At least in instances where there is no air quality analysis at all, it would seem that KDHE could not demonstrate that this requirement has been met, unless, for example, they have a policy, based on some analysis, that certain types or sizes of sources may be presumed not to have an adverse air quality impact. In that regard, we recommend that the state develop a policy for inclusion in its “Permits Writers Guide” that details when a project might benefit from an air quality review.

The department continues to place a heavy reliance on AP-42 factors for determining permit applicability. We noted very few instances in the source files where staff appeared to review, verify, challenge or correct emissions estimates made by sources and its consultants. In most states, we typically find that the review agency either performs their own independent emissions analysis or otherwise provides written verification in the permit record that they agree with, or dispute the emission factors. In most cases, the emission factors used were well documented in the permit application and were of a magnitude that

did not trigger any substantive federal technology standard or major source permitting program, so we found no major consequences of this oversight. Nevertheless, we recommend that the department adopt a standard practice of evaluating the emission calculations and documenting the analysis as part of the permit record. This quality check assures that applicants use the most recent, or best documented, information when making permit applicability decisions.

Approximately 21 of the 31 source files selected for review involved multiple, sequential projects that occurred within six months of the last permitting action. Of these, none provided any insights or documentation into how the department evaluates multi-permit projects to determine whether a more substantive permit review should have been required. While we didn't identify any projects that escaped major source review, because most of the projects were de minimis in nature, this is an important standard practice to assure that "related" projects do not escape major source review by virtue of splitting themselves into multiple, minor projects. For future permitting actions it would be worthwhile for the review engineer to create an enhanced paper trail either in the "project summary", "engineering analysis", or a memorandum to the file detailing why the current project is or is not part of any other permitting action occurring within the past 6-12 months.

The current KDHE website allows access to permit forms and instructions, answers many common questions about the permitting programs, and makes many of the departments' policies and guidance accessible to those required to obtain permits. These are all helpful tools. But, as information technology becomes more advanced and the public expectations are raised, we would like to see the department enhance its use of the internet and the department website to make its permitting activity more publicly accessible. Many states now make both draft and final permits available on line, along with associated deadlines for hearings, petitions, and the public comment period. In the near term, we anticipate many states will also begin to post permit applications on their websites. We encourage the department to explore options for making this information available via the internet.

As part of the "Permit Writers Guide" currently under development by the department, we believe that staff could benefit from guidelines for 1) engine replacement procedures, 2) when stack testing or continuous emission monitoring may be appropriate, 3) when modeling should be required, and, 4) procedures for limiting Potential to Emit (PTE) for synthetic minors or other sources seeking to avoid federal requirements such as MACT. For example, when a "no modeling" or "no stack testing" decision is made, it would be helpful to document the basis for that decision in the record. We found many instances where such "no-decisions" were made, but the reason for the exemption was unclear or undocumented altogether. For example, could it be that the exception is consistent with a department policy or guidance document? Or, are the anticipated emissions so far below the limit that they could reasonably be expected to demonstrate compliance? Or, has the source previously tested and the department is willing to use such results for subsequent permitting? For engine replacements, we noted that sometimes a permit or approval is required, but at other times not. With no reference to a department policy or other documentation in the file, there appeared to be no rationale for this inconsistency. Documenting these kinds of actions,

beyond a “yes” or “no” answers, would assure a better level of consistency between permit reviewers and provide a historical record for such decisions. It also provides a uniform set of procedures for new permitting staff to follow when first learning the program. We encourage the department to develop these and other relevant procedures for inclusion in the guide.

Other Observations:

Over the past several years, EPA has taken an interest in variances issued by states to allow sources to commence construction prior to obtaining all required approvals. EPA’s position is that any source that commences construction without the appropriate permit conditions to limit major source permit applicability (e.g. PSD, Title V Section 112(g)) is in violation of those requirements. In recent years, several states have revised their SIPs to allow for pre-construction waivers for “true” minor sources. Nevertheless, we periodically observe that sources may still try to seek a waiver to begin major source construction activities prior to receiving their permits. The federally-approved (and state-approved) Kansas rules contain no provision for a source, whether a “true” minor or not, to commence early construction. Further, our review of the files reveals no evidence that the department is allowing sources to commence construction prior to obtaining all of the required approvals or permits.

EPA Recommendations:

We recommend that the department undertake an effort over the next two years to focus on the top four program recommendations. As appropriate, the department may re-prioritize the list to concentrate on those areas most critical to the continuing success of the permitting programs.

We recommend that the department review, evaluate the specific findings in Attachment S. and take corrective action as necessary for, 1) Empire District Riverton to assure that the “pilot test period” for petcoke is appropriately limited so that PSD is not triggered (or that a PSD permit is obtained), and, 2) Astaris (now ICL Performance Products) to assure that the control device has been properly demonstrated to achieve 99% or better control on HAPs to validate the assumptions used to avoid the MACT.

Source Permit Files Evaluated During Program Review

<u>ID</u>	<u>AFS</u>	<u>Facility Name</u>	<u>SIC</u>	<u>Construction Permit</u>	<u># Projects</u>	<u># Public Notice</u>	<u>Title V Operating Permit</u>	<u>EPA Reviewer</u>
067	00030	BP America Production Company	1311	X	3	1	X	RW
093	00021	BP America Production Company	1311	X	3		X	RW
173	00029	Cargill, Inc. (Soybean Mill)	2075	X	6	3	X	TF
125	00035	CCPS Transportation, LLC	4612	X	1	1	X	RW
173	00068	Coleman Co., Inc. (The)	3429	X	3		X	PS
035	00036	Coffeyville Resources Crude Transport.	4612	X	1	1	X	TF

125	00059	Coffeyville Resources Crude Transport.	4612	X	1	1	X	JK
169	00037	Crestwood, Inc.	2434	X	5		X	JK
003	00030	East Kansas Agri-Energy	2869	X	2	1		TF
021	00002	Empire District Electric Company (The)	4911	X	3		X	JK
161	00001	Fort Riley, Army	9711	X	3		X	JK
035	00031	GE Engine Services, Inc - Strother South	3724	X	4		X	JK
777	00287	Harshman Construction L.L.C.	1422	X	12			RW
045	00013	ICL Performance Products, Inc.	2819	X	7	2	X	JK
091	00126	ITW Dymon	2842	X	5			PS
125	00064	John Deere Coffeyville Works, Inc.	3566	X	4			JK
161	00007	Kansas State University	4911	X	7	1	X	PS
117	00001	Landoll Corporation	3523	X	5			TF
145	00024	Larned State Hospital	8063	X	2			PS
005	00002	MGP Ingredients, Inc.	2085	X	16	2	X	TF
079	00045	Mid Continent Cabinetry	2434	X	7		X	PS
777	00018	Midwest Minerals, Inc.	1422	X	8			PS
175	00012	National Beef Packing Company, L.L.C.	2011	X	4	2	X	TF
189	00008	Northern Natural Gas Company	4922	X	1		X	TF
169	00050	Schwans Global Supply Chain, Inc. (Tony's Pizza)	2038	X	2	1	X	RW
777	00297	Shawnee Rock Company	1422	X	15			TF
055	00023	Sunflower Electric Power Corporation	4911	X	1		X	JK
021	00033	Tamko Roofing Products, Inc.	2952	X	12	1		RW
055	00043	Tyson Fresh Meats, Inc.	2011	X	4	1	X	JK
063	00019	Western Plains Energy, L.L.C.	2869	X	2	1		PS
151	00054	Wildcat Bio-Energy LLC	2869	X	2	1		RW

Attachment Q: Detailed Comments on Permit Source Files

Attachment R: Quick Summary of Findings for Permit Source Files Reviewed

Attachment S: NSR Self-Evaluation Questionnaire Completed by KDHE

CHAPTER 5

ENFORCEMENT AND COMPLIANCE

Introduction:

The report examines 12 critical elements covering inspection implementation, enforcement activity, commitments in annual agreements and data integrity consistent with the State Review Framework (SRF) issued by the Office of Enforcement and Compliance (Attachment Y: State Review Framework). These 12 critical elements: 1) Inspections/coverage of the regulated universe; 2) Documentation of inspection findings; 3) Timely and accurate completion of inspection reports; 4) Timely reporting of violations; 5) Inclusion of injunctive relief and return to compliance; 6) Timely initiation of enforcement actions; 7) Economic benefit calculations; 8) Collection of appropriate economic benefit and gravity portion of a penalty; 9) Meeting PPA/PPG/SEA agreements and commitments; 10) Timely data requirements; 11) Accurate data requirements; and 12) Complete data requirements, compare the actual compliance and enforcement practices of the KDHE with the Clean Air Act (CAA) Stationary Sources Program policies and guidance.

The purpose of the review is to assess KDHE's compliance and enforcement activities to ensure that violations that are being identified by KDHE are being reported to EPA Region 7, and that timely and appropriate enforcement actions are taken on the violations. The review also includes an overall assessment of the enforcement program.

The EPA enforcement review team included JoAnn Heiman and Gary Bertram, both representing the Air Permitting and Compliance Branch (APCO). Vic Cooper, Russ Brichacek and Mariellen Butler were the primary representatives for the KDHE air compliance program.

Methodology of the Review

Prior to meeting with KDHE, a list of source files to be reviewed was prepared and provided approximately one week prior to each visit. Providing the file list in advance provided ample opportunity to pull all necessary information into a central location. In addition to the files reviewed at KDHE, EPA also reviewed files maintained by the Wyandotte County Health Department. EPA reviewed 27 KDHE files and five Wyandotte County Health Department files. Source files were randomly selected with an effort made to include synthetic minors, and major sources subject to significant CAA requirements such as NSPS, NESHAP and MACT. The Aerometric Facility Data System (AFS) data base was used to identify source files for file review.

File Review

A Self-Evaluation Questionnaire (Attachment: Z) was developed by EPA to assist with file review. The questionnaire was completed for each source file reviewed. The EPA review

covered calendar year 2004 activities to the date of file review. EPA conducted the file review on four visits to the KDHE between the months of February and May, 2006. Any additional enforcement information made available to EPA following the date of file review was also included in the review. Any questions regarding file content or enforcement actions were presented to KDHE either during the EPA visit or submitted via e-mail briefly following each visit.

Program Element Review

Review of the program elements was conducted primarily by evaluating the data KDHE inputted into AFS for Federal Fiscal Year 2005. The data was compiled, tabulated and made available for review on the U.S. EPA web site. The table summarizing the results is available at <http://www.epa.gov/idea/otis/stateframework.html>.

Program element review is based on Federal Fiscal Year 2005 data.

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

Inspections at major sources: The KDHE Compliance Monitoring Strategy (CMS) (Attachment: Z) which KDHE agreed to in the 12/03/95 Implementation Agreement, states that KDHE will follow the guidelines for minimum inspection frequencies for major sources. The KDHE CMS further states that a Full Compliance Evaluation (FCE) will be conducted at major sources every two years, except for a mega-site and some natural gas compressor stations that will be performed every three years. KDHE conducted an FCE at 323 of the 328 major sources (98.5%) over the past two fiscal years. This fell short of the national goal of 100%, but it is well above the national average of 75.4%.

Inspections at synthetic minor (80% of major source level) – (SM80s): The CMS that KDHE agreed to already states that KDHE will inspect facilities that emit or have the potential-to-emit at or above 80% of the major source threshold once every five years. KDHE conducted an FCE at 620 of the 731 synthetic minor sources (84.8%) over the past four fiscal years. This exceeds both the national goal (80%) and the national average (77.8%).

Title V Annual Compliance Certifications received and reviewed: KDHE received and reviewed 315 of the 319 annual compliance certifications due (98.7%) during the fiscal year. This fell short of the national goal of 100%, but it is well above the national average of 76.2%. Further evaluation of the four annual compliance certifications revealed that the certifications had been reviewed, however the source was late with their submission; therefore, the state actually reviewed 100%.

Sources with unknown compliance status designations: AFS generates an unknown compliance status for CMS sources when either an FCE was not done within two fiscal years or an FCE was completed but was not entered into AFS. KDHE had one facility identified with an unknown compliance status.

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

Each inspection report reviewed contained a checklist that had been prepared for the facility. The checklist addressed permit requirements. A checklist outlining regulatory requirements was prepared for the facilities not requiring a permit. The checklists appeared to be thorough.

The checklists are a valuable tool for the inspector. However, many of the inspection reports reviewed contained limited narrative. Violations were identified, but a narrative description of inspector observations was not always present (see recommendations).

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

Inspection reports reviewed were typically completed within one week of inspection. Violations are typically identified by the time the inspection report is completed.

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

KDHE has a high priority violation discovery rate (per major FCE coverage of major and minor sources) of 4.8%. This places KDHE just below the national goal of greater than ½ of the national average of 9.7%.

KDHE has a high priority violation discovery rate (per major source) of 2.9%. This rate of discovery meets the national goal of ½ of the national average of 4.3%.

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

NONs – A KDHE issued Notice of Non-compliance (NON) requires the facility to respond by documenting correction of the violations. Deadlines are placed in the NON. The EPA review revealed that two dry cleaners did not provide a response to the KDHE issued NON. Instead, KDHE conducted a follow up inspection to document whether the violations had been corrected.

Orders – The EPA review of orders and consent decrees revealed that time frames for compliance were included in the actions.

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

The percentage of HPVs unaddressed for greater than 270 days is 69.8%. This is higher than the national average of 50.6%. It should be noted that 19 of the 37 unaddressed sources were part of a statewide “global” settlement for Anadarko Gathering Company.

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

The KDHE Air Regulatory Enforcement Policy (July 14, 2005) takes into consideration the gravity of the violation and the economic benefit to be gained by the violator. Documentation of the penalty calculations were not found for all of the orders reviewed by EPA. Penalties collected ranged from \$1000 to \$51,000 for the files reviewed. KDHE should maintain documentation of penalty calculations, including a justification, in the case file for each penalty order issued.

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.

The percentage of actions at HPVs with a penalty is 92.9%. This exceeds the national goal of 80% and the national average of 79.3%.

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

Language in the State grant work plan commits KDHE to conduct timely enforcement actions against major and synthetic minor sources, consistent with the State’s enforcement policies and priorities. The grant work plan contains no specific enforcement commitments, since Title V fees are used to cover compliance and enforcement of major sources. However, as noted above, KDHE has been very close to, or exceeded current national goals for inspections and enforcement.

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

Minimum data requirements represent the minimum amount of data that EPA believes is necessary to manage the national air stationary monitoring and enforcement program. FCEs, results of stack tests, results of Title V annual certification reviews and compliance status are some examples of the 26 minimum data requirements.

KDHE has entered 73.3% of the HPVs into AFS greater than 60 days after designation. Region 7 holds monthly calls with the KDHE enforcement staff. AFS issues will be added to the regular

discussions in an effort to proactively address future data entry concerns and emphasize the importance of timely entry of minimum data requirements.

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

KDHE enters data into their I-Steps database. The I-Steps data is provided to EPA Region 7, who then batches the data into AFS. Region 7 believes all minimum data requirements are being entered into I-Steps.

And,

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

EPA Recommendations:

KDHE is to be commended for its file organization. Requested files were quickly located and provided to the EPA reviewers. Files are organized by identification number, which remains constant for a site. Some of the requested files contained facilities with name or ownership changes. The file contained all necessary information, irregardless of site ownership.

KDHE is to be commended for its knowledge of current and historic enforcement activity. As a result, KDHE was able to quickly respond to questions posed by the EPA reviewers.

KDHE and Wyandotte County Health Department are to be commended for the source specific checklists used during inspections. The checklists are a valuable tool that can help the inspector quickly determine if a violation of the air regulations or facility permit has occurred.

The inspection reports would benefit from a consistent format. Some inspection reports consisted solely of the inspection checklist. Some reports consisted of the inspection checklist with handwritten notes in the margins. Some reports consisted of a checklist and narrative describing inspection observations and violations. The latter better described the inspector's findings. EPA recommends that inspection reports consist of a brief narrative addressing the inspector's observations and violations and attaching the checklist(s) as a supporting document.

Penalty justification/calculation documentation was not found in all of the files where a penalty was assessed. KDHE should ensure such documentation is included in the file for each penalty order issued.

Several inspections were conducted with a memo in file stating a letter was not mailed to the facility due to ongoing compliance issues. Such statements in the file are confusing and suggest that either there was no purpose in the inspector's visit or the inspector was not informed in advance of on-going enforcement activity. If KDHE requires the inspection, then the file should

contain documentation discussing the purpose of the inspection and the relation to the on-going enforcement activity. If KDHE does not require the inspection (and plans to take no action based on the inspection findings due to an ongoing enforcement action), then it may be a more efficient use of resources to communicate this information to the inspector and provide an alternate inspection target.

Although the files are well organized, the EPA reviewer noted a number of “holes” in the files, including facility response to enforcement actions and KDHE follow up action to identified violations.

Source Specific Findings

Deffenbaugh, Ind. (091-0117)

Documents in the file indicate discussions were held with the facility prior to drafting the CAFO in an effort to bring them into compliance. Although the intent is to speed resolution of the enforcement action, this approach can have the effect of complicating resolution of the enforcement action. The purpose of the CAFO is to outline the requirements to bring the facility into compliance and establish a date by which compliance is to be achieved.

Forest View Landfill (209-0003)

The facility is classified as HPV for NSPS WWW for flaring issues and monitor downtime. The flare issues were identified in June 2003. A September 24, 2004, inspection states “5th time out of compliance.” An October 4, 2004, memo lists the following compliance issues identified during the September 24, 2004, inspection: recordkeeping/no notification of 10 new gas extraction wells and ~2120 feet of gas collection header; failure to submit annual NSPS report and failure to submit collection & control design information. The file contains no additional information regarding the potential violations identified by the inspector. Therefore, it is unknown if the potential violations identified by the inspector were addressed.

Enforcement action for violations noted in June 2003, were not formally addressed for well over two years. The EPA December 22, 1998, policy “The Timely and Appropriate Enforcement Response to High Priority Violations” states that HPVs should be addressed within 270 days of designation as an HPV. EPA recommends that KDHE respond more quickly in preparing enforcement actions. The longer it takes to settle a case, the longer the facility may be in noncompliance. Also, in this case, the delay in issuing the enforcement action in a timely fashion may be an economic benefit for the facility due to a relatively low penalty (\$6,000) to address violations that may not have been resolved in excess of two years.

Columbian Tec Tank (099-0037)

A June 2005 letter terminated the December 2004 CAO. KDHE collected \$22,000 and waived the need for a Class I permit due to a lower Potential to Emit by the facility. The request

to vacate the Class I permit was made in a memo from the facility to KDHE dated November 2004. Reference to the memo was found in the file, but a copy was not found by the EPA reviewer. An August 2, 2005, inspection revealed the facility was operating differently than reported in its request to vacate their Class I permit. KDHE is unsure if a violation exists due to the fact that the facility is now classified as a B source and no longer is subject to a Class I permit. An information request letter was mailed to the facility on March 15, 2006, requesting additional information that will help determine if the facility is a true minor source.

EPA recommends that decisions to reclassify Class I facilities to synthetic minor not be incorporated into enforcement settlement agreements unless the facility has implemented a SEP that will clearly reduce its potential to emit. The EPA reviewer was unable to find a copy of the memo from the facility requesting the facility reclassification. However, the situation gives the appearance that the facility was rewarded for settling the enforcement action.

Air Capitol Plating (173-0152)

The facility is an HPV. The facility failed to submit reports during the years 2003, 2004 and 2005. Inspections were conducted September 27, 2004, and July 20, 2005. The inspector noted no violations during the two inspections. However, KDHE issued an LOW on May 2, 2005, and an NON on May 26, 2005. In addition, the facility submitted semi-annual compliance certifications identifying a number of violations, including: 1) formulations exceeding VOC limits; 2) use of unapproved solvent; 3) top coat exceeding VOC limits; 4) primer exceeding VOC content limit; and 5) top coat exceeding organic HAP content. The most recent compliance certification reviewed February 15, 2006 states violations still exist.

“Day Zero” was established as March 15, 2005, to establish the facility as an HPV. In accordance with the EPA December 22, 1998, policy “The Timely and Appropriate Enforcement Response to High Priority Violations” states that HPVs should be addressed within 270 days of designation as an HPV. A formal enforcement action has not been issued as of June, 2006. EPA recommends that KDHE respond more quickly in preparing enforcement actions.

National Beef Packing (175-0012 & 057-0013)

The case against both sites was settled at the same time. The facility paid a penalty and prepared an EMS. The CAO was terminated on May 3, 2005. Inspection of the two facilities occurred on January 10 and 11, 2006. The inspector noted no violations. However, a memo was also added to the file stating that a letter would not be mailed to the facility due to “Topeka issues”. The EPA reviewer was informed that the inspector was not aware the CAO requirements had been met.

Snorkel International (043-0017)

The facility failed to submit 2002 Emissions Inventory. An order was issued to the facility in December 2003. The CAO was terminated October 4, 2004. A penalty of \$1500 was

waived due to fact that Snorkel purchased the site from Omniquip in December 2002. Snorkel submitted EI forms to Omniquip for completion, but Omniquip did not respond. Inspections on April 15, 2004, and January 18, 2006, revealed no violations.

Palmer Manufacturing (055-0055)

A memo in the file documents the facility was open burning. The memo includes e-mails documenting the facility's knowledge of the open burning ban. An order was issued against facility seeking \$3500 in penalties. No documentation in file regarding current status of order.

Marble Creations (091-0154)

The facility was issued an order in November 2004, for late submission of their Class II permit application. It was also noted that facility's PTE would indicate they are a major source. A CAO was issued in April 2005. The CAO required the following: payment of \$2500 penalty; use of low-hazard air pollutant emission spray guns by July 15, 2005; and testing of one new low-HAP gel coat or resin each year. The CAO was terminated on July 7, 2005, and the penalty collected. An inspection was conducted November 29, 2005. The following comment was found in the report, "Facility has not met the terms of the CAO, which is now terminated." However, a letter was mailed to the facility on November 30, 2005, stating no violations were noted during the inspection.

Clay Center (027-00007)

The facility was issued an order in July 2004. The order cited the facility for failure to submit an annual certification, failure to submit semi-annual reports, late submission of quarterly reports and failure to conduct Method 9 and/or submit reports. The order assessed a penalty of \$7,000. A letter was mailed to the facility on September 9, 2005, noting that the facility is late submitting semi-annual reports. The letter further states that this is a recurring violation. The facility's consultant responded September 19, 2005. The consultant states there was a misunderstanding regarding the reporting dates. No additional information was found in the file documenting resolution of the September 9, 2005, letter or the July 2004 order.

London Pride Cleaners (091-00220)

KDHE issued an NON to facility on March 18, 2005, citing the following: 1) failure to maintain perc usage records; 2) failure to conduct leak inspections; 3) failure to maintain weekly temperature monitoring logs; and 4) failure to provide 30-day advance notification of startup. Facility was reinspected May 16, 2005, to determine compliance. No violations were noted during the inspection. However, no documentation of facility's response to NON or NON resolution was found in file.

Tower Metal Products (107-00027)

The file contained a memo from the inspector dated September 1, 2004. The memo notes that a letter was not prepared for the August 28, 2004, inspection due to compliance issue. A telephone conversation record dated December 15, 2004, states that both parties have decided to void the existing permit because the facility is a "B" source. A Class II permit was issued to the facility on April 15, 2005. There is no additional information regarding resolution of the compliance issue noted in the inspector's September 1, 2004, memo.

Discount Cleaners (173-00299)

The facility was issued an NON on August 16, 2004, citing the following violations noted during the August 4, 2004 inspection: 1) failure to maintain perc records; 2) failure to conduct leak checks; and 3) failure to maintain records of temperature checks. An inspection conducted on September 7, 2004, determined the violations had been corrected. No documentation of facility's response to NON was found in file.

Innovia Films (177-00035)

On December 21, 2005, KDHE issued a CAO to facility for violation of previous CAO and failure to demonstrate compliance with Subpart UUUU by December 10, 2005. The CAO placed facility on a compliance schedule. In addition to a \$10,000 penalty, the facility is required to accomplish the following: 1) develop a supplemental environmental project; 2) prepare and implement an EMS by June 1, 2007; 3) contribute \$1000 to support environmental education; 4) submit a construction permit application by March 1, 2006; and 5) install a flare within one year of permit issuance. The penalty was paid on January 18, 2006. The permit application was submitted on March 1, 2006. On March 15, 2006, the facility suggests the addition of a boiler control system to increase boiler efficiency to serve as the required supplemental environmental project. KDHE accepted the supplemental environmental project on March 20, 2006. It appears as though the supplemental environmental project was not proposed until after the CAO was signed. EPA's SEP Policy states that "The type and scope of each project are defined in the signed settlement agreement." The CAO requires the facility to commit "at least \$38,000 for a SEP project involving air emission reductions at their Tecumseh facility that is agreed mutually by KDHE and Innovia."

The EPA SEP Policy requires a SEP meet one of the following criteria:

- the project is designed to reduce the likelihood that similar violations will occur in the future;
- the project reduces the adverse impact to public health or the environment to which the violation at issue contributes;
- The project reduces the overall risk to public health or the environment potentially affected by the violation at issue.

The State SEP Policy offers similar requirements, but also requires the facility to develop an Environmental Management System and contribute to a statewide environmental education

program. However, the EPA reviewer did not find documentation showing the proposed SEP would reduce emissions, reduce impact to the environment or go beyond minimum compliance with the law.

Triumph Accessory (191-00035)

An inspection conducted on August 4, 2004, determined the facility is subject to Subpart T. Facility had not submitted annual solvent usage information. A memo in the file dated January 5, 2005, states that an NON should be issued to the facility for failure to report. No follow-up to the memo was found in the file.

Overall Assessment of Enforcement Program

The State of Kansas is implementing an adequate Air Enforcement Program. KDHE has program elements that are highlighted and areas for improvement as discussed below.

File Structure: Files were organized by ID number (not facility name) which made it very easy for staff to locate files, even for facilities in which ownership has changed. Documents located within the files are organized chronologically. Occasionally, a document would be missing or misfiled. But, overall Kansas is to be commended for the management of their Air Enforcement Files.

Inspections: Kansas came very close to inspecting all of its major sources in the past two years. Even though AFS would indicate they fell short, Kansas still performed much better than the national average. Tools available to the inspectors (i.e. checklists) are very well constructed and are valuable elements of an inspection.

Enforcement: Kansas is committed to returning violators to compliance. This is a worthy goal which should be the cornerstone, but balanced with formal enforcement. Kansas has been successful returning facilities to compliance.

EPA Recommendations:

Inspections: Although the checklists are important to the inspection procedure to assist the inspector in identifying potential permit and rule violations, some inspectors appear to rely too heavily on the checklists. Some inspection reports consisted primarily of the inspection checklist and little more. The inspection checklist should be a tool to support the findings of the inspector. Thus, the inspector should also provide, at a minimum, a brief narrative describing the inspection procedures and findings.

Timely Enforcement: Sometimes the efforts to negotiate before an order is issued or prior to a CAFO have resulted in delayed resolution of the enforcement action, and delayed compliance. In other cases, the CAFO may have been signed before the facility identified a SEP or the CAFO may have been terminated before the final deliverables were received by Kansas. Kansas should

use the available enforcement tools (enforcement orders, penalties, CAFOs) to encourage a rapid return to compliance with minimal delay and ensure compliance with all conditions are achieved before terminating the CAFO. By using these enforcement tools, specific deadlines can be set for the facilities to return to compliance.

CHAPTER 6

ASBESTOS

Introduction:

The Bureau of Air and Radiation of KDHE implements a fully-delegated Asbestos NESHAP program pursuant to 40 CFR Part 61, Subpart M. The program is responsible for notifications, inspections, enforcement case development, outreach, and data management. Given the limited resources devoted to the program, the level of effort is commendable. KDHE exercises common sense and good judgment in prioritizing inspections and pursuing enforcement actions. The enforcement files are well organized, and include adequate documentation to support enforcement actions. KDHE also implements an asbestos licensing program for workers and contractors/supervisors.

Program Operation:

Non-notifiers:

KDHE identifies non-notifiers in several ways. Abatement projects using demolition work practices are tracked to identify non-notifiers for the actual demolition. The demolition notification forms include questions concerning friable material found during the asbestos inspection, and the responses to those questions are used to identify non-notifiers for abatement projects. KDHE receives several citizen complaints per month, and many of these constitute demolitions with no prior notification. Field inspectors from other programs are trained to look for demolitions in progress, and district office personnel in other media programs have received training on the asbestos regulations. Also, news media reports are monitored to learn of non-notified projects.

Enforcement Response Policy:

KDHE has a written asbestos program enforcement policy document dated August 12, 1992, which considers gravity of the violation, compliance history, economic benefit, and other relevant factors. Generally, a notice of noncompliance is issued for first-time violators and for paperwork violations, whereas penalties are sought for repeat violators of emission control requirements. KDHE can levy penalties of up to \$5000 per violation for state regulations, and up to \$10,000 per day for NESHAP violations. When warranted, KDHE can also revoke business licenses. The present enforcement response policy does not appear to address the timeliness of enforcement actions; however, KDHE management and staff do keep track of case review and enforcement. KDHE is planning to update its 1992 policy, which will include criteria for documenting penalty calculations.

Education and Outreach:

KDHE takes advantage of opportunities to provide education and outreach to interested parties. KDHE meets frequently with city officials planning urban renewal projects and conducts "courtesy" inspections so that demolition and renovation requirements can be communicated beforehand. Similar approaches are also conducted with school districts planning renovation projects. The KDHE website includes many asbestos forms and resources, and the Department plans to make the site more user-friendly.

NESHAP Category I nonfriable floor covering:

KDHE follows EPA's policy with regard to the removal of Category 1 non-friable floor covering. If the material is in good condition, and is not sanded, ground or abraded, the removal is not considered a regulated project.

Policy Determinations:

KDHE maintains a Q & A notebook of EPA policy determinations and also accesses EPA's Applicability Determination Index (ADI).

Data Management:

NESHAP inspection data are entered into a Microsoft Access database and a hardcopy report is generated and maintained in the inspection folder for licensed abatement companies. The Access database has been operational for a few years, and replaced a previous AS400 system. The Access database has not been purged, and data from the former AS400 system has been merged into the new system. If an enforcement action is initiated, and enforcement file folder is maintained until the case is closed, at which time the folder is stored in the file room.

The Access database is also used to track notifications. The system is not accessible by either the KDHE regional offices, or the local delegated programs; however, for active abatement projects, the data base is able to generate Microsoft Excel and Word project summary documents which can be accessed throughout KDHE on its shared T: drive. NESHAP inspections conducted through work agreements with local agencies are also entered into the database.

File Review:

KDHE's files are organized by contractor name, and separate sub-folders are maintained for notifications, inspections and enforcement actions (if applicable). The files are well organized and contain sufficient information to document enforcement actions. File documentation was excellent and included telephone conversation records, inspection reports, event chronologies, newspaper articles, results of asbestos sample analysis, and notices of noncompliance, administrative orders and penalty actions. In particular, the compliance inspection reports were

well written and contained extensive narrative discussions in instances where enforcement action was to be pursued. Asbestos samples and chain of custody information are filed at the KDHE laboratory facility. KDHE frequently documents asbestos inspections using a video camera. This form of evidence has proven quite effective in settling asbestos enforcement cases. For additional information see Attachment T: BAR Annual Report 2005)

In all files examined, enforcement actions taken were appropriate for the gravity of the violations. EPA recommends that KDHE include a memorandum in enforcement files that documents the calculation and basis for penalties that are assessed. Most enforcement actions appeared to proceed expeditiously and delays seemed to be beyond the control of the department. KDHE also keeps well-documented asbestos sampling log book. Entries include analysis results, the location from which the sample was taken and the physical properties of the sample.

KDHE promptly issues a letter of response to each party submitting an asbestos abatement notification. If the notification information is incomplete, KDHE contacts the party to get additional information. The letter of response contains a summary of the pertinent notification information, which has proven valuable in documenting violations.

Subsequent to an asbestos inspection, KDHE issues a follow-up survey to the owner/operator. Obviously, when violations are documented and enforcement action is being considered, the survey responses often reflect the ire of the respondent. However, the survey responses generally offer KDHE a means of improving its compliance inspection process.

EPA Recommendations:

Include a memo in enforcement files which documents the calculation and basis for the assessed penalty. EPA understands that KDHE intends to implement this recommendation in conjunction with revising its August 12, 1992, Enforcement Response Policy.

CHAPTER 7

AMBIENT AIR MONITORING

Summary:

The Kansas Department of Health and Environment (KDHE) is responsible for conducting the ambient air monitoring program throughout the state of Kansas. This program includes a State and Local Air Monitoring Station (SLAMS) network of air monitors for carbon monoxide (CO), ozone (O₃), particulate matter-10 micron (PM₁₀), particulate matter-2.5 micron (PM_{2.5}), nitrogen dioxide (NO₂) and sulfur dioxide (SO₂). This network is designed to meet the EPA sitting regulations and is reviewed annually.

All of the monitors and the laboratory analytical procedures being utilized in this SLAMS network are EPA designated reference or equivalent methods. The standard materials used to calibrate and audit the monitoring systems are properly certified and have the required certification to NIST reference standards.

The agency's standard operating procedures (SOP's) and Quality Assurance Project Plan (QAPP) are in good order and well written. KDHE data completeness has historically been good for all pollutants monitored as have been the precision and accuracy (P&A) results for their monitoring.

Introduction:

An Air Monitoring System Audit of the KDHE was conducted on November 7, 2004. The purpose of the audit was to document the agency's compliance with the EPA ambient air monitoring regulations. The audit information was obtained from on-site monitor performance audits, agency staff interviews, a review of the most recent year of data in the EPA Air Quality System (AQS), and the agency's performance in the National Performance Audit Program (NPAP). A copy of the Air Monitoring System Audit Questionnaire is attached as Appendix A.

The participants in this audit were:

Name	Agency
Leland Grooms	EPA Region 7
Thien Bui	EPA Region 7
James Regehr	EPA Region 7
Mike Martin	KDHE/BAR
Gary Cragg	KDHE/BAR
Fred Diver	KDHE/BAR

Gary Ficklin	KDHE/BAR
Scott Weir	KDHE/BAR
Yan Wang	KDHE/BAR
Maurice Terrebonne	Wichita Environmental Health
John Stark	Wichita Environmental Health
R. Sachs	Unified Government of Wyandotte County Department of Air Quality
Perry Piper	Shawnee County Health Agency

The full cooperation and assistance of these individuals is acknowledged and greatly appreciated.

EPA Region VII audit personnel were able to visit one half of KDHE's air monitoring sites. Half of these sites were chosen using National Performance Audit Program results, the current Data Completeness Report and the current PARS Report. The other half were randomly chosen. The following is a list of the audited monitors and the monitor audit results:

Site Location	Pollutant	Audit Results
JFK Center	CO	Excellent
JFK Center	NO ₂	Excellent
JFK Center	O ₃	Excellent
JFK Center	SO ₂	Excellent
Justice Center	PM _{2.5}	Satisfactory
Justice Center*	PM _{2.5}	Satisfactory
Mine Creek BF	CO	Excellent
Mine Creek BF	O ₃	Excellent
Mine Creek BF	SO ₂	Excellent
Mine Creek BF	NO ₂	Excellent
Mine Creek BF	PM _{2.5}	Satisfactory
Mine Creek BF*	PM _{2.5}	Satisfactory
Blackbob Elementary School	PM _{2.5}	Satisfactory
1900 E. 9 th , SC	CO	Excellent
1900 E. 9 th , SC	NO ₂	Excellent
1900 E. 9 th , SC	O ₃	Satisfactory
Shawnee County, Robinson Sch	PM ₁₀	Satisfactory
Shawnee County, McClure Sch	PM _{2.5}	Satisfactory
Shawnee County, Robinson Sch	PM _{2.5}	Satisfactory
Wichita, Health Department	PM _{2.5}	Satisfactory
Wichita, Health Department*	PM _{2.5}	Satisfactory
Wichita, Coleman	PM ₁₀	Satisfactory
Wyandotte County, JFK Center	PM ₁₀	Satisfactory
Wyandotte County, JFK Center*	PM ₁₀	Satisfactory
Wyandotte County, JFK Center	PM _{2.5}	Satisfactory

Wyandotte County, JFK Center*	PM _{2.5}	Satisfactory
* indicates collocated monitors		

Audit Results:

The technical systems audit focused on the following five areas:

- 1) Network Management
- 2) Field Operations
- 3) Laboratory Operations
- 4) Data and Data Management
- 5) Quality Assurance/Quality Control

These areas were thoroughly reviewed onsite and through the technical systems audit form questionnaire. EPA Region VII found only minor deficiencies in these areas.

Network Management:

The current ambient air monitoring network in the state of Kansas (including local agencies) includes: four CO, nine O₃, twelve PM₁₀, twelve PM_{2.5}, four NO₂ and five SO₂ monitors. A listing of these sites is attached as Appendix C. It is reviewed annually to determine if monitoring locations need to be relocated, added or deleted. These monitors are adequately maintained during one visit every two weeks to each monitoring location.

All of the monitors and laboratory procedures used in the KDHE network have been designated by EPA as approved reference or equivalent methods for ambient air criteria pollutants. Each of the standard materials used to calibrate or audit these monitors or procedures is properly certified. When required, the standard certifications are traceable to NIST reference standards.

Field Operations:

KDHE has participated, as required, in EPA's national monitor performance audit program conducting audits of each type of pollutant monitor they operate. A review of the results of these audits confirms they have been satisfactory for the past two years. EPA Region VII, as noted above, conducted several monitor performance audits as part of this program audit. At least one analyzer for each pollutant monitored by KDHE was audited by Region VII. The calibration of each audited monitor was satisfactory or better. Also, the agency's internal monitor performance auditing has been done according to the EPA required schedule. The results for these audits were satisfactory in 2003-2004.

Laboratory Operations:

The laboratory operations for the KDHE PM_{2.5} program are currently contracted out to IML Air Science, Sheridan, WY. This program was audited by KDHE during the last fiscal year and no unfavorable findings were reported.

The PM₁₀ Laboratory for the state is located at the Forbes Field facility in Topeka. This area was reviewed during the technical system audit on November 7, 2004 and was found to be operating in a satisfactory manner.

Data and Data Management:

The completeness of valid data from the KDHE's ambient monitoring network historically has been good. The quarterly reports of this data to EPA have also been timely. This good record of data completeness continued in 2003 (the latest full year of validated data), every monitor in the network had more than 75 percent complete data for each quarter as required.

Quality Assurance/Quality Control:

The agency's standard operating procedures (SOP's) and Quality Assurance Project Plan (QAPP) are in good order and well written. However, several of the local agencies are operating off outdated SOP's. KDHE's data completeness has historically been good for all pollutants monitored as have been the precision and accuracy (P&A) results for their monitoring.

EPA Recommendations:

KDHE

KDHE needs to insure that all local agencies are operating off the most up to date SOP's for equipment operation and audit procedures to ensure consistency throughout the program.

Manual spot checks should be performed periodically on the weight equation for PM_{2.5} results received from the contract weighing lab.

The KDHE episode plan and SOP should be updated to include an AQI action limit lower than the present score of 200.

Air monitoring site records should be updated to include current pictures of the site, periods and reasons of invalidated data and record of requests and permission for moving/discontinuing site operations. All air monitoring site records should be stored in a central file.

Internal shelter temperature at monitoring stations must be maintained between 20 - 30 degrees Celsius to meet EPA reference and equivalency requirements. In order to document temperature control, a continuous temperature recorder at all monitoring sites is recommended. (Reference: Quality Assurance Handbook for Air Pollution Measurements Systems, Volume II: Part I, Ambient Air Quality Monitoring Program Quality System Development, EPA-454-R-98-004, August 1998, Section 7.1).

Cylinders BAL2189 (NO - 49.3ppm) and BAL3198 (NO - 48.7ppm) are out of certification. Care should be taken to use only gas standards that are within their certification periods.

Dirt was observed inside the sampling lines at the Health Department monitoring station in Wichita, KS. A cleaning schedule for sampling lines and manifold is recommended and should be included in the Standard Operating Procedures (SOP).

Field handling of PM_{2.5} filters should be consistent with all technicians who operate the PM_{2.5} analyzers. Filters inside the cassettes should be loaded in the magazine in a clean environment. Extraction of the exposed filters should also be done in a clean environment, not at the monitors. Better defined filter handling procedures should be included in the existing SOP.

The design flow rate of the PM₁₀ Hi-Volume sampler should be checked during a flow rate audit. A specific space to calculate the percent difference of the design flow rate and sampler flow rate is recommended to be included in the PM₁₀ audit form. (Reference: Quality Assurance Handbook for Air Pollution Measurements Systems, Volume II: Part 2, Specific Methods, Quality Assurance Guidance Document 2.11).

A flow rate/design flow rate check should be done monthly on a PM₁₀ Hi-Volume sampler. (Reference: Quality Assurance Handbook for Air Pollution Measurements Systems, Volume II: Part 2, Specific Methods, Quality Assurance Guidance Document 2.11).

A Quality Control (QC) check should be performed by the monitoring agency after an audit failure to validate the audit failure. Only the QC check by the monitoring agency will determine the validity of the data. Corrective action is done only after the QC check is performed by the monitoring agency. This procedure should be included in the current SOP.

An external leak check, internal leak check, temperature check (ambient and filter), and pressure audit should be performed once a quarter. (Reference: Quality Assurance Handbook for Air Pollution Measurements Systems, Quality Assurance Guidance Document 2.12, Monitoring PM_{2.5} in Ambient Air Using Designated Reference or Class I Equivalent Methods).

All points of a multi-calibration for continuous gaseous analyzers should be within +-2% of full scale of best-fit straight line. These criteria should be calculated and shown on the calibration sheet to insure that a calibration is valid. (Reference: Quality Assurance Handbook for Air Pollution Measurements Systems, Volume II: Part I, Ambient Air Quality Monitoring Program Quality System Development, EPA-454-R-98-004, August 1998).

A clearer adjustment procedure should be developed and included in the current SOP for the continuous analyzers.

An observed adjustment was made to the NO and NO_x channels during an audit by EPA personnel before the operator checked the NO₂ channel. An adjustment should only be done after NO, NO_x, and NO₂ level one checks have been performed. An additional level one span check should be done after the adjustment.

A temperature and pressure check is recommended when an audit is performed on the continuous PM₁₀ monitor. This should be documented on the audit form.

At the JFK site, the CO was last calibrated on December 17, 2003, a time span of 10 months since the last calibration. All continuous analyzers should be calibrated 6 months after the most recent calibration as stated in the Kansas Ambient Monitoring SOP.

The flow rate criteria should be change to +-4 percent on the PM_{2.5} monthly verification form.

The PM₁₀ elapsed timer/counter being used by KDHE and all local agencies should be checked for accuracy on an annual basis. (Reference: 40 CFR Part 50, App. M, Section 7.1.5).

SHAWNEE COUNTY HEALTH AGENCY

A flow rate/design flow rate check should be done monthly on the PM₁₀ Hi-Volume samplers. (Reference: Quality Assurance Handbook for Air Pollution Measurements Systems, Volume II: Part 2, Specific Methods, Quality Assurance Guidance Document 2.11).

