

# **The Louisiana Department of Environmental Quality Enforcement Program Framework Review Executive Summary**

## **Overview:**

Region 6 applauds LDEQ's participation in the development of the State Enforcement Program Review Framework and appreciates the level of cooperation and support LDEQ has demonstrated in implementing the Review process.

The Enforcement Program Review Framework is a collaborative effort by States and EPA to achieve greater consistency and results from environmental compliance. Under the Framework, there are 13 review elements, 12 of which apply to inspection, enforcement and data activities common to the Clean Air Act stationary source (CAA), the Resource Conservation and Recovery Act (RCRA) hazardous waste and the Clean Water Act NPDES programs. A thirteenth element is included to describe alternative approaches, compliance assistance, etc. associated with these CAA, RCRA and NPDES compliance programs.

In May 2005, Region 6 hosted a policy level meeting with LDEQ and other State enforcement managers to introduce and discuss the Review Framework. LDEQ also participated in the national Framework training co-hosted by the Environmental Council of States and EPA. In February 2007, the LDEQ and Region 6 Framework Review teams conducted a "dry run" of the Framework process in preparation for the actual review which began in April 2007. On-site file reviews at LDEQ's office in Baton Rouge and remotely through electronic access to the Environmental Data Management System were completed in May 2007.

LDEQ is authorized to administer programs under the CAA, NPDES and CWA. The Agency is organized into several program offices with the CAA, NPDES and RCRA inspection and enforcement functions under the Office of Environmental Compliance. LDEQ's success in administering these enforcement programs is due in large part to strong leadership through a dedicated and experienced management team and staff. This Framework Review describes the LDEQ's success in terms of performance goals. It highlights achievements and where there are concerns, it describes the actions taken to address those concerns.

This Framework review looks at LDEQ's FY 2005 activities. The review period was selected because the inspection and enforcement activities and related data were not affected by hurricane Katrina.

## **Inspections – Review Elements 1-3:**

The review compares LDEQ's Air, NPDES and RCRA inspection coverage against national program goals as well as negotiated inspection levels. Air, Water (NPDES) and RCRA inspection levels met PPG commitments which were consistent with the applicable national policies.

The quality of inspection reports is high. All 3 media use the Field Investigation Form (FIF), which identifies potential concerns and is completed and left with the facility at the time of the inspection. This concept might help other States and EPA to expedite compliance.

**Enforcement – Review Elements 4-8:**

The Framework looks at timeliness and quality of LDEQ enforcement and it looks at LDEQ penalty activity. The national data shows that LDEQ's air program has a good high priority violator (HPV) identification rate. It reflects positively on the inspection program and indicates that LDEQ is putting the HPVs into the database. Similarly, the water program is entering significant non-compliance (SNC) data and is to be commended for entering single event violation data into PCS (LDEQ is a leader in this area). While the data shows a relatively low SNC rate for RCRA, the Department aggressively pursues appropriate enforcement and the relatively low rates seem to have been administrative in nature.

The Department does not enter HPVs or SNCs into the national database until the enforcement action is signed. This can delay those data entries beyond the EPA policy timeframes. The Region will work with LDEQ, looking at approaches to meeting those timeliness guidelines.

Each of the 3 media has national guidelines for timely and appropriate enforcement. LDEQ enforcement is of high quality, meeting the appropriateness guidelines. LDEQ compares favorably with national averages for timeliness (e.g., LDEQ water enforcement 97% timely vs. the national average 93%).

The review indicates that LDEQ penalty calculations are consistent with its penalty rule. Monetary or economic benefit gained from non-compliance as well as the gravity of the violations was addressed in the penalties reviewed.

**Enforcement Commitments – Review Element 9:**

LDEQ met its enforcement related commitments.

**Data Integrity – Review Elements 10-12:**

In general, the review found data to be of a high quality. There were some data irregularities, but none that appeared to be systematic. For the irregularities identified, LDEQ has either fixed them or is on track to do so.