The current flow rate should be included during a calibration on the PM_{2.5} Calibration Form A +- 4 percent error calculation is also recommended for the one point verification.

The flow rate criteria should be changed to +-4 percent on the PM_{2.5} monthly verification form.

WICHITA ENVIRONMENTAL HEALTH

Current procedures for Wichita Environmental Health personnel include taking out a clean filter for the PM₁₀ Hi-Volume sampler and installing it in the cassette at the site. Filter recovery is also done at the site. EPA recommends that the clean filter be placed in the cassette in a clean environment protected and then installed in the monitor before sampling to reduce contamination. Exposed filter removal from the cassette should also be done in a clean environment. This procedure should be included in the current SOP.

A flow rate/design flow rate check should be done monthly on the PM₁₀ Hi-Volume samplers. (Reference: Quality Assurance Handbook for Air Pollution Measurements Systems, Volume II: Part 2, Specific Methods, Quality Assurance Guidance Document 2.11).

Calibration procedure for PM₁₀ Hi-Volume samplers should be consistent with the current SOP. If the manufacturer service manual is used then that should be included in the current SOP.

A more detailed documentation process is recommended for each recorded site visit to include maintenance documentation, PM_{2.5} filter information and corrective actions if needed.

Review sitting criteria on the Sedgwick County Health Department air monitoring site as it may be out of compliance with CFR requirements.

The barometric pressure sensor has not been certified since February 4, 2003. Pressure sensors should be calibrated/verified on an annual basis.

Quality assurance documentation such as temperature probe certification should be on hand. A good filing system for all documentation is recommended.

All PM_{2.5} filter cassettes should be installed in the magazine with a clean environment before taken out to the site for installation. Exposed filters should be taken back to the office inside a magazine, and then taken out when ready to ship to the lab within a clean environment. This procedure should be included in the current SOP.

The Chinook FTS SN#981105A certification expired on February 15, 2003. Care should be taken not to use any QC equipment that is not within allowable certification.

WYANDOTTE COUNTY

A flow rate/design flow rate check should be done monthly on a PM₁₀ Hi-Volume sampler. A certified flow orifice should also be used when a flow check is performed. Wyandotte County uses a Volumetric Flow Controller. If used, this procedure for the flow check should be included in the current SOP. (Reference: Quality Assurance Handbook for Air Pollution Measure).

For additional information see the following attachments:

Attachment U: National Air Monitoring System Audit Questionnaire

Attachment V: Monitor Audit Results

Attachment W: Ambient Air Monitoring Network

CHAPTER 8

AIR TOXICS

Introduction:

The BAR is where rules are adopted, the sources are tracked, reports submitted, inspection reports reviewed and permits written. The field offices' Bureau of Environmental Field Services (BEFS) or local agencies conduct source inspections. Source tests are observed by the BAR or the local agencies.

Inspections:

The BAR determines the number of inspections in each of the six field offices. The district field inspector submits a schedule of monthly inspections, and in general, the inspection numbers are evaluated by the BAR Central Office quarterly. Complaint inspections and other investigations/site inspections are scheduled as needed, and generally as soon as practical. Central office and district staff use a Complaint Investigation Form for documenting on-site investigations, as well as telephone or written complaints received from any source (public, governmental agencies, industry, etc.).

The report is expected to be sent back to the BAR within ten days of the inspection. Most of the inspection reports contain a cover sheet, a checklist, and comment sheet to determine basic source information. The report is reviewed for completeness and documentation of regulatory compliance.

Most Title V sources are inspected every year. The Synthetic Minors (KDHE Class II) sources are scheduled every two years. All Synthetic Minor sources in Kansas are scheduled for inspection on a one- or two-year cycle. Most other minor sources (KDHE "B" sources) are scheduled to be evaluated on a once every five-year cycle, except in Shawnee County where they are inspected on a yearly basis.

The data from the reports input into the BAR system and data are transferred to EPA for entry into AIRS. All reports are reviewed by BAR staff where follow up action is taken if deemed necessary.

Data Tracking:

The BAR personnel have used different spreadsheets over the past few years. The initial spreadsheets had a separate page for each standard, and listed the source and the points subject to the regulation. A second generation spreadsheet is being used that also tracks the compliance with the reporting requirements. BAR personnel are in the process of designing a data base to handle the requirements of the MACT notification and reporting and tracking.

Management of Program:

KDHE receives the initial notification reports, tracks and observes the performance test and tracks the compliance status. KDHE also incorporates the MACT standard in the permits and tracks the semiannual and annual compliance status reports. They schedule inspections, review inspections and track completion of the inspections. Two MACT categories, dry cleaners and secondary aluminum sweat furnaces, are not handled in this manner. The Bureau of Waste Management was tasked with inspections of dry cleaners and secondary aluminum sweat furnaces. The compliance data are entered into I-Steps, and some of the inspection and compliance data transferred to EPA for entry into AIRS.

Inspections:

Targeting of inspections, documentation of the sources' compliance during the inspection and reviews of the inspection report for the BEFS are excellent.

Two inspection reports, "Safety-Kleen, Inc, 2549 N. New York, Wichita" and "Raytheon Aircraft Company, 9709 E. Central, Wichita" did not have a detail checklist accompanying the inspection report. These inspection reports did not detail how the sources were complying with the standard. Appendix T-3

The one MACT standard, the dry cleaners' standard, Subpart M, is not tracked by the BAR program. Apparently the Bureau of Waste agreed in 1996 they would inspect the dry cleaners for compliance with the MACT standard. The Bureau of Waste submitted a list entitled "Outreach Cleaners" which listed 16 dry cleaners (Appendix T-4). The files for "Bentley's Garment Care Ctr., Neodesha," and "Hygenic Dry Cleaners, Topeka Kansas" were reviewed; these inspections do not include an air component to the inspections. The BAR program reviewed the Kansas files, after the on-site audit, and only found one dry cleaner inspection that included an air component to the inspection. EPA had received notifications from 145 dry cleaners located in Kansas.

EPA Recommendations:

EPA makes the following recommendations in response to the findings listed in Summary of Findings.

Evaluate the inspection reports for the local agencies and ensure that they meet a standard that allows the reviewer of the report to determine which parameters were checked to determine the source's compliance status and the compliance.

Revise the implementation plan for the MACT standard for dry cleaners.

KDHE should ensure all inspection reports contain a cover sheet, checklist, and comment sheet.

CHAPTER 9

TITLE V FEE REVIEW

Introduction:

The purpose of the Title V Fee Review was to assure that KDHE was collecting adequate fees and accounting for the direct and indirect costs associated with Title V and non-title V activities.

EPA started the Title V Fee review by submitting a set of questions to the KDHE, Bureau of Air and Radiation (BAR), concerning the Title V fee revenue, expenditures and the accounting system. KDHE provided detailed responses to the questions prior to the program review; however, KDHE was asked to give some clarification during the review.

The KDHE uses an Emission Inventory form for sources to identify their actual emissions for NO_x, VOC, PM₁₀, SO_x, PM, CO and HAP pollutants. Based on the amounts identified, an annual fee is paid on a per-ton basis. The current regulation fee is \$20 per ton. The fees are tracked by the source identification number using a spreadsheet.

The KDHE staff track their time through the use of cost codes to differentiate between Title V and Non-Title V activities. The BAR has a total of 53 people doing air quality work. Currently, Title V dollars fund 29.7 BAR FTE's and 7.14 Bureau of Environmental Field Services FTE's. The remaining positions are paid for with CAA section 103, 105, and State General Funds (SGF).

The reporting of Title V and non-Title V funds and activities are reviewed by the KDHE on a quarterly basis in order to make any needed adjustments. By tracking the revenues, expenditures and projections, the KDHE adjusts the per-ton yearly fee in order to meet the funding needs. A fee review was not performed during this program review.

Conclusion:

KDHE is collecting sufficient fees, and accounting for the direct and indirect costs associated with administering the Title V program in conjunction with the Non-Title V activities.

For additional information see the Self-Evaluation (Attachment X: Title V Self-Evaluation Questionnaire Completed by KDHE)

June 5, 2007

Mr. William L. Bider
Director
Bureau of Waste Management
Kansas Department of Health and Environment

Dear Mr. Bider:

The following is our response to your comments and feedback on the hazardous waste program review report that was provided to KDHE on March 7, 2007. Unless otherwise noted below, your comments are accepted and will be considered a part of the final report.

Hydrogeology Inspection Issues

- KDHE's comments on the hydrogeology program review were noted. In general, O&M and CME inspections in Kansas are technically sound and well written. Since the hydrogeology program review was conducted, KDHE created a comprehensive and well structured O&M inspection checklist which may substantially benefit efficiency and consistency. The EPA commends KDHE for their innovation and initiative in this effort. We look forward to working with KDHE to assist in the development of standard operating procedures for citing deficiencies (e.g., issuance of Notice of Violations), tracking the resolution of deficiencies using the RCRAInfo database, and documenting when the facility returns to compliance.
- EPA recognizes that outages of the RCRAInfo database created problems for data entry. Hopefully the updated and fully functional RCRAInfo system will facilitate timely entry of all nationally defined and required hydrogeologic inspection information into the database, including violations and resolution of violations. EPA will evaluate the possibility of providing RCRAInfo training for KDHE staff involved in permitting and corrective action at RCRA facilities.

Compliance and Enforcement Issues

- With respect to inspection reports being completed in a timely manner, KDHE responded to our comment that a few inspection reports were not signed and dated by the inspector. In these few cases, the inspection report had a space for signature and date by the inspector, but these spaces were not completed. We assumed that these were the final inspection reports since they were not marked as draft. However, we believe it is good practice to indicate that an inspection report is a final inspection report by including the inspector's signature and date, much the same way we sign and date other correspondence. The separate tracking system mentioned in KDHE's comments would not allow someone simply reviewing the file to determine whether an inspection report was final or not.

ARTD/RESP/Toensing/vb/7099/6/4/07H:RESP/Responseto SRFfrom KDHE
Davis Koesterer Slugantz Toensing

**Kansas Department of Health and Environment
RCRA Focused Program Review for FFY2005**

EXECUTIVE SUMMARY

The U.S. Environmental Protection Agency (EPA) Region 7 review team examined RCRA program elements hydrogeology, enforcement, authorization and program management for the Federal fiscal year 2005 (FFY05) as implemented by the Kansas Department of Health and Environment (KDHE) and the Kansas Bureau of Waste Management (BWM).

During this review, EPA staff reviewed file information and discussed site activities with KDHE project managers to evaluate hydrogeologic assessment activities and enforcement activities. In addition, EPA conducted a desk review of authorization and program management.

Hydrogeology Program Review

The following is a summary of the observations and conclusions resulting from the hydrogeology program review. The review checklist included as Attachment A to this report outlines the activities which were evaluated on a program-wide basis. Attachments B through E present site-specific evaluations for the facilities listed in Table 1 below.

The purpose of the hydrogeology program review is to evaluate the performance of BWM's Operation and Maintenance Inspections (O&M) and Comprehensive Groundwater Monitoring Evaluations (CME), which are conducted to determine if land disposal facilities have a groundwater monitoring system in place which is adequately designed, operated and maintained to monitor groundwater impacts from regulated units as required under 40 CFR Part 265 Subpart F. A CME is a comprehensive and detailed assessment of the adequacy of site characterization, and the design of a groundwater monitoring system. By contrast, an O&M is an enforcement inspection that ensures facilities properly operate and maintain their groundwater monitoring systems. An O&M is generally less resource-intensive and less detailed than a CME. It is conducted more frequently than the CME, and may also guide or focus a CME which may follow the O&M in subsequent years.

Federal guidance¹ suggests all RCRA land disposal facilities should receive a CME or an O&M routinely. Ideally, the guidance suggests that up to one-third of RCRA land disposal facilities receive a CME each year with the remainder of the population receiving an O&M. This schedule is not always practicable given resource constraints. KDHE currently requires a Groundwater Monitoring Report be submitted annually by all land disposal facilities in the state. It conducts an independent O&M at each facility on an approximate five year revolving schedule. This schedule is reasonable given the universe of regulated facilities and available resources.

KDHE projected completing four (4) O&Ms in FFY05, as cited in Table 1 below. Due to the loss of two staff members, KDHE did not complete O&M reports for Sinclair Oil and Total Petroleum as scheduled. A draft O&M report was in preparation for Sinclair Oil and was largely

¹ *Operation and Maintenance Inspection Guidance*. US EPA. OSWER 9950-3. March 1988.

complete at the time of this review. Of the facilities with final or completed draft O&M reports, the inspections and reports were technically sound, well written, and largely complete. Neither an inspection checklist nor a draft report was completed for Total Petroleum. These inspections are an important element of the RCRA compliance program, and KDHE should strive to meet these commitments on a yearly basis.

Table 1 – O&M Inspections Projected for FFY 2005

Facility Name	RCRA ID No.	Type of Inspection
Harcros Chemicals	KST210010062	O&M
Sinclair Oil	KSD091347898	O&M
Total Petroleum	KSD087418695	O&M
Cessna – Pawnee	KSD007233596	O&M

Although KDHE does have a program and policy for conducting routine hydrogeologic evaluations at land disposal facilities in the state, this review did identify several opportunities for improvement. In general, some data entries in RCRAInfo were missing or incomplete. Nationally defined and required entries include; (1) O&M and CME inspections, (2) violations or deficiencies found, and (3) resolution of violations. EPA strongly encourages KDHE to review facilities subject to groundwater monitoring in RCRAInfo and ensure that missing information is entered into the national database regarding the dates on which O&M and CME inspections have been conducted in the state since 1988. In the future, all nationally defined and required information should be entered into the database, including violations and the resolution of violations.

In some instances it was unclear, from reviews of KDHE files and the RCRAInfo database, whether and when deficiencies identified during an O&M inspection were addressed. An O&M is the same as any other RCRA inspection, and violations identified during the inspection should be recorded and tracked accordingly. EPA encourages KDHE to establish a standard process for citing deficiencies identified during an O&M or CME (e.g. issuing a Notice of Violation), tracking the resolution of deficiencies using the RCRAInfo database, and documenting when the facility returns to compliance.

While the O&M reports reviewed were technically sound and largely complete, the format and content varied to some degree from one report to another. EPA recommends that KDHE develop and follow a standardized format for all O&M and CME reports to ensure consistency (e.g. using a template Table of Contents), and to ensure that all required elements of the inspections have been satisfied. EPA further recommends that O&M and CME reports cite applicable federal guidance² within the text of the report. Federal guidance should be consulted by project managers to ensure that all vital components of an O&M are incorporated. While KDHE does have a guidance document entitled “CME/O&M Sampling and Analysis Observation Checklist,” which is adopted from the OSWER-9950-3 guidance, the checklist itself does not list a review of the facility operating record, obtaining site monitoring well data, or documenting the compliance decision-making process as necessary elements of the inspection. However, it was noted during the review that much of this information is reflected in the inspection reports despite being

² *Operation and Maintenance Inspection Guidance*. US EPA. OSWER 9950-3. March 1988.

absent from KDHE's checklist. It is also unclear if pre-inspection planning items recommended in federal guidance are conducted prior to conducting O&Ms in Kansas, such as the Sampling and Analysis Plan (SAP) review checklist.

It is notable that KDHE requires each land disposal facility in the state to submit an annual Groundwater Monitoring Report which includes a discussion of well maintenance activities to ensure the integrity of groundwater monitoring programs. Where applicable, O&M reports may reference documents such as annual Groundwater Monitoring Reports to fulfill some elements of the O&M inspection (e.g. review of the facility operating record).

Enhanced communication between KDHE and EPA project managers is needed regarding the conduct and findings of O&M inspections. In one instance, Sinclair Oil, the EPA project manager was reportedly unaware of problems with a background monitoring well which were identified in a 1995 CME and again in the 2005 O&M inspection. Communication between agencies is especially important when there are joint responsibilities for oversight of site-wide corrective action and groundwater monitoring. One part of the solution is to ensure that deficiencies identified in an O&M or CME are accurately entered into RCRAInfo. Another part of the solution is to ensure that both agencies communicate with one another about deficiencies, and cooperatively assign responsibility for addressing those deficiencies.

The RCRAInfo database indicates that several facilities which have received a CME have not yet received an O&M inspection (Calista Compressor, Coffeyville Resources Terminal, Koch Nitrogen, and Phillips Petroleum). The database indicates that Exline, Sherwin Williams, Williams Pipeline, and FI Kansas Remediation Trust have not received an O&M inspection within the past 3-5 years. All of these facilities have an O&M scheduled for 2009 or earlier, with the exception of FI Kansas Remediation Trust and Phillips Petroleum. After data gaps in RCRAInfo have been corrected, EPA and KDHE should coordinate to determine the priority and responsibility for conducting hydrogeologic evaluations as needed at these facilities. The schedule for conducting hydrogeologic evaluations should be discussed as part of the MYPS negotiation process.

No CMEs were performed by KDHE during FFY05. According to the most current MYPS at the time this report was written, two CMEs are scheduled through FFY 2009 at K-State Chemical Waste Landfill and Chemical Waste Management of Kansas. While KDHE has completed at least one CME for most land disposal facilities in the state, RCRAInfo data indicates that four land disposal facilities in the state have *not* received a CME to date (Coffeyville Resources Refining, Harcros Chemicals, FI Kansas Remediation Trust, and Kansas Army Ammunition Plant). A review of file records reveal that a CME has been completed for all four facilities, but this information has not been entered into the RCRAInfo database. These data gaps in RCRAInfo should be corrected. Furthermore, Kansas Army Ammunition Plant should receive priority consideration for a new CME, given the changes to the monitoring system and the significant issues raised by EPA, in a letter dated December 5, 1994 from William F. Lowe to Miles Stotts regarding the 1994 CME, which have yet to be addressed. A new CME is warranted whenever significant changes have been made to the site monitoring system or questions arise regarding current groundwater flow conditions or the nature or extent of the contaminant plume.

Enforcement Program Review

RCRA Enforcement Program Review of the Kansas Department of Health and Environment
Hazardous Waste Enforcement Program

On-site Review conducted May 15-17, 2006

EPA Evaluators: Beth Koesterer, Edwin Buckner, Jim Aycock

State Contacts: Jim Rudeen, Rebecca Wenner

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.

Hazardous waste inspections are conducted by KDHE's six district offices. In federal fiscal year 2005, inspections were conducted at facilities ranging from conditionally exempt small quantity generators (designated as small quantity generators under Kansas regulations) to permitted treatment/storage/disposal (TSD) facilities. Based on an RCRAInfo data report generated on November 17, 2006, there are 14 operating TSDs in Kansas. All 14 were inspected in either FFY 04 or 05 by EPA or KDHE. Two federal facility TSDs, Ft. Riley and Kansas Army Ammunition Plant, require inspection every year by statute. Ft. Riley was not inspected by either EPA or KDHE in FY04, but has since been inspected every year since.

Inspection coverage for the large and small quantity generator universe was adequate as well. Based on the most recent biennial report information, there are 173 large quantity generators (designated as EPA generators under Kansas regulation) in Kansas. Review of inspection data in RCRAInfo for the past five years (FFY2001 through FFY2005) indicates that 87 percent of the 173 large quantity generators were inspected during this time frame. KDHE continues to target large quantity generators for inspection.

KDHE targets inspections so as to cover all aspects of the hazardous waste program. The small quantity generator (SQG) and conditionally exempt generator (CESQG) universes (as those terms are defined in the Federal hazardous waste program) in Kansas is quite extensive. At the end of FY2005, there were 5620 facilities in these universes, and the RCRAInfo data as of the end of FY2005 also indicates that KDHE was able to conduct a CEI at almost three percent of this large number of facilities (147 CEIs).

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

Forty-four facility files were reviewed during the on-site evaluation portion of the enforcement program review. Most of the inspection reports reviewed were complete. They included a narrative discussion of the inspection, inspection checklists, and the necessary photo

documentation and copies of pertinent facility documents. However, some of the inspection reports did not include detailed information regarding how waste streams are generated, how the facility manages those waste streams on and off site, and how the facility conducted its hazardous waste determinations for each waste stream. This matter was discussed during the exit briefing with KDHE management and staff. A copy of a chart currently used by EPA inspectors was provided to KDHE to consider for use in future inspections. Other inspection reports included violations in the “comments” section of the report, rather than including these in the notice of non-compliance. To the extent possible, violations found during the inspection should be noted on the notice issued to the facility at the end of the inspection. In those instances where the facility representative corrects a violation during the inspection, the reports should include a description of the actions taken at that time by the facility. The inspection reports also did not state whether the inspection was conducted on an unannounced basis, but it was assumed at the time of the review that no notice is given to the facility prior to an inspection. Future inspection reports should state whether the inspection was conducted on an unannounced basis, or if prior notice was given to the facility.

Two oversight inspections were conducted by EPA during FFY05. Reports generated by EPA’s inspectors indicated that both inspectors evaluated during FFY05 demonstrated a good working knowledge of the applicable RCRA regulations and appropriate inspection techniques and procedures. Violations were noted in each inspection, and a Notice of Noncompliance was issued accordingly. The inspectors conducted a thorough evaluation of each facility’s RCRA compliance status. Documentation of compliance was thorough as well.

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

As stated previously, forty-four facility files were reviewed. A few of the inspection reports included in these files were not signed and dated by the inspector. However, given the trend established by the majority of the inspection reports reviewed, the reports are completed in a timely manner. The violations are identified in a timely manner as documented by the issuance of a Notice of Noncompliance to many of the facilities inspected.

Section 2: Review of the State Enforcement Activity

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

As a result of the file review, it was determined that the BWM does not consistently enter SNY evaluations into RCRAInfo. In most cases, the appropriate formal enforcement action was taken at significantly non-compliant facilities. It appears that the lack of SNC designation in RCRAInfo was more a reporting error, rather than a program error. For example, twelve facility files were selected for review based on the issuance of formal enforcement actions. An evaluation of the RCRAInfo data for these 12 facilities indicated that seven of the twelve were designated as significant non-compliers before the enforcement action was taken. The other five did not have a SNY evaluation entered into the database either before or after the issuance of the formal enforcement action. This issue was discussed during the exit briefing with KDHE

management and staff. KDHE is looking into developing procedures to consistently enter SNC determinations into RCRAInfo. It should be noted, however, that KDHE did identify seven new SNCs in FY05.

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

As a matter of routine, KDHE works to return a facility to compliance prior to or concurrent with the development of a formal enforcement action. Inspection staff located in the district offices work with the facilities in follow up to the inspections, and schedules for return to compliance are commonplace. In those instances where compliance is not achieved before the enforcement action is issued, the necessary compliance actions are included in the enforcement action.

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

As previously stated, KDHE issued twelve formal enforcement actions in FFY05, which were appropriate in each case. Seven of the actions were taken in a timely manner, less than 360 days from the date of determination of the violations. The remaining five formal enforcement actions required from 15 to 27 months to issue. In some cases, lengthy negotiations occurred or a hearing was requested by the facility. Some required longer case development. In these cases, the action was appropriate, but not timely.

There were several instances where repeat violations or a large number of violations were detected during an inspection, but formal enforcement action was not taken. Formal enforcement may have been appropriate in these cases. One such case has since been referred to EPA for inspection and enforcement, as the facility appears to be recalcitrant in returning to compliance with the RCRA regulations.

The informal enforcement actions taken by KDHE were timely and the facility was returned to compliance in less than 240 days. With the exception of the several cases mentioned in the previous paragraph, all informal enforcement actions were appropriate.

7. Degree to which the state includes both gravity and economic benefit calculations for all penalties, appropriately using the BEN model or consistent with state policy.

KDHE's civil penalty policy was last updated on February 1, 2006. This policy provides for a range of penalties that can be assessed for any particular violation, within the State's statutory limit of \$10,000 per day per violation. The policy states that "the penalty amounts may be adjusted as necessary to ensure that each penalty reflects an actual and substantial economic deterrent to the violation and the economic benefit realized through the violation for which it is assessed." However, based on the file review, it appears that no separate, independent calculation of economic benefit is completed nor is a separate penalty component assessed or collected to specifically recoup any economic benefit. The BEN model is not used by the State to calculate an economic benefit component for the civil penalties.

File reviews indicate that the assessed penalties were calculated (with exception of economic benefit) in accordance with the State's penalty policy. The State's policy allows for increased penalty based on the number of occurrences of a violation. Increases to the penalties based on multiple occurrences were noted in some penalty calculations. For example, per day penalties were assessed for storage of waste for more than 90 days.

However, not all of the penalty calculations included a justification for the selection of the penalty amount within a range of penalties. The lack of assessment of a specific economic benefit component in the penalties was discussed during the exit briefing with the State. A consistent approach to calculating economic benefit using the BEN program is suggested.

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

As previously states, an economic benefit component is not calculated separate from the gravity-based penalty. It appears, from statements in the State's penalty policy, penalty adjustments are allowed to reflect the economic benefit realized by the Respondent. However, there were no separate calculations of economic benefit reflected in the penalty calculations in the files reviewed. Overall, the selection of gravity-based penalties was consistent with the State's civil penalty policy.

The settlements in two reviewed cases included the acceptance of supplemental environmental projects (SEPs) to offset the entire civil penalty. Neither case collected a minimum gravity-based penalty or an economic benefit component. The State's penalty policy does not address the collection of a minimum gravity-based penalty or economic benefit when considering SEPs. Nor does the State's SEP policy address the collection of a minimum civil penalty or economic benefit component as part of the settlement of a case. It should also be noted here that the nexus of the SEP to the violations should be better documented in the facility files. In one case, five separate SEPs were accepted to offset the entire penalty. Although the penalty offset was negotiated according to the State's SEP policy (2:1 for small business), the nexus of the violation to SEP was not well documented in the facility file. It is suggested that the State develop a standard procedure for documentation of SEPs to include a discussion of nexus from violation to SEP.

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

9. Degree to which enforcement commitments in the PPA/PPG/categorical grants are met and any products or projects are completed.

The enforcement portion of the grant work plan end of year report from the State was reviewed separately from this program review. However, the KDHE's hazardous waste enforcement program was found to have completed the activities outlined in the work plan. The report indicated that the KDHE conducted inspections at 50 EPA generators, 144 Kansas generators, 30 Kansas small quantity generators, 14 operating TSDs and investigated 57 complaints in FFY05.

Section 4: Review of database integrity

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

With the exception of the SNC designation discussed in previous sections, most required data elements were found to be entered in a timely manner for the facility files reviewed. In the seven cases where the State indicated in RCRAInfo that a facility was a SNC, those designations were made prior to the formal enforcement action being taken. On average, the State required five and one-half months from the time of inspection, to determine if a facility was a SNC. The timeframes from inspection to SNC designation ranged from two to 13 months.

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

The enforcement data in RCRAInfo was compared to the file contents during the program review. The majority of the data was found to be accurate with regard to inspection date and type, violation and enforcement action date and type.

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

RCRAInfo data from May 9, 2006 was compared to the file contents for the facility files reviewed. Except for the lack of SNC designations discussed above, the data was found to be complete except for minor changes or omissions, which do not merit comment here. The lack of SNY evaluations in RCRAInfo for those facilities that received formal enforcement actions was discussed during the exit briefing with KDHE management and staff.

Authorization Program Desk Review

The State of Kansas and EPA continue to work together to bring the State's Authorization status current. We appreciate the State's willingness to work with us to resolve the many issues which have precluded Kansas from moving forward in seeking authorization for its hazardous waste regulations. We especially commend KDHE for its efforts with regards to the Kansas Audit Law. The Department was instrumental in assuring the law was changed to remove any obstacles to authorization.

Program Management Desk Review

Administrative services are performed by Christine Mennicke of the Regulations and Data Unit. Her responsibilities include, but are not limited to, preparation of annual Hazardous Waste Program grant applications, semi-annual and annual performance reports, and response to general program questions and requests.

Grant applications are of high quality, include all required information, are assembled for easy access and review and are delivered timely. Generally, negotiation of application changes is of a technical nature, and requires very few changes or adjustments. The quality of the

application is such that internal EPA review can be expedited and grant awards are made timely, when Federal funds are available.

Performance reports are submitted on time, and contain adequate information as outlined in the current approved work plans. Updates to the Multi-Year Facilities Plan Strategy, although performed by the Hazardous Waste Permits Section, are also completed and forwarded timely. KDHE's response to the annual EPA Program Review reveals a good working relationship between the two agencies.

Federal funds drawn to support the Hazardous Waste Program are consistent, timely, and accurately represent the financial needs of the agency. Attention to detail is such that annual KDHE Hazardous Waste Program grants can be closed timely, with no carry forward of unused funds.

We commend KDHE for the high quality performance, and look forward to maintaining these goals for the future.

<p>RCRA SUBTITLE C PROGRAM REVIEW CHECKLIST # 5 HYDROGEOLOGY (O&M / CME PERFORMANCE)</p>
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Completed by: Michael B. Davis, US EPA Region 7, ARTD/RCAP

Year Being Reviewed: FFY05

1. Is the universe of facilities subject to the Comprehensive Monitoring Evaluation (CME) and/or Operation and Maintenance Inspections (O&Ms) easily identifiable? (Y/N)

Yes. RCRA Info may be queried to identify land disposal facilities in Kansas. RCRA Info may also be queried to identify facilities which have received an O&M or a CME. In addition, KDHE maintains a multi-year planning strategy (MYPS) which is updated semi-annually and coordinated with EPA to set annual goals and workload priorities. O&M and CME activities are reflected in the MYPS.

2. Is the future CME/O&M workload accurately identified (i.e. is information readily available documenting all facility CME/O&M commitments for the next fiscal year)? (Y/N)

Yes. KDHE maintains a multi-year planning strategy (MYPS) which illustrates workload and projected O&M and CME activities in the forthcoming three fiscal years. The MYPS is updated semi-annually and coordinated with EPA to set annual goals and workload priorities.

3. Did the State meet the CME/O&M commitments for this federal fiscal year?

Yes. All O&M activities projected by KDHE in the approved MYPS were completed as scheduled in FFY05.

4. Identify CME/O&Ms that were issued in the fiscal year being reviewed.

<u>EPA ID #</u>	<u>Facility Name/Inspection Type</u>	<u>Report Author</u>
KST210010062	Harcros Chemicals / O&M	Maureen Ruhlman, KDHE
KSD091347898	Sinclair Kansas City Terminal / O&M	Kevin Anderson, KDHE
KSD087418695	Total Petroleum / O&M	N/A (No Report)
KSD007233596	Cessna – Pawnee / O&M	Kevin Anderson, KDHE

RCRA SUBTITLE C PROGRAM REVIEW CHECKLIST # 5A
SITE-SPECIFIC HYDROGEOLOGY (O&M / CME PERFORMANCE)

Completed by: Michael B. Davis, US EPA Region 7, ARTD/RCAP

Year Being Reviewed: FFY 2005

Instructions: Complete one checklist for each facility where a Comprehensive Monitoring Evaluation (CME) or Operation & Maintenance Inspection (O&M) was conducted.

FACILITY: HARCROS CHEMICALS, INC.

RCRA ID No.: KST210010062

TYPE OF INSPECTION: OPERATION & MAINTENANCE INSPECTION (O&M)
DECEMBER 23, 2005

1. Has the inspection report completion been entered accurately and timely into the national RCRA database? (Y/N)

No. The Operation & Maintenance Inspection (O&M) report was finalized on December 23, 2005. This program review occurred on May 17, 2006. Staff workload accounts for the delay in data entry. All previous O&M evaluations for this facility are entered into the database, although a discrepancy was noted with respect to event dates. Discrepancies noted in RCRA Info regarding O&M data. The December 2005 O&M report discusses a previous inspection completed in 1999, while the RCRA Info database reflects an event date in August 2001.

2. Were deficiencies noted as a result of the inspection?

Although no significant deficiencies were identified during the O&M inspection, it was noted in the O&M report that equipment decontamination procedures were not conducted in accordance with the existing SAP due to the use of an alternative decontamination agent. However, it was also noted that the decon procedures (Alconox and deionized water) are an accepted industry standard. The recommendation of the O&M report was to revise the SAP to allow for the use of Alconox, rather than citing a violation.

- a. Were the deficiencies entered accurately into the national RCRA data system within 30 days of the report issue date? (Y/N)

Data entries in RCRAInfo are incomplete. Nationally defined and required entries include O&M and CME inspections, violations or

deficiencies found, and resolution of violations. Neither the inspection nor the deficiencies and resolution of deficiencies are in the database.

- a. Is the State following up on the deficiencies identified in the report to ensure eventual compliance? (Y/N)

Yes.

- c. Have the deficiencies been addressed/corrected? (Y/N)

Yes. A revised SAP was submitted and approved by KDHE which provided for the use of Alconox as a decontamination agent. This was the only deficiency identified during the O&M inspection.

- d. For the deficiencies corrected, has the return to compliance been documented in the National RCRA data system? (Y/N)

No.

RCRA SUBTITLE C PROGRAM REVIEW CHECKLIST # 5A
SITE-SPECIFIC HYDROGEOLOGY (O&M / CME PERFORMANCE)

Completed by: Michael B. Davis, US EPA Region 7, ARTD/RCAP

Year Being Reviewed: FFY 2005

Instructions: Complete one checklist for each facility where a Comprehensive Monitoring Evaluation (CME) or Operation & Maintenance Inspection (O&M) was conducted.

FACILITY: SINCLAIR KANSAS CITY TERMINAL

RCRA ID No.: KSD091347898

TYPE OF INSPECTION: OPERATION & MAINTENANCE INSPECTION (O&M)
(DRAFT REPORT, DATED MAY 2006)

1. Has the inspection report completion been entered accurately and timely into the national RCRA database? (Y/N)

No. The Operation & Maintenance Inspection (O&M) report has not been finalized. A draft report was completed by KDHE geologist Kevin Anderson, who left the Department in May 2006. Once reviewed and finalized by KDHE, the inspection report completion will be entered into RCRAInfo.

2. Were deficiencies noted as a result of the inspection?

Yes. The Draft O&M report noted elevated concentrations of contaminants in a background monitoring well. The same deficiency was cited in a Comprehensive Monitoring Evaluation conducted in September 1995.

- a. Were the deficiencies entered accurately into the national RCRA data system within 30 days of the report issue date? (Y/N)

No. Operation & Maintenance Inspection (O&M) report has not been finalized.

- b. Is the State following up on the deficiencies identified in the report to ensure eventual compliance? (Y/N)

Yes.

- c. Have the deficiencies been addressed/corrected? (Y/N)

Yes. A revised SAP was submitted and approved by KDHE which provided for the use of Alconox as a decontamination agent. This was the only deficiency identified during the O&M inspection.

- d. For the deficiencies corrected, has the return to compliance been documented in the National RCRA data system ? (Y/N)

No.

RCRA SUBTITLE C PROGRAM REVIEW CHECKLIST # 5A
SITE-SPECIFIC HYDROGEOLOGY (O&M / CME PERFORMANCE)

Completed by: Robert Aston, US EPA Region 7, ARTD/RCAP

Year Being Reviewed: FFY 2005

Instructions: Complete one checklist for each facility where a Comprehensive Monitoring Evaluation (CME) or Operation & Maintenance Inspection (O&M) was conducted.

FACILITY: CESSNA - PAWNEE

RCRA ID No.: KSD007233596

TYPE OF INSPECTION: OPERATION & MAINTENANCE INSPECTION (O&M)

1. Has the inspection report completion been entered accurately and timely into the national RCRA database? (Y/N)

No. Data entries in RCRAInfo are incomplete. Nationally defined and required entries include O&M and CME inspections, violations or deficiencies found, and resolution of violations. Neither the inspection nor the deficiencies and resolution of deficiencies are in the database.

2. Were deficiencies noted as a result of the inspection?

Yes. A number of deficiencies were noted in the O&M report, including a well failure requiring abandonment, possible occlusion of well screens, discrepancies in well depth measurements, and inadequate well markings.

- a. Were the deficiencies entered accurately into the national RCRA data system within 30 days of the report issue date? (Y/N)

No.

- b. Is the State following up on the deficiencies identified in the report to ensure eventual compliance? (Y/N)

While it appears from various subsequent correspondence and submittals that the state is following up on some deficiencies, it is unclear whether and when deficiencies were addressed. There does not appear to be a standard format for communicating deficiencies or ensuring the deficiencies are addressed and adequately documented. For example, subsequent submittals by the responsible party note that

the requested well abandonment had been completed, but no well abandonment records could be identified in the file record. The facility noted the occluded well screen in yet another submittal, attributing this problem to inaccurate well-depth measurements during installation, but did not provide any record of having attempted to redevelop the well. It is unclear whether KDHE accepted these responses from the facility, or whether the deficiencies identified during the O&M are considered to be resolved. It was also unclear whether any action was taken by the facility to address the inadequate well markings. As noted above, information regarding deficiencies/violations is not recorded in RCRAInfo.

- c. Have the deficiencies been addressed/corrected? (Y/N)

Unclear. Please see comments under 2b above.

- d. For the deficiencies corrected, has the return to compliance been documented in the National RCRA data system ? (Y/N)

No.

RCRA SUBTITLE C PROGRAM REVIEW CHECKLIST # 5A
SITE-SPECIFIC HYDROGEOLOGY (O&M / CME PERFORMANCE)

Completed by: Michael B. Davis, US EPA Region 7 ARTD/RCAP

Year Being Reviewed: FFY 2005

Instructions: Complete one checklist for each facility where a Comprehensive Monitoring Evaluation (CME) or Operation & Maintenance Inspection (O&M) was conducted.

FACILITY: TOTAL PETROLEUM

RCRA ID No.: KSD087418695

TYPE OF INSPECTION: OPERATION & MAINTENANCE INSPECTION (O&M)

1. Has the inspection report completion been entered accurately and timely into the national RCRA database? (Y/N)

The inspector resigned from KDHE's hazardous waste program after completing the inspection but prior to generating an inspection record or O&M report. Due to the loss of program staff and the demands of other program priorities, KDHE was unable to reassign or otherwise complete this O&M.

2. Were deficiencies noted as a result of the inspection?

N/A. No inspection record or report was generated.

- a. Were the deficiencies entered accurately into the national RCRA data system within 30 days of the report issue date? (Y/N)
- b. Is the State following up on the deficiencies identified in the report to ensure eventual compliance? (Y/N)
- c. Have the deficiencies been addressed/corrected? (Y/N)
- d. For the deficiencies corrected, has the return to compliance been documented in the National RCRA data system ? (Y/N)

FY2006 Compliance and Enforcement Program Review: The
Clean Water Act and the
National Pollutant Discharge Elimination System

Kansas Department of Health and Environment



REGION VII

Review conducted April 23 – 27, 2007

**FY2006 PROGRAM REVIEW REPORT
KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT (KDHE):
THE CLEAN WATER ACT (CWA) / NATIONAL POLLUTANT DISCHARGE
ELIMINATION SYSTEM (NPDES)**

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**FY2006 KANSAS PROGRAM REVIEW:
CWA NPDES Enforcement Program Review
Review Conducted April 23-27, 2007**

1.0 Executive Summary

1.1 General Information

The Environmental Protection Agency (EPA) Region 7 Water Enforcement Branch conducted the FY2006 Kansas National Pollutant Discharge Elimination System (NPDES) Program Review on April 23 – 27, 2007, with the staff of the Kansas Department of Health and Environment (KDHE). The goal of the review was to assess the implementation of the authorized Clean Water Act (CWA) NPDES Enforcement program in Kansas.

KDHE is the Kansas state agency with the authority to administer the federal NPDES program, pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The review timeframe was July 1, 2005 to September 30, 2006, which covered the 2006 NPDES Inspection Year and the Federal Fiscal Year 2006 (FY2006). EPA focused its review on activities during the Review timeframe, but included some violations which occurred prior to FY2006 in order to assess the rationale for enforcement sought during FY2006.

Through discussions with KDHE on its agency processes and policies, as well as a detailed review of NPDES facility files, it is the Region's assessment that KDHE's NPDES and pretreatment compliance and enforcement programs are generally being implemented in accordance with the CWA and its implementing guidance. These findings, along with others, are discussed in the subsequent sections of this document.

The following section identifies major findings and recommendations from each NPDES program area that were identified as a result of this program review. A more detailed discussion of these findings is presented later on in this document.

1.2 Synopsis of Major Findings and Recommendations

EPA concluded that KDHE has improved its implementation of the NPDES program since the FY2003 program review, but KDHE needs to improve and strengthen certain aspects of the NPDES program. KDHE has advanced its CSO/SSO program, the stormwater program, and the Concentrated Animal Feeding Operations (CAFO) program implementation in comparison with the FY2003 program review.

KDHE needs to address the following deficiencies: improve documentation; verify facilities' return to compliance; improve communication for compliance and inspections; apply enforcement tools in a manner consistent with federal regulations and the KDHE Water Quality Guidance Memorandum regarding wastewater enforcement guidance, dated December 9, 1997; evaluate economic benefit, which is defined as the after tax net present value of a pollution prevention or mitigation project; and increase oversight and enforcement in the Combined Sewer Overflow / Sanitary Sewer Overflow (CSO/SSO) and the municipal separate storm sewer system (MS4) programs.

Core NPDES Program Implementation:

- EPA identified several inconsistencies between the KDHE enforcement program administration and the EPA enforcement program administration.
- KDHE's enforcement actions are written by experienced staff in the central office.
- KDHE should document enforcement decisions, including gravity and economic benefit in the penalty calculations.
- KDHE should include milestones which track progress towards compliance in enforcement actions.

Wastewater Program Implementation:

- KDHE addressed longstanding non-compliance by issuing NPDES permits that contained schedules of compliance (SOCs). In some instances, facilities received several SOC's over multiple permit phases. SOC's are being inserted into permits and viewed by KDHE as appropriate actions based on Kansas state law and the BOW Wastewater Enforcement Guidance. Schedules of compliance should only be used when a water quality based effluent limit (WQBEL) is required in a permit for the first time or the water quality standards have changed therefore changing the WQBEL. EPA recognizes the use of SOC's for State-driven issues are outside of the scope of federal authority (See Section 4.6).

Stormwater Program Implementation:

- KDHE has begun to implement the MS4 program. KDHE should work towards advancing its MS4 program by conducting MS4 audits and seeking enforcement when needed.
- KDHE does a good job reviewing SWPPPs and NOIs for deficiencies, and withholding permit authorization until the SWPPP is complete and satisfactory. EPA would like to see KDHE continue this practice.

Pretreatment Program Implementation:

- KDHE does not have an authorized Pretreatment Program, although KDHE shares implementation of the pretreatment program through an MOU with the Region. KDHE should continue to evaluate seeking authorization for the Pretreatment Program.

Data Management Implementation:

- KDHE should work towards entering all of the Water Enforcement National Data Base (WENDB) data elements according to the minimum requirements for Major and Minor facilities, including schedules of compliance, where required.
- KDHE should create a written standard operating procedure (SOP) for the management of the KDHE DMR oversight in the Oracle database management system (DBMS).

These summarized recommendations are discussed in greater detail in Section 4.0 of this report.

2.0 Introduction and Scope

EPA R7 Water Enforcement staff followed the 1999 Program Review Protocol (R7 Protocol) to conduct the review, and integrated the State Review Framework (Framework) protocol recommended by EPA Headquarters. EPA evaluated KDHE's progress made from the previous program review in FY2003; the historical strengths and weaknesses of KDHE's

program; the annual commitments achieved in the federally funded performance partnership grant (PPG) in the CWA Section 106 grant workplan (FY2006 workplan); and the compliance and enforcement activities that KDHE's program carried out during FY2006.

EPA staff visited KDHE's central office; reviewed KDHE Bureau of Water (BOW) files; and spoke with KDHE program staff to assess KDHE's compliance and enforcement actions in the traditional/core NPDES program; the Pretreatment Program; the Concentrated Animal Feeding Operations (CAFO) Program; the Stormwater Program; the CSO/SSO Program; and data management.

At the time of the review, KDHE was responsible for 1,574 Major and Minor wastewater permitted facilities; 2,225 active construction stormwater permits, 550 active industrial stormwater permits, and 3 Phase I and 59 Phase II MS4 permits; 473 permitted CAFO facilities; and 18 approved Pretreatment program cities and 52 Categorical Industries outside of Pretreatment cities.

EPA R7 selected 84 files for review (see Appendix A, Table 2) that provide a representative sample of the:

- NPDES universe in Kansas;
- different components of the NPDES program;
- State and Regional initiatives; and
- KDHE district offices.

Files were selected to obtain a broad perspective of how aspects of the program operate. In order to meet this need, lists of facilities were generated from EPA's national database, PCS, or were provided by KDHE staff. The lists contained facilities where the permit was identified as being active in PCS during the review timeframe of July 1, 2005 through September 30, 2006. From these lists, EPA made every effort to select files that would fairly and comprehensively represent the KDHE program's efforts in day-to-day management of the enforcement program. EPA examined factors such as recent inspection and enforcement activity for each CWA area (municipal wastewater, CSO, CAFO, construction stormwater, industrial stormwater, and pretreatment) in the timeframe reviewed. The criteria excluded the statistical design for random file selection. Conducting the review in this manner enabled EPA R7 staff to draw qualitative conclusions about KDHE's NPDES Enforcement program.

Additional information regarding EPA and KDHE staff contacts (Table 1, Appendix A), the file selection break out, and analysis criteria are included in the appendices. The reference list of federal and state policies is provided in Appendix B. A complete list of specific file review findings appears in Appendix D.

3.0 Follow up to Past Findings and Recommendations

EPA R7 staff evaluated the recommendations and action items included in the previous program review conducted in FY2003.

- KDHE developed an internal database to track return to compliance. However, EPA did not review the database during the program review.

- KDHE uses a Lotus Notes database, which appears to be useful in tracking compliance schedules and return to compliance. Additionally, enforcement actions are sent out through a chain of concurrence to assure consistent communication, as specified in KDHE's enforcement response policy. However, KDHE could improve its enforcement response by following up with facilities to track compliance when facilities do not meet criteria established within the enforcement document.
- KDHE has advanced its CSO program by expanding its involvement with CSO communities. KDHE has been working with the City of Atchison (KS0039128) and the City of Topeka, Oakland WWTP (KS0042722) to ensure that each facility implements the long-term control plan (LTCP) requirements of the NPDES permits. KDHE has also ensured that all bypass and overflow reports were submitted and appropriately documented.

4.0 Program Review Findings and Recommendations

The EPA R7 staff used data from the PCS database and EPA's Online Tracking Information System (OTIS) database pulled on March 9, 2007, that was provided in the OTIS Framework metrics table to discuss the State reported data with KDHE for the review timeframe.

The Framework protocol relies on twelve essential elements referred to as data metrics. The twelve NPDES data metrics are a common set of measures pulled from the national EPA PCS database that gives EPA an analysis of state-specific performance, and in some cases, comparisons with national averages, for areas where a data stream exists. KDHE maintains its own database for tracking compliance and enforcement activities. Because the data metrics are based on data entered into PCS, the reported result may not fully reflect what the metric is intended to measure. EPA used file reviews to support conclusions made in conjunction with the findings of the metrics.

Data Metrics 1a, 6a, 11a, and 12b analyzed in the following sections are connected to national goals established by EPA for all states that implement authorized CWA programs.

Section I. Review Area: Inspections

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

Traditional/Core NPDES Program Findings:

- Data Metric 1a is connected to a national goal of 100% inspection coverage for NPDES Majors during NPDES Inspection Year 2006.
- Data Metric 1a has a national average rate of 59.90% state inspection coverage of NPDES Majors, and a national average rate of 62.80% for inspection coverage of NPDES Majors based on combined data from state and federal databases.
- PCS indicated that KDHE inspected 40 out of 54 NPDES Majors, which is a 74.10% inspection coverage rate and above the national average.

- PCS indicated that 14 out of 54 NPDES Majors were not counted as inspected, which is 25.90% of the NPDES Majors universe in Kansas. However, KDHE tracks inspections based on the federal fiscal year, as opposed to the inspection year, which occurs three months earlier. KDHE reported that they inspected all 54 NPDES Majors accounted for in the metric, plus an additional two facilities that were Majors for a total of 56 NPDES Major inspections. This accounts for the difference in the number of inspections.
- Data Metric 1b indicated that Kansas had an average of 15.20% state inspection coverage of NPDES Minors, and a 15.60% rate for inspection coverage of NPDES Minors based on combined data from state and federal databases. The results for this metric may be skewed, as KDHE does not enter all WENDB data elements. KDHE reported that its compliance and enforcement tracking database indicates that 22.6% of NPDES Minor facilities were inspected in calendar year 2006.
- Data Metric 1c indicated that Kansas has an average rate of 2.70% state inspection coverage of NPDES Other facilities, and a 3.00% rate for inspection coverage of NPDES Other facilities based on combined data from state and federal databases. “Other facilities” includes stormwater, MS4, and CAFO inspections. EPA understands that this may not be an accurate reflection of all facilities because the universe of the “other” facilities was identified by SIC code.

Stormwater Program Findings:

- KDHE inspected construction stormwater sites mainly in response to complaints.
- KDHE reviewed the stormwater pollution prevention plans (SWPPPs) that were submitted with Notices of Intent (NOIs). If deficiencies were noted in a SWPPP, KDHE supported compliance by withholding the permit authorization until the SWPPP was complete and satisfactory.
- KDHE has not inspected or audited MS4 communities; although the annual reports, required by the MS4 permits to be submitted to KDHE annually, are reviewed to determine if the permittee is implementing the program.

CAFO Program Findings:

- KDHE performed inspections at 253 CAFOs (as defined by EPA) during 2006.
- KDHE inspected each of its CAFOs (as defined by EPA) that had an NPDES permit on a cycle of every 1-2 years.
- KDHE performed inspections and complaint investigations at approximately 53% of the permitted CAFOs during the review timeframe.

Pretreatment Program Findings:

- KDHE performed Pretreatment audits at 4 approved Pretreatment cities, and participated in 2 audits conducted by EPA Region 7.
- KDHE inspected 18 of its 52 Categorical industries outside Pretreatment cities.

Metric 1 Recommendations:

- Continue the practice of reviewing SWPPPs and NOIs for deficiencies, and continue to withhold permit authorization until the SWPPP is complete and satisfactory
- Audit Phase I and Phase II MS4 communities, to the extent possible, in an effort to assess and improve compliance with the program requirements.
- Inspect industrial stormwater facilities, to the extent possible, in an effort to assess and improve compliance with the program requirements.
- Focus inspection initiatives, to the extent possible, to make KDHE's presence known among the regulated community to further compliance.

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

Traditional/Core NPDES Program Findings:

- File Review Metric 2a: EPA reviewed 14 Major NPDES inspection reports. KDHE issued an inspection transmittal letter to each inspected facility that included the findings and outlined deficiencies, if any were observed by the inspector.
- EPA found that 64 % of Major NPDES inspection reports reviewed during the file review included an accurate description of deficiencies or violations. In other words, 36% of the files identified violations not accurately reported as all inspection reports reviewed cited deficiencies or violations. (9 files out of the 14 Majors).
- EPA found that 50% of the Minor NPDES inspection reports reviewed during the file review included an accurate description of potential and actual violations. (6 files out of the 12 Minors).

Stormwater Program Findings:

- File Review Metric 2a: EPA reviewed 10 stormwater inspections documented within the 17 stormwater files. The 9 inspection reports and one email (Sherwood Park Pump Station & Force Main, KS-R103311) documented inspection findings so that the violations were identified.
- KDHE issued an inspection transmittal letter to 9 of the 10 (inspection report not sent to Sherwood Park Pump Station & Force Main, KS-R103311) inspected facilities that included the findings and outlined deficiencies if any were observed by the inspector.
- KDHE took photographs when appropriate to document violations and provide supporting evidence. Furthermore, if deficiencies were noted by the inspector, the stormwater facility was required to provide documentation to KDHE (within a timeframe provided by KDHE in the inspection letter) verifying that the identified deficiencies had been corrected.

CAFO Program Findings:

- Overall, findings reported in CAFO inspections are well documented and provide accurate descriptions of observations. KDHE utilizes a checklist format for all CAFO inspection reports. While checklists were typically not

as comprehensive as a narrative based inspection report, KDHE's inspection reports document the findings included in the reports as well as provide accurate descriptions of what the inspector observed.

Pretreatment Program Findings:

- KDHE Pretreatment inspections were thorough and documented inspection findings. Investigations included descriptions to sufficiently identify violations.

Metric 2 Recommendations:

- Based on observations documented in the file and cited within the report, EPA recommends that KDHE follow the BOW Wastewater Treatment Facility Inspection Policy to increase the accurate descriptions of potential and actual violations documented in the inspection reports. Doing so will improve communication within the report regarding instances of non-compliance and the significance of the violations.
- KDHE should ensure that violations are clearly identified within inspection reports for core NPDES facilities. EPA understands that KDHE tracks receipt of engineering reports and construction projects for CSOs through the central office. Therefore, KDHE does not expect inspectors to cite CSO deficiencies in inspection reports.

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

Wastewater, stormwater, CAFO, and pretreatment inspection report findings were transmitted within 30 days, with few exceptions. Each of the inspection report transmittal letters and reports included a description of any violations noted, and required the facility to provide documentation to KDHE verifying that the identified deficiencies were corrected.

Traditional/Core NPDES Program Findings:

- EPA found that most of the Major and Minor inspection reports were completed timely and transmitted to the facilities, except for Clearview Village WWTP (KS0090671).
- File Review Metric 3a: EPA found that 64 % of the Major NPDES inspection reports identified violations within the review timeframe, indicating that there is a universe of facilities in non-compliance that KDHE is working to address. (9 files, irrespective of whether the files contained accurate description of potential and actual violations, were identified out of the 14 Majors).
- EPA found that 50% of the Minor NPDES inspection reports identified violations within the review timeframe, indicating that there is a universe of facilities in non-compliance that KDHE is working to address. (6 files, irrespective of whether the files contained accurate description of potential and actual violations, were identified out of the 12 Minors).

Stormwater Program Findings:

- EPA reviewed 9 stormwater inspection reports, and all were completed timely. All the reports included a description of any violations noted, and required the stormwater facility to provide documentation to KDHE verifying that the identified deficiencies were corrected.

- If deficiencies were noted at the stormwater site, then the inspection transmittal letter also included a date by which the facility had to demonstrate to KDHE that it had returned to compliance, as evidenced by the file contents for River Hill Shops (KS-R101349).

CAFO Program Findings:

- EPA reviewed 45 CAFO inspection reports and only 1 was not completed timely, which indicated that 97.78% of KDHE's CAFO inspection reports were completed in a timely manner.
- KDHE's investigation and documentation of complaints was timely and complete, including identification of violations that were transmitted to the facility within 30 days.

Pretreatment Program Findings:

- KDHE prepared and transmitted Pretreatment reports in a timely manner. For example, the Olathe audit (KS0045802) from May 11, 2006, was mailed to the city the following day.

Metric 3 Recommendations:

- KDHE should continue its practice of transmitting inspections reports in a timely manner.

Section II. Review Area: Enforcement Activity

All enforcement actions are written, tracked, and documented in the KDHE central office. KDHE enforcement actions and penalties were sought according to the requirements of the KDHE BOW Enforcement Guidance. The KDHE BOW Enforcement Guidance provides an explanation of the purpose of enforcement actions, the statutes and regulations allowing enforcement actions, the objective of enforcement actions, guidance on proper use of enforcement actions, options for various levels of enforcement actions, factors to be considered to determine an appropriate enforcement response, two penalty calculation matrices – one for permit violations and one for violations involving damages to resources of the state. The matrices include both gravity and economic benefit components.

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

Traditional/Core NPDES Program Findings:

- Data Metrics 4a1 and 4a2 had no single-event violation (SEV) information for NPDES Majors or Minors entered for Kansas based on combined data from state and federal databases. KDHE stated during the review that it has a separate database which tracks single event violations. Single-event violations are not a required WENDB data element. However, it is anticipated that single event violations will soon be a required element to enter. KDHE should work towards entering single event violations into PCS.
- Data Metric 4b1 and 4b2 indicated that there were 12 NPDES Majors in SNC status based on combined data from state and federal databases (12 out of 54 is a 22.22% rate of identification) . KDHE has a 22.22% SNC identification rate above the national average of 19.80%.

- Data Metric 4b2 has a national average rate of 19.80% NPDES Major facilities in SNC status based on combined data from state and federal database.

Stormwater Program Findings:

- Data Metric 4c: *Wet weather SNC placeholder during FY2006.*
- Metric 4 is not applicable to stormwater facilities, because currently there is no wet weather SNC policy.

CAFO Program Findings:

- Data Metric 4c: *Wet weather SNC placeholder during FY2006.*
- Metric 4 is not applicable to CAFOs, because currently there is no wet weather SNC policy.

Pretreatment Program Findings:

- KDHE was required to notify EPA of Pretreatment cities and SIUs that had violations on the semi-annual report, as established by the PPG workplan commitments. KDHE submitted those reports in a timely and accurate manner during 2006.
- KDHE reported that 3 of 52 Pretreatment facilities were in SNC for either reporting or effluent standards in the first half of 2006. This translates into a compliance rate of 94%.
- KDHE reported that 6 of 52 industries outside Pretreatment cities were in SNC for the second half of 2006. This constituted a compliance rate of 88%, which was low compared to KDHE historical standards.

Metric 4 Recommendations:

- Improve documentation of the SNC status of NPDES Majors by working towards entering WENDB data elements into PCS.

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

Traditional/Core NPDES Program Findings:

- File Review Metric 5a: The majority of KDHE formal state enforcement actions contained a compliance schedule; however, the compliance schedule often only required the facility to submit a proposed plan and schedule. The proposed plan and schedule were seldom incorporated in a follow-up document that demonstrates how or when the facility returned to compliance. For example, the Johnson County, Tomahawk Creek WWTP (KS0055484) enforcement action only required a proposed plan of action.
- File Review Metric 5b: EPA has not determined the percentage of actions or responses, other than formal enforcement actions, that return facilities to compliance.
- KDHE addressed longstanding non-compliance by issuing NPDES permits that contained SOCs. In some instances, facilities received several SOCs over multiple permit phases. SOCs are being inserted into permits and viewed by KDHE as appropriate actions based on Kansas state law and the BOW Wastewater Enforcement Guidance. Per 40 CFR §122.47(a), the CWA only allows for SOCs in permits for effluent limits based on water quality standards

adopted or substantively revised after July 1, 1977, where the State's water quality standards (WQS) or implementing regulations clearly authorize the use of SOC. SOC should only be used when a WQBEL is required in a permit for the first time or the water quality standards have changed therefore changing the WQBEL.

- EPA observed that some enforcement actions did not contain milestones for tracking progress of a facility's return to compliance. Where KDHE requests a compliance schedule, language should be included in the enforcement action which incorporates the schedule into the action upon approval by KDHE. An example of this is Johnson County, Tomahawk Creek (KS0055484).

Stormwater Program Findings:

- EPA reviewed 3 formal enforcement actions. They all contained complying actions to return each facility to compliance in a specific timeframe. Furthermore, the 3 files documented that each stormwater facility had met the requirements of its order and had returned to compliance. (3 out of 3 files indicated that 100% of stormwater enforcement actions returned the facility to compliance.)
- KDHE did not consistently document milestone dates for tracking progress of a facility's return to compliance in the file. While the enforcement actions reviewed contained requirements for compliance, only the final closure milestone documentation was observed.

CAFO Program Findings:

- EPA reviewed 12 formal enforcement actions for CAFOs and one action, Coolidge Dairy, sought penalties, but did not contain complying actions to return the facility to compliance. The facility was issued an SOC in the permit. Because non-compliance warranted penalties, the facility should have been placed on an SOC through the enforcement action. 11 out of 12 is a 91.67% rate of CAFO enforcement actions that returned the facility to compliance.

Pretreatment Program Findings:

- All 18 approved Pretreatment Programs were in compliance in 2006. Therefore, no enforcement was needed pursuant to Metric 5.
- KDHE is required to enforce against Significant Industrial Users (SIUs) in non-Pretreatment cities. All such SIUs determined to be in SNC were issued timely NOV's requiring immediate return to compliance. All SIUs returned to compliance as required.

Metric 5 Recommendations:

- KDHE should document whether a facility is in compliance with the terms of its formal enforcement action to address issues that prevent a facility from returning to compliance within a specific timeframe. EPA is pleased to see that KDHE uses a database to track the status of enforcement actions and hopes that KDHE will work towards entering this information into PCS or ICIS. For stormwater compliance actions, KDHE should include periodic enforcement milestones, such as progress report dates, that would make the compliance actions easier to track when appropriate. Milestones would enable KDHE to detect lack of progress with the SOC.

4.6 Degree to which the state takes enforcement actions, in accordance with the national enforcement response policies relating to specific media (the Clean Water Act), in a timely and appropriate manner.

Traditional/Core NPDES Program Findings:

- Data available in PCS indicates that KDHE sought nine wastewater enforcement actions during the period examined for the review.
- Data Metric 6a is connected to a national goal to address 98% or more (> 98%) of significant noncompliance (SNC) violations at NPDES Major facilities through timely enforcement actions.
- KDHE's timely enforcement response was 83.30% (below the national average of 91.10%), based on enforcement actions entered in PCS that addressed SNC violations at NPDES Major facilities.
- Data Metric 6b indicated that there were 13 NPDES facilities in Kansas where no follow-up enforcement actions were conducted, according to state data. These facilities were addressed through an SOC in a permit.
- File Review Metric 6c: Wastewater data indicates that 15% SNCs were addressed appropriately during the NPDES Inspection year 2006 and FY2006. An example of this is MGP Ingredients (KS0001635).
- The KDHE central office writes and tracks enforcement actions against wastewater facilities that are determined to be in violation of the CWA.
- EPA reviewed 9 wastewater enforcement files, and determined that KDHE's enforcement actions were not consistently timely and appropriate. KDHE should ensure that actions are timely and appropriate. Actions were not consistently timely and appropriate due to the following:
 - At times, KDHE used informal negotiation, then unilateral orders, and finally a negotiated Consent Agreement. Because this process is lengthy, it may contribute to a greater period of non-compliance.
 - KDHE issued SOCs to facilities in on-going non-compliance when it met the criteria for enforcement, as outlined in the KDHE BOW Enforcement Guidance.
 - KDHE documented instances where facilities did not meet milestone dates in SOCs to track compliance with plant upgrades, plant expansions, and other required activities.
 - In some instances, permits contained SOCs for enforcement actions taken by KDHE during the Review timeframe. For example, Iola WWTF (KS0032123) and Topeka, Oakland WWTP (KS0042722) both had SOCs in the permit that contained requirements in the enforcement actions. Placing the SOC in the permit when enforcement has been sought may change the requirements for compliance and make it difficult to seek enforcement.

Stormwater Program Findings:

- Metric 6c is not applicable to stormwater facilities, because currently there is no wet weather SNC policy.
- KDHE should continue to take formal enforcement actions against sites in violation of stormwater requirements to the maximum extent possible.

CAFO Program Findings:

- Metric 6c is not applicable to CAFOs, because currently there is no wet weather SNC policy.
- EPA reviewed 12 formal enforcement actions filed against CAFOs, and found that the inspectors routinely refer illegal discharge violations, as well as serious NPDES permit violations, for formal enforcement actions in a timely and appropriate manner.

Pretreatment Program Findings:

- All NOV's were issued within 30 days of KDHE's knowledge of the violation. This is in accordance with EPA's model Pretreatment Enforcement Response Plan. No further action was needed as all facilities returned to compliance in a timely manner.

Metric 6 Recommendations:

- KDHE should review the enforcement policy options to align KDHE enforcement efforts to address timely and appropriate enforcement that returns violators to compliance.
- KDHE should ensure that non-compliance is addressed in an appropriate manner by ensuring that SOCs are not included in permits, unless specified in the CFR and that enforcement is used to place facilities under SOCs for compliance with pre-existing requirements.
- KDHE should continue to take formal enforcement actions against sites in violation of stormwater requirements to the maximum extent possible.
- Track and document milestones achieved in SOCs in PCS.

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

KDHE's penalty policy includes both gravity and economic benefit components; however, KDHE does not consistently seek to recover economic benefit in penalties assessed. KDHE has enforcement discretion to decide when or whether to recover economic benefit, but KDHE needs to include a rationale for its decision with the penalty calculation.

Traditional/Core NPDES Program Findings:

- File Review Metric 7a: EPA is aware of three wastewater facilities that received penalties during the time period of the review: Abengoa, Norton and Oberlin. KDHE provided penalty rationale for several facilities, though not all of the facilities, after the time of the review. EPA reviewed the penalty calculation for Oberlin and found that KDHE did not include statements to justify the amount of the penalty being sought. Penalty calculations for Norton and Abengoa were not available for EPA review.
- KDHE did not include documentation that outlined the wastewater enforcement matrix or the determination of gravity assessed.
- KDHE did not include documentation of how the penalties or economic benefit were assessed, such as: delayed or avoided cost of installing controls, sampling, capital equipment improvements, and operation and maintenance.

- KDHE did not include information in many of the wastewater files that discussed whether the penalty amounts encompassed both gravity and economic benefit.

Stormwater Program Findings:

- KDHE's penalty policy used for calculating penalties against NPDES facilities includes direction for calculating both gravity and economic benefit factors. However, of the two penalty calculations available for review, N.R. Hamm Quarry, and Quint T, L.L.C., economic benefit was not assessed for either penalty. Additionally, the penalty calculations did not justify the factors selected. For example, economic hardship was selected based on generalizations, as opposed to demonstration of the hardship. A penalty justification should be available for cases where a penalty was assessed.
- KDHE did not include documentation for how the penalties were calculated for either Hamm Quarries (KS-0117498, KS-0097632, and KS-0097837) and Quint T. LLC, Wakarusa Ridge Estates (KS-R102316).

CAFO Program Findings:

- KDHE did not consistently document rationale for the calculation of economic benefit.

Pretreatment Program Findings:

- KDHE did not take formal enforcement (only NOV's were issued) against a Pretreatment facility during the review timeframe; therefore no penalties were assessed for Pretreatment facilities.

Metric 7 Recommendations:

- EPA was unable to review KDHE's legal files. However, EPA encourages KDHE to ensure that the files contain a penalty justification that documents the rationale for the assessed penalty.
- KDHE should assess economic benefit to ensure that violators are placed in the same financial position as they would have been if they had complied on time.
- EPA also encourages KDHE to ensure that the files contain documentation of the rationale for the calculation and collection of economic benefit in CAFO enforcement actions.

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

KDHE did not consistently include documentation indicating whether the assessed penalty was actually collected or what portion of a collected penalty represented gravity or economic benefit.

Traditional/Core NPDES Program Findings:

- Data Metric 8a indicated that KDHE did not take appropriate enforcement action against Norton WWTF (KS0022446) to collect economic benefit and gravity portions of a penalty. EPA was unable to review the penalty calculation for Norton.

- Data Metric 8b indicated that KDHE normally included penalties with 15.40% of its formal enforcement actions based on state data.
- File Review Metric 8c: Economic benefit was not sought for the one wastewater penalty calculation that was available for review.
- KDHE did not consistently document in the files whether the wastewater facility had paid the penalty, but some files included an email or a copy of a check. KDHE explained that it maintains an electronic database on penalties paid.
- KDHE did not use the criteria to seek penalties as stated in the BOW Enforcement Response Policy because EPA reviewed several facilities where penalties should have been assessed in accordance with the guidance. These facilities include: the Johnson County Wastewater Tomahawk Creek WWTP and Iola.
- File Review Metric 8d: EPA could not determine how many of KDHE's wastewater enforcement actions resulted in penalties collected during the review timeframe.
- According to PCS, 3.8% of final enforcement actions (1 of 26 files) resulted in penalties collected during the review timeframe, for example Oberlin STP (KS0022501).
- KDHE had no consistent information in the wastewater files that discussed whether the penalty amounts encompassed both gravity and economic benefit.
- KDHE made few efforts to obtain stipulated penalties, although in one case a penalty amount was held in abeyance pending satisfactory completion of the compliance measures (see, Abengoa Bioenergy Corp. (KS0081329)). KDHE stated that it has increased use of stipulated penalties since the time period examined during the review.

Stormwater Program Findings:

- While stormwater penalties were not required to be entered into PCS, one of the three stormwater penalties collected, Quint T., LLC (KSR102316), was entered into PCS. A penalty of \$2,500 was assessed for Quint T., LLC.
- KDHE did not assess or document either the gravity or the economic benefit factors for the penalties collected for the three stormwater enforcement actions.
- KDHE documented that each of the three stormwater enforcement facilities had paid the penalties.

CAFO Program Findings:

- KDHE's initial/proposed penalty amounts include both gravity and economic benefit factors; however, the penalties associated with final enforcement actions did not.
- Documentation of penalty calculations associated with Consent Agreements and other final enforcement actions against CAFOs were not documented in the facility file.

Pretreatment Program Findings:

- KDHE did not need to take enforcement against a Pretreatment facility during the review timeframe; therefore, not penalties were assessed for Pretreatment facilities.

Metric 8 Recommendations:

- KDHE should evaluate the BOW enforcement policy to implement enforcement actions and penalty calculations for collected penalties that are consistent with the EPA Enforcement Response Policy.
- KDHE should collect appropriate penalties, including gravity and economic benefit, for final enforcement actions.
- KDHE should document how penalties collected for final CAFO enforcement actions are calculated in order to assure consistent application of the State's penalty policies.

Section III. Review Area: Agreements

Goals and Commitments

The FY2005 CWA Section 106 workplan contains specific agreed-upon tasks that will be undertaken by KDHE and EPA to help accomplish the goals of the CWA. Although the primary or sole funding source for each task described in KDHE's FY2006 workplan is expected to come from federal CWA 106 grant funds, some of the tasks may be partially supported with funding from other sources.

4.9 Enforcement commitments in the PPA/PPG/categorical grants (written agreements to deliver products/projects at a specified time), if they exist, are met and any products or projects are complete.

Traditional/Core NPDES Program Findings:

- File Review Metric 9a: KDHE has met their 2006 PPG requirements related to wastewater inspections and enforcement actions in the State agreements (PPA/PPGs, SEA, etc.) that contain enforcement and compliance commitments that were met during NPDES Inspection Year 2006 and FY2006.

Stormwater Program Findings:

- KDHE met its 2006 PPG requirements related to stormwater inspections and enforcement.

CAFO Program Findings:

- KDHE met its 2006 PPG requirements related to CAFO inspections and enforcement.

Pretreatment Program Findings:

- KDHE met its 2006 PPG requirements related to Pretreatment inspections, audits, and enforcement.
- KDHE set and met its annual goal for Pretreatment audits and Pretreatment Compliance Inspections. In addition, KDHE identified a number of Categorical industries outside Pretreatment cities to inspect.

Metric 9 Recommendations:

- None at this time.

Section IV. Review Area: Data Integrity

Data Management and Data Integrity

The primary Kansas data management system is an Oracle database system developed and maintained by KDHE personnel. Facilities enter their DMR data into another database, DEEMERs, and then KDHE processes the data and sends it back to the facility for verification. The facility electronically attests that the DMR data is correct, and then KDHE closes the security window and prepares the secure data for upload into PCS.

The Oracle database is an efficient electronic data system that captures the DMR data, but EPA is concerned regarding the minimal technical support for the program that acts as the primary data management system. The Oracle program was developed with EPA assistance, but became a database supported by a consultant. EPA is concerned about the lack of longevity and security that puts the Oracle database at risk. KDHE utilized their IT staff to support the Oracle database, but only when there was project-specific funding.

4.10 Degree to which the Minimum Data Requirements are timely.

Traditional/Core NPDES Program Findings:

- File Review Metric 10a: KDHE properly enters and maintains most of the minimum-WENDB data elements according to accepted schedules.

Stormwater Program Findings:

- Not applicable to stormwater.

CAFO Program Findings:

- Not applicable to CAFOs

Pretreatment Program Findings:

- KDHE does not enter WENDB data elements into PCS following a Pretreatment Compliance Inspection (PCI) or Pretreatment audit. KDHE should enter elements for facilities it is involved with when conducting a PCI or audit.

Metric 10 Recommendations:

- KDHE should work towards meeting the data entry schedules for WENDB data elements.
- KDHE should increase efforts to address data for facilities in noncompliance in a timely manner.
- KDHE should enter Pretreatment inspection, audit and DMR data in a timely manner.

4.11 Degree to which the Minimum Data Requirements are accurate.

Traditional/Core NPDES Program Findings:

- Data Metric 11a is connected to a national goal to address 80% or more ($\geq 80\%$) of the enforcement actions linked to the violations that the enforcement actions address in the PCS database during FY2006.
- Data Metric 11a indicates that Kansas linked enforcement actions to 47.10% of the violations based on state data uploaded to the PCS database during FY2006, which is below the national goal of $\geq 80\%$.

- EPA reviewed 14 Major NPDES inspection reports. KDHE had 100% of the inspection reports accurately documented in PCS during the review timeframe.
- The Oracle database, which incorporates data entered by NPDES facilities, was generally accurate and correct. The Oracle database is a program that supports KDHE's DMR data entry because each Major facility enters its own DMR data into DEEMERs, which is received and reviewed by KDHE who loads it into the Kansas database system and then uploads the data to PCS via the 80 column electronic card batch uploading process. There are strict security measures in place, so the possibility of falsifying data is nearly eliminated.
- EPA did not see any kind of a Standard Operating Procedure (SOP) for how KDHE quality assured (QA) the DMR data. KDHE and EPA discussed how data was reviewed, but KDHE did not provide a written data QA protocol.
- File Review Metric 11r indicates that Kansas needs to improve its accuracy of the minimum WENDB data requirements during the NPDES Inspection Year 2006 and FY2006.
 - Windom WWTP (KS0051721): KDHE's inspection report from June 5, 2006 was in the file, but the information was not entered into PCS.

Stormwater Program Findings:

- Not applicable to stormwater.

CAFO Program Findings:

- Not applicable to CAFOs.

Pretreatment Program Findings:

- KDHE does not enter WENDB data elements into PCS following a Pretreatment Compliance Inspection (PCI) or Pretreatment audit.

Metric 11 Recommendations:

- KDHE must properly link enforcement actions to the violations in PCS more than 80% of the time to meet the national goal.
- KDHE should create a Standard Operating Procedure (SOP) for DBMS to provide Quality Assurance of the DMR data.
- EPA would like to meet with KDHE to determine a protocol for entering pretreatment data.

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

Traditional/Core NPDES Program Findings:

- Data Metric 12a: According to PCS, KDHE had all Majors and Minors up-to-date and complete for all permit types during the review timeframe.
- Data Metric 12b1: KDHE had a data entry rate of 96.30%, which was above the national goal that requires 95% or more ($\geq 95\%$) of the data to have correctly coded limits for NPDES Majors for state and federal data entry combined. KDHE had a 97.80% data entry rate for municipal facilities, and a 96.80% data entry rate for non-municipal facilities.

- Data Metric 12b2: KDHE had a data entry rate of 90.10%, which was below the national goal that requires 95% or more ($\geq 95\%$) data entry rate of DMRs for NPDES Majors based on the number of DMRs expected.
- KDHE entered 97.80% of DMR parameters correctly for municipal facilities, and 98.40% of DMR parameters correctly for non-municipal facilities, based upon the number of DMR forms received from NPDES Majors and entered into PCS for the most recent quarter (January 1, 2006 through March 31, 2006) divided by the number of DMR forms for NPDES Majors in that quarter.
- Data Metric 12b3: KDHE manually overrode 0.00% SNC data based on combined PCS state and federal data entry.
- Data Metric 12d1: KDHE inspected 310 NPDES facilities for NPDES compliance during the review timeframe, and 14 NPDES facilities were inspected for NPDES compliance by the local EPA Regional office.
- Data Metric 12k: Iola WWTF (KS0032123) and Delia WWTP (KS0046493) were respectively identified as facilities of concern through reports submitted to EPA by KDHE. EPA is concerned about the lack of compliance schedules entered in PCS. Compliance schedule data are a portion of the WENDB data elements, and should be entered for all Majors and Minor 92-500s. EPA found that KDHE had not entered compliance schedules into PCS for any of the facilities reviewed under SOCs, including 8 Major facilities and 2 Minor 92-500 facilities.
- The Pretreatment Program Required Indicator (PRET) is a required facility data element, and was entered where required.
- The KDHE enforcement actions for the NPDES Majors and some Minors (PL 92-500s) were entered into PCS by the EPA Region 7 PCS contact.
- 12 Minor NPDES inspection reports were reviewed, and EPA found that 92% of the inspection reports were appropriately documented in PCS.

Stormwater Program Findings:

- Not applicable to stormwater.

CAFO Program Findings:

- Not applicable to CAFOs.

Pretreatment Program Findings:

- KDHE does not provide Pretreatment WENDB data elements for PCS.

Metric 12 Recommendations:

- KDHE should work towards entering the required WENDB parameter of schedules of compliance into PCS.

FY2006 KDHE Program Review:

**Appendix A: Reference Tables Supporting the
Kansas Program Review**



Reference Tables Supporting the Kansas Program Review

Table 1. EPA and KDHE Staff Participating in the FY2006 Kansas CWA NPDES Program Review

EPA Evaluators:	Howard Bunch	Phone: 913-551-7879
	Berla Jackson-Johnson	913-551-7720
	Paul Marshall	913-551-7419
	Linda McKenzie	913-551-7477
	Nick Peak	913-551-7019
	Stephen Pollard	913-551-7582
	Cynthia Sans	913-551-7492
	Stacie Tucker	913-551-7715
KDHE Contacts:	Karl Mueldener	Phone: 785-296-5500
	Mike Tate	785-296-5504
	Ed Dillingham	785-296-5513
	Don Carlson	785-296-5547
	John Mitchell	785-296-6603
	Rance Walker	785-296-5509
	Donna Porter	785-296-5550
	Terry Medley	785-296-5570

Table 2. Files Selected for FY2006 Kansas CWA NPDES Program Review

CWA Source Universe Information	Number of Sources in Universe in FY2006	Number of Files Selected for Review	Number of Files Reviewed	
			Inspection & Data Files	Enforcement Files
Wastewater	54 Majors, including 3 Combined Sewer System (CSO) Communities	35	29	22
	4,155 Non-majors			
Data Management	4,209 Facilities/ Sources			
Enforcement-Legal Process	13 Formal Enforcement Actions			
Stormwater	3,020* Construction	10	17	3
	1,997* Industrial	6		
	1 Municipal Sanitary Storm Sewer (MS4), Phase I Community	1		
	59 MS4, Phase II Communities			
Concentrated Animal Feeding Operations (CAFOs)	473 CAFOs	30	29	12
Pretreatment	16 Approved Pretreatment Programs	9	9	0

*Approximate number of active permits in universe as of April 23, 2007

FY2006 KDHE Program Review:

**Appendix B: Reference List for the Citation of
Information Criteria**



Reference List for the Citation of information criteria

EPA:

1. Inspection commitments in the PPA/PPG/SEA for FY2006
2. EPA's National Program Guidance (beginning in FY2006)
3. EPA's Permit Compliance System (PCS) and Online Tracking Information System (OTIS) Databases
4. Inspectors Guide for Evaluation of Municipal Wastewater Treatment Plants (April 1979)
5. EPA NPDES Inspection Strategy and Guidance for Preparing Annual State/EPA Inspection Plans (EPA Office of Water Enforcement and Permits, April 1985)
6. EPA NPDES Compliance Inspection Manual (September 1994)
7. EPA NPDES Inspection Manuals (various topic manuals – flow measurement, laboratory, etc.)
8. EPA's Guide Manual on NPDES Regulations for Concentrated Animal Feeding Operations (EPA 833/B-95-001, December 1995)
9. Completed KDHE inspection reports for FY2006
10. EPA's NPDES Significant Noncompliance (SNC) Criteria to Address Violations of Non-monthly Average Limits, revised in 1995
11. EPA's Expanded Significant Noncompliance (SNC) Definition Implementation, (April 1996)
12. EPA's Enforcement Response Guide, (September 1999)
13. National Clean Water Act Settlement Penalty Policy
14. EPA's Supplemental Environmental Projects (SEP) Policy (May 1998)
15. EPA's BEN Model
16. EPA's PROJECT Model
17. Small Business Regulatory Enforcement and Fairness Act (SBREFA) Policy
18. Enforcement Management System (EMS) National Pollutant Discharge Elimination System (NPDES) (1989)
19. EPA's Regional Enforcement Management System (EMS)
20. EPA's Indipay model
21. EPA's Munipay model
22. EPA's Ability to Pay (ABEL) model

Kansas:

23. Bureau of Water (BOW) Inspection Training Manual II (BOW Inspection Manual)
24. KDHE BOW Wastewater Treatment Facility Inspection Policy (September 24, 2003)
25. KDHE BOW Wastewater Enforcement Guidance (December 9, 1997)

FY2006 KDHE Program Review:

Appendix C: State Review Framework Data Metrics



**State Review Framework
Preliminary Data Metrics for Kansas
Clean Water Act**

OTIS State Review Framework Results
CWA Data for Kansas (Review Period Ending: FY06)

Metrics
Information
updated 3/9/2007

Metric	Measure Type	Metric Type	National Goal	National Average	Kansas (Metric=x/y) ⁰	Count (x)	Universe (y)	Not Counted (y-x)	State Discrepancy (Yes/No)	State Correction	State Data Source	Discrepancy Explanation	Action Items to Correct Discrepancy
1. Degree to which state program has completed the universe of planned inspections/compliance evaluations (addressing core requirements and federal, state and regional priorities).													
A	Inspection Coverage: NPDES Majors (1 NPDES Inspection Year) ¹	Goal	State	100%	59.90%	74.10%	40	54	14				
			Combined		62.80%	74.10%	40	54	14				
B	Inspection Coverage: NPDES Non-Majors (1 NPDES Inspection Year) ²	Informational- Only	State			15.20%	182	1,194	1,012				
			Combined			15.60%	186	1,194	1,008				
C	Inspection Coverage: NPDES Other (not 1a or 1b) (1 NPDES Inspection Year) ³	Informational- Only	State			2.70%	81	2,961	2,880				
			Combined			3.00%	89	2,961	2,872				
R	Percent of Planned Inspections Completed	Check coverage for a list of facilities over a specified time frame using the OTIS Clean Water Act Query											
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.													
A	Single-Event Violations at Majors (1 FY)	Informational- Only	Combined			0	NA	NA	NA				
	Single-Event Violations at Non-Majors (1 FY)	Informational- Only	Combined			0	NA	NA	NA				
B	Major Facilities in SNC (1 FY)	Review Indicator	Combined			12	NA	NA	NA				
	SNC Rate: Percent Majors in SNC (1 FY)	Review Indicator	Combined		19.80%	22.20%	12	54	42				
6. Degree to which a state takes timely and appropriate enforcement actions, in accordance with policy relating to specific media.													
A	Major Facilities Without Timely Action (1 FY)	Goal	Combined	< 2%	8.90%	16.70%	9	54	45				
B	No Activity Indicator - Number of Actions (1 FY)	Review Indicator	State			13	NA	NA	NA				
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 - Actions with Penalties (1 FY)	Informational- Only	State			2	NA	NA	NA				
B	Percent Actions with Penalty (1 FY)	Informational- Only	State			15.40%	2	13	11				
11. Degree to which the Minimum Data Requirements are accurate.													
A	Actions Linked to Violations (1 FY)	Data Quality	State	≥ 80%		47.10%	8	17	9				
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	Active Facility Universe: NPDES Majors (Current)	Data Quality	State			54	NA	NA	NA				
	Active Facility Universe: NPDES Non- Majors (Current)	Data Quality	State			1,194	NA	NA	NA				

B	Majors: Correctly Coded Limits (Current)	Goal	Combined	≥ 95%	90.90%	96.30%	52	54	2
	Majors: DMR Entry Rate based on DMRs expected (1 Qtr) ⁴	Goal	State	≥ 95%	92.40%	90.10%	NA	NA	NA
	Majors: Manual SNC Override Rate (1 FY) ⁵	Data Quality	Combined			0.00%	0	12	12
C	Non-Majors: Correctly Coded Limits (Current)	Informational-Only	Combined			4.10%	49	1,194	1,145
	Non-Majors: DMR Entry Rate based on DMRs expected (1 Qtr) ⁶	Informational-Only	Combined			71.70%	NA	NA	NA
D	Compliance Monitoring: Facilities Inspected (1 NPDES Inspection Year)	Data Quality	State			310	NA	NA	NA
			Regional			14	NA	NA	NA
	Compliance Monitoring: Number of Inspections (1 NPDES Inspection Year)	Data Quality	State			319	NA	NA	NA
Regional					15	NA	NA	NA	
E	Linked Violations (1 FY)	<i>Review not required at this time. This metric is contingent upon state use of ICIS-NPDES.</i>							
F	NOV: Number of Sources (1 FY)	Data Quality	State			0	NA	NA	NA
			Regional			2	NA	NA	NA
	NOV: Number of NOV's (1 FY)	Data Quality	State			0	NA	NA	NA
Regional					2	NA	NA	NA	
G	Violations at Non-Majors: Noncompliance Rate (1 FY)	Informational-Only	Combined			2.30%	28	1,194	1,166
	Violations at Non-Majors: Noncompliance Rate in the Annual Noncompliance Report (ANCR) (1 FY) ⁷	Informational-Only	Combined			0 / 0	0	0	0
	Violations at Non-Majors: DMR Non-Receipt (3 FY)	Informational-Only	Combined			11	NA	NA	NA
H	Formal Action: Number of Sources (1 FY)	Data Quality	State			11	NA	NA	NA
	Formal Action: Number of Actions (1 FY)	Data Quality	State			13	NA	NA	NA
I	Penalties: Actions with Penalties (1 FY)	Informational-Only	State			2	NA	NA	NA
	Penalties: Total Penalties (1 FY)	Informational-Only	State			\$5,000	NA	NA	NA
J	Facilities with Compliance Schedule Violations (1 FY)	<i>This metric is not displaying the correct values.</i>							
K	Facilities with Permit Schedule Violations (1 FY)	<i>This metric is not displaying the correct values.</i>							

⁰ State metric column is generally computed from the value in the Count column (x) divided by the value in the Universe column (y).

¹ Metrics 1a, 1b, and 1c reflect inspections conducted during the NPDES Inspection Year, a 12-month period which begins on July 1st and ends on the June 30th prior to the end of the corresponding fiscal year.