# Louisiana Department of Environmental Quality Enforcement Program Framework Review

## Clean Air Act Stationary Source Enforcement Program

<b>EPA Evaluators:</b>	Toni J. Allen	(214) 665-7271
	Esteban Herrera	(214) 665-7348
	Amanda Ferguson	(214) 665-8420
<b>State Contacts:</b>	Jeffrey Nolan	(225) 219-3931
	Betty Brousseau	(225) 219-3612
	Misty Lemon	(225) 219-3781

### General Program Overview:

The Louisiana Department of Environmental Quality (LDEQ) is headquartered in Baton Rouge, Louisiana. The inspection and enforcement functions are located in the Surveillance and Enforcement Divisions of the Office of Environmental Compliance at LDEQ in Baton Rouge. LDEQ has six regional offices throughout the State. Individual media inspectors, who are Surveillance Division staff, are located within all of these regional offices. The regional inspectors conduct inspections and prepare inspection reports. The regional offices may also issue informal enforcement actions for relatively minor deficiencies discovered during and inspections. In addition to these functions, the Surveillance Division is responsible for all inspection related data entry and reporting. The Enforcement Division develops, initiates and supports formal enforcement actions and is responsible for all enforcement related data entry and reporting.

### Information Sources Included in Review:

On February 22, 2007, the Region 6 review team conducted a dry run with the LDEQ to review the Framework data metrics and file review metrics. The Region reviewed files in April 2007 at LDEQ's Baton Rouge office. The Region 6 review team did not visit LDEQ regional offices for this review.

The review included data from the AIRS/AFS (AFS) database and state enforcement and inspection files. The State fiscal year (FY) period (July 1, 2004 – June 30, 2005) was used for this review. The entire State Review Framework team agreed to utilize the state's FY to more closely align with the State's projections and accomplishments. This was also the most recent complete data year not significantly impacted by hurricane Katrina. For the review period, State FY2005, the Louisiana conducted inspections at 274 major and 15 synthetic minor 80% (SM80s) for a total of 289 facilities. LDEQ took 58 formal enforcement actions against 56 facilities. From this universe of 345 facilities, a subset of files was selected for file review purposes as described below:

#### Enforcement actions in 2005

Title V Major	Universe 79; selected 15
SM80%	Universe 3; selected 2
Non-Title V Major or SM80%	Universe 10; selected 1

Inspections conducted in 2005 with no enforcement action

Inspected Title V Major Universe 192; selected 18

Inspected SM80% Universe 7; selected 2

The total files reviewed were 38 (18 enforcement and 20 full compliance evaluations (FCE) inspection). Files for review were selected randomly, choosing every fourth or fifth case for Title V enforcement action, and every tenth or eleventh on Title V inspections. LDEQ reported 140 partial compliance evaluations in FY 2005. The review of each file included a review of the inspection report(s) (if applicable), enforcement case time line, notice of violations, consent orders, and penalty amounts. All files are maintained at the central location in Baton Rouge, Louisiana. LDEQ scans and maintains records pertaining to facilities - correspondence, inspection reports, permits, enforcement actions – on its Electronic Document Management System (EDMS). Settlement Agreements (final enforcement documents) are publicly available on LDEQ’s website (<http://www.deq.louisiana.gov/portal/>). LDEQ has procedures in place to protect confidential information (e.g., confidential business information).

***Section 1: Review of State Inspection Implementation***

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

**Findings:**

**Inspections at Major sources:** The FY 2005 Air Program Priorities (Workplan)<sup>1</sup> specified a frequency for conducting Full Compliance Evaluations (FCEs) consistent with the April 2001 Stationary Source Compliance Monitoring Strategy (CMS). The CMS recommends a minimum frequency at major sources to be once every two years. The universe of major sources includes those with an EPA or State classification code in AFS for major sources. For the purposes of this review, the current universe of 583 major sources includes all sources classified in AFS by EPA or the State as a major source. According to AFS, in state FY 2004-2005, the State completed FCEs at 80.9% (combined State and EPA FCEs 81.4%) of the major source universe, which is marginally higher than the national average of 80.1% FCEs at major sources (data metric 1.A.1). LDEQ attributed this shortfall (100% vs 80.9%) to staff turnover during that timeframe.