² See above.

³ See above.

⁴ Metric 12b2 reflects DMRs received from 1/1/06 to 3/31/06.

⁵ Data for this metric are only available for FY2005.

⁶ Metric 12c2 reflects DMRs received from 1/1/06 to 3/31/06.

⁷ Metric data for the selected review period are not available. Please see the previous fiscal year report for this metric.

FY2006 KDHE Program Review:

Appendix D: EPA File Review



REGION VII

Summary of CWA NPDES Wastewater Files Reviewed

NPDES Major Facilities

Atchison WWTP, KS0039128, NEDO:

Findings: The Atchison WWTP is an activated sludge treatment plant with a sludge storage tank. The design flow for dry weather is 2.8 million gallons per day (MGD), and the peak wet weather flow is 8.4 (MGD). The effluent from the treatment plant flows into the Missouri River directly, instead of Whiskey Creek. The current permit was issued January 1, 2004, and expires December 31, 2008.

KDHE performed an annual inspection of this NPDES Major facility on December 21, 2005. The inspection report was completed and timely transmitted to the facility in 19 days. The inspection report noted permit limit effluent exceedance for Total Suspended Solids (TSS) in May 2004 and December 2005. The city reported 52 bypasses and/or overflows within their collection system from July 2005 through October 2006. The overflows were reported based on a chalk line indicator, where a chalk line was drawn along the bottom of CSO outfalls and checked the following day to see if lines had been disturbed.

The city and its engineer worked to replace the force main to the WWTP and made improvements to the North Headworks pump station. This portion of the collection system has had problems for some time. The city prepared a Long-Term Control Plan (LTCP) for the Combined Sewer Overflows (CSOs) as required by the Kansas Department of Environment (KDHE), and the city started seeking funding for the CSO project.

The city completed its LTCP in May 2004 and determined to separate its CSOs through a phased approach. KDHE addressed CSO upgrades through the current permit. The upgrade requirements that were outlined in the current permit schedule of compliance (SOC) have been satisfied. KDHE and the city are awaiting the re-issuance of the next permit to address future upgrade requirements for the LTCP.

Key Concerns: The facility reported 52 overflows from July 2005 through October 2006. These may or may not have been overflows, and are based on disruption of the chalk line indicator. KDHE should continue to review the City's reported overflows to ensure the city is reporting the correct information and take appropriate enforcement as needed. KDHE should develop a compliance schedule that requires complete implementation of the city's LTCP. KDHE should not continue to require only partial implementation of the LTCP.

Chanute WWTP, KS0080837, SEDO:

Findings: The Chanute WWTP is a trickling filter plant with a sand drying bed and liquid sludge disposal. The design flow is 2.2 MGD. The current permit was issued February 1, 2003, and expires January 31, 2008.

KDHE performed an annual inspection of this NPDES Major facility on December 5, 2005. The inspection report was completed and timely transmitted to the facility in 1 day.

The KDHE file did not have correspondence, follow-up actions, or return to compliance documents for the violations noted in PCS. The city worked on the digester during the October 1, 2005, - March 31, 2006, timeframe. However, the Chanute WWTP returned to compliance in June and July 2006 on the PCS monthly effluent averages. KDHE believed that the ammonia-nitrogen (NH₃-N) violations were due to facility samples not being representative. EPA could not determine the work status from the file, or how KDHE had determined the cause of NH₃-N violations.

Key Concerns: There were no issues or deficiencies identified in the file during the program review for this facility.

Chisholm Creek Utility Authority, KS0089176, SCDO:

Findings: The Chisholm Creek Utility Authority WWTP (CCUA) is operated by Operations Enterprises, Inc. (OEI) who has a contract with the CCUA. CCUA is a Sequencing Batch Reactor system. Sludge is digested aerobically while held in secondary sludge basins until the sludge is dewatered by a belt filter press. Dewatered sludge is stored in a modified pole barn. Effluent flow is based on the number per day and volume of each decant. The current permit was issued November 1, 2004, and expires December 31, 2007.

KDHE performed an annual inspection of this NPDES Major facility on August 10, 2006. The inspection report was completed and timely transmitted to the facility in 13 days. KDHE identified that the crane used to remove the UV disinfection units for appropriate cleaning was not functioning properly, during the annual inspection. KDHE followed up on issues of non-compliance with correspondence dated November 6, 2006.

Key Concerns: There were no issues or deficiencies identified in the file during the program review for this facility.

Derby WWTP #2, KS0050377, SCDO:

Findings: The Derby WWTP is an activated sludge (oxidation ditch) treatment plant with a static screen sludge thickener, gravity belt thickening, 3 aerated sludge holding tanks, and liquid sludge/land application. The design flow is 2.5 MGD. The current permit was issued December 1, 2005, and expires August 31, 2007.

KDHE performed an inspection of this NPDES Major facility on November 15, 2005. The inspection report was completed and timely transmitted to the facility in 2 days. KDHE's inspection report indicated that the facility was in compliance. No issues or deficiencies were identified in this inspection report.

Key Concerns: There were no issues or deficiencies identified in the file during the program review for this facility.

Emporia WWTF, KS0046728, SEDO:

Findings: The Emporia WWTP is an activated sludge treatment plant with sludge thickening, anaerobic digesters, sludge belt filter press, a peak flow pre-sedimentation basin, and a peak flow holding basin. The design flow is 4.6 MGD. The current permit was issued August 1, 2003, and expires July 31, 2008.

KDHE performed an annual inspection of this NPDES Major facility on February 7, 2006. The inspection report was completed and timely transmitted to the facility in 8 days. No issues or deficiencies were identified in this inspection report.

KDHE performed an abbreviated inspection at this facility on July 5, 2006, and the report was completed and transmitted the same day. The inspection was a result of a complaint reporting the city was dumping sludge from the WWTP on Weaver Road, which is located 2 miles south of the city. No problems were observed during the abbreviated inspection.

Key Concerns: There were no issues or deficiencies identified during the program review for this facility.

Fort Scott WWTF, City of, KS0095923, SEDO:

Findings: The Fort Scott WWTP is an extended aeration activated sludge plant with a 3-celled aerated lagoon for extraneous flow. The city's dry weather design flow is 3.0 MGD. The typical flow is 1.0 to 2.7 MGD. The current permit was issued June 1, 2004, and expires February 28, 2009.

Key Concerns: There were no issues or deficiencies identified in the file during the program review for this facility.

Hays WWTF, KS0036684, NWDO:

Findings: The Hays WWTP is an activated sludge treatment plant with dissolved air flotation sludge thickener, anaerobic sludge digestion, sand drying beds, chlorination, de-chlorination and uses granular media filters. The treated wastewater is used as water to irrigate golf courses and sports fields. The design flow is 2.8 MGD. The permit was issued March 1, 2004, and expires February 28, 2009.

KDHE performed an annual inspection of this NPDES Major facility on April 11, 2006. The inspection report was completed and timely transmitted to the facility in 12 days. No issues or deficiencies were identified in this inspection report.

An abbreviated inspection was performed on the facility November 23, 2005. It was a result of a complaint reporting odor, which actually was a nearby animal feeding facility. No problems were observed during the abbreviated inspection.

Key Concerns: There were no issues or deficiencies identified during the program review for this facility.

Iola WWTF, KS0032123, SEDO:

Findings: The Iola WWTP has a lift station, 1 aeration cell, and 3 cell wastewater stabilization lagoon system. The permitted Flow is 1.394 MGD for 120 day detention time. It serves a population of 7,000; however, it was designed for a population equivalent of 16,320. The previous permit was issued on October 1, 2001, and was scheduled to expire on December 31, 2005. The current permit was issued on September 1, 2005, and expires December 31, 2008.

KDHE performed an annual inspection of this NPDES Major facility on October 27, 2005. The inspection report was completed and timely transmitted to the facility in 11 days. No issues or deficiencies were identified in this inspection report.

The Iola WWTP was on the EPA Watch List from January 2004 through September 2006 because of effluent violations of monthly average limits (Technical Review Criteria and chronic). The facility operated under the previous permit that implemented provisions of the Consent Order 00-E-0154 until August 30, 2005. The facility began operating according to its current permit SOC on September 1, 2005, but the facility did not meet the SOC milestone dates. This facility is currently operating under KDHE Consent Order 06-E-0002 effective January 30, 2006, which required upgrades to return the facility to compliance. KDHE has documented the status of upgrades made at this facility.

Key Concerns: The facility has been in noncompliance since 2003, but the KDHE permit SOCs and enforcement actions have not returned Iola to compliance. KDHE must continue to follow the status and deliverables of its current enforcement action to ensure that Iola returns to compliance.

Johnson County Wastewater, Blue River District #1, KS0092738, NEDO:

Findings: The Johnson County (JOCO) Blue River District # 1 is a BNR Activated Sludge System with a peak flow equalization basin. The design average daily flow is 10.5 MGD. The peak daily flow is 37.5 MGD. The previous permit was issued on July 1, 2000, and expired on June 30, 2005. The current permit was issued on March 1, 2007, and expires December 31, 2011.

KDHE performed an annual inspection of this NPDES Major facility on September 22, 2006. The inspection report was completed and timely transmitted to the facility in 29 days. The JOCO Blue River District # 1 recently built a new BNR Activated Sludge Plant. The upgraded treatment facility was built to operate and maximize the removal of targeted nutrients. The current permit SOC requires the facility to achieve compliance with the final limits by July 1, 2007, and to conduct a study two years thereafter.

Key Concerns: EPA did not examine the compliance status for this facility, as the deadline for compliance was outside of the scope of this review.

MGP Ingredients, KS0001635, NEDO:

Findings: The primary production operation for the facility is the production of ethanol. Its adjacent flour, wheat starch and gluten plant directs a part of its wastewater for use as raw material in the ethanol production with the remainder being sent to the MGP ethanol wastewater treatment system. A portion of the wheat starch and gluten process wastewater combines in an anaerobic/aerobic treatment system. Waste activated sludge is pumped to a gravity belt press. The sludge cake is mixed with bran from the flour mill and distillers syrup to produce dry animal feed. All domestic wastewater is connected to the city sanitary sewer system. The treated process wastewater average daily flow is 0.92 MGD (maximum 1.3 MGD) from Outfall 001b that combines with 4.36 MGD average flow (maximum 5.62 MGD) of non-contact cooling water discharged at Outfall 001. The current permit was issued on December 1, 2003, and expires November 20, 2008.

KDHE performed an annual inspection of this NPDES Major facility on December 21, 2005. The inspection report was completed and timely transmitted to the facility in 16 days. No issues or deficiencies were identified in this inspection report.

EPA found an October 7, 2005, letter in the KDHE file that discussed the October 3, 2005, upset of the MGP activated sludge process that caused the discharge of solids to flow into White Clay Creek exceeding permit limits.

EPA found a February 16, 2006, letter from MGP in the file that discussed the proposed movement of the wastewater discharge point from White Clay Creek to the Missouri River due to toxicity issues. The KDHE file included a letter from MGP on July 6, 2006, that proposed a change in facility's process of disinfectant usage.

Key Concerns: There were no issues or deficiencies identified in the file during the program review for this facility.

Topeka (Oakland) WWTP, KS0042722, NEDO:

Findings: The Topeka (Oakland) WWTP is an activated sludge-contact stabilization treatment plant with 2-stage anaerobic sludge digestion, mechanical sludge dewatering, windrow composting, and sludge storage and distribution. The average design flow is 16 MGD. The peak flow capacity is 32 MGD. The current permit was issued on July 1, 2004, and expires December 31, 2008.

KDHE performed an annual inspection of this NPDES Major facility on December 19, 2005. The inspection report was completed and timely transmitted to the facility in 23 days. No issues or deficiencies were identified in this inspection report. The Topeka Oakland WWTP was under a permit-based SOC to upgrade the plant; however some effluent violations occurred while some equipment was taken out of service during the upgrade. The facility construction was due to be completed by July 1, 2006.

The city is currently in the assessment phase of its LTCP to determine if the upgrades made to

the wastewater treatment plant and the collection system have substantially eliminated combined sewer overflows. KDHE addressed CSO upgrades through the current permit. Topeka completed plant WWTP upgrade requirements and CSO controls by July 1, 2006.

Topeka is required by the NPDES permit to conduct post-construction monitoring as approved in the LTCP.

Key Concerns: KDHE needs to monitor Topeka's compliance with the post-construction monitoring requirements, and determine if the CSO controls operate as anticipated.

Tyson Fresh Meats, Inc. – Emporia, KS0000817, SEDO:

Findings: The Tyson Meats, Inc. is a beef slaughtering operation, in which processes include hide de-fleshing, boiler blow-down, and stockyard washing. The runoff is treated in a WWTP prior to discharge to an unnamed tributary to Cottonwood River to Neosho River. The current permit was issued on January 1, 2004, and expires December 31, 2008.

KDHE performed an annual inspection of this NPDES Major facility on February 28, 2006. The inspection report was completed and timely transmitted to the facility in 16 days. The KDHE inspection report discussed the O&M at the WWTP. The report also discussed Tyson's optimization of sludge, because no sludge was removed from treatment system as required by the permit SOC.

KDHE documented that the facility was out of compliance with its permit SOC, which supports the Kansas Nutrient Plan. Tyson was required to remove sludge from Pond # 1B and dispose of it or Tyson must land apply the sludge.

A pump station bypass occurred October 3, 2006, which fell outside the timeframe of the program review. Tyson followed the proper procedures to call KDHE and document this event.

Key Concerns: EPA could neither determine if KDHE had received all deliverables, nor the status of compliance of the Tyson facility. KDHE must follow-up on all deliverables and deficiencies outlined in the inspection report, and document the facility's responses and actions taken to address noncompliance of permit requirements.

UCB Films Incorporated, a.k.a. Innovia Films, Inc. KS0003204, NEDO:

Findings: The Innovia Films, Inc. produces cellophane from wood pulp for use primarily in food packaging. The cellophane production process generates acid, alkaline and neutral wastewater streams. The treatment system consists of a mix house, finishing coating, casting and viscose manufacturing area (VMA), a wet end dumpster, evaporator, barometric condenser, boiler blow-down, reverse osmosis demineralizer, sodium softener, sand filter regeneration, cooling tower, cooling tower blow-down, effluent clarifier, an equalization basin, and 8 ponds. The average daily flow rate is 1.94 MGD. The current permit was issued January 1, 2006, and expires December 31, 2010.

KDHE performed an inspection of this NPDES Major facility on December 14, 2005. The

inspection report was completed and timely transmitted to the facility in 19 days. No issues or deficiencies were identified in this inspection report.

Innovia Films, Inc. is currently under an SOC which required the facility to submit a sludge removal plan, and remove all sludge from ponds # 4 and 5 except for a small quantity needed to maintain liner integrity that will be removed by September 30, 2006. The SOC had additional requirements and compliance milestone dates for whole effluent toxicity (WET) and toxics reduction evaluation (TRE) plans; however all of these actions fell outside the timeframe of the program review in 2007 through 2009.

Key Concerns: EPA could not determine if this facility submitted deliverables, or the facility's compliance with the permit SOC. KDHE must ensure this facility is submitting all deliverables and complying with the requirements outlined in the permit-based SOC.

Wichita, Four Mile Creek WWTP, KS0081973, SCDO:

Findings: The Wichita Four Mile Creek WWTP is an extended aeration treatment plant with re-aeration, sludge thickener/clarifier, sludge pump station, belt filter press, sludge truck, and an extraneous flow basin system. The average design flow is 1.5 MGD; the peak design flow is 4.5 MGD. The current permit was issued October 1, 2005, and expires September 30, 2010.

KDHE performed an annual inspection of this NPDES Major facility on April 19, 2006. The inspection report was completed and timely transmitted to the facility in 17 days. KDHE did not identify any deficiencies during this inspection. An additional inspection occurred on November 15, 2006, in which the following deficiencies were identified:

- Wichita must calibrate both influent and effluent flow meter, and begin reporting the most accurate flow meter data on the monthly monitoring reports.
- Wichita must also begin reporting on the monthly discharge monitoring report whether the flow data was obtained from the influent flow meter or the effluent flow meter.
- All bypasses of wastewater must be reported immediately by telephone to KDHE followed by a written notification within 5 days of becoming aware of the bypass.

Key Concerns: While deficiencies were identified during the inspection, KDHE followed up with the facility to ensure that deficiencies were resolved.

NPDES Minor Facilities

Baldwin City WWTP, KS0097381, NEDO:

Findings: The Baldwin WWTP consists of two Schieber aeration basins and clarifiers, UV disinfection, cascade aeration, and aerated sludge storage tank. The current permit was issued July 1, 2006, and expires December 31, 2009.

KDHE performed an inspection of this NPDES Minor facility on February 15, 2006. The inspection report was completed and timely transmitted to the facility in 17 days. The KDHE inspection report noted that the western half of the treatment unit was out of service for repairs. There was no documentation of follow-up by KDHE to determine if the unit was repaired,

brought back on line, or returned to compliance.

Key Concerns: KDHE must follow-up on all deficiencies outlined in inspection reports and document the facility responses and actions taken to address noncompliance.

Beach House Heat Pumps, KS0088927, SCDO:

Findings: The Beach House Pumps consist of 3 heat pumps, and non-contact cooling water. This outfall discharges to a tributary which discharges into a residential lake to a receiving stream. The current permit was issued January 1, 2003, and expires December 31, 2007.

KDHE performed an inspection of this NPDES Minor facility on December 4, 2002, which was outside the timeframe of the program review. This inspection was the most recent inspection available. This inspection report was not entered or documented into PCS.

The KDHE inspection report noted deficient operation of the ground water wellhead casings, and KDHE required the permittee to respond to the report findings by January 24, 2003. The facility submitted a response letter to KDHE on January 24, 2003, regarding its follow-up actions to correct the deficiency found during the inspection. KDHE sent a letter on February 15, 2003, accepting the response sent by Beach house with no further action required on the part of the city.

Key Concerns: There were no issues or deficiencies identified in the file during the program review for this facility.

Clearview Village WWTP, KS0090671, NEDO:

Findings: The Clear-view Village WWTP consist of a 3 cell wastewater stabilization lagoon. The current permit was issued in October 1, 2006, and expires December 2011.

KDHE performed a semi-annual inspection of this NPDES Minor facility on November 4, 2005. The inspection report was completed and transmitted to the facility in 142 days. During the review of the inspection report it was noted that algae was observed down stream of the discharge point, the facility was experiencing I/I issues, and bypasses were documented. EPA could not verify the number of bypasses that had occurred during the file review. Another inspection was noted in the file referring to an anonymous complaint and the requirement that all bypasses must be reported immediately.

Key Concerns: EPA could not determine if any follow-up actions were taken to address and resolve the problems identified in the inspection report. KDHE must follow-up on all deficiencies and violations outlined in inspection reports, and document the facility responses and appropriate actions taken to address noncompliance.

Delia WWTP, KS0046493, NEDO:

Findings: The Delia WWTP is a 2 cell WWTP lagoon, with plans to expand the facility to a three-cell lagoon in December 2006. The current permit was issued March 1, 2006, and expires

December 31, 2010. It should be noted that this is a very small community, with a population of 164 people in 2000.

KDHE performed a semi-annual inspection of this NPDES Minor facility on July 10, 2003, which was outside the timeframe of the program review. This inspection was the most recent inspection available. This inspection report was not entered and documented into PCS. The inspection report was completed and timely transmitted to the facility in 8 days.

EPA found a July 18, 2003, KDHE letter to Delia's mayor that discussed serious permit compliance problems at this facility. A November 25, 2003, reminder letter was sent to the city regarding an assessed \$500 penalty that was past due, which the city then paid. The KDHE Administrative Order 02-E-0214 was issued January 7, 2004. EPA found a KDHE memo from January 20, 2004, that addressed issues relating to project scheduling. Delia applied but was rejected by the Kansas Department of Commerce for the 2004 CDBG grant competition. The city was required by the January 7, 2004, Order to submit a schedule for construction improvements by March 1, 2004. The city and KDHE communicated and corresponded about compliance and milestone date issues from 2003 to 2007.

An Amended Consent Agreement was issued by KDHE on April 19, 2005. Delia appeared on the 2005 Annual Non-compliance Report (ANCR) provided by KDHE. The city was more than 1 year behind on construction requirements.

EPA observed meeting minutes for a December 5, 2006, KDHE meeting that discussed final inspection findings for Delia's wastewater lagoon facility improvements. KDHE was tracking the facility's compliance, which fell outside the timeframe of the program review. KDHE collected stipulated penalties of \$100 from Delia on April 27, 2007, for failure to provide discharge monitoring reports (DMRs) and late submittal of DMRs.

Key Concerns: There were no issues or deficiencies identified during the program review for this facility. The city and KDHE took more than 6 years after the first SOC was put into the permit, and 3 years after enforcement was initiated to return Delia to compliance. It appears that the length of time, penalty, enforcement action, and enforcement action amendment were appropriate considering this community was so small and the expansion was done with grant dollars.

Fredonia WWTP, KS0045985, SEDO:

Findings: The Fredonia WWTP is a mechanical plant with sludge drying beds, sludge dewatering system, and a sludge loading pad. The design flow is 0.475 MGD. The previous permit was issued September 1, 2001, and expired August 31, 2006. The current permit was issued September 1, 2006, and expires August 31, 2011.

KDHE performed an inspection of this NPDES Minor facility on May 15, 2006. The inspection report was completed and timely transmitted to the facility the same day. No issues or deficiencies were identified in this inspection report. The previous permit had an SOC that required the city to upgrade the treatment plant, and achieve compliance by November 1, 2005.

Key Concerns: There were no issues or deficiencies identified during the program review for this facility.

Gardner, Kill Creek WWTP, KS0095605, NEDO:

Findings: The Gardner Kill Creek WWTP is an activated sludge mechanical facility with sludge drying beds, UV disinfection, and cascade aeration. The outfall discharges to the Kansas River via Kill Creek. The average design flow is 2.5 MGD. The previous permit was issued November 1, 2004, and expired March 1, 2007. The current permit was issued March 1, 2007, and expires December 31, 2011.

KDHE performed a semi-annual inspection of this NPDES Major facility on March 15, 2006. The inspection report was completed and timely transmitted to the facility in 20 days. No issues or deficiencies were identified in this inspection report. EPA found NH₃-N violations identified for quarters January through March 2006 and April through June 2006 in PCS. There have not been any additional violations that have occurred since June 2006.

KDHE identified the WWTP as a NPDES Major facility in the draft routing sheet dated February 13, 2007. The facility has an SOC in the current permit, which allows the city to add irrigation of the treated wastewater and also requires a nutrient study. Correspondence found in KDHE files dated August 6, 2004, indicated the city planned to construct another 2+ MGD WWTP in the future.

Key Concerns: KDHE must continue to follow the status and deliverables of this facility to ensure completion and compliance of the upgrades outlined in the permit-based SOC. The facility is still listed as a Minor in PCS. KDHE needs to submit an NPDES permit rating worksheet to have the facility status changed.

Haven WWTP, KS0116815, SCDO:

Findings: The Haven WWTF is a three cell wastewater stabilization lagoon with two lift stations. The previous permit was issued January 2, 2002, and expired January 1, 2007. The current permit was issued October 1, 2006, and expires September 30, 2011, which is after the timeframe of the program review.

KDHE performed an inspection of this NPDES Minor facility on February 24, 2006. The inspection report was completed and timely transmitted to the facility in 30 days. KDHE issued an inspection report transmittal letter on April 26, 2006, which discussed renewing the (previous) permit with a new SOC, even after the first permit-based SOC wasn't met. The letter discussed that the city needed to renew the permit and ensure a 2007 budget to complete the SOC requirements.

Haven appeared on the 2005 Annual Non-compliance Report (ANCR) provided by KDHE. The city was more than 1 year behind on construction requirements. There was an SOC in the previous permit requiring the city to achieve compliance with permit effluent limits by March 1, 2002. There is an SOC in the current permit, which requires the city to complete the same upgrade and achieve compliance by December 31, 2009.

Key Concerns: The facility has not appropriately addressed deficiencies or submitted deliverables required in the SOC to return to compliance. KDHE must continue to follow the status and deliverables of this facility to ensure completion and compliance of the upgrades outlined in the permit-based SOC.

Oberlin STP, KS0022501, NWDO:

Findings: The Oberlin STP is a contact stabilization package plant with 1 (maybe 2) clarifier(s), sludge drying beds, chlorination facilities available. The design flow is 0.45 MGD. The current permit was issued August 1, 2002, and expires July 31, 2007.

KDHE performed an annual inspection of this NPDES Minor facility on March 28, 2006. The inspection report was completed and timely transmitted to the facility in 1 day. No issues or deficiencies were identified in this inspection report. The inspector requested a follow-up inspection in the report, but a follow-up was not conducted or documented. There is an SOC in the permit which required the city to upgrade the plant and achieve compliance with permit by December 31, 2005.

An Administrative Order was issued on December 28, 2005. A Consent Agreement 05-E-0255 was issued in February 2006. An amendment to the Consent Agreement, dated March 7, 2007, was issued extending the compliance dates of the original order. A penalty of \$2,500 was assessed for the violations. EPA could not determine how the penalty was determined or if the penalty had been paid. Plant upgrades appeared to still be in progress.

Key Concerns: EPA could not determine if this facility was submitting any deliverables required in the SOC. KDHE must continue to follow and document the compliance status and deliverables of this facility to ensure a return to compliance.

Pretty Prairie WWTP, KS0030520, SCDO:

Findings: The Pretty Prairie WWTP consists of an Imhoff Tank and trickling filter treatment system with sludge drying beds. The WWTP discharges into an unnamed tributary which discharges into Smoot Creek and then into the Ninescah River and finally into the Lower Arkansas River. The design flow is 1.0 MGD. The current permit was issued November 1, 2003, and expires December 31, 2007.

KDHE performed a semi-annual inspection of this NPDES Minor facility on January 12, 2006. The inspection report was completed and timely transmitted to the facility in 25 days. KDHE identified 2 issues or deficiencies in this inspection report. KDHE required the facility to take corrective actions, and documentation was provided to KDHE within the specified timeframe.

A SOC in the permit required upgrade from Imhoff Tank to a proposed 3 cell wastewater lagoon system. A follow-up letter from KDHE to the city, discussed the city's completion of corrective actions with no further action required.

Key Concerns: There were no issues or deficiencies identified in the file during the program review for this facility.

Ransom WWTP, KS0031453, NWDO:

Findings: The Ransom STP is a 3 cell wastewater stabilization lagoon. The permitted flow is 37,750 GPD. The design population equivalent is 461. The previous permit was issued June 1, 2001, and expired May 30, 2006. The current permit was issued April 1, 2006, and expires March 31, 2011.

KDHE performed a semi-annual inspection of this NPDES Minor facility on September 4, 2003, which was outside the timeframe of the program review. This inspection was the most recent inspection available. This inspection report was not entered or documented into PCS. The inspection report was completed and timely transmitted to the facility in 12 days. No issues or deficiencies were identified in this inspection report, which fell outside the timeframe of the program review.

Key Concerns: There were no issues or deficiencies identified in the file during the program review for this facility.

Troy, Peters Creek WWTP, KS0047520, NEDO:

Findings: The Troy WWTP is a 3 cell wastewater stabilization lagoon. The design flow is 0.10 MGD. The design population equivalent is 1,000. The effluent from the treatment plant flows into Missouri River via Peters Creek. The current permit was issued November 1, 2003, and expires December 21, 2008.

KDHE performed an inspection of this NPDES Minor facility on April 13, 2006. The inspection report was completed and timely transmitted to the facility in 26 days. No violations were identified during the inspection. There were no issues or deficiencies identified in the file during the program review for this facility.

Key Concerns: There were no issues or deficiencies identified in the file during the program review for this facility.

Windom WWTP, KS0051721, NCDO:

Findings: The Windom WWTP is a 3 cell wastewater stabilization lagoon, and a lift station. The design flow is 27, 500 GPD, and the lagoons were operating at 50% loading capacity. There were no discharges from the lagoon from September 2004 through September 2006. The previous permit was issued January 2, 2002, and expired January 1, 2007. The current permit was issued February 1, 2007, and expires January 21, 2012. There was an SOC in the permit which required the facility to hire a certified operator by February 1, 2003, and to provide the information to KDHE.

KDHE performed a semi-annual inspection of this NPDES Minor facility on June 27, 2006. The inspection report was not entered or documented into PCS. The inspection was completed and timely transmitted to the facility in 8 days. The inspection report sent to the city on July 5, 2006,

documented several O&M issues:

- treatment plant not having enough wave action in lagoons,
- too many weeds on banks,
- grass above freeboard on banks to prevent erosion, and
- keep inlet and interconnecting flow-boxes clean and clear of debris.

The inspection report stated that the city has addressed some O&M issues and lift station issues. The report cover letter stated that a KDHE follow-up inspection to view completed work would be coordinated with a site visit to view upgrades once completed, within the next 6 months (around January 31, 2007). An upgrade to the WWTP is planned soon.

Key Concerns: EPA could not determine if the follow-up site visit was completed, which fell outside of the timeframe reviewed. KDHE must document and include in their files all inspections, follow-up actions, and status reports submitted by the facility.

Summary of CWA NPDES Enforcement Files Reviewed

NPDES Major Facilities

Abilene WWTP, KS0051942, NCDO:

Findings: A 2005 Compliance Order incorporates by reference a 2003 agreement (Administrative Order 03-E-0167). The 2005 Compliance Order required the City to complete facility upgrades by April 1, 2007. Apparently the delay in complying with the 2003 agreement was caused by potentially inaccurate flow data which had to be verified. Correspondence dated August 19, 2005, also states that the City had been accepting wastes from Russell Stover without pretreatment.

There was no documentation in the file that the required upgrades had been completed (as required by April 1, 2007). Additionally, there was no inspection by KDHE of the facility in 2006, even though the facility had been in non-compliance and was subject to an Order. The fact that a prior compliance agreement was extended by 2 years to confirm flow data may not have been the most efficient means of achieving compliance for the facility. Lastly, there is no documentation of what the contribution of the significant industrial user (SIU) Russell Stover was to the non-compliance, or what actions were taken by the SIU to pretreat its wastewater.

Key Concerns: SIUs that may contribute to non-compliance of a municipality should be addressed.

Johnson County Wastewater, Middle Basin Indian Creek WWTP, KS0119601, NEDO:

Findings: This facility had numerous violations in 2002. A facility upgrade was implemented. All issues related to the facility's compliance appear to be resolved by the upgrade.

Key Concerns: EPA could not determine whether the wet weather diversions from the Indian

Creek WWTP to the Kansas City, Missouri (KCMO) system actually reach the KCMO Blue River WWTF, or whether these diversions result in SSO/CSO discharges in the KCMO collection system (See further discussion of this concern in the Johnson County, Tomahawk WWTP summary below).

Johnson County Wastewater, Tomahawk Creek WWTP, KS0055484, NEDO:

Findings: In February 2006 KDHE issued a Compliance Order (Compliance Order 06-E-0016) to resolve CBOD violations. This Order required the submittal of a plan to resolve those violations.

The KCMO sewer collection system has overflow problems. In particular, the CSO portions of the KCMO sewer collection system have frequent dry weather and wet weather overflow discharges. These overflows are unauthorized and illegal.

During the program review EPA observed in the file that KDHE allowed the Tomahawk Creek WWTP to divert its flows to the KCMO collection system for treatment at the Blue River WWTF. The Tomahawk Creek WWTP permit authorizes only the diversion of the "raw sewage [from the Tomahawk Creek WWTP] to the [KCMO] Blue River WWTF via the KCMO interceptor line".

In a March 2007 Pre-Design letter from KDHE to the Johnson County Wastewater engineer, KDHE approved a plan submitted by Johnson County to send the maximum quantity of dry weather and peak wet weather flow to the KCMO sewer system.

Because of the need for an integrated approach between KCMO and its satellite communities which utilize KCMO's treatment facilities, an analysis must be performed to determine whether dry weather diversions from the satellite communities (such as Johnson County) would constitute permit violations of either KCMO's permit or the Tomahawk Creek WWTP permit. EPA is currently finalizing a Consent Decree with KCMO which will require substantial upgrades and address CSO and SSO issues within their collection system. The expenditures for this project total (approximately) \$1.5 billion.

Key Concerns: EPA is concerned that the additional flows from the Tomahawk Creek WWTP to the KCMO Blue River WWTF, even though the Tomahawk Creek WWTP is permitted to divert flow, is contributing to KCMO Blue River WWTF overflow discharges which would otherwise not occur. During periods of wet weather, the KCMO sewer collection system is at capacity in certain portions of the system, and there is a greater likelihood that the diverted flows will: (1) not reach the KCMO Blue River WWTF; (2) cause bypassing and overflows within the collection system; and (3) put further stress on the KCMO collection system.

NPDES Minor Facilities

Abengoa Bioenergy Corp., KS0081329, SCDO:

Findings: In 2005 there was a citizen's complaint regarding a discharge of wastewater into a

ditch. KDHE investigated and determined that the discharge did not come from the Abengoa facility. There is no explanation of what was the source. In November 2006, the Facility submitted an equalization plan. A Consent Order (06-E-001) was issued with a \$30,000 penalty, with \$10,000 held in abeyance.

Key Concerns: KDHE has a penalty policy that may have been used to calculate this penalty but there was no evidence of its application to this penalty assessment in the file.

Conway Springs WWTP, KS0030651, SCDO:

Findings: The City failed to file the DMRS required by the permit. The City was issued a unilateral Compliance Order (06-E-0140), which was appealed, and then entered into a consensual Order. The Consent Order required payment of a \$250 fine.

Key Concerns: There were no issues or deficiencies identified in the file during the program review for this facility.

Garden Plain WWTP, KS0116386, SCDO:

Findings: In 2004, a KDHE inspection showed a bypass and 2005 numerous permit violations were recorded. In March 2005, KDHE issued a unilateral Compliance Order (05-E-0069) which established a schedule for compliance that required an engineering report, and to thereafter implement upgrades in a schedule approved by KDHE. Following an appeal of the March 2005 Order, a consent order was signed in November 2005, which required actions to return the facility to compliance outside of the review timeframe. The KDHE Order required the city to submit action plans to KDHE by July 2007; facility construction was required to commence by February 2008; construction was to be completed by December 2008; with compliance was to be achieved by March 2009.

Key Concerns: The file review shows KDHE's ongoing efforts to achieve compliance with the City, but no penalty was assessed or collected.

Norton WWTF, KS0022446, NWDO:

Findings: The file contains documentation between KDHE and the City from 1999, 2003, 2004 and 2005 regarding the need for upgrades. The file contains documentation of a bypass of raw sewage in 2004. DMR data shows fecal counts of 30,000 f.c.u. and greater in 2004 and 2005. A 2002 permit contained a compliance schedule which required an engineering report/plan by January 2002, construction complete by December 2005 and compliance by March 2006.

Based on the City's failure to comply with the schedule in the permit, in December 2005, KDHE issued a unilateral Compliance Order (05-E-0254) which required plan submittal by February 2006, construction complete by December 2006 and compliance by January 2007. The unilateral order was appealed by the City and a Consent Order was entered in February 2006 which provided a revised compliance schedule and required a \$2,500 penalty. In May 2006, KDHE received a letter from the City's engineering firm which stated that the bids for the required work

were too expensive and the city was working on cost reductions. The February 2006 Order was then subsequently amended to provide a revised compliance schedule.

Key Concerns: EPA observed that KDHE was trying to work with the City; however, it appears that non-compliance was allowed to continue for an extended period of time (from 2002 to April 2007). KDHE did not take timely enforcement, despite evidence of the bypass of raw sewage and extremely high fecal coliform discharges.

WaKeeney STP, KS0030481, NWDO:

Findings: A permit was issued to the City in 2000, which required the City propose a plan and schedule to achieve compliance by February 2001. The City requested that KDHE perform a UAA on the receiving water to determine whether the permit limits were correct. Based on the file documentation, more time was given to the City to propose its plan/schedule for compliance. In February 2005 a new permit was issued which again required the City to propose a plan/schedule to achieve compliance. The City failed to meet these requirements.

In September 2006, KDHE issued a unilateral Compliance Order (06-E-0128) which alleged the City had failed to comply with the compliance schedule of an earlier Order and permit. The September 2006 Order was appealed by the City, and a consensual Compliance Order was entered in January 2007 which resolved the appeal. One issue raised by the City in its appeal was the need to acquire more land to upgrade the WWTF. The January 2007 Order requires a compliance plan submittal by May 2007; construction complete by January 2008; and the achievement of compliance by April 2008.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe. This is a small municipality which KDHE has worked with extensively over a long period of time to achieve compliance. While compliance may have been achieved more quickly, KDHE's 2006/2007 Orders were reasonable resolutions of the issues based on the City's 2001 request for a UAA, the appeal of the schedule of the 2006 unilateral Order, and the effort to reach a consensual resolution.

York International d/b/a York UPG, KS0000850, SCDO:

Findings: File shows 2005 permit, and documentation of history of failure to file DMRs. Nothing else was observed in the file, although apparently a Compliance Order (06-E-0143) was issued.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe.

Summary of CWA NPDES Stormwater Files Reviewed

Municipal Separate Storm Sewer System (MS4)

Kansas City, KS0095656, NEDO:

Findings: Kansas City is a Phase I stormwater city. The City's permit became effective January 1, 2001, and expired December 31, 2004. The permit has been administratively extended pending issuance of the revised permit. KDHE is currently working on renewing this permit. There has not been an audit or inspection to determine compliance with the requirements of the permit.

Key Concerns: EPA did not document any issues or concerns associated with this city.

Industrial Stormwater

N.R. Hamm Quarry, Petefish, Quarry #3, KS0117498, NEDO:

Findings: This facility is a quarry in Eudora. The most recent permit became effective December 1, 2006, and expires February 28, 2011. The permit contains a compliance schedule requiring the facility to develop a SWPPP. The permit that was effective prior to the current permit was for a non-washing facility and it also required that a SWPPP be developed. Correspondence dated April 19, 2006, from KDHE to the facility outlined the findings of a April 6, 2006, inspection. The findings were the same as items 1-4 in the order as outlined below. KDHE performed a site visit on June 6, 2006, and the unpermitted wash plant was in full operation. KDHE issued Administrative Order Number 06-E-0100 on August 15, 2006, citing violations for: (1) conducting wash operations without a permit; (2) the site plan sent with the permit renewal was inaccurate; (3) the pit dewatering was not being directed to outfall 001 as in the permit application; and (4) there was significant disturbed area with no erosion controls. KDHE also penalized Hamm \$5,000 for the violations at this facility and two other Hamm quarries. The penalty was collected and the file documented that the facility complied that all requirements of the Order.

Key Concerns: KDHE has a penalty policy that may have been used to calculate this penalty but EPA was unable to determine how the policy was used.

N.R. Hamm Quarry, Smith Quarry #106, KS0097632, NEDO:

Findings: This facility is a quarry near Holton. The most recent permit became effective July 1, 2005, and expires June 30, 2010. The permit contains a compliance schedule requiring the facility to develop a SWPPP. A KDHE inspection on June 2, 2006, (inspection letter sent June 6, 2006) revealed that the facility had not inspected outfalls and receiving streams as required by the permit, nor were there records of inspections. The facility also had not developed a SWPPP prior to initiation of quarry activities or within 90 days of permit issuance. KDHE issued Administrative Order Number 06-E-0100 on August 15, 2006, citing violations at three facilities including: (1) conducting wash operations without a permit; (2) the site plan sent

with the permit renewal was inaccurate; (3) the pit dewatering was not being directed to outfall 001 as in the permit application; and (4) there was significant disturbed area with no erosion controls. KDHE also penalized Hamm \$5,000 for the violations at these facilities. The penalty was collected and the file documented that the facility complied that all requirements of the Order.

Key Concerns: KDHE has a penalty policy that may have been used to calculate this penalty but EPA was unable to determine how the policy was used.

N.R. Hamm Quarry, Troy/Huss Quarry #108, KS0097837, NEDO:

Findings: This facility is a quarry near Troy. The most recent permit became effective July 1, 2005, and expires December 31, 2008. The permit contains a compliance schedule requiring the facility to develop a SWPPP. A KDHE inspection on September 19, 2006, (inspection letter sent September 25, 2006) revealed that the facility had not inspected outfalls and stormwater runoff areas, nor were there records of inspections. The facility also had not developed a SWPPP prior to initiation of quarry activities or within 90 days of permit issuance. KDHE issued Administrative Order Number 06-E-0100 on August 15, 2006, citing violations at the three facilities including: (1) conducting wash operations without a permit; (2) the site plan sent with the permit renewal was inaccurate, the pit dewatering was not being directed to outfall 001 as in the permit application; and (3) there was significant disturbed area with no erosion controls. KDHE also penalized Hamm \$5,000 for the violations at these facilities. The penalty was collected and the file documented that the facility complied that all requirements of the Order.

Key Concerns: KDHE has a penalty policy that may have been used to calculate this penalty but EPA was unable to determine how the policy was used

Western Plains Energy, LLC, KS-0093076, NWDO:

Findings: The facility is an ethanol production facility in Oakley. The permit is effective from April 1, 2005, through February 28, 2009. The permit contains a schedule of compliance requiring the development of a SWPPP and certification of its existence within one year of the issuance of the permit. EPA inspected the facility on March 9, 2005, the findings of which were documented in the May 3, 2005, inspection report. KDHE inspected the facility on June 28, 2005, and documented its findings in a letter to the facility dated July 14, 2005. On August 3, 2006, the facility sent KDHE a copy of the cover page of its SWPPP and stated that the SWPPP was completed in February 2005.

Key Concerns: EPA did not document any issues or concerns associated with this file.

Waste Management of Kansas, KS-R000153, NEDO:

Findings: The facility is Rolling Meadows Landfill in Shawnee County. The facility submitted a NOI to KDHE on July 9, 1993 and again on March 1, 2005, and January 24, 2007. There were two letters in the file from Shawnee County, dated September 26, 2006 and December 22, 2006. Both letters were date-stamped received by KDHE on December 28, 2006, and both letters conveyed the county's concerns regarding a lack of BMPs at the facility and included pictures

that showed erosion rills onsite due to the lack of BMPs. KDHE sent the facility a letter on January 16, 2007, informing the facility of the complaint received by KDHR and requiring additional stabilization and temporary controls. The letter requested a response from the facility by March 1, 2007. The facility responded on February 2, 2007, indicating the temporary BMPs it had installed and outlining its plans to increase stabilization when the weather would allow. The facility included pictures of the actions it had taken to come into compliance.

Key Concerns: EPA did not document any issues or concerns associated with this file.

Penny's Concrete, Inc. KS-G460013, NEDO:

Findings: Penny's is a ready-mix concrete company and the subject of this review was a facility in Paola. The facility has a permit effective October 1, 2002, through September 30, 2007. KDHE inspected the facility on May 18, 2006, the findings of which were included in a June 1, 2006, letter to Penny's. On August 3, 2006, KDHE issued Administrative Order (06-E-0104) citing several violations including: (1) settling basin discharges continuously because of flow from a natural spring onsite; (2) company had submitted a SWPPP on January 30, 2006, but a copy of the plan was not at the Paola facility during the KDHE inspection and the facility manager was not aware of the existence of the plan; (3) quarterly stormwater control inspections were not conducted; and (4) the site map failed to include the location of settling basins, fuel storage, domestic sewage disposal area, outfalls and roadside ditches. The AO required immediate implementation of effluent sampling, submittal of quarterly inspection logs, the submittal of an updated SWPPP by September 15, 2006, that the SWPPP be at each company facility in Kansas, that a responsible party at each facility be trained and that the SWPPP be implemented. The facility was to continue submitting sample results and inspection logs until December 13, 2007. The AO also required payment of a penalty in the amount of \$5,000. A note in the file stated that the AO was appealed by Penny's but that a hearing was held and KDHE won. A check in the amount of \$5,000, dated March 5, 2007, was in the file. Receipt of all deliverables was not in the file but the timeframe for submitting deliverables had not lapsed and will be ongoing until December 13, 2007.

Key Concerns: KDHE has a penalty policy that may have been used to calculate this penalty but there was no evidence of its application to this penalty assessment in the file.

Construction Stormwater

River's Edge East, KS-R102990, NEDO:

Findings: This 5.2 acre (disturbed) construction site is located in Wyandotte County; the Unified Government is the permit holder. NOI received December 1, 2005. KDHE received a citizen complaint on August 31, 2006, stating that BMPs were not adequate at the site. KDHE notified the permittee of the complaint on September 7, 2006. On September 8, 2006, the permittee called KDHE to say improvements were being made to the site.. KDHE drove by the site on September 20, 2006, and verified that adequate BMPs were in place and functioning.

Key Concerns: EPA did not document any issues or concerns associated with this file.

Wolf Creek Golf Links, KS-R104006, NEDO:

Findings: This 37 acre (disturbed) construction site is located in Olathe. NOI was received June 1, 2006. The permittee's engineer sent a letter to KDHE on December 12, 2006, stating that the project was almost complete and that remaining work included reconstruction of the south parking lot and replanting tall native grasses along berms lining the 183rd and Lackman right-of-way. KDHE sent a letter to the permittee on January 17, 2007, stating that the facility submitted an inadequate NOI and proceeded with construction. KDHE's letter required the permittee to submit a revised SWPPP, NOI, and proof of BMP improvements by March 1, 2007. February 23, 2007, letter from permittee contained all required documentation.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe.

Heritage Square, KS-R103186, NEDO:

Findings: This is a construction site located in Pottawatomie County near Manhattan. KDHE received a complaint on June 22, 2006. On June 26, 2006, NEDO called a site contact and left a message describing the complaint. On June 27, 2006, the site contact returned the call and said the SWPPP would be updated to control dust.

Key Concerns: KDHE indicated that it felt further follow-up was not necessary.

Stone Creek Meadows, KS-R101277, NEDO:

Findings: This is a construction site in Tonganoxie. NOI was received October 1, 2003, and approved November 7, 2003. There was no KDHE inspection or enforcement for this file. EPA did an inspection and sent a Notice of Proposed Penalty and Opportunity for Pre-filing Negotiations letter on October 31, 2005. A copy of the letter was received by KDHE on November 2, 2005.

Key Concerns: EPA did not document any issues or concerns associated with this file.

Tiblow Townhomes Subdivision, KS-R102723, NEDO:

Findings: This is a construction site in Bonner Springs. KDHE received the NOI on August 2, 2005, and approved it on August 3, 2005. KDHE received a complaint on August 28, 2006, and referred it to NEDO. On August 28, 2006, NEDO contacted the permittee and relayed the complaint that there was a constant problem with sediment leaving the site. On August 28, 2006, NEDO drove by the site and noted a lack of BMPs. On September 7, 2006, NEDO spoke with the permittee who stated BMPs would be improved by September 11, 2006. On September 20, 2006, NEDO drove by and confirmed adequate BMPs were installed and that no further action was necessary.

Key Concerns: EPA did not document any issues or concerns associated with this file.

Prairie View Subdivision, KS-R101155, NEDO:

Findings: This is a construction site in Topeka. KDHE received the NOI on July 14, 2003, and approved it on September 12, 2003. There was a post-it note on the file that stated, "See Complaint File." The complaint file was not provided for review.

Key Concerns: The activity in this file is outside the period of review.

Sherwood Park Pump Station and Force Main, KS-R103311, NEDO:

Findings: This is a 2.5 acre (disturbed) construction site in Topeka. The NOI was received by KDHE on May 9, 2006, and authorized on May 17, 2006. KDHE received a complaint from a nearby landowner saying sediment was being discharged from the site into Lake Vaquero. KDHE conducted drive-bys at the site on August 31, 2006, and again on September 5, 2006. The findings of the site visits are summarized in an email from the inspector to himself, with a copy to Joe Mester. The email states that the contractor was installing seed and straw cover and that the majority of the site still needed cover.

Key Concerns: While the file does not document if the site was returned to compliance, KDHE indicated that the site appears to be stabilized. KDHE also indicated that it would attempt to better document complaints that have been satisfactorily resolved or addressed.

River Hill Shops, KS-R101349, NEDO:

Findings: This is a 37 acre (disturbed) construction site in Shawnee. KDHE received the NOI on January 7, 2004, and issued the authorization on January 13, 2004. KDHE inspected the site on May 1, 2006, and forwarded the findings to the permittee on May 3, 2006, requiring submission of an updated erosion control plan with implementation schedule by May 19, 2006. The permittee responded to KDHE on May 30, 2006, (permittee stated the May 3, 2006, correspondence was not received until it was faxed to him on May 12, 2006) detailing the status of the erosion controls. KDHE performed a follow-up inspection on June 28, 2006. On July 5, 2006, KDHE provided the findings of the inspection to the permittee and requiring submission of documentation addressing BMPs not yet installed by July 21, 2006. The remaining

correspondence in the file is dated December 12, 2006, and later and is outside the period of review.

Key Concerns: Review of the portion of this file that was within the period of review did not reveal any concerns.

Kansas Department of Transportation (KDOT), KS-R101567, NEDO:

Findings: This is a KDOT construction site in Topeka. KDHE received the NOI on April 27, 2004, and issued the authorization on May 28, 2004. A SWPPP was received by KDHE on September 9, 2005. Email correspondence between KDHE staff mentions a complaint was received about this site. KDHE inspected the site on August 12, 2005. KDHE staff met with KDOT on September 8, 2005. KDHE determined that the SWPPP and BMPs were inadequate. KDHE requested that the revised SWPPP be submitted by September 30, 2005. KDHE drove by the site on January 30, 2006, and determined controls to be inadequate. KDHE received an e-mail from KDOT on May 23, 2006, which stated that a contractor was on site installing ditch checks, slope barriers, inlet barriers, and seeding and reseeding areas not under further construction. On June 2, 2006, KDHE received an updated SWPPP from KDOT.

Key Concerns: KDHE may want to consider requiring additional documentation to confirm compliance where a facility reports that it's in compliance.

Quint T., LLC, Wakarusa Ridge Estates, KS-R102316, NEDO:

Findings: This is a construction site in Eudora. Developer originally applied for a permit on August 3, 2000. KDHE notified developer on February 17, 2005, to apply for a permit now that general permit is available (since March 2003). KDHE received a complaint on October 28, 2005, about the condition of the site. KDHE inspected the site on November 3, 2005, and transmitted the findings of the inspection on November 14, 2005, directing the developer to submit by November 25, 2005, a written description of erosion/sediment controls that will be installed. KDHE issued AO 06-E-0011, signed February 6, 2006, demanding updated SWPPP, implementation of BMPs, and submission of monthly inspection logs. The order also required payment of a penalty in the amount of \$2,500. Payment of the penalty was received March 2, 2006. KDHE received a letter from Quint T LLC's attorney on February 14, 2006, requesting a copy of all of KDHE's records on the site. A copy of the updated SWPPP was received by KDHE on February 14, 2006. Copies of inspection logs were received by KDHE on June 8, 2006. KDHE received another complaint from the same complainant on July 20, 2006, and also asking KDHE for information on its enforcement at the site. KDHE inspected the site on September 7, 2006, and noted areas in need of maintenance. KDHE required a response from developer by September 18, 2006. KDHE drove by the site on September 18, 2006, and verified that controls had been repaired.

Key Concerns: EPA did not document any issues or concerns associated with this file.

Summary of CWA NPDES CAFO Files Reviewed

4-Mile Feeders, Inc., KS0092461, NWDO:

Findings: 4-Mile Feeders is an open feedlot that KDHE permitted as a large CAFO. There were three inspections performed at this facility by KDHE. The specific inspection information is below:

<u>Inspection Type</u>	<u>Inspection Date</u>	<u>Report Date</u>
Compliance	8/30/05	8/31/05
Complaint Investigation	9/28/05	9/28/05
Compliance	10/12/06	10/13/06

An Administrative Order was issued on December 12, 2005, for violations discovered as a result of the complaint investigation.

Key concerns: There was little information in the file to document the facility had corrected the violations noted in the inspection reports nor was the information in the file documenting compliance with the Administrative Order.

B&B Cattle Company, NCDO:

Findings: B&B Cattle Company is an open feedlot that KDHE permitted as a large CAFO. There were three inspections performed by KDHE during the period of review. The specific inspection information is below:

<u>Inspection Type</u>	<u>Inspection Date</u>	<u>Report Date</u>
Complaint	2/23/06	2/29/06
Follow-up	6/8/06	6/8/06
Follow-up	7/15/06	7/15/06

A Letter of Warning was issued on March 29, 2006. An Administrative Order was filed on June 27, 2006, and a subsequent Consent Agreement was filed on October 18, 2006, to resolve violations discovered as a result of these inspections.

Key concerns: While compliance with the above enforcement actions is ongoing, there is very little information in the file as to their current compliance status as it relates to penalty payment and other compliance/enforcement deliverables. This may be attributed to the fact that penalty payments are tracked in a electronic tracking system.

Chisholm Feeders, KS0089109, NCDO:

Findings: Chisholm Feeders is an open feedlot that KDHE permitted as a medium CAFO. There was one inspection performed by KDHE that occurred outside EPA's period of review. This was a compliance inspection that occurred on January 26, 2005. The associated inspection checklist was completed and transmitted to the facility on February 7, 2005. There was an Administrative Order that was issued as a result of this inspection. It was issue on October 12,

2005.

Key concerns: There was little information in the file to document the facility had corrected the violations noted in the inspection report nor was the information in the file documenting compliance with the Administrative Order.

Clark Feedlot, KS0091561, SWDO:

Findings: Clark Feedlot is an open feedlot that KDHE permitted as a large CAFO. There was one inspection performed by KDHE during the period of review. This was a follow-up inspection that occurred on November 8, 2005. The associated inspection checklist was completed and transmitted to the facility on November 9, 2005.

Key concerns: EPA did not document any issues or concerns associated with this facility or the inspection report reviewed.

Coolidge Dairy, LLC, KS0093343, SWDO:

Findings: Coolidge Dairy is a dairy operation that KDHE permitted as a large CAFO. There were two inspections performed by KDHE during the period of review. The specific inspection information is below:

<u>Inspection Type</u>	<u>Inspection Date</u>	<u>Report Date</u>
Compliance	3/7/06	4/4/06
Compliance	6/15/06	6/27/06

Coolidge Dairy was operating under an Administrative Order that was issued prior to EPA's review period. Both inspections documented violations of the Order and resulted in issuance of an amended Order requiring payment of a \$15,000.00 penalty. This amended order was issued in August 2006.

Key concerns: No information was in the file that documented the facility had corrected violations discovered as a result of the inspections. Complying actions were proposed within the permit, and were not sought through enforcement, as recommended by EPA. The amended Order issued by KDHE required the facility to pay the stipulated penalty agreed to from the previous consent agreement.

Dale Springer, KS0085448, SEDO:

Findings: Dale Springer Feedlot is an open feedlot that KDHE permitted as a large CAFO. There was one inspection performed by KDHE during the period of review. This was a compliance inspection that occurred on July 6, 2006. The associated inspection checklist was completed and transmitted to the facility on July 7, 2006.

Key concerns: EPA did not document any issues or concerns associated with this facility or the inspection report reviewed.

Double D Farms, KS0098566, NWDO:

Findings: Double D Farms is an open feedlot that KDHE permitted as a large CAFO. There were four inspections performed by KDHE during the period of review. The specific inspection information is below:

<u>Inspection Type</u>	<u>Inspection Date</u>	<u>Report Date</u>
Complaint	12/12/05	12/12/05
Compliance/Complaint	6/6/06	6/8/06
Complaint	7/11/06	7/11/06
Compliance/Complaint	9/21/06	9/21/06

There have been multiple formal enforcement actions issued to this facility prior to or as a result of the inspections reviewed by EPA. A summary of these actions is below:

<u>Enforcement Type</u>	<u>Filing Date</u>
Administrative Order	8/2/05
Consent Agreement	12/8/05
2 nd Administrative Order	8/16/06
2 nd Consent Agreement	3/5/07

Key concerns: EPA did not document any issues or concerns associated with the inspection reports and/or the enforcement actions reviewed.

Flint Hills Feedlot, KS0051268, SEDO:

Findings: Flint Hills Feedlot is an open feedlot that KDHE permitted as a large CAFO. There were three inspections performed by KDHE during the period of review. The specific inspection information is below:

<u>Inspection Type</u>	<u>Inspection Date</u>	<u>Report Date</u>
Complaint	7/20/05	7/25/05
Follow-up	8/22/05	8/22/05
Compliance	4/5/06	5/3/06

A Notice of Noncompliance was issued on July 22, 2005.

Key concerns: EPA did not document any issues or concerns associated with this facility or the inspection report reviewed.

Foote Cattle Company, KS0096423, NEDO:

Findings: Foote Cattle Company is an open feedlot that KDHE permitted as a large CAFO. There was one inspection performed by KDHE during the period of review. This was a compliance inspection that occurred on February 3, 2006. The associated inspection checklist was completed and transmitted to the facility on February 6, 2006.

Key concerns: EPA did not document any issues or concerns associated with this facility or the inspection report reviewed.

Four N, Inc., KS0085669, SCDO:

Findings: Four N, Inc. is an open feedlot that KDHE permitted as a large CAFO. There was one inspection performed by KDHE during the period of review. This was a compliance inspection that occurred on November 21, 2005. The associated inspection checklist was completed and transmitted to the facility on November 21, 2005.

Key concerns: EPA did not document any issues or concerns associated with this facility or the inspection report reviewed.

Golden Duck Inc., KS0098981, NWDO:

Findings: Golden Duck was a poultry facility that KDHE permitted as a large CAFO. It was not active during EPA's period of review and inspections/compliance issues were related to state requirements and therefore were not included in EPA's review.

Key concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe.

Handke Farms, Inc., KS0087351, NEDO:

Findings: Handke Farms, Inc. is an open feedlot that KDHE permitted as a large CAFO. There was one inspection performed by KDHE during the period of review. This was a compliance inspection that occurred on August 16, 2005. The associated inspection checklist was completed and transmitted to the facility on August 23, 2005.

Key concerns: EPA did not document any issues or concerns associated with this facility or the inspection report reviewed.

Harder Farms, Inc., KS0098302, SCDO:

Findings: Harder Farms, Inc. is an open feedlot that KDHE permitted as a large CAFO. There was one inspection performed by KDHE during the period of review. This was a compliance inspection that occurred on July 18, 2006. The associated inspection checklist was completed and transmitted to the facility on July 19, 2006.

Key concerns: EPA did not document any issues or concerns associated with this facility or the inspection report reviewed.

Helendale Ranch, KS0094188, NWDO:

Findings: Helendale Ranch is an open feedlot that KDHE permitted as a large CAFO. There was one inspection performed by KDHE during the period of review. This was a compliance inspection that occurred on April 13, 2006. The associated inspection checklist was completed

and transmitted to the facility on April 18, 2006.

Key concerns: KDHE cited violations for not having livestock waste controls in place, however, a review of the permit identified a compliance schedule that gives the facility until October 2007 to construct these controls.

Henry Creek Farms, KS0089451, SCDO:

Findings: Henry Creek Farms is an open feedlot and swine facility that KDHE permitted as a large CAFO. There were two inspections performed by KDHE during the period of review. The specific inspection information is below:

<u>Inspection Type</u>	<u>Inspection Date</u>	<u>Report Date</u>
Compliance	2/21/06	2/27/06
Follow-up	4/12/06	4/17/06

Key concerns: EPA did not document any issues or concerns associated with this facility or the inspection report reviewed.

Huff and Puff Pork, KS0095087, SWDO:

Findings: Huff and Puff Pork is a swine operation that KDHE permitted as a large CAFO. There was one inspection performed by KDHE during the period of review. This was a compliance inspection that occurred on June 22, 2006. The associated inspection checklist was completed and transmitted to the facility on June 22, 2006.

Key concerns: EPA did not document any issues or concerns associated with this facility or the inspection report reviewed.

Lakin Dairy, KS0093599, SWDO:

Findings: Lakin Dairy is a dairy operation that KDHE permitted as a large CAFO. There were two inspections performed by KDHE during the period of review. The specific inspection information is below:

<u>Inspection Type</u>	<u>Inspection Date</u>	<u>Report Date</u>
Compliance	8/10/05	8/26/05
Compliance	8/9/06	8/16/06

Key concerns: EPA did not document any issues or concerns associated with this facility or the inspection report reviewed.

Mann's ATP, Inc., KS0088901, SCDO:

Findings: Mann's ATP is an open feedlot that KDHE permitted as a large CAFO. There was one inspection performed by KDHE during the period of review. This was a compliance inspection that occurred on April 12, 2006. The associated inspection checklist was completed

and transmitted to the facility on April 17, 2006.

Key concerns: EPA did not document any issues or concerns associated with this facility or the inspection report reviewed.

O.K. Corral , KS0080438, SCDO:

Findings: O.K. Corral was an open feedlot that KDHE permitted as a large CAFO. There was one inspection performed by KDHE during the period of review. This was a compliance inspection that occurred on September 20, 2006. The associated inspection checklist was completed and transmitted to the facility on October 30, 2006.

Key concerns: EPA did not document any issues or concerns associated with this facility or the inspection report reviewed.

O'Brien Cattle Company, Inc., KS0097136, SEDO:

Findings: O'Brien Cattle is an open feedlot that KDHE permitted as a large CAFO. There was one inspection performed by KDHE during the period of review. This was a compliance inspection that occurred on November 28, 2005. The associated inspection checklist was completed and transmitted to the facility on November 29, 2005.

Key concerns: EPA did not document any issues or concerns associated with this facility or the inspection report reviewed.

Patterson Farms, KS0119300, SEDO:

Findings: Patterson Farms is a swine facility that KDHE permitted as a large CAFO. There was one inspection performed by KDHE during the period of review. This was a compliance inspection that occurred on February 15, 2006. The associated inspection checklist was completed and transmitted to the facility on April 18, 2007.

Key concerns: EPA documented that it took well over 1 year to transmit inspection report to the facility.

Peterson Feedlot, KS0093751, NEDO:

Findings: Peterson Feedlot is an open feedlot that KDHE permitted as a large CAFO. There was one inspection performed by KDHE during the period of review. This was a compliance inspection that occurred on August 31, 2006.

Key concerns: Documentation of this inspection was not in the facility file.

Post Feed Yard, KS0088129, SWDO:

Findings: Post Feed Yard is an open feedlot that KDHE permitted as a large CAFO. There was one inspection performed by KDHE during the period of review. This was a compliance

inspection that occurred on February 10, 2006. The associated inspection checklist was completed and transmitted to the facility on February 10, 2006.

Key concerns: EPA did not document any issues or concerns associated with this facility or the inspection report reviewed.

Rock Creek Finishing Farm, KS0091260, NEDO:

Rock Creek Finishing Farm is a swine facility that KDHE permitted as a large CAFO. There was one inspection performed by KDHE during the period of review. This was a compliance inspection that occurred on January 26, 2006. The associated inspection checklist was completed and transmitted to the facility on January 27, 2006.

Key concerns: EPA did not document any issues or concerns associated with this facility or the inspection report reviewed.

Eugene Talkington, KS0115835, SCDO:

Findings: This facility is a beef and swine operation that KDHE permitted as a large CAFO. There were two inspections performed by KDHE during the period of review. The specific inspection information is below:

<u>Inspection Type</u>	<u>Inspection Date</u>	<u>Report Date</u>
Compliance	7/26/05	8/2/05
Compliance	9/14/06	9/20/06

Key concerns: EPA did not document any issues or concerns associated with this facility or the inspection report reviewed.

Saint Francis Feedyard, KS0089486, NWDO:

Findings: Saint Francis Feedyard is an open feedlot that KDHE permitted as a large CAFO. There were three inspections performed by KDHE during the period of review. The specific inspection information is below:

<u>Inspection Type</u>	<u>Inspection Date</u>	<u>Report Date</u>
Compliance/Complaint	3/17/06	3/21/06
Complaint	5/16/06	5/18/06
Follow-up	8/10/06	8/14/06

An Administrative Order was filed on September 1, 2006, and a subsequent Consent Agreement was filed on January 30, 2007, to resolve violations discovered as a result of these inspections.

Key concerns: EPA did not document any issues or concerns associated with this facility or the inspection report reviewed.

Solomon Valley Feeders, KS0053511, NCDO:

Solomon Valley Feeders is an open feedlot that KDHE permitted as a large CAFO. There was one inspection performed by KDHE during the period of review. This was a compliance inspection that occurred on August 23, 2006. The associated inspection checklist was completed and transmitted to the facility on August 30, 2006.

Key concerns: EPA did not document any issues or concerns associated with this facility or the inspection report reviewed.

Spring Creek Farm (Parker), KS0088463, NEDO:

Findings: Spring Creek Farm is a swine operation that KDHE permitted as a large CAFO. There were three inspections performed by KDHE during the period of review. The specific inspection information is below:

<u>Inspection Type</u>	<u>Inspection Date</u>	<u>Report Date</u>
Complaint	11/22/05	11/23/05
Compliance	2/20/06	2/27/06
Complaint	2/22/06	2/24/06

Key concerns: EPA did not document any issues or concerns associated with this facility or the inspection report reviewed.

Summary of CWA Pretreatment Files Reviewed

Pretreatment Program Cities

Great Bend Pretreatment Audit, KS0038491, NWDO:

Findings: A Pretreatment Audit was conducted of the Great Bend approved Pretreatment program on July 27, 2006. The Great Bend program had been approved on March 30, 2006, so program implementation had only begun about four months before.

Given the newness of the program, KDHE's focus was on assisting the city develop positive and efficient approaches to implementation. The audit report was issued within the appropriate time frame and comprehensively addressed all significant program elements.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe.

McPherson, KS0036196, NCDO:

Findings: Neither a Pretreatment Audit nor a Pretreatment Compliance Inspection (PCI) was conducted of the McPherson approved Pretreatment program in FY2006. Because the scope of

the SRF is to evaluate inspections of facilities in FY2006, no further review of the file was made.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe.

Olathe, Pretreatment Audit, KS0045802, NEDO:

Findings: On May 11, 2006, KDHE conducted a Pretreatment audit of the Olathe approved Pretreatment program. The report was mailed to the city the next day, May 12, 2006.

The city had just gone through a Pretreatment coordinator change and KDHE believed it would be best to use an audit to cover with the new personnel, the responsibilities and requirements required by program implementation. The tone of the audit was more to assist than enforce, an approach KDHE takes when a program has undergone a leadership change.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe.

Salina Pretreatment Audit, KS0038474, NCDO:

Findings: A Pretreatment Audit was conducted on May 30, 2006, of the Salina approved Pretreatment program. The state elected to inspect Salina because there had been a change in Pretreatment coordinators roughly three months before.

The city was making a smooth transition between Pretreatment coordinators. The new individual had some concerns and questions that KDHE provided expert help with. The report turnaround was excellent; the report was transmitted on June 28, 6. The city responded to the audit with a request for more assistance from KDHE on permit contents, implementing the criteria for industrial Significant Noncompliance (SNC), spill control plans, industrial reporting, local limits and modification of its Enforcement Response Plan. KDHE met with Salina to provide guidance on these issues on July 11, 2006.

Key Concerns: There are no concerns with KDHE's performance for both the audit and its follow-up.

Wichita, KS0043036, SCDO:

Findings: Neither a Pretreatment Audit nor a Pretreatment Compliance Inspection (PCI) was conducted of the Wichita approved Pretreatment program in FY2006. Because the scope of the SRF is to evaluate inspections of facilities in FY2006, no further review of the file was made.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe.

Industries outside Pretreatment Program cities

Liberty Inc, Manhattan, NCDO:

Findings: A review of the Liberty, Inc. Manhattan facility showed that no inspection activities with that industry occurred during the program review time frame. Because the scope of the SRF is to evaluate inspections of facilities in FY2006, no further review of the file was made.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe.

Liberty Inc., Waterville, NEDO:

Findings: A review of the Liberty, Inc. Waterville facility showed that no inspection activities with that industry occurred during the program review time frame. Because the scope of the SRF is to evaluate inspections of facilities in FY2006, no further review of the file was made.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe.

Moridge Manufacturing, Moundridge, NCDO:

Findings: Moridge Manufacturing was inspected on February 23, 2006. This was done in conjunction with another IU in Moundridge, Tortilla King. Moundridge had been having trouble in its collection system due to oil and grease discharges from its industrial users.

Moridge, a Categorical industry was found not to be the main source of oil and grease issues. The report issued by KDHE indicated that the inspection was thorough, comprehensive, and complete.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe.

RML, Ottawa, NEDO:

Findings: RML was inspected on April 27, 2006, because it was a newer industry and in need of submitting a baseline monitoring report (BMR).

The purpose was more of compliance assistance rather than the usual enforcement. Following KDHE's inspection, RML submitted its BMR on June 6, 2006.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe.

Webster MFG., Winfield, SCDO:

Findings: Webster was inspected June 5, 2006. Webster had been found to be in infrequent noncompliance the previous reporting period for submitting a late report.

KDHE found during the inspection, an additional outfall that need to be included in the industry's permit. Over time, the industry's compliance rate with pollutant standards has been

acceptable.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe.

Summary of CWA NPDES Data Management Files Reviewed

There are 120 minimum data requirements for WENDB data elements and the acronyms definitions are located at the end of the data file summaries. The WENDB data elements are applicable to the NPDES Majors. A subset of the 120 data elements are applicable to the NPDES Minor mechanical plants (PL 92-500 facilities).

NPDES Major Facilities

Atchison, KS0039128, NEDO:

Findings: Overall the DMR data was entered correctly. However, there were three instances of incorrect DMR data as shown below:

August 2006			
Parameter BOD			
	On DMR		In PCS
MCMN	3.00		MCMN 2.10 mg/l
MCAV	6.80 (Wk. 4 Avg. 2.5)		MCAV 3.75999 mg/l
MCMX	10.50		MCMX 6.80 mg/l

Other than the above discrepancies the DMR data was entered correctly, timely and complete. There was a current compliance schedule in the file, but it was not entered in PCS.

Key Concerns: KDHE should work towards entering compliance schedules in PCS.

Chanute, KS0080837, SEDO:

Findings: The DMR data was entered correctly, timely and complete. There were no deficiencies. There was no current compliance schedule for this Major facility in the file and there was no compliance schedule entered in PCS. Since Chanute is a pretreatment program city, a “Y” code should be entered in PCS. KDHE indicated that the “Y” code had been entered, but did not upload to PCS. KDHE plans to review the situation and get the data properly loaded.

Key Concerns: KDHE needs to assure that the “Y” code is entered and uploaded, when required.

Chisholm Creek Utility Authority, KS0089176, SCDO:

Findings: This facility did not have any DMR data in PCS. The EPA PCS coordinator explained this to KDHE’s contact and the data was reloaded to PCS. The EPA PCS coordinator

rechecked PCS but the DMR data has not populated PCS.

Key Concerns: The DMR data needs to be uploaded to PCS,

Derby WWTP #2, KS0050377, SCDO:

Findings: The DMR data was entered correctly, timely and complete with one exception as noted below:

July 2006

Parameter TSS

On DMR

MCMX 3.20

In PCS

MCMX 3.00

Key Concerns: Data error “measurement/violation concentration maximum (MCMX) 3.20 on DMR and PCS 3.00” was due to a typographical error and the missing WENDB data elements.

Emporia WWTF, KS0046728, SEDO:

Findings: The DMR data was entered correctly, timely and complete, there were no deficiencies. There was no current compliance schedule for this facility in the file and there was no compliance schedule in PCS. Since Emporia is a pretreatment program city, a “Y” code should be entered in PCS. KDHE indicated that the “Y” code had been entered, but did not upload to PCS. KDHE plans to review the situation and get the data properly loaded.

Key Concerns: KDHE needs to assure that the “Y” code is entered and uploaded, when required.

Fort Scott WWTF, City of, KS0095923, SEDO:

Findings: The DMR data was entered correctly, timely and complete, and there were no deficiencies. There was a compliance schedule in the file for this Major facility, but it was not entered in PCS.

Key Concerns: KDHE should work towards entering compliance schedules in PCS.

Hays WWTF, KS0036684, NWDO:

Findings: The DMR data was entered correctly, timely and complete, there were no deficiencies. There was a compliance schedule in the file but it was not entered in PCS.

Key Concerns: KDHE should work towards entering compliance schedules in PCS.

Iola WWTF, KS0032123, SEDO:

Findings: The DMR data was entered correctly, timely and complete. There were no deficiencies. There was a compliance schedule in the file but it was not entered in PCS. . Since Iola is a pretreatment program city, a “Y” code should be entered in PCS. KDHE indicated that the “Y” code had been entered, but did not upload to PCS. KDHE plans to review the situation

and get the data properly loaded.

Key Concerns: KDHE needs to assure that the “Y” code is entered and uploaded, when required. KDHE should work towards entering compliance schedules in PCS.

Johnson County Wastewater, Blue River District #1, KS0092738, NEDO:

Findings: The DMR data was entered correctly, timely and complete. There were no deficiencies. There were compliance schedules in the file for this Major facility but they were not entered in PCS. Since Johnson County is a pretreatment program city, a “Y” code should be entered in PCS for the main plant, Nelson. KDHE plans to review the situation and get the data properly loaded.

Key Concerns: KDHE needs to assure that the “Y” code is entered and uploaded, when required. KDHE should work towards entering compliance schedules in PCS.

MGP Ingredients, KS0001635, NEDO:

Findings: The DMR data was entered correctly, timely and complete. There were no other deficiencies. There was no current compliance schedule for this facility but there were two older schedules with violations in PCS which need to be corrected in PCS.

Key Issues: KDHE should work towards entering violations in PCS.

Topeka (Oakland) WWTP, KS0042722, NEDO:

Findings: The DMR data was entered correctly with the exceptions as noted below:

August 2005		
Parameter BOD		
	On DMR	In PCS
MCMN	11.0	11.0
MCAV	78.8750	78.8750
MCMX	180.00	139.00 *

*the 139.00 is the Week 2 average. The weekly average value was used for the MCMX. The remaining DMR data was entered correctly, timely and complete and there were no other deficiencies. There were compliance schedules in the file for this Major facility, but they were not entered in PCS.

Key Issues: KDHE should correct the data discrepancies noted above. KDHE should also work towards entering compliance schedules in PCS.

Tyson Fresh Meats, Inc. (Emporia), KS0000817, SEDO:

Findings: The DMR data was entered correctly, timely and complete. There were no deficiencies.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe.

UCB Films, Incorporated, KS0003204, NEDO:

Findings: The DMR data was entered correctly, timely and complete and there were no deficiencies. There was a compliance schedule for this Major facility in the file but it was not entered in PCS.

Key Concerns: KDHE should work towards entering compliance schedules in PCS.

Wichita, Four Mile Creek WWTP, KS0081973, SCDO:

Findings: Since Johnson County is a pretreatment program city, a “Y” code should be entered in PCS for the main plant, Nelson. The DMR data was entered correctly with the exceptions noted below:

September 2006

Parameter DO		
On DMR		In PCS
MCMN	7.85	8.23

August 2006

Parameter DO		
On DMR		In PCS
MCMN	7.60	7.97

July 2006

Parameter DO		
On DMR		In PCS
MCMN	7.73	7.94

June 2006

Parameter DO		
On DMR		In PCS
MCMN	7.93	8.45

May 2006

Parameter DO		
On DMR		In PCS
MCMN	8.12	8.36

April 2006

Parameter DO		
On DMR		In PCS
MCMN	8.41	8.65

March 2006

Parameter DO		
On DMR		In PCS
MCMN	8.11	9.09

February 2006

Parameter DO		
On DMR		In PCS
MCMN	9.01	9.47

January 2006

Parameter DO		
On DMR		In PCS
MCMN	7.17	8.65

December 2005

Parameter DO		
On DMR		In PCS
MCMN	8.31	8.96

November 2005

Parameter DO		
On DMR		In PCS
MCMN	7.52	8.096

October 2005

Parameter DO		
On DMR		In PCS
MCMN	7.47	8.37

Key Concerns: KDHE needs to assure that the “Y” code is entered and uploaded, when required. KDHE should correct the data discrepancies noted above.

NPDES Minor Facilities

Baldwin City WWTP, KS0097381, NEDO:

Findings: The DMR data was entered timely and complete.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe.

Beach House Heat Pumps, KS0088927, SCDO:

Findings: The DMR data was entered timely and complete,

Key Concerns: EPA did not document any issues or concerns associated with this facility

during the reviewed timeframe.

Clearview Village WWTP, KS0090671, NEDO:

Findings: The DMR data was entered timely and complete.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe.

Delia WWTP, KS0046493, NEDO:

Findings: The DMR data was entered timely and complete, with the exception of the compliance schedule.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe.

Fredonia WWTP, KS0045985, SEDO:

Findings: The DMR data was entered timely and complete.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe.

Gardner, Kill Creek WWTP, KS0095605, NEDO:

Findings: The DMR data was entered timely and complete.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe.

Haven WWTP, KS0116815, SCDO:

Findings: The DMR data was entered timely and complete. There was a compliance schedule for this facility in the file but it was not reflected in PCS.

Key Concerns: KDHE should work towards entering compliance schedules in PCS.

Oberlin STP, KS0022501, NWDO:

Findings: The DMR data was entered timely and complete. There was a compliance schedule for this facility in the file but it was not reflected in PCS.

Key Concerns: KDHE should work towards entering compliance schedules in PCS.

Pretty Prairie WWTP, KS0030520, SCDO:

Findings: The DMR data was entered timely and complete.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe.

Ransom WWTP, KS0031453, NWDO:

Findings: The DMR data was entered timely and complete.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe.

Troy, Peters Creek WWTP, KS0047520, NEDO:

Findings: The DMR data was entered timely and complete.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe.

Windom WWTP, KS0051721, NCDO:

Findings: The DMR data was entered timely and complete.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe.

Additional NPDES Data Files Reviewed

The EPA data steward reviewed three additional files, as a collaboration of data management concerns and enforcement actions. EPA reviewed compliance with enforcement actions and WENDB data elements.

NPDES Major Facilities

Johnson County Wastewater, Tomahawk Creek WWTP, KS0055484, NEDO:

Findings: There is a non-receipt of compliance schedule entered in PCS dated June of 2006, but no compliance schedules entered in PCS after that date, and PCS is missing a WENDB data element.

Key Concerns: KDHE should work towards entering compliance schedules in PCS, including the resolve date.

NPDES Minor Facilities

Conway Springs WWTP, KS0030651, SCDO:

Findings: The DMR data was entered timely and complete.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe.

Garden Plain WWTP, KS0116386, SCDO:

Findings: The enforcement action taken by KDHE was entered by the Region 7 PCS contact.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe.

FY2006 KDHE Program Review:

**Appendix E: KDHE and EPA Revisions to Draft Report
and File Summary**



REGION VII

1.0 Executive Summary

1.1 General Information

The Environmental Protection Agency (EPA) Region 7 Water Enforcement Branch conducted the FY2006 Kansas National Pollutant Discharge Elimination System (NPDES) Program Review on April 23 – 27, 2007, with the staff of the Kansas Department of Health and Environment (KDHE). The goal of the review was to assess the implementation of the authorized Clean Water Act (CWA) NPDES Enforcement program in Kansas.

KDHE is the Kansas state agency with the authority to administer the federal NPDES program, pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The review timeframe was July 1, 2005 to September 30, 2006, which covered the 2006 NPDES Inspection Year and the Federal Fiscal Year 2006 (FY2006). EPA focused its review on activities during the Review timeframe, but included some violations which occurred prior to FY2006 in order to assess the rationale for enforcement sought during FY2006.

Through discussions with KDHE on its agency processes and policies, as well as a detailed review of NPDES facility files, it is the Region's assessment that KDHE's NPDES and pretreatment compliance and enforcement programs are generally being implemented in accordance with the CWA and its implementing guidance. These findings, along with others, are discussed in the subsequent sections of this document.

The following section identifies major findings and recommendations from each NPDES program area that were identified as a result of this program review. A more detailed discussion of these findings is presented later on in this document.

1.2 Synopsis of Major Findings and Recommendations

EPA concluded that KDHE has improved its implementation of the NPDES program since the FY2003 program review, but KDHE needs to improve and strengthen certain many aspects of the NPDES program. KDHE has advanced its CSO/SSO program, the stormwater program, and the Concentrated Animal Feeding Operations (CAFO) program implementation in comparison with the FY2003 program review.

KDHE needs to address the following deficiencies: improve documentation; verify facilities' return to compliance; improve communication for compliance and inspections; take consistent enforcement actions; apply enforcement tools in a manner consistent with federal regulations and the KDHE Water Quality Guidance Memorandum regarding wastewater enforcement guidance, dated December 9, 1997; evaluate assess economic benefit, which is defined as the after tax net present value of a pollution prevention or mitigation project; and increase oversight and enforcement in the Combined Sewer Overflow / Sanitary Sewer Overflow (CSO/SSO) and the municipal separate storm sewer system (MS4) programs.

Core NPDES Program Implementation:

- EPA identified several inconsistencies between the KDHE enforcement program administration and the EPA enforcement program administration.
- KDHE's enforcement actions are ~~written~~ ~~conducted~~ by experienced staff in the central office.
- KDHE should document enforcement decisions, including gravity and economic benefit in the penalty calculations.
- KDHE should consistently include milestones *which track progress towards compliance* in enforcement actions, and document actions to ensure that facilities return to compliance.

Wastewater Program Implementation:

- ~~KDHE interpreted schedules of compliance in permits as a state-based compliance tool. Ensure that enforcement actions meet the federal definition of enforcement.~~
- KDHE addressed longstanding non-compliance by issuing NPDES permits that contained schedules of compliance (SOCs). In some instances, facilities received several SOCs over multiple permit phases. SOCs are being inserted into permits and viewed by KDHE as appropriate actions based on Kansas state law and the BOW Wastewater Enforcement Guidance. Schedules of compliance should only be used when a water quality based effluent limit (WQBEL) is required in a permit for the first time or the water quality standards have changed therefore changing the WQBEL. EPA recognizes the use of SOCs for State-driven issues are outside of the scope of federal authority (See Section 4.6).

Stormwater Program Implementation:

- KDHE has begun to implement the MS4 program. KDHE should work towards advancing its MS4 program by conducting MS4 audits and seeking enforcement when needed
- ~~KDHE should conduct more oversight in the MS4 stormwater program~~
- ~~KDHE should conduct MS4 audits~~
- ~~Data indicates that KDHE only collected \$12,500 in stormwater enforcement penalties.~~
- KDHE should continue to review ~~does a good job reviewing~~ SWPPPs and NOIs for deficiencies, and ~~continue to withhold~~ withholding permit authorization until the SWPPP is complete and satisfactory. EPA would like to see KDHE continue this practice.

Pretreatment Program Implementation:

- KDHE does not have an authorized Pretreatment Program, although KDHE shares implementation of the pretreatment program through an MOU with the Region. ~~KDHE should seek authorization for the Pretreatment Program and work with the Region on the requirements to do so.~~ KDHE should continue to evaluate seeking authorization for the Pretreatment Program.

Data Management Implementation:

- KDHE ~~must enter~~ should work towards entering all of the Water Enforcement National Data Base (WENDB) data elements according to the minimum requirements for Major and Minor facilities, including schedules of compliance, where required.
- KDHE should create a written standard operating procedure (SOP) for the management of the KDHE DMR oversight in the Oracle database management system (DBMS) DEEMERS.

These summarized recommendations are discussed in greater detail in Section 4.0 of this report. ~~Within 30 days of receipt of the program review, KDHE must provide EPA an action~~

plan to review and implement the recommendations within 90 days, including milestones for significant activities.

2.0 Introduction and Scope

EPA R7 Water Enforcement staff followed the 1999 Program Review Protocol (R7 Protocol) to conduct the review, and integrated the State Review Framework (Framework) protocol recommended by EPA Headquarters. EPA evaluated KDHE's progress made from the previous program review in FY2003; the historical strengths and weaknesses of KDHE's program; the annual commitments achieved in the federally funded performance partnership grant (PPG) in the CWA Section 106 grant workplan (FY2006 workplan); and the compliance and enforcement activities that KDHE's program carried out during FY2006.

EPA staff visited KDHE's central office; reviewed KDHE Bureau of Water (BOW) files; and spoke with KDHE program staff to assess KDHE's compliance and enforcement actions in the traditional/core NPDES program; the Pretreatment Program; the Concentrated Animal Feeding Operations (CAFO) Program; the Stormwater Program; the CSO/SSO Program; and data management.

During the review timeframe, KDHE was responsible for 4,209 Major and Minor wastewater permitted facilities; 3,020 active construction stormwater permits, 1,997 active industrial stormwater permits, and 3 Phase I and 59 Phase II MS4 permits; 473 permitted CAFO facilities; and 16 approved Pretreatment program cities and 52 Categorical Industries outside of Pretreatment cities.

At the time of the review, KDHE was responsible for 1,574 Major and Minor wastewater permitted facilities; 2,225 active construction stormwater permits, 550 active industrial stormwater permits, and 3 Phase I and 59 Phase II MS4 permits; 473 permitted CAFO facilities; and 18 approved Pretreatment program cities and 52 Categorical Industries outside of Pretreatment cities.

EPA R7 selected 84 files for review (see Appendix A, Table 2) that provide a representative sample of the:

- NPDES universe in Kansas;
- different components of the NPDES program;
- State and Regional initiatives; and
- KDHE district offices.

Files were selected to obtain a broad perspective of how aspects of the program operate. In order to meet this need, lists of facilities were generated from EPA's national database, PCS, or were provided by KDHE staff. The lists contained facilities that were active where the permit was identified as being active in PCS during the review timeframe of July 1, 2005 through September 30, 2006. From these lists, EPA made every effort to select files that would fairly and comprehensively represent the KDHE CWA program's efforts in day-to-day program management. EPA examined factors such as recent inspection and enforcement activity for each CWA area (municipal wastewater, CSO, CAFO, construction stormwater, industrial stormwater,

and pretreatment) in the timeframe reviewed. The criteria excluded the statistical design for random file selection. EPA selected files that ensured a comprehensive review of the state's inspection and enforcement activities, and Conducting the review in this manner enabled EPA R7 staff to draw qualitative conclusions about KDHE's NPDES Enforcement program. The statistical inferences and quantitative comparisons were limited according to the narrowed files selection criteria.; however, The criteria excluded the statistical design for random file selection.