**Inspections at Synthetic Minor (80 percent of major source level) – (SM-80s):** The Workplan specified a frequency for conducting FCEs consistent with the CMS. The CMS recommends that FCEs be conducted at each SM-80 source once every five years at a minimum. The current universe of 62 SM-80s includes those with an EPA or State classification in AFS as an SM and a CMS indicator of “S” to specify which SMs are SM-80 facilities. However, this CMS was effective in April 2001 and implemented October 1, 2001. The data reviewed were from the effective date through the end of the state FY05, June 30, 2005. LDEQ completed FCEs during the four-year period FY 2002-FY2005 at 66.1% (41/62) of SM-80s, which was lower than the national average of 77% (data metric 1.B).

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<sup>1</sup> Annual Workplan agreed upon by Region 6 and LDEQ

**Inspections at minor sources:** The Workplan does not include FCEs at minor sources, as States are not required by the CMS to conduct FCEs at minor sources. The State conducted a total of 306 FCEs at minor sources, primarily in response to citizen complaints and inquiries.

**Title V Annual Compliance Certifications received and reviewed:** According to AFS, 433 Title V annual compliance certifications (ACCs) were due for review and received in FY 2005. LDEQ reviewed 100% of the ACCs based on the data metrics used. This compares favorably to the national average of 79.3% (data metric 1.F). For the review period, LDEQ reported results from 100% of the ACCs reviewed in AFS. However, in 2005 LDEQ was incorrectly reporting the date received as the date reviewed and was not reporting the actual review date. LDEQ staff stated that 100% of the ACCs received were reviewed. The date received and the date reviewed are both in the State's TEMPO system, however, these dates are not showing up in AFS. LDEQ attributes this to a data mapping problem.

**Sources with Unknown Compliance Status:** The AFS database generates an unknown compliance status for CMS sources when an FCE is not conducted within the required frequency or when the FCE is completed but was not entered into AFS. The current data metrics indicated 145 sources in Louisiana with an unknown compliance status at the time of the review (currently 146). Analysis indicates that 85% of the current 146 sources (125/146) are located in the Acadiana, Capital, Southeast, and Southwest regions where surveillance activities has been reduced because staff have been and are currently assisting with ongoing hurricane clean-up efforts (involves facilities in 37 of 64 total parishes). An analysis of the remaining 21 facilities indicates data issues regarding 17 facilities (information in state's TEMPO system differs from information in AFS). The remaining four facilities had not had a FCE in 2+ years, per the AFS data base. One of the four facilities was inspected in May 2007. Another facility's status changed prior to 2005 (major to minor), but the CMS flag and frequency did not get changed in AFS. One of the four, a Title V major, was not in operation at the time of the inspection and the inspection was coded as a PCE. A fourth facility has no inspection record since August 2003, but is scheduled for an inspection during the first quarter of Louisiana's FY2008 (July – September 2007).

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

AIRS, CMS, and the FY2005 Workplan, which outlines environmental and programmatic goals for the FY.

**Actions:**

Regarding Title V ACCs, LDEQ committed in its FY07 PPG to report the date due and date received using the correct code. It also committed to work towards being able to report the date reviewed from its state system (i.e., resolve the data mapping issue).

CMS frequencies will be updated per the approved compliance monitoring strategy for 2008. The proposed strategy is due September 1, 2007.

For the 17 inspections that did not make the AFS upload, see element 11.

For the 4 facilities with unknown compliance status, LDEQ is verifying the current status of each facility and will update the data entry for each facility and/or provide an inspection date.

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

**Findings:**

All of the inspection reports reviewed contained well-documented inspection findings, including the accurate identification of violations. LDEQ utilizes a standardized format for all inspection reports. The reports “cut and paste” the Title V permit for major sources or general operating permit for non-major sources which lists all permit requirements and the inspection findings for each specific requirement.

The inspection reports include an assessment of control devices, process operating conditions, EPA Method 9 Visible emission observation as needed, a review of facility records and operating logs, process parameters and equipment performance parameters. However, none of the inspection reports reviewed contained an enforcement history as required by the CMS.

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

LDEQ Case files, HPV policy, CMS

**Actions:**

LDEQ implemented new inspection report guidelines as of July 1, 2005 that include previous enforcement history for all Title V inspection reports.