Additional information regarding EPA and KDHE staff contacts (Table 1, Appendix A), the file selection break out, and analysis criteria are included in the appendices. The reference list of federal and state policies is provided in Appendix B. A complete list of specific file review findings appears in Appendix D. For other supporting information, please see the Table of Contents.

3.0 Follow up to Past Findings and Recommendations

EPA R7 staff evaluated the recommendations and action items included in the previous program review conducted in FY2003.

- KDHE developed an internal database to track ~~has not reviewed or revised its protocols for tracking~~ return to compliance. However, EPA did not review the database during the program review, nor fully implemented enforcement tracking to address return to compliance.
- KDHE uses a Lotus Notes database, which appears to be useful in tracking compliance schedules and return to compliance. Additionally, enforcement actions are sent out through a chain of concurrence to assure consistent communication, as specified in KDHE's enforcement response policy. However, KDHE could improve its enforcement response by following up with facilities to track compliance when facilities do not meet criteria established within the enforcement document.
- ~~KDHE has not fully implemented enforcement tracking to address return to compliance.~~
- KDHE has advanced its CSO program by expanding its involvement with CSO communities. KDHE has been working with the City of Atchison (KS0039128) and the City of Topeka, Oakland WWTP (KS0042722) to ensure that each facility implemented the long-term control plan (LTCP) requirements of the NPDES permits. KDHE has been working with Atchison and Topeka to ensure also ensured that all bypass and overflow reports were submitted and appropriately documented. This accomplishment was a recommendation that was highlighted in the 2003 program review.

4.0 Program Review Findings and Recommendations

The EPA R7 staff used data from the PCS database and EPA's Online Tracking Information System (OTIS) database pulled on March 9, 2007, that was provided in the OTIS Framework metrics table to discuss the State reported data with KDHE for the review timeframe.

The Framework protocol relies on twelve essential elements referred to as data metrics. The twelve NPDES data metrics are a common set of measures pulled from the national EPA PCS database that gives EPA an analysis of state-specific performance, and in some cases, comparisons with national averages, for areas where a data stream exists.

KDHE maintains its own database for tracking compliance and enforcement activities. Because the data metrics are based on data entered into PCS, the reported result may not fully reflect what the metric is intended to measure. EPA used file reviews to support conclusions made in conjunction with the findings of the metrics.

Data Metrics 1a, 6a, 11a, and 12b analyzed in the following sections are connected to national goals established by EPA for all states that implement authorized CWA programs.

Section I. Review Area: Inspections

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

Traditional/Core NPDES Program Findings:

- Data Metric 1a is connected to a national goal of 100% inspection coverage for NPDES Majors during NPDES Inspection Year 2006.
- Data Metric 1a has a national average rate of 59.90% state inspection coverage of NPDES Majors, and a national average rate of 62.80% for inspection coverage of NPDES Majors based on combined data from state and federal databases.
- PCS indicated that KDHE inspected 40 out of 54 NPDES Majors, which is a 74.10% inspection coverage rate and above the national average.
- PCS indicated that 14 out of 54 NPDES Majors were not counted as inspected, which is 25.90% of the NPDES Majors universe in Kansas. However, KDHE tracks inspections based on the federal fiscal year, as opposed to the inspection year, which occurs three months earlier. KDHE reported that they inspected all 54 NPDES Majors accounted for in the metric, plus an additional two facilities that were Majors for a total of 56 NPDES Major inspections. This accounts for the difference in the number of inspections.
- Data Metric 1b indicated that Kansas had an average of 15.20% state inspection coverage of NPDES Minors, and a 15.60% rate for inspection coverage of NPDES Minors based on combined data from state and federal databases. The results for this metric may be skewed, as KDHE does not enter all WENDB data elements. KDHE reported that its compliance and enforcement tracking database indicates that 22.6% of NPDES Minor facilities were inspected in calendar year 2006.
- Data Metric 1c indicated that Kansas has an average rate of 2.70% state inspection coverage of NPDES Other facilities, and a 3.00% rate for inspection coverage of NPDES Other facilities based on combined data from state and federal databases. “Other facilities” includes stormwater, MS4, and CAFO inspections. EPA understands that this may not be an accurate reflection of all facilities because the universe of the “other” facilities was identified by SIC code.

Stormwater Program Findings:

- KDHE inspected construction stormwater sites mainly in response to complaints. ~~although KDHE began targeting inspections, such as those done in the Pottawatomie County area.~~
- KDHE reviewed the stormwater pollution prevention plans (SWPPPs) that were submitted with Notices of Intent (NOIs). If deficiencies were noted in a SWPPP, KDHE supported compliance by withholding the withheld permit authorization until the SWPPP was complete and satisfactory.
- KDHE has not inspected or audited municipal separate storm sewer system (MS4) communities; although the annual reports, required by the MS4 permits to be submitted to KDHE annually, are reviewed to determine if the permittee is implementing the program.

CAFO Program Findings:

- KDHE performed inspections at 253 CAFOs (as defined by EPA) during 2006.
- KDHE inspected each of its CAFOs (as defined by EPA) that had ~~and were issued an~~ NPDES permits on a cycle of every 1-2 years.
- KDHE performed inspections and complaint investigations at approximately 53% of the permitted CAFOs during the review timeframe.

Pretreatment Program Findings:

- KDHE performed Pretreatment audits at ~~3~~ 4 approved Pretreatment cities, and participated in 2 audits conducted by EPA Region 7.
- KDHE inspected ~~1846~~ of its 52 Categorical industries outside Pretreatment cities.

Metric 1 Recommendations:

- Continue the practice of reviewing SWPPPs and NOIs for deficiencies, and continue to withhold permit authorization until the SWPPP is complete and satisfactory
- Audit Phase I and Phase II MS4 communities, to the extent possible, in an effort to assess and improve compliance with the program requirements.
- Inspect industrial stormwater facilities, to the extent possible, in an effort to assess and improve compliance with the program requirements.
- Focus ~~Continue targeted~~ inspection initiatives, to the extent possible, ~~such as the initiative in Pottawatomie County in an effort to increase compliance with the stormwater regulations, and~~ to make KDHE's presence ~~felt known~~ among the regulated community ~~to further compliance.~~

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

Traditional/Core NPDES Program Findings:

- File Review Metric 2a: EPA reviewed 14 Major NPDES inspection reports. KDHE issued an inspection transmittal letter to each inspected facility that included the findings and outlined deficiencies, if any were observed by the inspector.

- EPA found that 64 % of Major NPDES inspection reports reviewed during the file review included an accurate description of potential and actual deficiencies or violations. In other words, 36% of the files identified violations not accurately reported as all inspection reports reviewed cited deficiencies or violations. (9 files out of the 14 Majors).
- EPA found that 50% of the Minor NPDES inspection reports reviewed during the file review included an accurate description of potential and actual violations. (6 files out of the 12 Minors).

Stormwater Program Findings:

- File Review Metric 2a: EPA reviewed 10 stormwater inspections documented within the 17 stormwater files. The 9 inspection reports and one email (Sherwood Park Pump Station & Force Main, KS-R103311) documented inspection findings so that the violations were identified.
- KDHE issued an inspection transmittal letter to 9 of the 10 (inspection report not sent to Sherwood Park Pump Station & Force Main, KS-R103311) inspected facilities that included the findings and outlined deficiencies if any were observed by the inspector.
- KDHE took photographs when appropriate to document violations supplement the findings and provide supporting evidence. Furthermore, if identify deficiencies were noted by the inspector, the stormwater facility was required to provide documentation to KDHE (within a timeframe provided by KDHE in during the inspection letter) verifying that the identified deficiencies had been corrected.

CAFO Program Findings:

- Overall, findings reported in CAFO inspections are well documented and provide accurate descriptions of observations. KDHE utilizes a checklist format for all CAFO inspection reports. While checklists were typically not as comprehensive as a narrative based inspection report, KDHE's inspection reports document the findings included in the reports as well as provide accurate descriptions of what the inspector observed.

Pretreatment Program Findings:

- KDHE Pretreatment inspections were thorough and documented inspection findings. Investigations included descriptions to sufficiently identify violations.

Metric 2 Recommendations:

- Based on observations documented in the file and cited within the report, EPA recommends that KDHE follow the BOW Wastewater Treatment Facility Inspection Policy to increase the accurate descriptions of potential and actual violations documented in the inspection reports. Doing so will improve communication within the report regarding instances of non-compliance and the significance of the violations.
- KDHE should ensure that violations are clearly identified within inspection reports for core NPDES facilities. EPA understands that KDHE tracks receipt of engineering reports and construction projects for CSOs through the central

office. Therefore, KDHE does not expect inspectors to cite CSO deficiencies in inspection reports.

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

Wastewater **All of the In general**, stormwater, CAFO, and pretreatment inspection report findings were transmitted within 30 days, with **few** only 3 or 4 exceptions. Each of the inspection report transmittal letters and reports included a description of any violations noted, and required the facility to provide documentation to KDHE verifying that the identified deficiencies were corrected.

Traditional/Core NPDES Program Findings:

- EPA found that most of the Major and Minor inspection reports were completed timely and transmitted to the facilities, except for the City of Fort Scott WWTF (KS0095923) and Clearview Village WWTP (KS0090671).
- File Review Metric 3a: EPA found that 64 % of the Major NPDES inspection reports identified violations within the review timeframe, **indicating that there is a universe of facilities in non-compliance that KDHE is working to address.** (9 files, **irrespective of whether the files contained accurate description of potential and actual violations**, were identified out of the 14 Majors).
- EPA found that 50% of the Minor NPDES inspection reports identified violations within the review timeframe, **indicating that there is a universe of facilities in non-compliance that KDHE is working to address.** (6 files, **irrespective of whether the files contained accurate description of potential and actual violations**, were identified out of the 12 Minors).

Stormwater Program Findings:

- EPA reviewed 9 stormwater inspection reports, and all were completed timely. All the reports included a description of any violations noted, and required the stormwater facility to provide documentation to KDHE verifying that the identified deficiencies were corrected.
- If deficiencies were noted at the stormwater site, then the inspection transmittal letter also included a date by which the facility had to demonstrate to KDHE that it had returned to compliance, as evidenced by the file contents for River Hill Shops (KS-R101349).
- **(Moved to Section 4.2, under stormwater) KDHE occasionally took photographs to supplement the findings of the inspection. Furthermore, if deficiencies were noted by the inspector, the stormwater facility was required to provide documentation to KDHE (within a timeframe provided by KDHE in the inspection letter) verifying that the identified deficiencies had been corrected.**

CAFO Program Findings:

- EPA reviewed 45 CAFO inspection reports and only 1 was not completed timely, which indicated that 97.78% of KDHE's CAFO inspection reports were completed in a timely manner.

- KDHE’s investigation and documentation of complaints was timely and complete, including identification of violations that were transmitted to the facility within 30 days.

Pretreatment Program Findings:

- KDHE prepared and transmitted Pretreatment reports in a timely manner. For example, the Olathe audit (KS0045802) from May 11, 2006, was mailed to the city the following day.

Metric 3 Recommendations:

- ~~Improve the wastewater inspection documentation and timely violation identification.~~
- ~~KDHE should continue its practice of transmitting inspections strive to transmit all inspection reports in a timely manner. Because KDHE uses the inspection report to communicate violations to the facility, violations are not identified in a timely manner when the inspection report is transmitted late.~~

Section II. Review Area: Enforcement Activity

All enforcement actions are ~~written, initiated,~~ tracked, and documented in the KDHE central office. KDHE enforcement actions and penalties were sought according to the requirements of the KDHE BOW Enforcement Guidance. ~~The KDHE BOW Enforcement Guidance provides an explanation of the purpose of enforcement actions, the statutes and regulations allowing enforcement actions, the objective of enforcement actions, guidance on proper use of enforcement actions, options for various levels of enforcement actions, factors to be considered to determine an appropriate enforcement response, two penalty calculation matrices – one for permit violations and one for violations involving damages to resources of the state. The matrices include both gravity and economic benefit components. However, the matrices contain~~ ~~The KDHE BOW Enforcement Guidance provided an enforcement action matrix, but the Guidance provided little penalty matrix criteria beyond the civil penalty criteria established in K.S. A. 65-170d.~~ ~~KDHE’s penalty policy includes both gravity and economic benefit components.~~

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

Traditional/Core NPDES Program Findings:

- Data Metrics 4a1 and 4a2 had no single-event violation (SEV) information for NPDES Majors or Minors entered for Kansas based on combined data from state and federal databases. KDHE stated during the review that it has a separate database which tracks single event violations. ~~Single-event violations are not a required WENDB data element. However, it is anticipated that single event violations will soon be a required element to enter. KDHE should work towards entering single event violations into PCS.~~
- Data Metric 4b1 and 4b2 indicated that there were 12 NPDES Majors in SNC status based on combined data from state and federal databases (12 out of 54

is a 22.22% rate of identification) . KDHE has a 22.22% SNC identification rate above the national average of 19.80%.

- Data Metric 4b2 has a national average rate of 19.80% NPDES Major facilities in SNC status based on combined data from state and federal database.

Stormwater Program Findings:

- Data Metric 4c: *Wet weather SNC placeholder during FY2006.*
- Metric 4 is not applicable to stormwater facilities, because currently there is no wet weather SNC policy.

CAFO Program Findings:

- Data Metric 4c: *Wet weather SNC placeholder during FY2006.*
- Metric 4 is not applicable to CAFOs, because currently there is no wet weather SNC policy.

Pretreatment Program Findings:

- KDHE was required to notify EPA of Pretreatment cities and SIUs that had violations on the semi-annual report, as established by the PPG workplan commitments. KDHE submitted those reports in a timely and accurate manner during 2006.
- KDHE reported that 3 of 52 Pretreatment facilities were in SNC for either reporting or effluent standards in the first half of 2006. This translates into a compliance rate of 94%.
- KDHE reported that 6 of 52 industries outside Pretreatment cities were in SNC for the second half of 2006. This constituted a compliance rate of 88%, which was low compared to KDHE historical standards.

Metric 4 Recommendations:

- Improve documentation of the SNC status of NPDES Majors by **working towards** entering WENDB data elements into PCS.

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

Traditional/Core NPDES Program Findings:

- File Review Metric 5a: The majority of KDHE formal state enforcement actions contained a compliance schedule; however, the compliance schedule often only required the facility to submit a proposed plan and schedule. The proposed plan and schedule were seldom incorporated in a follow-up document that demonstrates how or when the facility returned to compliance. For example, the Johnson County, Tomahawk Creek WWTP (KS0055484) enforcement action only required a proposed plan of action.
- File Review Metric 5b: EPA has not determined the percentage of actions or responses, other than formal enforcement actions, that return facilities to compliance.
- **KDHE implemented informal enforcement actions through schedules of compliance (SOCs) in the NPDES permit. KDHE addressed longstanding non-compliance by issuing NPDES permits that contained SOC.** In some

instances, facilities received several SOC's over multiple permit phases. SOC's are being inserted into permits and viewed by KDHE as formal enforcement appropriate actions based on Kansas state law and the BOW Wastewater Enforcement Guidance. ~~but these actions don't meet the definition of formal enforcement action (FEA).~~ Per 40 CFR §122.47(a), the CWA only allows for SOC's in permits for effluent limits based on water quality standards adopted or substantively revised after July 1, 1977, where the State's water quality standards (WQS) or implementing regulations clearly authorize the use of SOC's. ~~KDHE must modify or create enforcement options within the wastewater enforcement guidance that addresses timely and appropriate enforcement, in accordance with the EPA Enforcement Response Policy.~~ SOC's should only be used when a WQBEL is required in a permit for the first time or the water quality standards have changed therefore changing the WQBEL.

- EPA observed ~~in some wastewater files~~ that ~~some~~ enforcement actions did not consistently document contain milestones ~~dates~~ for tracking progress of a facility's return to compliance. Where KDHE requests a compliance schedule, language should be included in the enforcement action which incorporates the schedule into the action upon approval by KDHE. An example of this is Johnson County Tomahawk Creek (KS0055484). ~~For example, KDHE told EPA that it had assessed stipulated penalties for a missed milestone in the compliance order for Derby WWTP #2 (KS0050377), but this information was not documented in the files.~~
- [Moved to recommendations] KDHE ~~has not implemented~~ should consider securing formal enforcement actions that address future upgrades of all LTCP plans and any other wastewater activities that are currently in progress, in order to establish SOC's that include a compliance end date. ~~return facilities to compliance within specific timeframes.~~

Stormwater Program Findings:

- EPA reviewed 3 formal enforcement actions. They all contained complying actions to return each facility to compliance in a specific timeframe. Furthermore, the 3 files documented that each stormwater facility had met the requirements of its order and had returned to compliance. (3 out of 3 files indicated that 100% of stormwater enforcement actions returned the facility to compliance.)
- KDHE did not consistently document milestone dates for tracking progress of a facility's return to compliance. While the enforcement actions reviewed contained requirements for compliance, only the final closure milestone documentation was ~~observed in the facilities' files by EPA~~

CAFO Program Findings:

- EPA reviewed 12 formal enforcement actions for CAFOs and ~~one action, Coolidge Dairy, only 1~~ sought penalties, but did not contain complying actions to return the facility to compliance. ~~It only contained penalties.~~ The facility was issued an SOC in the permit. Because non-compliance warranted penalties, the facility should have been placed on an SOC through the enforcement action. 11 out of 12 is a 91.67% rate of CAFO enforcement actions that returned the facility to compliance.

Pretreatment Program Findings:

- All 1846 approved Pretreatment Programs were in compliance in 2006. Therefore, no enforcement was needed pursuant to Metric 5.
- KDHE is required to enforce against Significant Industrial Users (SIUs) in non-Pretreatment cities. All such SIUs determined to be in SNC were issued timely NOV's requiring immediate return to compliance. All SIUs returned to compliance as required.

Metric 5 Recommendations:

- ~~KDHE should define and implement formal enforcement actions that address timely and appropriate enforcement, in accordance with the EPA Enforcement Response Policy. EPA does not consider SOCs to be an enforcement tool.~~
- KDHE should document whether a facility is in compliance with the terms of its formal enforcement action ~~and. Address issues that prevent a facility from returning to compliance within a specific timeframe. EPA is pleased to see that KDHE uses a database to track the status of enforcement actions and hopes that KDHE will work towards entering this information into PCS or ICIS. However, EPA believes KDHE's program would benefit from tracking enforcement actions while the facility is in the midst of complying with the order, rather than just tracking the end result.~~
- ~~[Moved from traditional/Core NPDES Program Findings] KDHE has not implemented should consider securing formal enforcement actions that address future upgrades of all LTCP plans and any other wastewater activities that are currently in progress for facilities such as Atchison and Topeka, in order to establish SOCs that include a compliance end date. return facilities to compliance within specific timeframes.~~
- For stormwater compliance actions, KDHE should include periodic enforcement milestones, such as progress report dates, that would make the compliance actions easier to track. Milestones would enable KDHE to detect lack of progress with the SOC.
- ~~Determine and document when the facility returns to compliance within a specific timeframe.~~
- ~~KDHE should implement formal enforcement actions that incorporate future upgrades of all LTCP plans, and any other wastewater activities that are currently in progress, in order to return facilities to compliance with specific timeframes.~~

4.6 Degree to which the state takes enforcement actions, in accordance with the national enforcement response policies relating to specific media (the Clean Water Act), in a timely and appropriate manner.

Traditional/Core NPDES Program Findings:

- Data available in PCS indicates that KDHE sought nine wastewater enforcement actions during the period examined for the review.
- Data Metric 6a is connected to a national goal to address 98% or more (> 98%) of significant noncompliance (SNC) violations at NPDES Major facilities through timely enforcement actions.

- KDHE's timely enforcement response was 83.30% (below the national average of 91.10%), based on enforcement actions entered in PCS that addressed SNC violations at NPDES Major facilities.
- Data Metric 6b indicated that there were 13 NPDES facilities in Kansas where no follow-up enforcement actions were conducted, according to state data, by KDHE through informal enforcement actions, which the state conducts based on the permit SOC. These facilities were addressed through an SOC in a permit.
- File Review Metric 6c: Wastewater data indicates that 15% SNCs were addressed appropriately during the NPDES Inspection year 2006 and FY2006. For example An example of this is MGP Ingredients (KS0001635), Delia (KS0046493), Fredonia (KS0045985), and Pretty Prairie (KS0030520).
- It appears that KDHE is very sensitive to attempting to obtain penalties from municipalities, for example KDHE sought or entered few penalties against municipalities during the period of review. The City of Norton (KS0022446) is the only municipal enforcement action on record, with a penalty of \$2,500.
- The KDHE central office initiates writes and tracks informal or formal enforcement actions against wastewater facilities that are determined to be in violation of the CWA.
- EPA reviewed 9 wastewater enforcement files, and determined that KDHE's enforcement actions were not consistently timely and appropriate. KDHE should ensure that actions are timely and appropriate. Actions were not consistently timely and appropriate due to the following:
 - At times, KDHE used informal negotiation, then unilateral orders, and finally a negotiated Consent Order Agreement. Because this process is lengthy, it may contribute to a greater period of achieve compliance at facilities after several years of known non-compliance.
 - Consent Orders Agreements included a more liberal compliance schedule than the initial unilateral order, and only occasionally included a penalty for the alleged violations.
 - KDHE initiated formal enforcement, where there has been a recalcitrant permittee that failed to comply with the previous informal efforts to achieve compliance, only against facilities that had not met the SOC in the permit
 - KDHE implemented SOC into permits of facilities that were in on-going noncompliance. KDHE implemented the permit SOCs as formal enforcement actions that are enforceable by state law, based on the KDHE BOW Enforcement Guidance. issued SOCs to facilities in on-going non-compliance when it met the criteria for enforcement, as outlined in the KDHE BOW Enforcement Guidance.
 - KDHE wastewater files documented non-compliance with permit SOCs, in which the instances where facilities did not consistently meet milestone dates in SOCs in permits for tracking progress of to track compliance with plant upgrades, plant expansions, or necessary and other required activities for

the facilities' return to compliance with the permit effluent limits.

- In some instances, the permits contained SOCs was related to for enforcement actions taken pursued by KDHE during the Review timeframe. For example, Iola WWTF (KS0032123) and Topeka, Oakland WWTP (KS0042722) both had SOCs in the permit that contained requirements in the enforcement actions. Placing the SOC in the permit when enforcement has been sought may change the requirements for compliance and make it difficult to seek enforcement. and permit SOCs to upgrade the facilities to achieve compliance.

Stormwater Program Findings:

- Metric 6c is not applicable to stormwater facilities, because currently there is no wet weather SNC policy.
- KDHE should continue to take formal enforcement actions against sites in violation of stormwater requirements to the maximum extent possible.

CAFO Program Findings:

- Metric 6c is not applicable to CAFOs, because currently there is no wet weather SNC policy.
- EPA reviewed 12 formal enforcement actions filed against CAFOs, and found that the inspectors routinely refer illegal discharge violations, as well as serious NPDES permit violations, for formal enforcement actions in a timely and appropriate manner.

Pretreatment Program Findings:

- All NOV's were issued within 30 days of KDHE's knowledge of the violation. This is in accordance with EPA's model Pretreatment Enforcement Response Plan. No further action was needed as all facilities returned to compliance in a timely manner.

Metric 6 Recommendations:

- KDHE should review the enforcement policy options to align KDHE enforcement efforts to address timely and appropriate enforcement that returns violators to compliance.
- KDHE should ensure that KDHE non-compliance is addressed in an appropriate manner by ensuring that SOCs are not included in permits, unless specified in the CFR and that enforcement is used to place facilities under SOCs for compliance with pre-existing requirements. KDHE should seek enforcement when enforcement actions meet the federal definition of a formal enforcement.
- KDHE should continue to take formal enforcement actions against sites in violation of stormwater requirements to the maximum extent possible.
- Track and document milestones achieved in permit-SOCs in PCS.

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

KDHE's penalty policy includes both gravity and economic benefit components;

however, KDHE does not consistently seek to recover economic benefit in penalties assessed. KDHE has enforcement discretion to decide when or whether to recover economic benefit, but KDHE needs to include a rationale for its decision with the penalty calculation.

Traditional/Core NPDES Program Findings:

- File Review Metric 7a: The percentage of formal enforcement actions taken that included gravity and economic benefit calculations could not be determined for wastewater cases, because KDHE did not include penalty justification documents in the compliance files. EPA is aware of three wastewater facilities that received penalties during the time period of the review: Abengoa, Norton and Oberlin. KDHE provided penalty rationale for several facilities, though not all of the facilities, after the time of the review. EPA reviewed the penalty calculation for Oberlin and found that KDHE did not include statements to justify the amount of the penalty being sought. Penalty calculations for Norton and Abengoa were not available for EPA review.
- KDHE did not include documentation that outlined the wastewater enforcement matrix or the determination of gravity assessed.
- KDHE did not include documentation of how the penalties or economic benefit were assessed, such as: delayed or avoided cost of installing controls, sampling, capital equipment improvements, and operation and maintenance.
- KDHE did not include information in many of the wastewater files that discussed whether the penalty amounts encompassed both gravity and economic benefit.

Stormwater Program Findings:

- KDHE's penalty policy used for calculating penalties against NPDES facilities includes direction for calculating both gravity and economic benefit factors. However, none of the stormwater enforcement files that EPA reviewed contained a rationale for how the penalty calculations were performed, nor was it evident if the assessed penalty amounts accounted for both gravity and economic benefit. of the two penalty calculations available for review, N.R. Hamm Quarry, and Quint T, L.L.C., economic benefit was not assessed for either penalty. Additionally, the penalty calculations did not justify the factors selected. For example, economic hardship was selected based on generalizations, as opposed to demonstration of the hardship. A penalty justification should be available for cases where a penalty was assessed.
- KDHE did not include documentation for how the penalties were calculated for the following stormwater enforcement actions: Hamm Quarries (KS-0117498, KS-0097632, and KS-0097837), and Quint T. LLC, Wakarusa Ridge Estates (KS-R102316).

CAFO Program Findings:

- KDHE did not consistently document rationale for the calculation of economic benefit.

Pretreatment Program Findings:

- KDHE did not take formal enforcement (only NOV's were issued) against a Pretreatment facility during the review timeframe; therefore no penalties were assessed for Pretreatment facilities.

Metric 7 Recommendations:

- ~~KDHE should provide a penalty justification in their files that documents the rationale for the assessed penalty.~~
- EPA was unable to review KDHE's legal files. However, EPA encourages KDHE to ensure that the files contain a penalty justification that documents the rationale for the assessed penalty.
- KDHE should assess economic benefit to ensure that violators are placed in the same financial position as they would have been if they had complied on time.
- ~~KDHE should document rationale for the calculation and collection of economic benefit in CAFO enforcement actions.~~
- EPA also encourages KDHE to ensure that the files contain documentation of the rationale for the calculation and collection of economic benefit in CAFO enforcement actions.

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

KDHE did not consistently include documentation indicating whether the assessed penalty was actually collected or what portion of a collected penalty represented gravity or economic benefit.

Traditional/Core NPDES Program Findings:

- Data Metric 8a indicated that KDHE did not take appropriate enforcement action against Norton WWTF (KS0022446) to collect economic benefit and gravity portions of a penalty. EPA was unable to review the penalty calculation for Norton. ~~was not made available to EPA for review to verify this finding.~~
- Data Metric 8b indicated that KDHE normally included penalties with 15.40% of its formal enforcement actions based on state data.
- File Review Metric 8c: EPA could not determine how many final enforcement actions had penalties that included economic benefit during the review timeframe, because KDHE did not include penalty justification or penalty collection documents in the wastewater files reviewed. Economic benefit was not sought for the one wastewater penalty calculation that was available for review.
- KDHE did not consistently document in the files whether the wastewater facility had paid the penalty, but some files included an email or a copy of a check. KDHE explained that it BOW maintains an electronic database on penalties paid.

- KDHE did not use the criteria to seek penalties as stated in the BOW Enforcement Response Policy penalty matrix for penalties assessed for wastewater cases, because many wastewater enforcement actions did not have a penalty assessed in the Compliance Orders, because EPA reviewed several facilities where penalties should have been assessed in accordance with the guidance. These facilities include: the Johnson County Wastewater Tomahawk Creek WWTP and Iola.
- File Review Metric 8d: EPA could not determine how many of KDHE's wastewater enforcement actions resulted in penalties collected during the review timeframe, because KDHE did not include penalty collection documents in the compliance files.
- According to PCS, 3.8% of final enforcement actions (1 of 26 files) resulted in penalties collected during the review timeframe, for example Oberlin STP (KS0022501).
- KDHE had no consistent information in the wastewater files that discussed whether the penalty amounts encompassed both gravity and economic benefit.
- KDHE made few efforts to obtain stipulated penalties, although in one case a penalty amount was held in abeyance pending satisfactory completion of the compliance measures (see, Abengoa Bioenergy Corp. (KS0081329)). KDHE stated that it has increased use of stipulated penalties since the time period examined during the review.

Stormwater Program Findings:

- While stormwater penalties were not required to be entered into PCS, one of the three stormwater penalties collected, Of the three stormwater penalties collected by KDHE, only Quint T., LLC (KSR102316), was entered into PCS. A penalty of \$2,500 was assessed for Quint T., LLC.
- KDHE did not assess or document either the gravity or the economic benefit factors for the penalties collected for the three stormwater enforcement actions.
- KDHE documented that each of the three stormwater enforcement facilities had paid the penalties.

CAFO Program Findings:

- KDHE's initial/proposed penalty amounts include both gravity and economic benefit factors; however, the penalties associated with final enforcement actions did not.
- Documentation of penalty calculations associated with Consent Agreements and other final enforcement actions against CAFOs were not documented in the facility file.

Pretreatment Program Findings:

- KDHE did not need to take formal enforcement against a Pretreatment facility during the review timeframe; therefore, not penalties were assessed for Pretreatment facilities.

Metric 8 Recommendations:

- KDHE should evaluate the BOW enforcement policy to implement enforcement actions and penalty calculations for collected penalties that are consistent with the EPA Enforcement Response Policy.

- KDHE should collect appropriate penalties, including gravity and economic benefit, for final enforcement actions.
- KDHE should document how penalties collected for final CAFO enforcement actions are calculated in order to assure consistent application of the State's penalty policies.

Section III. Review Area: Agreements

Goals and Commitments

The FY2005 CWA Section 106 workplan contains specific agreed-upon tasks that will be undertaken by KDHE and EPA to help accomplish the goals of the CWA. Although the primary or sole funding source for each task described in KDHE's FY2006 workplan is expected to come from federal CWA 106 grant funds, some of the tasks may be partially supported with funding from other sources.

4.9 Enforcement commitments in the PPA/PPG/categorical grants (written agreements to deliver products/projects at a specified time), if they exist, are met and any products or projects are complete.

Traditional/Core NPDES Program Findings:

- File Review Metric 9a: KDHE has met their 2006 PPG requirements related to wastewater inspections and enforcement actions in the State agreements (PPA/PPGs, SEA, etc.) that contain enforcement and compliance commitments that were met during NPDES Inspection Year 2006 and FY2006.

Stormwater Program Findings:

- KDHE met its 2006 PPG requirements related to stormwater inspections and enforcement.

CAFO Program Findings:

- KDHE met its 2006 PPG requirements related to CAFO inspections and enforcement.

Pretreatment Program Findings:

- KDHE met its 2006 PPG requirements related to Pretreatment inspections, audits, and enforcement.
- KDHE set and met its annual goal for Pretreatment audits and Pretreatment Compliance Inspections. In addition, KDHE identified a number of Categorical industries outside Pretreatment cities to inspect.

Metric 9 Recommendations:

- None at this time.

Section IV. Review Area: Data Integrity

Data Management and Data Integrity

The primary Kansas data management system is an Oracle database system developed and maintained by KDHE personnel. KDHE uses the DEEMERs program as their DBMS for data management system. The DEEMERs program was originally developed from FORTRAN. KDHE has used DEEMERs since 1997, and has upgraded DEEMERs since its development. Facilities enter their DMR data into another database, DEEMERs, and then KDHE processes the data and sends it back to the facility for verification. The facility electronically attests that the DMR data is correct, and then KDHE closes the security window and prepares the secure data for upload into PCS.

The Oracle database DEEMERs is an efficient electronic data system that captures the DMR data, but EPA is concerned regarding the minimal technical support for the program that acts as the primary data management system. The Oracle DEEMERs program was developed with EPA assistance, but became a database supported by a consultant. EPA is concerned about the lack of longevity and security that puts the Oracle database DEEMERs at risk. KDHE utilized their IT staff to support the Oracle database DEEMERs, but only when there was project-specific funding.

4.10 Degree to which the Minimum Data Requirements are timely.

Traditional/Core NPDES Program Findings:

- File Review Metric 10a: KDHE properly entered and maintained most of the minimum WENDB data elements according to accepted schedules.
- DEEMERs supported KDHE's DMR data entry because each NPDES Major facility that used DEEMERs entered their own DMR data. There was a defined data entry window, so the possibility of late data entry is nearly eliminated.

Stormwater Program Findings:

- Not applicable to stormwater.

CAFO Program Findings:

- Not applicable to CAFOs

Pretreatment Program Findings:

- KDHE does not enter WENDB data elements into PCS following a Pretreatment Compliance Inspection (PCI) or Pretreatment audit. KDHE should enter elements for facilities it is involved with when conducting a PCI or audit.

Metric 10 Recommendations:

- KDHE should work towards meeting Meet the data entry schedules for the Minimum Requirements for WENDB data elements.
- KDHE should increase efforts to address data for facilities in noncompliance in a timely manner.
- KDHE should enter Pretreatment inspection, audit and DMR data in a timely manner.

4.11 Degree to which the Minimum Data Requirements are accurate.

Traditional/Core NPDES Program Findings:

- Data Metric 11a is connected to a national goal to address 80% or more ($\geq 80\%$) of the enforcement actions linked to the violations that the enforcement actions address in the PCS database during FY2006.
- Data Metric 11a indicates that Kansas linked enforcement actions to 47.10% of the violations based on state data uploaded to the PCS database during FY2006, which is below the national goal of $\geq 80\%$.
- EPA reviewed 14 Major NPDES inspection reports. KDHE had 100% of the inspection reports accurately documented in PCS during the review timeframe. However, overall DMR data was not accurate because 5 out of the 14 Major facilities reviewed had incorrect DMR data.
- The Oracle database, which incorporates data entered by DEEMERS implementation, in which Major NPDES facilities entered their own DMR data, was generally accurate and correct. The Oracle databases should have provided data that was 100% correct. However, 35.7% of the DMR data was incorrect out of the 14 Majors reviewed. EPA did not see a specific DMR data trend, but EPA was concerned about the low level of DMR data trustworthiness in the DEEMERS system. DEEMERS is a program that supports supported KDHE's DMR data entry because each Major facility enters its own DMR data into DEEMERS, which is received and reviewed by KDHE who loads it into the Kansas database system and then uploads the data to PCS via the 80 column electronic card batch uploading process. NPDES Major facility that used DEEMERS entered their own DMR data. There were are strict security measures in place, so the possibility of falsifying data was is nearly eliminated.
- EPA did not see any kind of a Standard Operating Procedure (SOP) for how KDHE quality assured (QA) the DMR data. KDHE and EPA discussed how data was reviewed, but KDHE did not provide a written data QA protocol.
- File Review Metric 11r indicates that Kansas needed to improve its accuracy of the minimum WENDB data requirements during the NPDES Inspection Year 2006 and FY2006.
 - Windom WWTP (KS0051721): KDHE's inspection report from June 5, 2006 was in the file, but the information was not entered into PCS.

Stormwater Program Findings:

- Not applicable to stormwater.

CAFO Program Findings:

- Not applicable to CAFOs.

Pretreatment Program Findings:

- KDHE does not enter WENDB data elements into PCS following a Pretreatment Compliance Inspection (PCI) or Pretreatment audit.

Metric 11 Recommendations:

- ~~KDHE must enter data correctly, including Pretreatment data.~~
- KDHE must properly link enforcement actions to the violations in PCS more than 80% of the time to meet the national goal.
- KDHE should create a Standard Operating Procedure (SOP) for DBMS to provide Quality Assurance QA of the DMR data.

- EPA would like to meet with KDHE to determine a protocol for entering pretreatment data.

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

Traditional/Core NPDES Program Findings:

- Data Metric 12a: According to PCS, KDHE had all Majors and Minors up-to-date and complete for all permit types during the review timeframe.
- Data Metric 12b1: KDHE had a data entry rate of 96.30%, which was above the national goal that requires 95% or more ($\geq 95\%$) of the data to have correctly coded limits for NPDES Majors for state and federal data entry combined. KDHE had a 97.80% data entry rate for municipal facilities, and a 96.80% data entry rate for non-municipal facilities.
- Data Metric 12b2: KDHE had a data entry rate of 90.10%, which was below the national goal that requires 95% or more ($\geq 95\%$) data entry rate of DMRs for NPDES Majors based on the number of DMRs expected.
- KDHE entered 97.80% of DMR parameters correctly for municipal facilities, and 98.40% of DMR parameters correctly for non-municipal facilities, based upon the number of DMR forms received from NPDES Majors and entered into PCS for the most recent quarter (January 1, 2006 through March 31, 2006) divided by the number of DMR forms for NPDES Majors in that quarter.
- Data Metric 12b3: KDHE manually overrode 0.00% SNC data based on combined PCS state and federal data entry.
- Data Metric 12d1: KDHE inspected 310 NPDES facilities for NPDES compliance during the review timeframe, and 14 NPDES facilities were inspected for NPDES compliance by the local EPA Regional office.
- Data Metric 12k: Iola WWTF (KS0032123) and Delia WWTP (KS0046493) were respectively identified on the watch list and as facilities of concern through reports submitted to EPA by KDHE. and appeared on the Kansas ANCR report for FY 2005-2006.
- DEEMERs supported KDHE's DMR data entry because each NPDES Major facility that used DEEMERs entered their own DMR data. There were strict security measures in place, so the possibility of falsifying data was nearly eliminated.
- KDHE did not consistently meet minimum data entry requirements of the Water Enforcement National Data Base (WENDB) data elements.
- EPA is concerned about the lack of compliance schedules entered in PCS. Compliance schedule data are a portion of the WENDB data elements, and should be entered for all Majors and Minor 92-500s. EPA found that KDHE had not entered the compliance schedules into PCS for any of the facilities reviewed under SOCs, including 8 Major facilities and 2 Minor 92-500 facilities.

- The Pretreatment Program Required Indicator (PRET) is a required facility data element, and was entered where required. but none of the NPDES Major and Minor facilities had this data element entered.
- The KDHE enforcement actions for the NPDES Majors and some Minors (PL 92-500s) were entered into PCS by the EPA Region 7 PCS contact.
- 12 Minor NPDES inspection reports were reviewed, and EPA found that 92% of the inspection reports were appropriately documented in PCS.

Stormwater Program Findings:

- Not applicable to stormwater.

CAFO Program Findings:

- Not applicable to CAFOs.

Pretreatment Program Findings:

- KDHE does not provide Pretreatment WENDB data elements for PCS.

Metric 12 Recommendations:

- ~~KDHE must providing provide the WENDB data elements including compliance schedules and enforcement actions for Majors and Minor 92-500s. In addition, the pretreatment program required indicator should be entered for all facilities.~~
- KDHE should work towards entering the required WENDB parameter of schedules of compliance into PCS.

Summary of CWA NPDES Wastewater Files Reviewed

NPDES Major Facilities

Atchison WWTP, KS0039128, NEDO:

Findings: The Atchison WWTP is an activated sludge treatment plant with a sludge storage tank. The design flow for dry weather is 2.8 million gallons per day (MGD), and the peak wet weather flow is 8.4 (MGD). The effluent from the treatment plant flows into the Missouri River directly, instead of Whiskey Creek. The current permit was issued January 1, 2004 and expires December 31, 2008.

KDHE performed an annual inspection of this NPDES Major facility on December 21, 2005. The inspection report was completed and timely transmitted to the facility in 19 days. The inspection report noted permit limit effluent exceedance for Total Suspended Solids (TSS) in May 2004 and December 2005. The city ~~had experienced~~ reported 52 bypasses and/or overflows within their collection system from July 2005 through October 2006. The overflows were reported based on a chalk line indicator, where a chalk line was drawn along the bottom of CSO outfalls and checked the following day to see if lines had been disturbed.

The city and its engineer worked to replace the force main to the WWTP and made improvements to the North Headworks pump station. This portion of the collection system has had problems for some time. The city prepared a Long-Term Control Plan (LTCP) for the Combined Sewer Overflows (CSOs) as required by the Kansas Department of Environment (KDHE), and the city started seeking funding for the CSO project.

The city completed its LTCP in May 2004, and determined to separate its CSOs through a phased approach. KDHE addressed CSO upgrades through the current permit. The upgrade requirements that were outlined in the current permit schedule of compliance (SOC) have been satisfied. KDHE and the city are awaiting the re-issuance of the next permit to address future upgrade requirements for the LTCP.

Key Concerns: ~~The facility was in noncompliance, but KDHE has not taken timely enforcement action to address the effluent violations or bypasses/overflows in this CSO community. It is not clear if the state's water quality standard allows for LTCP-SOCs in permits. KDHE must reconsider putting all CSO and wastewater upgrades into an enforceable document that will cover all of the needed improvements. KDHE must find a way to address both the state's and the city's needs, rather than wait to change LTCP upgrades in an SOC during the permit renewals every 5 years.~~

The facility reported 52 overflows from July 2005 through October 2006. These may or may not have been overflows, and are based on disruption of the chalk line indicator. KDHE should continue to review the City's reported overflows to ensure the city is reporting the correct information and take appropriate enforcement as needed. KDHE should develop a compliance

schedule that requires complete implementation of the city's LTCP. Such a compliance schedule should be in an enforcement action or possibly in a permit, if the state's water quality standards allow for SOCs in permits. KDHE should not continue to require only partial implementation of the LTCP.

Chanute WWTP, KS0080837, SEDO:

Findings: The Chanute WWTP is a trickling filter plant with a sand drying bed and liquid sludge disposal. The design flow is 2.2 MGD. The current permit was issued February 1, 2003 and expires January 31, 2008.

KDHE performed an annual inspection of this NPDES Major facility on December 5, 2005. The inspection report was completed and timely transmitted to the facility in 1 day. No issues or deficiencies were identified in this inspection report that corresponded to violations entered in PCS from December 2005 through June 2006.

The KDHE file did not have correspondence, follow-up actions, or return to compliance documents for the violations noted in PCS. This facility was on the EPA Watch List from October 2005 through March 2006. The city worked on the digester during the October 1, 2005 - March 31, 2006 timeframe. However, the Chanute WWTP returned to compliance in June and July 2006 on the PCS monthly effluent averages. KDHE believed that the ammonia-nitrogen (NH₃-N) violations were due to facility samples not being representative. EPA could not determine the work status from the file, or how KDHE had determined the cause of NH₃-N violations.

Key Concerns: There were no issues or deficiencies identified in the file during the program review for this facility. KDHE must follow up on all deficiencies outlined in inspection reports and document the facility responses and actions taken to address noncompliance.

Chisholm Creek Utility Authority, KS0089176, SCDO:

Findings: The Chisholm Creek Utility Authority WWTP (CCUA) is operated by Operations Enterprises, Inc. (OEI) who has a contract with the CCUA. CCUA is a Sequencing Batch Reactor stair step aeration system. Sludge is digested aerobically while held in secondary sludge basins until the sludge is deviated dewatered by a belt filter press. Dewatered sludge is stored in a modified pole barn. Effluent flow is based on the number per day and volume of each decant. The current permit was issued November 1, 2004 and expires December 31, 2007.

KDHE performed an annual inspection of this NPDES Major facility on August 10, 2006. The inspection report was completed and timely transmitted to the facility in 13 days. KDHE identified that the crane used to remove the UV disinfection units for appropriate cleaning was not functioning properly, during the annual inspection. KDHE did not document follow-up on the operations and maintenance (O&M) deficiencies in the file. KDHE followed up on issues of non-compliance with correspondence dated November 6, 2006.

Key Concerns: There were no issues or deficiencies identified in the file during the program

review for this facility.

Key Concerns: EPA could not determine if the facility had returned to compliance. KDHE must follow up on all deficiencies outlined in inspection reports and document the facility responses and actions taken to address noncompliance.

Derby WWTP #2, KS0050377, SCDO:

Findings: The Derby WWTP is an activated sludge (oxidation ditch) treatment plant with a static screen sludge thickener, gravity belt thickening, 3 aerated sludge holding tanks, and liquid sludge/land application. The design flow is 2.5 MGD. The current permit was issued December 1, 2005 and expires August 31, 2007.

KDHE performed a semi-annual an inspection of this NPDES Major facility on November 15, 2005. The inspection report was completed and timely transmitted to the facility in 2 days. KDHE's inspection report indicated that the facility was in compliance. No issues or deficiencies were identified in this inspection report.

Key Concerns: There were no issues or deficiencies identified in the file during the program review for this facility.

Emporia WWTF, KS0046728, SEDO:

Findings: The Emporia WWTP is an activated sludge treatment plant with sludge thickening, anaerobic digesters, sludge belt filter press, a peak flow pre-sedimentation basin, and a peak flow holding basin. The design flow is 4.6 MGD. The current permit was issued August 1, 2003 and expires July 31, 2008.

KDHE performed an annual inspection of this NPDES Major facility on February 7, 2006. The inspection report was completed and timely transmitted to the facility in 8 days. No issues or deficiencies were identified in this inspection report.

KDHE performed an abbreviated inspection at this facility on July 5, 2006, and the report was completed and transmitted the same day. The inspection was a result of a complaint reporting the city was dumping sludge from the WWTP on Weaver Road, which is located 2 miles south of the city. No problems were observed during the abbreviated inspection.

Key Concerns: There were no issues or deficiencies identified during the program review for this facility.

Fort Scott WWTF, City of, KS0095923, SEDO:

Findings: The Fort Scott WWTP is an extended aeration activated sludge plant with a 3-celled aerated lagoon for extraneous flow. The city's dry weather design flow is 3.0 MGD. The typical

flow is 1.0 to 2.7 MGD. The current permit was issued June 1, 2004 and expires February 28, 2007-2009.

~~KDHE entered an annual inspection of this NPDES Major facility on January 30, 2006 in the PCS database. However EPA did not find an inspection report in the KDHE file. EPA could not determine if the inspection report was completed, or it was timely transmitted to the facility. EPA could not determine either the inspection findings, or the compliance status of this facility.~~

Key Concerns: ~~KDHE did not maintain the inspection report in the facility file, so compliance status of the facility could not be reviewed. There were no issues or deficiencies identified during the program review for this facility.~~

Hays WWTF, KS0036684, NWDO:

Findings: The Hays WWTP is an activated sludge treatment plant with dissolved air flotation sludge thickener, anaerobic sludge digestion, sand drying beds, chlorination, de-chlorination and uses granular media filters. The treated wastewater is used as gray water to irrigate golf courses and sports fields. ~~and irrigation of the golf courses and ball fields, and re-aeration of effluent.~~ The design flow is 2.8 MGD. The permit was issued March 1, 2004 and expires February 28, 2009.

KDHE performed an annual inspection of this NPDES Major facility on April 11, 2006. The inspection report was completed and timely transmitted to the facility in 12 days. No issues or deficiencies were identified in this inspection report.

An abbreviated inspection was performed on the facility November 23, 2005. It was a result of a complaint reporting odor, ~~was coming from the city compost pile~~ which actually was ~~a nearby animal feeding facility.~~ No problems were observed during the abbreviated inspection.

Key Concerns: There were no issues or deficiencies identified during the program review for this facility.

Iola WWTF, KS0032123, SEDO:

Findings: The Iola WWTP has a lift station, 1 aeration cell, and 3 cell wastewater stabilization lagoon system. The permitted Flow is 1.394 MGD for 120 day detention time. It serves a population of 7,000; however, it was designed for a population equivalent of 16,320. The previous permit was issued on October 1, 2001 and was scheduled to expire on December 31, 2005. The current permit was issued on September 1, 2005 and expires December 31, 2008.

KDHE performed ~~an a semi~~ annual inspection of this NPDES Major facility on October 27, 2005. The inspection report was completed and timely transmitted to the facility in 11 days. No issues or deficiencies were identified in this inspection report.

The Iola WWTP was on the EPA Watch List from January 2004 through September 2006, because of effluent violations of monthly average limits (Technical Review Criteria and chronic). The facility operated under the previous permit that implemented provisions of the

Consent Order 00-E-0154 until August 30, 2005. The facility began operating according to its current permit SOC on September 1, 2005, but the facility did not meet the SOC milestone dates. This facility is currently operating under KDHE Consent Order 06-E-0002 effective January 30, 2006, which required upgrades to return the facility to compliance. KDHE has documented the status of upgrades made at this facility.

Key Concerns: The facility has been in noncompliance since 2003, but the KDHE permit SOCs and enforcement actions have not returned Iola to compliance. KDHE must continue to follow the status and deliverables of its current enforcement action to ensure that Iola returns to compliance.

Johnson County Wastewater, Blue River District #1, KS0092738, NEDO:

Findings: The Johnson County (JOCO) Blue River District # 1 is a BNR Activated Sludge System with a peak flow equalization basin. The design average daily flow is 10.5 MGD. The peak daily flow is 37.5 MGD. The previous permit was issued on July 1, 2000 and expired on June 30, 2005. The current permit was issued on March 1, 2007 and expires December 31, 2011.

KDHE performed an annual inspection of this NPDES Major facility on September 22, 2006. The inspection report was completed and timely transmitted to the facility in 29 days. The JOCO Blue River District # 1 recently built a new BNR Activated Sludge Plant. The upgraded treatment facility was built to operate and maximize the removal of targeted nutrients. The current permit SOC requires the facility to achieve compliance with the final limits by July 1, 2007, and to conduct a study 2 years thereafter. ~~Both of these compliance milestones fell outside the timeframe of the program review.~~

Key Concerns: ~~EPA could not determine if KDHE took action to return this facility to compliance during the review timeframe. The compliance activity in this file was outside the period of review.~~ EPA did not examine the compliance status for this facility, as the deadline for compliance was outside of the scope of this review.

MGP Ingredients, KS0001635, NEDO:

Findings: ~~The MGP Ingredients is a facility that dry grinds wheat to produce flour wheat starch and Gluten.~~ The primary production operation for the facility is the production of ethanol. Its adjacent flour, wheat starch and gluten plant directs a part of its wastewater for use as raw material in the ethanol production with the remainder being sent to the MGP ethanol wastewater treatment system. A portion of the wheat starch and gluten process wastewater combines in an anaerobic/aerobic treatment system. Waste activated sludge is pumped to a gravity belt press. The sludge cake is mixed with bran from the flour mill and distillers syrup to produce dry animal feed. All domestic wastewater is connected to the city sanitary sewer system. The treated process wastewater average daily flow is 0.92 MGD (maximum 1.3 MGD) from Outfall 001b that combines with 4.36 MGD average flow (maximum 5.62 MGD) of non-contact cooling water discharged at Outfall 001. The current permit was issued on December 1, 2003 and expires November 20, 2008.

KDHE performed an annual inspection of this NPDES Major facility on December 21, 2005.

The inspection report was completed and timely transmitted to the facility in 16 days. No issues or deficiencies were identified in this inspection report.

EPA found an October 7, 2005 letter in the KDHE file that discussed the October 3, 2005 upset of the MGP activated sludge process that caused the discharge of solids to flow into White Clay Creek exceeding permit limits.

EPA found a February 16, 2006 letter from MGP in the file that discussed the proposed movement of the wastewater discharge point from White Clay Creek to the Missouri River due to toxicity issues. The KDHE file included a letter from MGP on July 6, 2006 that proposed a change in facility's process of disinfectant usage.

Key Concerns: KDHE does not need to follow-up on issues at this facility at this time.

Topeka (Oakland) WWTP, KS0042722, NEDO:

Findings: The Topeka (Oakland) WWTP is an activated sludge-contact stabilization treatment plant with 2-stage anaerobic sludge digestion, mechanical sludge dewatering, windrow composting, and sludge storage & distribution. The average design flow is 16 MGD. The peak flow capacity is 32 MGD. The current permit was issued on July 1, 2004 and expires December 31, 2008.

KDHE performed an annual inspection of this NPDES Major facility on December 19, 2005. The inspection report was completed and timely transmitted to the facility in 23 days. No issues or deficiencies were identified in this inspection report. The Topeka Oakland WWTP was under a permit-based SOC to upgrade the plant; however some effluent violations occurred while some equipment was taken out of service during the upgrade. The facility construction was due to be completed by July 1, 2006.

The city completed its LTCP, and determined to separate its CSOs through a phased approach. The city is currently in the assessment phase of its LTCP to determine if the upgrades made to the wastewater treatment plant and the collection system have substantially eliminated combined sewer overflows. KDHE addressed CSO upgrades through the current permit. Topeka completed plant WWTP upgrade requirements and CSO controls by July 1, 2006, but the facility did not return to compliance.

Topeka is required by the NPDES permit to conduct post-construction monitoring as approved in the LTCP. No further CSOs were expected to occur from Topeka's sewer system; however, Topeka needs to collect adequate post-construction monitoring data to determine whether or not the overflows have been eliminated.

KDHE and the city are awaiting the re-issuance of the next permit to address future phases of the CSO separation projects. KDHE must reconsider putting all CSO and wastewater upgrades into an enforceable document that will cover all of the needed improvements. KDHE must find a way to address both the state's and the city's needs, rather than wait to renegotiate changes in an SOC during the permit renewals every 5 years.

Key Concerns: KDHE needs to monitor Topeka's compliance with the post-construction monitoring requirements, and determine if the CSO controls operate as anticipated. **KDHE must reconsider putting all CSO and wastewater upgrades into an enforceable document that will cover all of the needed improvements.**

Tyson Fresh Meats, Inc. – Emporia, KS0000817, SEDO:

Findings: The Tyson Meats, Inc. is a beef slaughtering operation, in which processes include hide de-fleshing, boiler blow-down, and stockyard washing. The runoff is treated in a WWTP prior to discharge to an unnamed tributary to Cottonwood River to Neosho River. The current permit was issued on January 1, 2004 and expires December 31, 2008.

KDHE performed an annual inspection of this NPDES Major facility on February 28, 2006. The inspection report was completed and timely transmitted to the facility in 16 days. The KDHE inspection report discussed the O&M at the WWTP. The report also discussed Tyson's optimization of sludge, because no sludge was removed from treatment system as required by the permit SOC.

KDHE documented that the facility was out of compliance with its permit SOC, which supports the Kansas Nutrient Plan. Tyson was required to remove sludge from Pond # 1B and dispose of it or Tyson must land apply the sludge.

A pump station bypass occurred October 3, 2006, which fell outside the timeframe of the program review. Tyson followed the proper procedures to call KDHE and document this event.

Key Concerns: EPA could neither determine if KDHE had received all deliverables, nor the status of compliance of the Tyson facility. KDHE must follow-up on all deliverables and deficiencies outlined in the inspection report, and document the facility's responses and actions taken to address noncompliance of permit requirements.

UCB Films Incorporated, a.k.a. Innovia Films, Inc. KS0003204, NEDO:

Findings: The Innovia Films, Inc. produces cellophane from wood pulp for use primarily in food packaging. The cellophane production process generates acid, alkaline and neutral wastewater streams. The treatment system consists of a mix house, finishing coating, casting and viscose manufacturing area (VMA), a wet end dumpster, evaporator, barometric condenser, boiler blow-down, reverse osmosis demineralizer, sodium softener, sand filter regeneration, cooling tower, cooling tower blow-down, effluent clarifier, an equalization basin, and 8 ponds. The average daily flow rate is 1.94 MGD. The current permit was issued January 1, 2006 and expires December 31, 2010.

KDHE performed an inspection of this NPDES Major facility on December 14, 2005. The inspection report was completed and timely transmitted to the facility in 19 days. No issues or deficiencies were identified in this inspection report.

Innovia Films, Inc. is currently under an SOC which required the facility to submit a sludge removal plan, and remove all sludge from ponds # 4 and 5 except for a small quantity needed to maintain liner integrity that will be removed by September 30, 2006. The SOC had additional requirements and compliance milestone dates for whole effluent toxicity (WET) and toxics reduction evaluation (TRE) plans; however all of these actions fell outside the timeframe of the program review in 2007 through 2009.

Key Concerns: EPA could not determine if this facility submitted deliverables, or the facility's compliance with the permit SOC. KDHE must ensure this facility is submitting all deliverables and complying with the requirements outlined in the permit-based SOC.

Wichita, Four Mile Creek WWTP, KS0081973, SCDO:

Findings: The Wichita Four Mile Creek WWTP is an extended aeration treatment plant with re-aeration, sludge thickener/clarifier, sludge pump station, belt filter press, sludge truck, and an extraneous flow basin system. The average design flow is 1.5 MGD; the peak design flow is 4.5 MGD. The current permit was issued October 1, 2005 and expires September 30, 2010.

KDHE performed an annual inspection of this NPDES Major facility on April 19, 2006. The inspection report was completed and timely transmitted to the facility in 17 days. KDHE did not identify any deficiencies during this inspection. An additional inspection occurred on November 15, 2006 in which the following deficiencies were identified:

~~KDHE identified the following deficiencies during the inspection:~~

- Wichita must calibrate both influent and effluent flow meter, and begin reporting the most accurate flow meter data on the monthly monitoring reports.
- Wichita must also begin reporting on the monthly discharge monitoring report whether the flow data was obtained from the influent flow meter or the effluent flow meter.
- All bypasses of wastewater must be reported immediately by telephone to KDHE followed by a written notification within 5 days of becoming aware of the bypass.

Key Concerns: While deficiencies were identified during the inspection, KDHE followed up with the facility to ensure that deficiencies were resolved.

~~**Key Concerns:** EPA could not determine if the facility had corrected those deficiencies, began documenting and reporting bypasses, or returned to compliance. KDHE must ensure all follow-up actions to address deficiencies are documented in the file. KDHE must ensure that this facility is reporting all bypasses outlined in the permit-based SOC.~~

NPDES Minor Facilities

Baldwin City WWTP, KS0097381, NEDO:

Findings: The Baldwin WWTP consists of 2 sSchieber aeration basins and clarifiers, UV disinfection, cascade aeration, and aerated sludge storage tank. The current permit was issued July 1, 2006 and expires December 31, 2009.

KDHE performed an ~~semi-annual~~ inspection of this NPDES Minor facility on February 15, 2006. The inspection report was completed and timely transmitted to the facility in 17 days. The KDHE inspection report noted that the western half of the treatment unit was out of service for repairs. There was no documentation of follow-up by KDHE to determine if the unit was repaired, brought back on line, or returned to compliance.

Key Concerns: KDHE must follow-up on all deficiencies outlined in inspection reports and document the facility responses and actions taken to address noncompliance.

Beach House Heat Pumps, KS0088927, SCDO:

Findings: The Beach House Pumps consist of 3 heat pumps, and non-contact cooling water. This outfall discharges to a tributary which discharges into a residential lake to a receiving stream. The current permit was issued January 1, 2003 and expires December 31, 2007.

KDHE performed an ~~semi-annual~~ inspection of this NPDES Minor facility on December 4, 2002, which was outside the timeframe of the program review. This inspection was the most recent inspection available. This inspection report was not entered or documented into PCS.

The KDHE inspection report noted deficient operation of the ground water wellhead casings, and KDHE required the ~~permittee city~~ to respond to the report findings by January 24, 2003. The facility submitted a response letter to KDHE on January 24, 2003 regarding its follow-up actions to correct the deficiency found during the inspection. KDHE sent a letter on February 15, 2003 accepting the response sent by Beach house with no further action required on the part of the city.

Key Concerns: There is no issue that needs to be followed-up by this facility at this time.

Clearview Village WWTP, KS0090671, NEDO:

Findings: The Clear-view Village WWTP consist of a 3 cell wastewater stabilization lagoon. The current permit was issued in October 1, 2006 and expires December 2011.

KDHE performed a semi-annual inspection of this NPDES Minor facility on November 4, 2005. The inspection report was completed and ~~timely~~ transmitted to the facility in 142 days. During the review of the inspection report it was noted that algae was observed down stream of the discharge point, the facility was experiencing I/I issues, and bypasses were documented. EPA could not verify the number of bypasses that had occurred during the file review. Another inspection was noted in the file referring to an anonymous complaint and the requirement that all bypasses must be reported immediately.

Key Concerns: EPA could not determine if any follow-up actions were taken to address and resolve the problems identified in the inspection report. KDHE must follow-up on all deficiencies and violations outlined in inspection reports, and document the facility responses

and appropriate actions taken to address noncompliance.

Delia WWTP, KS0046493, NEDO:

Findings: The Delia WWTP is a 2 cell WWTP lagoon, with plans to expand the facility to a 3 cell lagoon in December 2006. The current permit was issued March 1, 2006 and expires December 31, 2010. It should be noted that this is a very small community, with a population of 164 people in 2000.

KDHE performed a semi-annual inspection of this NPDES Minor facility on July 10, 2003, which was outside the timeframe of the program review. This inspection was the most recent inspection available. This inspection report was not entered and documented into PCS. The inspection report was completed and timely transmitted to the facility in 8 days.

EPA found a July 18, 2003 KDHE letter to Delia's mayor that discussed serious permit compliance problems at this facility. A November 25, 2003 reminder letter was sent to the city regarding an assessed \$500 penalty that was past due, which the city then paid. The KDHE Administrative Order 02-E-0214 was issued January 7, 2004. EPA found a KDHE memo from January 20, 2004 that addressed issues relating to project scheduling. Delia applied but was rejected by the Kansas Department of Commerce KDHE for the 2004 CDBG grant competition. The city was required by the January 7, 2004 Order to submit a schedule for construction improvements by March 1, 2004. The city and KDHE communicated and corresponded about compliance and milestone date issues from 2003 to 2007.

An Amended Consent Agreement was issued by KDHE on April 19, 2005. Delia appeared on the 2005 Annual Non-compliance Report (ANCR) provided by KDHE. The city was more than 1 year behind on construction requirements.

EPA observed meeting minutes for a December 5, 2006 KDHE meeting that discussed final inspection findings for Delia's wastewater lagoon facility improvements. KDHE was tracking the facility's compliance, which fell outside the timeframe of the program review. KDHE collected stipulated penalties of \$100 from Delia on April 27, 2007, for failure to provide discharge monitoring reports (DMRs) and late submittal of DMRs.

Key Concerns: There were no issues or deficiencies identified during the program review for this facility. The city and KDHE took more than 6 years after the first SOC was put into the permit, and 3 years after enforcement was initiated to return Delia to compliance. It appears that the length of time, penalty, enforcement action, and enforcement action amendment were appropriate considering this community was so small and the expansion was done with grant dollars.

Fredonia WWTP, KS0045985, SEDO:

Findings: The Fredonia WWTP is a mechanical plant with sludge drying beds, sludge dewatering system, and a sludge loading pad. The design flow is 0.475 MGD. The previous

permit was issued September 1, 2001 and expired August 31, 2006. The current permit was issued September 1, 2006 and expires August 31, 2011.

KDHE performed an ~~semi-annual~~ inspection of this NPDES Minor facility on May 15, 2006. The inspection report was completed and timely transmitted to the facility the same day. No issues or deficiencies were identified in this inspection report. The previous permit had an SOC that required the city to upgrade the treatment plant, and achieve compliance by November 1, 2005.

Key Concerns: There were no issues or deficiencies identified during the program review for this facility.

Gardner, Kill Creek WWTP, KS0095605, NEDO:

Findings: The Gardner Kill Creek WWTP is an activated sludge mechanical facility with sludge drying beds, UV disinfection, and cascade aeration. The outfall discharges to the Kansas River via Kill Creek. The average ~~design daily~~-flow is 2.5 MGD. The previous permit was issued November 1, 2004 and expired March 1, 2007. The current permit was issued March 1, 2007 and expires December 31, 2011.

KDHE performed a semi-annual inspection of this NPDES ~~Minor~~ Major facility on March 15, 2006. The inspection report was completed and timely transmitted to the facility in 20 days. No issues or deficiencies were identified in this inspection report. EPA found NH₃-N violations identified for quarters January through March 2006 and April through June 2006 in PCS. There have not been any additional violations that have occurred since June 2006.

KDHE identified the WWTP as a NPDES Major facility in the draft routing sheet dated February 13, 2007. The facility has an SOC in the current permit, which ~~allows~~ requires the city to add irrigation of the treated wastewater and also requires requirements for a nutrient study. EPA could not identify in the files reviewed if the study had met the requirements of the addition of the irrigation for the nutrient study. Correspondence found in KDHE files dated August 6, 2004 indicated the city planned to construct another 2+ MGD WWTP in the future.

Key Concerns: KDHE must continue to follow the status and deliverables of this facility to ensure completion and compliance of the upgrades outlined in the permit-based SOC. The facility is still listed as a Minor in PCS. KDHE needs to submit an NPDES permit rating worksheet to have the facility status changed.

Haven WWTP, KS0116815, SCDO:

Findings: The Haven WWTF is a 3 cell wastewater stabilization lagoon with ~~which consists of~~ 2 lift stations. The previous permit was issued January 2, 2002 and expired January 1, 2007. The current permit was issued October 1, 2006 and expires September 30, 2011, which is after the timeframe of the program review.

KDHE performed an **an semi-annual** inspection of this NPDES Minor facility on February 24, 2006. The inspection report was completed and timely transmitted to the facility in 30 days. KDHE issued an inspection report transmittal letter on April 26, 2006, which discussed renewing the (previous) permit with a new SOC, even after the first permit-based SOC wasn't met. The letter discussed that the city needed to renew the permit and ensure a 2007 budget to complete the SOC requirements.

Haven appeared on the 2005 Annual Non-compliance Report (ANCR) provided by KDHE. The city was more than 1 year behind on construction requirements. There was an SOC in the previous permit requiring the city to achieve compliance with permit effluent limits by March 1, 2002. There is an SOC in the current permit, which requires the city to complete the same upgrade and achieve compliance by December 31, 2009.

Key Concerns: The facility has not appropriately addressed deficiencies or submitted deliverables required in the SOC to return to compliance. KDHE must continue to follow the status and deliverables of this facility to ensure completion and compliance of the upgrades outlined in the permit-based SOC.

Oberlin STP, KS0022501, NWDO:

Findings: The Oberlin STP is a contact stabilization package plant with 1 (maybe 2) clarifier(s), sludge drying beds, chlorination facilities available. The design flow is 0.45 MGD. The current permit was issued August 1, 2002 and expires July 31, 2007.

KDHE performed **an a semi-**annual inspection of this NPDES Minor facility on March 28, 2006. The inspection report was completed and timely transmitted to the facility in 1 day. No issues or deficiencies were identified in this inspection report. The inspector requested a follow-up inspection in the report, but a follow-up was not conducted or documented. There is an SOC in the permit which required the city to upgrade the plant and achieve compliance with permit by December 31, 2005.

EPA found An Administrative Order **was issued on** December 28, 2005. A Consent Agreement 05-E-0255 was issued **on in** February 2006. An amendment to the Consent Agreement, dated March 7, 2007 was issued extending the compliance dates of the original order. A penalty of \$2,500 was assessed for the violations. EPA could not determine how the penalty was determined or if the penalty **was had been paid based on the files reviewed**. Plant upgrades appeared to **be** still **be** in progress.

Key Concerns: EPA could not determine if this facility was submitting any deliverables required in the SOC. KDHE must continue to follow and document the compliance status and deliverables of this facility to ensure a return to compliance.

Pretty Prairie WWTP, KS0030520, SCDO:

Findings: The Pretty Prairie WWTP consists of an Imhoff Tank **and trickling filter** treatment

system with sludge drying beds. The WWTP discharges into an unnamed tributary which discharges into Smoot Creek and then into the Ninescah River and finally into the Lower Arkansas River. The design flow is 1.0 MGD. The current permit was issued November 1, 2003 and expires December 31, 2007.

KDHE performed a semi-annual inspection of this NPDES Minor facility on January 12, 2006. The inspection report was completed and timely transmitted to the facility in 25 days. KDHE identified 2 issues or deficiencies in this inspection report. KDHE required the facility to take corrective actions, and documentation was provided to KDHE within the specified timeframe.

A SOC in the permit required upgrade from Imhoff Tank to a proposed 3 cell wastewater lagoon system. A follow-up letter from KDHE to the city, discussed the city's completion of corrective actions with no further action required. ~~however there was no documentation in the file supporting corrective action other than the letter written by KDHE.~~

Key Concerns: KDHE must ensure that all supporting documentation is in the file. It appears that no further actions need to be taken at this time regarding this facility.

Ransom WWTP, KS0031453, NWDO:

Findings: The Ransom STP is a 3 cell wastewater stabilization lagoon. The permitted flow is 37,750 GPD. The design population equivalent is 461. The previous permit was issued June 1, 2001 and expired May 30, 2006. The current permit was issued April 1, 2006 and expires March 31, 2011.

KDHE performed a semi-annual inspection of this NPDES Minor facility on September 4, 2003, which was outside the timeframe of the program review. This inspection was the most recent inspection available. This inspection report was not entered or documented into PCS. The inspection report was completed and timely transmitted to the facility in 12 days. No issues or deficiencies were identified in this inspection report, which fell outside the timeframe of the program review.

Key Concerns: It appears that no further actions need to be taken at this time regarding this facility.

Troy, Peters Creek WWTP, KS0047520, NEDO:

Findings: The Troy WWTP is a 3 cell wastewater stabilization lagoon. The design flow is 0.10 MGD. The design population equivalent is 1,000. The effluent from the treatment plant flows into ~~Missouri River via Peters Creek Little Arkansas River via an unnamed tributary.~~ The current permit was issued November 1, 2003 and expires December 21, 2008.

KDHE performed an ~~semi-annual~~ inspection of this NPDES Minor facility on April 13, 2006. The inspection report was completed and timely transmitted to the facility in 26 days. No violations were identified during the inspection. There were no issues or deficiencies identified

in the file during the program review for this facility.

Key Concerns: It appears that no further actions need to be taken at this time regarding this facility.

Windom WWTP, KS0051721, NCDO:

Findings: The Windom WWTP is a 3 cell wastewater stabilization lagoon, and a lift station. The design flow is 27, 500 GPD, and the lagoons were operating at 50% loading capacity. There were no discharges from the lagoon from September 2004 through September 2006. The previous permit was issued January 2, 2002 and expired January 1, 2007. The current permit was issued February 1, 2007 and expires January 21, 2012. There was an SOC in the permit which required the facility to hire a certified operator by February 1, 2003, and to provide the information to KDHE.

KDHE performed a semi-annual inspection of this NPDES Minor facility on June 27, 2006. The inspection report was not entered or documented into PCS. The inspection was completed and timely transmitted to the facility in 8 days. The inspection report sent to the city on July 5, 2006 documented several O&M issues:

- treatment plant not having enough wave action in lagoons,
- too many weeds on banks,
- grass above freeboard on banks to prevent erosion, and
- keep inlet and interconnecting flow-boxes clean and clear of debris.

The inspection report stated that the city has addressed some O&M issues and lift station issues. The report cover letter stated that a KDHE follow-up inspection to view completed work would be coordinated with a site visit to view upgrades once completed, within the next 6 months (around January 31, 2007). An upgrade to the WWTP is planned soon.

Key Concerns: EPA could not determine if the follow-up site visit was completed, which fell outside of the timeframe reviewed. KDHE must document and include in their files all inspections, follow-up actions, and status reports submitted by the facility.

Summary of CWA NPDES Enforcement Files Reviewed

NPDES Major Facilities

Abilene WWTP, KS0051942, NCDO:

Findings: A 2005 Compliance Order incorporates by reference a 2003 agreement (Administrative Order 03-E-0167). The 2005 Compliance Order required the City to complete facility upgrades by April 1, 2007. Apparently the delay in complying with the 2003 agreement was caused by potentially inaccurate flow data which had to be verified. Correspondence dated August 19, 2005, also states that the City had been accepting wastes from Russell Stover without pretreatment.

There was no documentation in the file that the required upgrades had been completed (as required by April 1, 2007). Additionally, there was no inspection by KDHE of the facility in 2006, even though the facility had been in non-compliance and was subject to an Order. The fact that a prior compliance agreement was extended by 2 years to confirm flow data may not have been the most efficient means of achieving compliance for the facility. Lastly, there is no documentation of what the contribution of the significant industrial user (SIU) Russell Stover was to the non-compliance, or what actions were taken by the SIU to pretreat its wastewater.

Key Concerns: SIUs that may contribute to non-compliance of a municipality should be addressed. There was no documentation in the file that the required upgrades had been completed as required by April 1, 2007, which fell outside the review timeframe.

Johnson County Wastewater, Middle Basin Indian Creek WWTP, KS0119601, NEDO:

Findings: This facility had numerous violations in 2002. A facility upgrade was implemented. All issues related to the facility's compliance appear to be resolved by the upgrade.

Key Concerns: EPA could not determine whether the wet weather diversions from the Indian Creek WWTP to the Kansas City, Missouri (KCMO) system actually reach the KCMO Blue River WWTF, or whether these diversions result in SSO/CSO discharges in the KCMO collection system (See further discussion of this concern in the Johnson County, Tomahawk WWTP summary below).

Johnson County Wastewater, Tomahawk Creek WWTP, KS0055484, NEDO:

Findings: In February 2006, KDHE issued a Compliance Order (Compliance Order 06-E-0016) to resolve CBOD violations. This Order required the submittal of a plan to resolve those violations.

The KCMO sewer collection system has overflow problems. In particular, the CSO portions of the KCMO sewer collection system have frequent dry weather and wet weather overflow

discharges. These overflows are unauthorized and illegal.

During the program review EPA observed in the file that KDHE allowed the Tomahawk Creek WWTP to divert its flows to the KCMO collection system for treatment at the Blue River WWTF. The Tomahawk Creek WWTP permit authorizes only the diversion of the "raw sewage [from the Tomahawk Creek WWTP] to the [KCMO] Blue River WWTF via the KCMO interceptor line".

In a March 2007 Pre-Design letter from KDHE to the Johnson County Wastewater engineer, KDHE approved a plan submitted by Johnson County to send the maximum quantity of dry weather and peak wet weather flow to the KCMO sewer system.

Because of the need for an integrated approach between KCMO and its satellite communities which utilize KCMO's treatment facilities, an analysis must be performed to determine whether dry weather diversions from the satellite communities (such as Johnson County) would constitute permit violations of either KCMO's permit or the Tomahawk Creek WWTP permit. EPA is currently finalizing a Consent Decree with KCMO which will require substantial upgrades and address CSO and SSO issues within their collection system. The expenditures for this project total (approximately) \$1.5 billion.

Key Concerns: EPA is concerned that the additional flows from the Tomahawk Creek WWTP to the KCMO Blue River WWTF, even though the Tomahawk Creek WWTP is permitted to divert flow, is contributing to KCMO Blue River WWTF overflow discharges which would otherwise not occur. During periods of wet weather, the KCMO sewer collection system is at capacity in certain portions of the system, and there is a greater likelihood that the diverted flows will: 1) not reach the KCMO Blue River WWTF, 2) cause bypassing and overflows within the collection system, and 3) put further stress on the KCMO collection system.

NPDES Minor Facilities

Abengoa Bioenergy Corp., KS0081329, SCDO:

Findings: In 2005 there was a citizen's complaint regarding a discharge of wastewater into a ditch. KDHE investigated and determined that the discharge did not come from the Abengoa facility. There is no explanation of what was the source. In November 2006, the Facility submitted an equalization plan. A Consent Order (06-E-001) was issued with a \$30,000 penalty, with \$10,000 held in abeyance.

Key Concerns: KDHE has a penalty policy that may have been used to calculate this penalty but there was no evidence of its application to this penalty assessment in the file.

Conway Springs WWTP, KS0030651, SCDO:

Findings: The City failed to file the DMRS required by the permit. The City was issued a

unilateral Compliance Order (06-E-0140), which was appealed, and then entered into a consensual Order. The Consent Order required payment of a \$250 fine.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe.

Garden Plain WWTP, KS0116386, SCDO:

Findings: In 2004, a KDHE inspection showed a bypass and 2005 numerous permit violations were recorded. In March 2005, KDHE issued a unilateral Compliance Order (05-E-0069) which established a schedule for compliance that required an engineering report, and to thereafter implement upgrades in a schedule approved by KDHE. Following an appeal of the March 2005 Order, a consent **suat** order was signed in November 2005, which required actions to return the facility to compliance outside of the review timeframe. The KDHE Order required the city to submit action plans to KDHE by July 2007; facility construction was required to commence by February 2008; construction was to be completed by December 2008; with compliance was to be achieved by March 2009.

Key Concerns: The file review shows KDHE's ongoing efforts to achieve compliance with the City, but no penalty was assessed or collected.

Norton WWTF, KS0022446, NWDO:

Findings: The file contains documentation between KDHE and the City from 1999, 2003, 2004 and 2005 regarding the need for upgrades. The file contains documentation of a bypass of raw sewage in 2004. DMR data shows fecal counts of 30,000 f.c.u. and greater in 2004 and 2005. A 2002 permit contained a compliance schedule which required an engineering report/plan by January 2002, construction complete by December 2005 and compliance by March 2006.

Based on the City's failure to comply with the schedule in the permit, in December 2005, KDHE issued a unilateral Compliance Order (05-E-0254) which required plan submittal by February 2006, construction complete by December 2006 and compliance by January 2007. The unilateral order was appealed by the City and a Consent Order was entered in February 2006 which provided a revised compliance schedule and required a \$2,500 penalty. In May 2006, KDHE received a letter from the City's engineering firm which stated that the bids for the required work were too expensive and the city was working on cost reductions. The February 2006 Order was then subsequently amended to provide a revised compliance schedule.

Key Concerns: EPA observed that KDHE was trying to work with the City; however, it appears that non-compliance was allowed to continue **without enforcement** for an extended period of time (from 2002 to April 2007). KDHE did not take timely enforcement, despite evidence of the bypass of raw sewage and extremely high fecal coliform discharges.

WaKeeney STP, KS0030481, NWDO:

Findings: A permit was issued to the City in 2000, which required the City propose a plan and schedule to achieve compliance by February 2001. The City requested that KDHE perform a UAA on the receiving water to determine whether the permit limits were correct. Based on the file documentation, more time was given to the City to propose its plan/schedule for compliance. In February 2005 a new permit was issued which again required the City to propose a plan/schedule to achieve compliance. The City failed to meet these requirements.

In September 2006, KDHE issued a unilateral Compliance Order (06-E-0128) which alleged the City had failed to comply with the compliance schedule of an earlier Order and permit. The September 2006 Order was appealed by the City, and a consensual Compliance Order was entered in January 2007 which resolved the appeal. One issue raised by the City in its appeal was the need to acquire more land to upgrade the WWTF. The January 2007 Order requires a compliance plan submittal by May 2007; construction complete by January 2008; and the achievement of compliance by April 2008.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe. This is a small municipality which KDHE has worked with extensively over a long period of time to achieve compliance. While compliance may have been achieved more quickly, KDHE's 2006/2007 Orders were reasonable resolutions of the issues based on the City's 2001 request for a UAA, the appeal of the schedule of the 2006 unilateral Order, and the effort to reach a consensual resolution.

York International d/b/a York UPG, KS0000850, SCDO:

Findings: File shows 2005 permit, and documentation of history of failure to file DMRs. Nothing else was observed in the file, although apparently a Compliance Order (06-E-0143) was issued.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe.

Summary of CWA NPDES Stormwater Files Reviewed

Municipal Separate ~~Sanitary~~ Storm Sewer System (MS4)

Kansas City, KS0095656, NEDO:

Findings: Kansas City is a Phase I stormwater city. The City's permit became effective January 1, 2001 and expired December 31, 2004. The permit has been administratively extended pending issuance of the revised permit. KDHE is currently working on renewing this permit. There has not been an audit or inspection to determine compliance with the requirements of the permit.

Key Concerns: EPA did not document any issues or concerns associated with this city.

Industrial Stormwater

N.R. Hamm Quarry, Petefish, Quarry #3, KS0117498, NEDO:

Findings: This facility is a quarry in Eudora. The most recent permit became effective December 1, 2006 and expires February 28, 2011. The permit contains a compliance schedule requiring the facility to develop a SWPPP. The permit that was effective prior to the current permit was for a non-washing facility and it also required that a SWPPP be developed. Correspondence dated April 19, 2006 from KDHE to the facility outlined the findings of a April 6, 2006 inspection. The findings were the same as items 1-4 in the order as outlined below. KDHE performed a site visit on June 6, 2006 and the unpermitted wash plant was in full operation. KDHE issued Administrative Order Number 06-E-0100 on August 15, 2006 citing violations for 1) conducting wash operations without a permit, 2) the site plan sent with the permit renewal was inaccurate, 3) the pit dewatering was not being directed to outfall 001 as in the permit application, and 4) there was significant disturbed area with no erosion controls. KDHE also penalized Hamm \$5,000 for the violations at this facility and two other Hamm quarries. The penalty was collected and the file documented that the facility complied that all requirements of the Order.

Key Concerns: ~~The penalty calculation in the file consisted of an email that stated, "Vic caught them washing at the quarry and the permit is not for a washing facility. This is after he told them twice to get the application in to change the permit. Unless there are extenuating circumstances, I'm suggesting a \$5,000 fine to get their attention." KDHE has a penalty policy that may have been used to calculate this penalty but EPA was unable to determine how the policy was used. there was no evidence of its application to this penalty assessment in the file.~~

N.R. Hamm Quarry, Smith Quarry #106, KS0097632, NEDO:

Findings: This facility is a quarry near Holton. The most recent permit became effective July 1, 2005 and expires June 30, 2010. The permit contains a compliance schedule requiring the

facility to develop a SWPPP. A KDHE inspection on June 2, 2006 (inspection letter sent 6/6/06) revealed that the facility had not inspected outfalls and receiving streams as required by the permit, nor were there records of inspections. The facility also had not developed a SWPPP prior to initiation of quarry activities or within 90 days of permit issuance. KDHE issued Administrative Order Number 06-E-0100 on August 15, 2006 citing violations at three facilities including 1) conducting wash operations without a permit, 2) the site plan sent with the permit renewal was inaccurate, 3) the pit dewatering was not being directed to outfall 001 as in the permit application, and 4) there was significant disturbed area with no erosion controls. KDHE also penalized Hamm \$5,000 for the violations at these facilities. The penalty was collected and the file documented that the facility complied that all requirements of the Order.

Key Concerns: ~~The penalty calculation in the file consisted of an email that stated, “Vic caught them washing at the quarry and the permit is not for a washing facility. This is after he told them twice to get the application in to change the permit. Unless there are extenuating circumstances, I’m suggesting a \$5,000 fine to get their attention.”~~ KDHE has a penalty policy that may have been used to calculate this penalty but EPA was unable to determine how the policy was used. ~~there was no evidence of its application to this penalty assessment in the file.~~

N.R. Hamm Quarry, Troy/Huss Quarry #108, KS0097837, NEDO:

Findings: This facility is a quarry near Troy. The most recent permit became effective July 1, 2005 and expires December 31, 2008. The permit contains a compliance schedule requiring the facility to develop a SWPPP. A KDHE inspection on September 19, 2006 (inspection letter sent 9/25/066) revealed that the facility had not inspected outfalls and stormwater runoff areas, nor were there records of inspections. The facility also had not developed a SWPPP prior to initiation of quarry activities or within 90 days of permit issuance. KDHE issued Administrative Order Number 06-E-0100 on August 15, 2006 citing violations at the three facilities including 1) conducting wash operations without a permit, 2) the site plan sent with the permit renewal was inaccurate, the pit dewatering was not being directed to outfall 001 as in the permit application, and 4) there was significant disturbed area with no erosion controls. KDHE also penalized Hamm \$5,000 for the violations at these facilities. The penalty was collected and the file documented that the facility complied that all requirements of the Order.

Key Concerns: ~~The penalty calculation in the file consisted of an email that stated, “Vic caught them washing at the quarry and the permit is not for a washing facility. This is after he told them twice to get the application in to change the permit. Unless there are extenuating circumstances, I’m suggesting a \$5,000 fine to get their attention.”~~ KDHE has a penalty policy that may have been used to calculate this penalty but EPA was unable to determine how the policy was used. ~~there was no evidence of its application to this penalty assessment in the file.~~

Western Plains Energy, LLC, KS-0093076, NWDO:

Findings: The facility is an ethanol production facility in Oakley. The permit is effective from April 1, 2005 through February 28, 2009. The permit contains a schedule of compliance requiring the development of a SWPPP and certification of its existence within one year of the

issuance of the permit. EPA inspected the facility on March 9, 2005, the findings of which were documented in the May 3, 2005 inspection report. KDHE inspected the facility on June 28, 2005 and documented its findings in a letter to the facility dated July 14, 2005. On August 3, 2006 the facility sent KDHE a copy of the cover page of its SWPPP and stated that the SWPPP was completed in February, 2005.

Key Concerns: EPA did not document any issues or concerns associated with this file.

Waste Management of Kansas, KS-R000153, NEDO:

Findings: The facility is Rolling Meadows Landfill in Shawnee County. The facility submitted a NOI to KDHE on July 9, 1993 and again on March 1, 2005 and January 24, 2007. There were two letters in the file from Shawnee County, dated 9/26/06 and 12/22/06. Both letters were date-stamped received by KDHE on 12/28/06 and both letters conveyed the county's concerns regarding a lack of BMPs at the facility and included pictures that showed erosion rills onsite due to the lack of BMPs. KDHE sent the facility a letter on January 16, 2007 informing the facility of the complaint received by KDHR and requiring additional stabilization and temporary controls. The letter requested a response from the facility by 3/1/07. The facility responded on 2/2/07 indicating the temporary BMPs it had installed and outlining its plans to increase stabilization when the weather would allow. The facility included pictures of the actions it had taken to come into compliance.

Key Concerns: EPA did not document any issues or concerns associated with this file.