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

**Findings:**

LDEQ is required by standard operating procedures (SOP) to complete inspection reports within 30 working days of the inspection. The files reviewed indicated two of 20 inspection reports reviewed (10%) were not completed within a timely manner per the SOP. The Information and Collection Request (ICR) in place during FY2005 requires that FCEs and violations identified during FCEs be entered into AFS within a 90-day timeframe. All of the 20 FCEs were entered into AFS timely. A review in AFS of stack tests indicates 76 observed and/or reviewed in FY05. Results for all 76 were entered into AFS.

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

LDEQ Case Files, CMS, LDEQ regulations, Information Collection Request

**Actions:**

LDEQ committed to review and consider revision of SOP and timeline for completing inspection reports.

*Section 2: Review of State Enforcement Activity.*

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

**Findings:**

LDEQ has a regularly scheduled monthly HPV conference call with EPA (third Thursday of each month) and reports significant violations at this time if they have not done so previously. These calls are on-going and provide a mechanism for reporting on HPVs newly identified. LDEQ and EPA talk frequently and share information on cases outside of the HPV monthly call as well. EPA generates AFS retrievals of HPVs addressed, unaddressed, and resolved in preparation of the monthly meeting to identify whether HPVs have been entered into AFS and whether the addressing action, if any, has been entered in AFS.

The vehicle for the timely and accurate reporting of HPVs to EPA is the AFS database. Of the files reviewed, two HPVs out of the 18 actions (11%) were not entered into AFS. For one of the 2, LDEQ designated the violation as an HPV, but it was not identified as such in AFS. In the other instance, LDEQ did not designate the violation as an HPV.

The data metrics 1.A, 1.B indicate a relatively high HPV discovery rate compared to the national average. Metric 1. D indicates that over 70% of LDEQ's formal enforcement actions in AFS had prior HPV designations. This compares favorably with the national average of 79.4%.

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

HPV Policy.

**Actions:**

LDEQ requested training and assistance from Region 6 on the HPV policy in late 2006. EPA coordinated HPV training on January 23, and March 15, 2007 which was offered via video conference and WebEx web cast to all Region 6 state agencies and one local agency. Staff in LDEQ's central office participated in both sessions of the HPV training. The HPV determination is made in the central office in the Enforcement Division by the Enforcement Writer, his/her supervisor and manager, and/or the Senior/Staff Scientist.

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

**Findings:**

EPA reviewed 18 enforcement files. Of the 18 enforcement actions reviewed, 14 (78%) were HPVs and four (22%) were not HPVs. In every instance where a complying action was needed, LDEQ specified what actions were necessary and the time frame for completing those actions. The files contained documentation reflecting compliance with the complying action requirements.

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

LDEQ Case files, HPV Policy

**Actions:**

No actions needed.

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

**Findings:**

Under the EPA Policy on Timely and Appropriate Enforcement Response to High Priority Violations, a timely action must occur within 270 days of the day zero, or date violations were identified plus 45 days. An appropriate action must either address or resolve the violation (i.e., on a legally-enforceable and expeditious administrative or judicial order, or be the subject to a referral to the attorney general for further action). All state enforcement actions should also assess civil penalties where applicable.

Enforcement actions are issued by the Office of Environmental Compliance; either by the Surveillance Division or the Enforcement Division. Enforcement Actions issued by the Surveillance Division consist of actions for minor areas of concern discovered during inspections. The Surveillance Division will issue a Notice of Corrected Deficiency for a minor area of concern corrected at the time of inspection or a Notice of Deficiency for a minor area of concern that can be corrected within 30 days. If not corrected, the matter is referred to the Enforcement Division for further action.

The Enforcement Division issues actions for areas of concern that are referred to it from various sources. These include but are not limited to referrals by the Surveillance and Permits Division, self-reported non-compliance (non-compliance reports, permit deviation reports, etc.), referrals from criminal investigators, from EPA and/or other state and federal agencies.