Penny's Concrete, Inc. KS-G460013, NEDO:

Findings: Penny's is a ready-mix concrete company and the subject of this review was a facility in Paola. The facility has a permit effective October 1, 2002 through September 30, 2007. KDHE inspected the facility on 5/18/06, the findings of which were included in a 6/1/06 letter to Penny's. On August 3, 2006 KDHE issued Administrative Order (06-E-0104) citing several violations including, 1) settling basin discharges continuously because of flow from a natural spring onsite, 2) company had submitted a SWPPP on 1/30/06 but a copy of the plan was not at the Paola facility during the KDHE inspection and the facility manager was not aware of the existence of the plan, 3) quarterly stormwater control inspections were not conducted, and 4) the site map failed to include the location of settling basins, fuel storage, domestic sewage disposal area, outfalls and roadside ditches. The AO required immediate implementation of effluent sampling, submittal of quarterly inspection logs, the submittal of an updated SWPPP by 9/15/06, that the SWPPP be at each company facility in Kansas, that a responsible party at each facility be trained and that the SWPPP be implemented. The facility was to continue submitting sample results and inspection logs until 12/31/07. The AO also required payment of a penalty in the amount of \$5,000. A note in the file stated that the AO was appealed by Penny's but that a hearing was held and KDHE won. A check in the amount of \$5,000, dated 3/5/07 was in the file. Receipt of all deliverables was not in the file but the timeframe for submitting deliverables had not lapsed and will be ongoing until 12/31/07.

Key Concerns: KDHE has a penalty policy that may have been used to calculate this penalty but there was no evidence of its application to this penalty assessment in the file.

Construction Stormwater

River's Edge East, KS-R102990, NEDO:

Findings: This 5.2 acre (disturbed) construction site is located in Wyandotte County; the Unified Government is the permit holder. NOI received 12/1/05. KDHE received a citizen complaint on 8/31/06 stating that BMPs were not adequate at the site. KDHE notified the permittee of the complaint on 9/7/06. On 9/8/06 the permittee called KDHE to say improvements were being made to the site.. KDHE drove by the site on 9/20/06 and verified that adequate BMPs were in place and functioning.

Key Concerns: EPA did not document any issues or concerns associated with this file.

Wolf Creek Golf Links, KS-R104006, NEDO:

Findings: This 37 acre (disturbed) construction site is located in Olathe. NOI was received 6/1/06. The permittee's engineer sent a letter to KDHE on 12/22/06 stating that the project was almost complete and that remaining work included reconstruction of the south parking lot and replanting tall native grasses along berms lining the 183rd and Lackman right-of-way. KDHE sent a letter to the permittee on 1/17/07 stating that the facility submitted an inadequate NOI and proceeded with construction. KDHE's letter required the permittee to submit a revised SWPPP, NOI, and proof of BMP improvements by 3/1/07. 2/23/07 letter from permittee contained all required documentation.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe.

Heritage Square, KS-R103186, NEDO:

Findings: This is a construction site located in Topeka in Pottawatomie County near Manhattan. KDHE received a complaint on June 22, 2006. On June 26, 2006, NEDO called a site contact and left a message describing the complaint. On June 27, 2006, the site contact returned the call and said the SWPPP would be updated to control dust.

Key Concerns: There is no documentation in the file to indicate if the site returned to compliance. However, KDHE indicated that it felt further follow-up was not necessary.

Stone Creek Meadows, KS-R101277, NEDO:

Findings: This is a construction site in Tonganoxie. NOI was received 10/1/03 and approved 11/7/03. There was no KDHE inspection or enforcement for this file. EPA did an inspection and sent a Notice of Proposed Penalty & Opportunity for Pre-filing Negotiations letter on 10/31/05. A copy of the letter was received by KDHE on 11/2/05.

Key Concerns: EPA did not document any issues or concerns associated with this file.

Tiblow Townhomes Subdivision, KS-R102723, NEDO:

Findings: This is a construction site in Bonner Springs. KDHE received the NOI on 8/2/05 and approved it on 8/3/05. KDHE received a complaint on 8/28/06 and referred it to NEDO. On 8/28/06 NEDO contacted the permittee and relayed the complaint that there was a constant problem with sediment leaving the site. On 8/29/06 NEDO drove by the site and noted a lack of BMPs. On 9/7/06 NEDO spoke with the permittee who stated BMPs would be improved by 9/11/06. On 9/20/06 NEDO drove by and confirmed adequate BMPs were installed and that no further action was necessary.

Key Concerns: EPA did not document any issues or concerns associated with this file.

Prairie View Subdivision, KS-R101155, NEDO:

Findings: This is a construction site in Topeka. KDHE received the NOI on 7/14/03 and approved it on 9/12/03. There was a post-it note on the file that stated, "See Complaint File." The complaint file was not provided for review.

Key Concerns: The activity in this file is outside the period of review.

Sherwood Park Pump Station & Force Main, KS-R103311, NEDO:

Findings: This is a 2.5 acre (disturbed) construction site in Topeka. The NOI was received by KDHE on May 9, 2006 and authorized on May 17, 2006. KDHE received a complaint from a nearby landowner saying sediment was being discharged from the site into Lake Vaquero. KDHE conducted drive-bys at visited the site on August 31, 2006 and again on September 5, 2006. The findings of the site visits are summarized in an email from the inspector to himself, with a copy to Joe Mester. The email states that the contractor was installing seed and straw cover and that the majority of the site still needed cover.

Key Concerns: The findings of the inspection were not forwarded to the site and While the file does not document if the site was returned to compliance, KDHE indicated that the site appears to be stabilized. KDHE also indicated that it would attempt to better document complaints that have been satisfactorily resolved or addressed.

River Hill Shops, KS-R101349, NEDO:

Findings: This is a 37 acre (disturbed) construction site in Shawnee. KDHE received the NOI on January 7, 2004 and issued the authorization on January 13, 2004. KDHE inspected the site on May 1, 2006 and forwarded the findings to the permittee on May 3, 2006 requiring submission of an updated erosion control plan with implementation schedule by May 19, 2006. The permittee responded to KDHE on May 30, 2006 (permittee stated the May 3, 2006 correspondence was not received until it was faxed to him on May 12, 2006) detailing the status of the erosion controls. KDHE performed a follow-up inspection on June 28, 2006. On July 5, 2006. KDHE provided the findings of the inspection to the permittee and requiring submission of documentation addressing BMPs not yet installed by July 21, 2006. The remaining correspondence in the file is dated December 12, 2006 and later and is outside the period of review.

Key Concerns: Review of the portion of this file that was within the period of review did not reveal any concerns.

Kansas Department of Transportation (KDOT), KS-R101567, NEDO:

Findings: This is a KDOT construction site in Topeka. KDHE received the NOI on April 27, 2004 and issued the authorization on May 28, 2004. A SWPPP was received by KDHE on September 9, 2005. Email correspondence between KDHE staff mentions a complaint was received about this site. KDHE inspected the site on August 12, 2005. KDHE staff met with KDOT on September 8, 2005. KDHE determined that the SWPPP and BMPs were inadequate. KDHE requested that the revised SWPPP be submitted by September 30, 2005. KDHE drove by the site on January 30, 2006 and determined controls to be inadequate. KDHE received an e-mail from KDOT on May 23, 2006, which stated that a contractor was on site installing ditch checks, slope barriers, inlet barriers, and seeding and reseeding areas not under further construction. On June 2, 2006, KDHE received an updated SWPPP from KDOT.

Key Concerns: KDHE may want to consider requiring additional documentation to confirm compliance where a facility reports that it's in compliance. There is no documentation in the file to indicate if the site returned to compliance.

Quint T., LLC, Wakarusa Ridge Estates, KS-R102316, NEDO:

Findings: This is a construction site in Eudora. Developer originally applied for a permit on 8/3/00. KDHE notified developer on 2/17/05 to apply for a permit now that general permit is available (since 3/03). KDHE received a complaint on 10/28/05 about the condition of the site. KDHE inspected the site on 11/3/05 and transmitted the findings of the inspection on 11/14/05 directing the developer to submit by 11/25/05 a written description of erosion/sediment controls that will be installed. KDHE issued AO 06-E-0011, signed 2/6/06 demanding updated SWPPP, implementation of BMPs, and submission of monthly inspection logs. The order also required payment of a penalty in the amount of \$2,500. Payment of the penalty was received 3/2/06. KDHE received a letter from Quint T LLC's attorney on 2/14/06 requesting a copy of all of KDHE's records on the site. A copy of the updated SWPPP was received by KDHE on 2/14/06. Copies of inspection logs were received by KDHE on 6/8/06. KDHE received another complaint

from the same complainant on 7/20/06 and also asking KDHE for information on its enforcement at the site. KDHE inspected the site on 9/7/06 and noted areas in need of maintenance. KDHE required a response from developer by 9/18/06. KDHE drove by the site on 9/18/06 and verified that controls had been repaired.

Key Concerns: EPA did not document any issues or concerns associated with this file.

Summary of CWA NPDES CAFO Files Reviewed

4-Mile Feeders, Inc., KS0092461, NWDO:

Findings: 4-Mile Feeders is an open feedlot that KDHE permitted as a large CAFO. There were three inspections performed at this facility by KDHE. The specific inspection information is below:

<u>Inspection Type</u>	<u>Inspection Date</u>	<u>Report Date</u>
Compliance	8/30/05	8/31/05
Complaint Investigation	9/28/05	9/28/05
Compliance	10/12/06	10/13/06

An Administrative Order was issued on 12/5/2005 for violations discovered as a result of the complaint investigation.

Key concerns: There was little information in the file to document the facility had corrected the violations noted in the inspection reports nor was the information in the file documenting compliance with the Administrative Order.

B&B Cattle Company, NCDO:

Findings: B&B Cattle Company is an open feedlot that KDHE permitted as a large CAFO. There were three inspections performed by KDHE during the period of review. The specific inspection information is below:

<u>Inspection Type</u>	<u>Inspection Date</u>	<u>Report Date</u>
Complaint	2/23/06	2/29/06
Follow-up	6/8/06	6/8/06
Follow-up	7/15/06	7/15/06

A Letter of Warning was issued on March 29, 2006. An Administrative Order was filed on June 27, 2006 and a subsequent Consent Agreement was filed on October 18, 2006 to resolve violations discovered as a result of these inspections.

Key concerns: While compliance with the above enforcement actions is ongoing, there is very little information in the file as to their current compliance status as it relates to penalty payment and other compliance/enforcement deliverables. This may be attributed to the fact that penalty payments are tracked in a electronic tracking system.

Chisholm Feeders, KS0089109, NCDO:

Findings: Chisholm Feeders is an open feedlot that KDHE permitted as a medium CAFO. There was one inspection performed by KDHE that occurred outside EPA's period of review. This was a compliance inspection that occurred on January 26, 2005. The associated inspection

checklist was completed and transmitted to the facility on February 7, 2005. There was an Administrative Order that was issued as a result of this inspection. It was issue on October 12, 2005.

Key concerns: There was little information in the file to document the facility had corrected the violations noted in the inspection report nor was the information in the file documenting compliance with the Administrative Order.

Clark Feedlot, KS0091561, SWDO:

Findings: Clark Feedlot is an open feedlot that KDHE permitted as a large CAFO. There was one inspection performed by KDHE during the period of review. This was a follow-up inspection that occurred on November 8, 2005. The associated inspection checklist was completed and transmitted to the facility on November 9, 2005.

Key concerns: EPA did not document any issues or concerns associated with this facility or the inspection report reviewed.

Coolidge Dairy, LLC, KS0093343, SWDO:

Findings: Coolidge Dairy is a dairy operation that KDHE permitted as a large CAFO. There were two inspections performed by KDHE during the period of review. The specific inspection information is below:

<u>Inspection Type</u>	<u>Inspection Date</u>	<u>Report Date</u>
Compliance	3/7/06	4/4/06
Compliance	6/15/06	6/27/06

Coolidge Dairy was operating under an Administrative Order that was issued prior to EPA’s review period. Both inspections documented violations of the Order and resulted in issuance of an amended Order requiring payment of a \$15,000.00 penalty. This amended order was issued in August 2006.

Key concerns: No information was in the file that documented the facility had corrected violations discovered as a result of the inspections. **Complying actions were proposed within the permit, and were not sought through enforcement, as recommended by EPA. The amended Order issued by KDHE only dealt with penalties and did not include complying actions to return the facility to compliance. The penalty order was for the required the facility to pay the stipulated penalty agreed to from the previous consent agreement.**

Dale Springer, KS0085448, SEDO:

Findings: **Foote Cattle Company Dale Springer Feedlot** is an open feedlot that KDHE permitted as a large CAFO. There was one inspection performed by KDHE during the period of review.

This was a compliance inspection that occurred on July 6, 2006. The associated inspection checklist was completed and transmitted to the facility on July 7, 2006.

Key concerns: EPA did not document any issues or concerns associated with this facility or the inspection report reviewed.

Double D Farms, KS0098566, NWDO:

Findings: Double D Farms is an open feedlot that KDHE permitted as a large CAFO. There were four inspections performed by KDHE during the period of review. The specific inspection information is below:

<u>Inspection Type</u>	<u>Inspection Date</u>	<u>Report Date</u>
Complaint	12/12/05	12/12/05
Compliance/Complaint	6/6/06	6/8/06
Complaint	7/11/06	7/11/06
Compliance/Complaint	9/21/06	9/21/06

There has been multiple formal enforcement actions issued to this facility prior to or as a result of the inspections reviewed by EPA. A summary of these actions is below:

<u>Enforcement Type</u>	<u>Filing Date</u>
Administrative Order	8/2/05
Consent Agreement	12/8/05
2 nd Administrative Order	8/16/06
2 nd Consent Agreement	3/5/07

Key concerns: EPA did not document any issues or concerns associated with the inspection reports and/or the enforcement actions reviewed.

Flint Hills Feedlot, KS0051268, SEDO:

Findings: Flint Hills Feedlot is an open feedlot that KDHE permitted as a large CAFO. There were three inspections performed by KDHE during the period of review. The specific inspection information is below:

<u>Inspection Type</u>	<u>Inspection Date</u>	<u>Report Date</u>
Complaint	7/20/05	7/25/05
Follow-up	8/22/05	8/22/05
Compliance	4/5/06	5/3/06

A Notice of Noncompliance was issued on 7/22/05.

Key concerns: EPA did not document any issues or concerns associated with this facility or the inspection report reviewed.

Foote Cattle Company, KS0096423, NEDO:

Findings: Foote Cattle Company is an open feedlot that KDHE permitted as a large CAFO. There was one inspection performed by KDHE during the period of review. This was a compliance inspection that occurred on February 3, 2006. The associated inspection checklist was completed and transmitted to the facility on February 6, 2006.

Key concerns: EPA did not document any issues or concerns associated with this facility or the inspection report reviewed.

Four N, Inc., KS0085669, SCDO:

Findings: Four N, Inc. is an open feedlot that KDHE permitted as a large CAFO. There was one inspection performed by KDHE during the period of review. This was a compliance inspection that occurred on November 21, 2005. The associated inspection checklist was completed and transmitted to the facility on November 21, 2005.

Key concerns: EPA did not document any issues or concerns associated with this facility or the inspection report reviewed.

Golden Duck Inc., KS0098981, NWDO:

Findings: Golden Duck was a poultry facility that KDHE permitted as a large CAFO. It was not active during EPA's period of review and inspections/compliance issues were related to state requirements and therefore were not included in EPA's review.

Key concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe.

Handke Farms, Inc., KS0087351, NEDO:

Findings: Handke Farms, Inc. is an open feedlot that KDHE permitted as a large CAFO. There was one inspection performed by KDHE during the period of review. This was a compliance inspection that occurred on August 16, 2005. The associated inspection checklist was completed and transmitted to the facility on August 23, 2005.

Key concerns: EPA did not document any issues or concerns associated with this facility or the inspection report reviewed.

Harder Farms, Inc., KS0098302, SCDO:

Findings: Harder Farms, Inc. is an open feedlot that KDHE permitted as a large CAFO. There was one inspection performed by KDHE during the period of review. This was a compliance

inspection that occurred on July 18, 2006. The associated inspection checklist was completed and transmitted to the facility on July 19, 2006.

Key concerns: EPA did not document any issues or concerns associated with this facility or the inspection report reviewed.

Helendale Ranch, KS0094188, NWDO:

Findings: Helendale Ranch is an open feedlot that KDHE permitted as a large CAFO. There was one inspection performed by KDHE during the period of review. This was a compliance inspection that occurred on April 13, 2006. The associated inspection checklist was completed and transmitted to the facility on April 18, 2006.

Key concerns: KDHE cited violations for not having livestock waste controls in place, however, a review of the permit identified a compliance schedule that gives the facility until October 2007 to construct these controls.

Henry Creek Farms, KS0089451, SCDO:

Findings: Henry Creek Farms is an open feedlot and swine facility that KDHE permitted as a large CAFO. There were two inspections performed by KDHE during the period of review. The specific inspection information is below:

<u>Inspection Type</u>	<u>Inspection Date</u>	<u>Report Date</u>
Compliance	2/21/06	2/27/06
Follow-up	4/12/06	4/17/06

Key concerns: EPA did not document any issues or concerns associated with this facility or the inspection report reviewed.

Huff and Puff Pork, KS0095087, SWDO:

Findings: Huff and Puff Pork is a swine operation that KDHE permitted as a large CAFO. There was one inspection performed by KDHE during the period of review. This was a compliance inspection that occurred on June 22, 2006. The associated inspection checklist was completed and transmitted to the facility on June 22, 2006.

Key concerns: EPA did not document any issues or concerns associated with this facility or the inspection report reviewed.

Lakin Dairy, KS0093599, SWDO:

Findings: Lakin Dairy is a dairy operation that KDHE permitted as a large CAFO. There were two inspections performed by KDHE during the period of review. The specific inspection information is below:

<u>Inspection Type</u>	<u>Inspection Date</u>	<u>Report Date</u>
Compliance	8/10/05	8/26/05
Compliance	8/9/06	8/16/06

Key concerns: EPA did not document any issues or concerns associated with this facility or the inspection report reviewed.

Mann's ATP. Inc., KS0088901, SCDO:

Findings: Mann's ATP is an open feedlot that KDHE permitted as a large CAFO. There was one inspection performed by KDHE during the period of review. This was a compliance inspection that occurred on April 12, 2006. The associated inspection checklist was completed and transmitted to the facility on April 17, 2006.

Key concerns: EPA did not document any issues or concerns associated with this facility or the inspection report reviewed.

O.K. Corral , KS0080438, SCDO:

Findings: O.K. Corral was an open feedlot that KDHE permitted as a large CAFO. There was one inspection performed by KDHE during the period of review. This was a compliance inspection that occurred on September 20, 2006. The associated inspection checklist was completed and transmitted to the facility on October 30, 2006.

Key concerns: EPA did not document any issues or concerns associated with this facility or the inspection report reviewed.

O'Brien Cattle Company, Inc., KS0097136, SEDO:

Findings: O'Brien Cattle is an open feedlot that KDHE permitted as a large CAFO. There was one inspection performed by KDHE during the period of review. This was a compliance inspection that occurred on November 28, 2005. The associated inspection checklist was completed and transmitted to the facility on November 29, 2005.

Key concerns: EPA did not document any issues or concerns associated with this facility or the inspection report reviewed.

Patterson Farms, KS0119300, SEDO:

Findings: Patterson Farms is a swine facility that KDHE permitted as a large CAFO. There was one inspection performed by KDHE during the period of review. This was a compliance inspection that occurred on February 15, 2006. The associated inspection checklist was completed and transmitted to the facility on April 18, 2007.

Key concerns: EPA documented that it took well over 1 year to transmit inspection report to the facility.

Peterson Feedlot, KS0093751, NEDO:

Findings: Peterson Feedlot is an open feedlot that KDHE permitted as a large CAFO. There was one inspection performed by KDHE during the period of review. This was a compliance inspection that occurred on August 31, 2006.

Key concerns: Documentation of this inspection was not in the facility file.

Post Feed Yard, KS0088129, SWDO:

Findings: Post Feed Yard is an open feedlot that KDHE permitted as a large CAFO. There was one inspection performed by KDHE during the period of review. This was a compliance inspection that occurred on February 10, 2006. The associated inspection checklist was completed and transmitted to the facility on February 10, 2006.

Key concerns: EPA did not document any issues or concerns associated with this facility or the inspection report reviewed.

Rock Creek Finishing Farm, KS0091260, NEDO:

Rock Creek Finishing Farm is a swine facility that KDHE permitted as a large CAFO. There was one inspection performed by KDHE during the period of review. This was a compliance inspection that occurred on January 26, 2006. The associated inspection checklist was completed and transmitted to the facility on January 27, 2006.

Key concerns: EPA did not document any issues or concerns associated with this facility or the inspection report reviewed.

Eugene Talkington, KS0115835, SCDO:

Findings: This facility is a beef and swine operation that KDHE permitted as a large CAFO. There were two inspections performed by KDHE during the period of review. The specific inspection information is below:

<u>Inspection Type</u>	<u>Inspection Date</u>	<u>Report Date</u>
Compliance	7/26/05	8/2/05
Compliance	9/14/06	9/20/06

Key concerns: EPA did not document any issues or concerns associated with this facility or the inspection report reviewed.

Saint Francis Feedyard, KS0089486, NWDO:

Findings: Saint Francis Feedyard is an open feedlot that KDHE permitted as a large CAFO. There were three inspections performed by KDHE during the period of review. The specific inspection information is below:

<u>Inspection Type</u>	<u>Inspection Date</u>	<u>Report Date</u>
Compliance/Complaint	3/17/06	3/21/06
Complaint	5/16/06	5/18/06
Follow-up	8/10/06	8/14/06

An Administrative Order was filed on September 1, 2006 and a subsequent Consent Agreement was filed on January 30, 2007 to resolve violations discovered as a result of these inspections.

Key concerns: EPA did not document any issues or concerns associated with this facility or the inspection report reviewed.

Solomon Valley Feeders, KS0053511, NCDO:

Solomon Valley Feeders is an open feedlot that KDHE permitted as a large CAFO. There was one inspection performed by KDHE during the period of review. This was a compliance inspection that occurred on August 23, 2006. The associated inspection checklist was completed and transmitted to the facility on August 30, 2006.

Key concerns: EPA did not document any issues or concerns associated with this facility or the inspection report reviewed.

Spring Creek Farm (Parker), KS0088463, NEDO:

Findings: Spring Creek Farm is a swine operation that KDHE permitted as a large CAFO. There were three inspections performed by KDHE during the period of review. The specific inspection information is below:

<u>Inspection Type</u>	<u>Inspection Date</u>	<u>Report Date</u>
Complaint	11/22/05	11/23/05
Compliance	2/20/06	2/27/06

Complaint

2/22/06

2/24/06

Key concerns: EPA did not document any issues or concerns associated with this facility or the inspection report reviewed.

Summary of CWA Pretreatment Files Reviewed

Pretreatment Program Cities

Great Bend Pretreatment Audit, KS0038491, NWDO:

Findings: A Pretreatment Audit was conducted of the Great Bend approved Pretreatment program on July 27, 2006. The Great Bend program had been approved on March 30, 2006 so program implementation had only begun about four months before.

Given the newness of the program, KDHE's focus was on assisting the city develop positive and efficient approaches to implementation. The audit report was issued within the appropriate time frame and comprehensively addressed all significant program elements.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe.

McPherson, KS0036196, NCDO:

Findings: Neither a Pretreatment Audit nor a Pretreatment Compliance Inspection (PCI) was conducted of the McPherson approved Pretreatment program in FY2006. Because the scope of the SRF is to evaluate inspections of facilities in FY2006, no further review of the file was made.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe.

Olathe, Pretreatment Audit, KS0045802, NEDO:

Findings: On May 11, 2006, KDHE conducted a Pretreatment audit of the Olathe approved Pretreatment program. The report was mailed to the city the next day, May 12, 2006.

The city had just gone through a Pretreatment coordinator change and KDHE believed it would be best to use an audit to cover with the new personnel, the responsibilities and requirements required by program implementation. The tone of the audit was more to assist than enforce, an approach KDHE takes when a program has undergone a leadership change.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe.

Salina Pretreatment Audit, KS0038474, NCDO:

Findings: A Pretreatment Audit was conducted on May 30, 2006 of the Salina approved Pretreatment program. The state elected to inspect Salina because there had been a change in

Pretreatment coordinators roughly three months before.

The city was making a smooth transition between Pretreatment coordinators. The new individual had some concerns and questions that KDHE provided expert help with. The report turnaround was excellent; the report was transmitted on June 28, 2006. The city responded to the audit with a request for more assistance from KDHE on permit contents, implementing the criteria for industrial Significant Noncompliance (SNC), spill control plans, industrial reporting, local limits and modification of its Enforcement Response Plan. KDHE met with Salina to provide guidance on these issues on July 11, 2006.

Key Concerns: There are no concerns with KDHE's performance for both the audit and its follow-up. ~~However, documentation of this audit in PCS was not done.~~

Wichita, KS0043036, SCDO:

Findings: Neither a Pretreatment Audit nor a Pretreatment Compliance Inspection (PCI) was conducted of the Wichita approved Pretreatment program in FY2006. Because the scope of the SRF is to evaluate inspections of facilities in FY2006, no further review of the file was made.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe.

Industries outside Pretreatment Program cities

Liberty Inc, Manhattan, NCDO:

Findings: A review of the Liberty, Inc. Manhattan facility showed that no inspection activities with that industry occurred during the program review time frame. Because the scope of the SRF is to evaluate inspections of facilities in FY2006, no further review of the file was made.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe.

Liberty Inc., Waterville, NEDO:

Findings: A review of the Liberty, Inc. Waterville facility showed that no inspection activities with that industry occurred during the program review time frame. Because the scope of the SRF is to evaluate inspections of facilities in FY2006, no further review of the file was made.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe.

Moridge Manufacturing, Moundridge, NCDO:

Findings: Moridge Manufacturing was inspected on February 23, 2006. This was done in conjunction with another IU in Moundridge, Tortilla King. Moundridge had been having trouble in its collection system due to oil and grease discharges from its industrial users.

Moridge, a Categorical industry was found not to be the main source of oil and grease issues. The report issued by KDHE indicated that the inspection was thorough, comprehensive, and complete.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe.

RML, Ottawa, NEDO:

Findings: RML was inspected on April 27, 2006 because it was a newer industry and in need of submitting a baseline monitoring report (BMR).

The purpose was more of compliance assistance rather than the usual enforcement. Following KDHE's inspection, RML submitted its BMR on June 6, 2006.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe.

Webster MFG., Winfield, SCDO:

Findings: Webster was inspected June 5, 2006. Webster had been found to be in infrequent noncompliance the previous reporting period for submitting a late report.

KDHE found during the inspection, an additional outfall that need to be included in the industry's permit. Over time, the industry's compliance rate with pollutant standards has been acceptable.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe.

Summary of CWA NPDES Data Management Files Reviewed

There are 120 minimum data requirements for WENDB data elements and the acronyms definitions are located at the end of the data file summaries. The WENDB data elements are applicable to the NPDES Majors. A subset of the 120 data elements are applicable to the NPDES Minor mechanical plants (PL 92-500 facilities).

NPDES Major Facilities

Atchison, KS0039128, NEDO:

Findings: Overall the DMR data was entered correctly. However, there were three instances of incorrect DMR data as shown below:

August 2006			
Parameter BOD			
On DMR		In PCS	
MCMN	3.00	MCMN	2.10 mg/l
MCAV	6.80 (Wk. 4 Avg. 2.5)	MCAV	3.75999 mg/l
MCMX	10.50	MCMX	6.80 mg/l

Other than the above discrepancies the DMR data was entered correctly, timely and complete. There was a current compliance schedule in the file, but it was not entered in PCS. **The minimum WENDB data elements were not entered in PCS, see below table.**

Parameter Limits Record	Compliance Schedule Data	Enforcement Action Data	Facility	Measurement Violation Record
And Pipe Schedule Data				
COLS, CONP, LQAV, LQMX, LQUC, MLED, MLSL, ILED, ILSD	CSCH, DSCD, DTAC, DTRC, DTSC, EVNT, CSFN	KDHE does not enter their enforcement actions into PCS	PRET	MQAV, MQMX

Key Concerns: **Data discrepancies and no compliance schedule entered in PCS and missing WENDB data elements. KDHE should work towards entering compliance schedules in PCS.**

Chanute, KS0080837, SEDO:

Findings: The DMR data was entered correctly, timely and complete. There were no deficiencies. There was no current compliance schedule for this Major facility in the file and there was no compliance schedule entered in PCS. **Since Chanute is a pretreatment program city, a "Y" code should be entered in PCS. KDHE indicated that the "Y" code had been entered,**

but did not upload to PCS. KDHE plans to review the situation and get the data properly loaded.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe, other than missing WENDB data elements. KDHE needs to assure that the “Y” code is entered and uploaded, when required.

Parameter Limits and Pipe Schedule Data	Facility	Measurement Violation Record
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COLS, CONP, LQMX, LQUC, MLED, MLSD, ILED, ILSD	PRET	MQAV, MQMX
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Chisholm Creek Utility Authority, KS0089176, SCDO:

Findings: This facility did not have any DMR data in PCS. The EPA PCS coordinator explained this to KDHE’s contact and the data was reloaded to PCS. The EPA PCS coordinator rechecked PCS but the DMR data has not populated PCS.

Key Concerns: EPA has determined that The DMR data is not being needs to be uploaded to PCS and the missing WENDB data elements.

Parameter Limits and Pipe Schedule Data	DMR Measurement Data	Facility	Measurement Violation Record
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COLS, CONP, ELED, ELSD, LCAV, LCMN, LCMX, LCUC, LQAV, LQMX, LQUC, LTYP, MLOC, MODN, PLDS, PLRD, PRAM, SEAN, MLED, MLSD, ILED, ILSD	MCAV, MCMN, MCMX, MQAV, MQMX, MVDT, NODI, SNCE, SNDE, VDRD, VDSC, VMLO, VPRM	PRET	MQAV, MQMX
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Derby WWTP #2, KS0050377, SCDO:

Findings: The DMR data was entered correctly, timely and complete with one exception as

noted below:

July 2006

Parameter TSS

On DMR

MCMX 3.20

In PCS

MCMX 3.00

Key Concerns: Data error “measurement/violation concentration maximum (MCMX) 3.20 on DMR and PCS 3.00” was due to a typographical error and the missing WENDB data elements.

Parameter Limits Data and Pipe Schedule Data	Facility	Measurement Violation Record
MLED, MLSD, ILED, ILSD, COLS, CONP, LQAV, LQMX, LQUC	PRET	MQAV, MQMX

Emporia WWTF, KS0046728, SEDO:

Findings: The DMR data was entered correctly, timely and complete, there were no deficiencies. There was no current compliance schedule for this facility in the file and there was no compliance schedule in PCS. Since Emporia is a pretreatment program city, a “Y” code should be entered in PCS. KDHE indicated that the “Y” code had been entered, but did not upload to PCS. KDHE plans to review the situation and get the data properly loaded.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe, other than missing WENDB data elements. KDHE needs to assure that the “Y” code is entered and uploaded, when required.

Parameter Limits Data and Pipe Schedule Record	Facility	Measurement Violation Record
COLS, CONP, MLED, MLSD, ILED, ILSD, LQMX, LQUC	PRET	MQAV, MQMX

Fort Scott WWTF, City of, KS0095923, SEDO:

Findings: The DMR data was entered correctly, timely and complete, and there were no deficiencies. There was a compliance schedule in the file for this Major facility, but it was not entered in PCS.

Key Concerns: The compliance schedule was not entered in PCS and missing WENDB data elements. KDHE should work towards entering compliance schedules in PCS.

Parameter Limits Record and Pipe Schedule Data	Compliance Schedule Record	Facility	Measurement Violation Record
COLS, CONP, LQAV, LQMX, LQUC, MLED, MLSD, ILED, ILSD	CSCH, DTAC, DTRC, DTSC, EVNT	PRET	MQAV, MQMX

Hays WWTF, KS0036684, NWDO:

Findings: The DMR data was entered correctly, timely and complete, there were no deficiencies. There was a compliance schedule in the file but it was not entered in PCS.

Key Concerns: The compliance schedule was not entered in PCS and missing WENDB data elements. KDHE should work towards entering compliance schedules in PCS.

Parameter Limits Record and Pipe Schedule Data	Permit Facility Record	Compliance Schedule Record	Measurement Violation Record
COLS, CONP, LQAV, LQMX, LQUC, MLED, MLSD, ILED, ILSD	PRET	CSCH, DTAC, DTRC, DTSC, EVNT	MQAV, MQMX

Iola WWTF, KS0032123, SEDO:

Findings: The DMR data was entered correctly, timely and complete. There were no deficiencies. There was a compliance schedule in the file but it was not entered in PCS. . Since Iola is a pretreatment program city, a “Y” code should be entered in PCS. KDHE indicated that the “Y” code had been entered, but did not upload to PCS. KDHE plans to review the situation and get the data properly loaded.

Key Concerns: The compliance schedule was not entered in PCS and there was missing WENDB data elements. KDHE needs to assure that the “Y” code is entered and uploaded, when required. KDHE should work towards entering compliance schedules in PCS.

Parameter	Measurement	Compliance	Permit Facility
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Limits Record and Pipe Schedule Data	Violation Record	Schedule Record	Record
COLS, CONP, LQAV, LQMX, LQUC, MLED, MLSD, ILED, ILSD	MQAV, MQMX	CSCH, DTAC, DTRC, DTSC, EVNT	PRET

Johnson County Wastewater, Blue River District #1, KS0092738, NEDO:

Findings: The DMR data was entered correctly, timely and complete. There were no deficiencies. There were compliance schedules in the file for this Major facility but they were not entered in PCS. Since Johnson County is a pretreatment program city, a “Y” code should be entered in PCS for the main plant, Nelson. KDHE plans to review the situation and get the data properly loaded.

Key Concerns: The compliance schedules were not entered in PCS and missing WENDB data elements. KDHE needs to assure that the “Y” code is entered and uploaded, when required. KDHE should work towards entering compliance schedules in PCS.

Parameter Limits Record and Pipe Schedule Data	Measurement Violation Record	Compliance Schedule Record	Permit Facility Record
COLS, CONP, LQAV, LQMX, LQUC, MLED, MLSD, ILED, ILD	MQAV, MQMX	CSCH, DTAC, DTRC, DTSC, EVNT	PRET

MGP Ingredients, KS0001635, NEDO:

Findings: The DMR data was entered correctly with the exceptions as noted below:

February 2006

Parameter PH

	On DMR	In PCS
MCMN	6.69	7.26
MCAV	7.33	7.37
MCMX	7.59	7.42

March 2006

Parameter BOD		
	On DMR	In PCS
MCMX	4.07	3.65

The remaining DMR data was entered correctly, timely and complete. There were no other deficiencies. There was no current compliance schedule for this facility but there were two older schedules with violations in PCS which need to be corrected in PCS.

Key Issues: The data differences from the DMR and PCS, the dated compliance schedules with violations in PCS and the missing WENDB data elements as shown below. KDHE should work towards entering violations in PCS.

Permit Facility Record

PRET

**Parameter Limits Record and
Pipe Schedule Record**

COLS, CONP, LQAV

MLED, MLSL, ILED, ILSD

Topeka (Oakland) WWTP, KS0042722, NEDO:

Findings: The DMR data was entered correctly with the exceptions as noted below:

August 2005

Parameter BOD		
	On DMR	In PCS
MCMN	11.0	11.0
MCAV	78.8750	78.8750
MCMX	180.00	139.00 *

*the 139.00 is the Week 2 average. The weekly average value was used for the MCMX. The remaining DMR data was entered correctly, timely and complete and there were no other deficiencies. There were compliance schedules in the file for this Major facility, but they were not entered in PCS.

Key Issues: The weekly average value was used for the measurement/violation concentration maximum (MCMX). The compliance schedules were not entered in PCS and missing WENDB data elements as shown below. KDHE should correct the data discrepancies noted above. KDHE should also work towards entering compliance schedules in PCS.

**Parameter Limits Record
and Pipe Schedule Record**

MLEL, MLSL, ILED,
ILSD, COLS, CONP

**Measurement Violation
Record**

MQAV, MQMX

Tyson Fresh Meats, Inc. (Emporia), KS0000817, SEDO:

Findings: The DMR data was entered correctly, timely and complete. There were no deficiencies.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe. ~~other than the missing WENDB data elements as shown below.~~

Permit Facility Record	Parameter Limits and Pipe Schedule Data
PRET	COLS, CONP, MLED, MLSD, ILED, ILSD

UCB Films, Incorporated, KS0003204, NEDO:

Findings: The DMR data was entered correctly, timely and complete and there were no deficiencies. There was a compliance schedule for this Major facility in the file but it was not entered in PCS.

Key Concerns: ~~Compliance schedules not entered in PCS and the missing WENDB data elements as shown below.~~ KDHE should work towards entering compliance schedules in PCS.

Permit Facility Record	Parameter Limits and Pipe Schedule Data	Compliance Schedule Record
PRET	MLED, MLSD, ILED, ILSD	CSCH, DSCD, DTAC, DTRC, DTSC, EVNT

Wichita, Four Mile Creek WWTP, KS0081973, SCDO:

Findings: Since Johnson County is a pretreatment program city, a "Y" code should be entered in PCS for the main plant, Nelson. The DMR data was entered correctly with the exceptions noted below:

September 2006	
Parameter DO	
On DMR	In PCS
MCMN 7.85	8.23
August 2006	
Parameter DO	

On DMR In PCS
MCMN 7.60 7.97

July 2006

Parameter DO
On DMR In PCS
MCMN 7.73 7.94

June 2006

Parameter DO
On DMR In PCS
MCMN 7.93 8.45

May 2006

Parameter DO
On DMR In PCS
MCMN 8.12 8.36

April 2006

Parameter DO
On DMR In PCS
MCMN 8.41 8.65

March 2006

Parameter DO
On DMR In PCS
MCMN 8.11 9.09

February 2006

Parameter DO
On DMR In PCS
MCMN 9.01 9.47

January 2006

Parameter DO
On DMR In PCS
MCMN 7.17 8.65

December 2005

Parameter DO
On DMR In PCS
MCMN 8.31 8.96

November 2005

Parameter DO
On DMR In PCS
MCMN 7.52 8.096

October 2005

Parameter DO

On DMR

MCMN 7.47

In PCS

8.37

Key Concerns: The differences in the actual DMR data and what is in PCS and the missing WENDB data elements as shown below. KDHE needs to assure that the “Y” code is entered and uploaded, when required. KDHE should correct the data discrepancies noted above.

Permit Facility Record

**Pipe Schedule Record and
Parameter Limits Record**

**Measurement Violation
Record**

PRET

COLS, CONP, LQMX,
LQUC, MLED, MLSD,
ILED, ILSD

MQAV, MQMX

NPDES Minor Facilities

Baldwin City WWTP, KS0097381, NEDO:

Findings: The DMR data was entered timely and complete. , but PCS is missing a WENDB data element.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe. , other than the missing WENDB data element as shown below.

Permit Facility Record

PRET

Beach House Heat Pumps, KS0088927, SCDO:

Findings: The DMR data was entered timely and complete. , but PCS is missing a WENDB data element.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe. , other than the missing WENDB data element as shown below.

Permit Facility Record

PRET

Clearview Village WWTP, KS0090671, NEDO:

Findings: The DMR data was entered timely and complete. , but PCS is missing a WENDB data element.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe. , other than the missing WENDB data element as shown below.

Permit Facility Record

PRET

Delia WWTP, KS0046493, NEDO:

Findings: The DMR data was entered timely and complete. , but PCS is missing a WENDB data element.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe. , other than the missing WENDB data element as shown below.

Permit Facility Record

PRET

Fredonia WWTP, KS0045985, SEDO:

Findings: The DMR data was entered timely and complete. , but PCS is missing a WENDB data element.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe. , other than the missing WENDB data element as shown below.

Permit Facility Record

PRET

Gardner, Kill Creek WWTP, KS0095605, NEDO:

Findings: The DMR data was entered timely and complete. , but PCS is missing a WENDB data element.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe. , other than the missing WENDB data element as shown below.

Permit Facility Record

PRET

Haven WWTP, KS0116815, SCDO:

Findings: The DMR data was entered timely and complete. There was a compliance schedule for this facility in the file but it was not reflected in PCS. ~~and PCS is missing WENDB data elements.~~

Key Concerns: ~~The compliance schedule not entered in PCS and the missing WENDB data element as shown below.~~ KDHE should work towards entering compliance schedules in PCS.

Permit Facility Record

PRET

Compliance Schedule Record

CSCH, DSCD, DTAC, DTRC, DTSC, EVNT

Oberlin STP, KS0022501, NWDO:

Findings: The DMR data was entered timely and complete. There was a compliance schedule for this facility in the file but it was not reflected in PCS. ~~and PCS is missing WENDB data elements.~~

Key Concerns: ~~The compliance schedule not entered in PCS and the missing WENDB data element as shown below.~~ KDHE should work towards entering compliance schedules in PCS.

Permit Facility Record

PRET

Compliance Schedule Record

CSCH, DSCD, DTAC, DTRC, DTSC, EVNT

Pretty Prairie WWTP, KS0030520, SCDO:

Findings: The DMR data was entered timely and complete. ~~, but PCS is missing a WENDB data element.~~

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe. ~~, other than the missing WENDB data element as shown below.~~

Permit Facility Record

PRET

Ransom WWTP, KS0031453, NWDO:

Findings: The DMR data was entered timely and complete. ~~, but PCS is missing a WENDB data element.~~

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe. ~~, other than the missing WENDB data element as shown below.~~

Permit Facility Record

PRET

Troy, Peters Creek WWTP, KS0047520, NEDO:

Findings: The DMR data was entered timely and complete. ~~, but PCS is missing a WENDB data element.~~

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe. ~~, other than the missing WENDB data element as shown below.~~

Permit Facility Record

PRET

Windom WWTP, KS0051721, NCDO:

Findings: The DMR data was entered timely and complete. ~~, but PCS is missing a WENDB data element.~~

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe. ~~, other than the missing WENDB data element as shown below.~~

Permit Facility Record

PRET

Additional NPDES Data Files Reviewed

The EPA data steward reviewed three additional files, as a collaboration of data management concerns and enforcement actions. EPA reviewed compliance with enforcement actions and WENDB data elements.

NPDES Major Facilities

Johnson County Wastewater, Tomahawk Creek WWTP, KS0055484, NEDO:

Findings: There is a non-receipt of compliance schedule entered in PCS dated June of 2006, but no compliance schedules entered in PCS after that date, and PCS is missing a WENDB data element.

Key Concerns: ~~Compliance schedule not entered in PCS and the compliance schedule in PCS needing a resolved date.~~ KDHE should work towards entering compliance schedules in PCS, including the resolve date.

NPDES Minor Facilities

Conway Springs WWTP, KS0030651, SCDO:

Findings: The DMR data was entered timely and complete. ~~but PCS is missing a WENDB data element.~~

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe. ~~, other than the missing WENDB data element as shown below.~~

Permit Facility Record

PRET

Garden Plain WWTP, KS0116386, SCDO:

Findings: The enforcement action taken by KDHE was entered by the Region 7 PCS contact.

Key Concerns: EPA did not document any issues or concerns associated with this facility during the reviewed timeframe. ~~Missing WENDB data element.~~

Permit Facility Data

PRET