The Enforcement Division's enforcement process begins with the issuance of a Warning Letter. The Warning Letter puts the respondent on notice of the concerns and that LDEQ is considering enforcement action. A description of LDEQ's civil enforcement options and its process follows:



Notice of Violation (NOV) - This notice is issued for minor violations that can be corrected in a short period of time. This is an informal enforcement action.

Notice of Corrected Violation (NOCV) – This notice is issued to the respondent when a violation has been corrected. The NOCV is an informal enforcement action.

Notice of Potential Penalty (NOPP) – This notice is issued prior to issuance of a Penalty. LDEQ is required by state statute to notify a respondent before it issues a penalty. It advises the respondent that LDEQ is considering a penalty action. Once a NOPP is issued, the Department must wait ten days before a Penalty Assessment (described below) can be issued. This allows the respondent to contact the Department to discuss the violations and basis for a penalty. The NOPP is issued when the violations have already been corrected. It is not considered to be a formal enforcement action.

Compliance Order (CO) - This action is issued to the respondent alleging violations and requiring action on the respondent's part to correct the violations cited. The CO is not a penalty action. However, failure to comply with the CO may trigger the NOPP process.

Compliance Order and Notice of Potential Penalty (CONOPP) – This is a formal addressing action where both a penalty and injunctive relief are deemed necessary.

Penalty Assessment (PA)– If after the NOPP or CONOPP the Department has determined that a penalty will be issued, the penalty is calculated in accordance with the Department's Penalty Rule. The PA is an addressing action under the HPV Policy.

Expedited Penalty – This is a penalty action that may be issued for a specific list of violations. This Penalty requires attainment of compliance and allows for a reduced penalty amount. The payment of the Expedited Penalty is completely voluntary and may require attendance at a class designed to prevent recurrence of certain violations (e.g., records keeping). If the respondent decides not to participate in this voluntary penalty, a formal NOPP and Penalty will be issued using the Penalty Rule calculations. The fully executed Expedited Penalty document, signed by the respondent and the State is an addressing action under the HPV Policy.

Of the actions issued by the Enforcement Division, the Compliance Order and the Penalty Assessment can be appealed. The appeal must be filed within 30 days of receipt of an enforcement action. If the Department grants the appeal the case goes through the adjudicatory process. If the Department denies the appeal, the respondent can appeal the action in the State's 19<sup>th</sup> District Court. The Notices

issued by the Department are not subject to the appeals process. Actions become final if an appeal is not filed within 30 days.

The Respondent may enter into settlement negotiations with the Department when violations are alleged by the Department. This settlement process may be initiated at anytime beginning with the discovery of a violation. The settlement process is guided by the Enforcement Division's Settlement Agreement SOP. It is not necessary for an action to be issued in order to begin settlement negotiations. This settlement process culminates in a Settlement Agreement which cites the violations, the necessary injunctive relief and the settlement amount. The Settlement Agreement is sent to the respondent for signature and for public notice (45 day comment period). It is also sent to the State's Attorney General for signature.

LDEQ's time frames for the above civil enforcement options are governed by time frames established in the HPV Policy.

EPA reviewed 14 actions addressing HPVs. One action started in the NOPP process, but was resolved without further action (the HPV could have possibly been downgraded). One compliance order, 4 Penalty Assessments, 6 Settlement Agreements and 2 Expedited Penalty actions were also reviewed.

EPA identified a concern regarding LDEQ's identification of day zero. Under the HPV policy, Day Zero is the discovery date plus 45 days, if no additional information is needed. If additional information is needed, Day Zero is the day the additional information is received or the 90<sup>th</sup> day after the violation was discovered, whichever is earlier? For violations that are self-reported, Day Zero is 30 days after the information on the violation is received. LDEQ's policy has been that a violation is not officially considered as such until alleged in a document (e.g., NOPP) signed by the Assistant Secretary.

Region 6 performed an analysis to determine how the State Day Zero differed from the Policy Day Zero (date violation is discovered plus a maximum of 90 days). Using the Policy Day Zero, five of the 14 addressing actions reviewed would not have occurred within 270 days of Day Zero.

Using actual data in AFS, three of 14 addressing enforcement actions reviewed did not occur within 270 days of Day Zero, although one of the three actions was just slightly beyond the 270 day timeline (289 days). The files documented that all corrective actions either occurred within 270 days of day zero or the facility was placed on a compliance schedule to come back into compliance. All 14 HPV enforcement actions were appropriate. A review of the data metric 6.A indicated LDEQ had 53.2% (50/94) HPVs unaddressed for more than 270 days compared to the national average of 55.8%.

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

LDEQ Case files, HPV Policy, EPA Policy on Timely and Appropriate Enforcement Response to High Priority Violations.

**Actions:**

Region 6 recommends that LDEQ identify Day Zero consistent with EPA's Policy on Timely and Appropriate Enforcement to High Priority Violations.

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

**Findings:**

By statute, LDEQ's penalty assessment process requires the issuance of a notice NOPP. The NOPP places the respondent on notice that the State intends to seek a penalty for alleged violations and invites the respondent to meet and/or provide any relevant information for consideration in the matter.

At any point in the enforcement process, the respondent can propose a settlement. Settlement may be pre-NOPP and is distinguished from a procedural standpoint from penalty assessment by LDEQ – see Element 8 below.

LDEQ penalty calculations are guided by State Rule. Penalties are calculated by applying 9 factors to a penalty event (e.g., violation or day of violation). The factors are: 1 violation gravity; 2 degree of risk caused by the violation; 3 violation history; 4 gross revenues of respondent; 5 degree of culpability; 6 efforts to mitigate damage; 7 whether the violation was reported; 8 monetary benefit from violation and 9 costs of bringing and prosecuting the case.

Factors, 1 and 2, are used to find a penalty range matrix cell from the Penalty Matrix. Factors 3-7 are used to determine the penalty amount within that range. This is calculated for each individual penalty event. The values of the individual penalty events are added together. If there has been a monetary gain (economic benefit) from noncompliance, this is calculated and added to the penalty figure. In addition, the Department calculates its costs in taking the action (e.g., staff time, monitoring costs, etc.) and adds that to the penalty amount.

Region 6 randomly reviewed penalty worksheets for four of the 13 cases with penalties. Each penalty worksheet documented penalty calculations. All of the penalties included a gravity component (used to identify the matrix cell) and all of the penalties reviewed included an economic benefit component of zero. The violations (late reports) did not appear to result in an economic benefit and the documentation affirmed this. The documentation also included the other factors.

The penalties reviewed appeared to be comparable with those EPA might have generated using its HPV Policy.

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

LDEQ Case files, HPV Policy, LDEQ Penalty Rule

**Actions:**

No action needed.

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

**Findings:**

LDEQ distinguishes final Penalty Assessments from Settlement Agreements. Like Penalty Assessments, Settlement Agreements are guided by LDEQ's Penalty Rule. A settlement figure, proposed by the respondent, is evaluated against the penalty range given in the matrix cell (gravity is considered in selecting the matrix cell). Economic benefit is included in determining the acceptable penalty range. LDEQ documents settlement calculations. These documents are considered to be enforcement confidential and are not included in the electronic document management system.

The documentation for 4 final Penalty Assessments were reviewed. These are discussed under element 7. The Region did not review documentation for any Settlement Agreements.

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

Case Files, HPV policy

**Actions:**

No actions needed.

***Section 3: Review of Other Enforcement Agreements***

**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.**

**Findings:**

LDEQ committed to perform FCEs at major sources and SM80% per the CMS frequency; however, the state bases its workload and targeting on the state FY timeframe. Enforcement commitments in the Workplan with LDEQ are reviewed by Region 6 during its end-of-year review of the CAA PPG funding cycle. The FY 2005 EOY review indicated that the State met its commitments.

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

Overview of LDEQ CMS Plan for FY 04 and 05.

*Section 4: Review of Database Integrity.*

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

**Findings:**

Minimum data requirements (MDRs) represent the minimum amount of data that EPA believes is necessary to manage the national air stationary source compliance monitoring and enforcement program. FCEs stack tests and stack test results, results of Title V ACC reviews, and compliance status are some examples of the MDRs. LDEQ enters all data into its state database, TEMPO. Data is transferred from TEMPO to AFS via the Universal Interface. All MDR data associated with the files reviewed were entered into AFS timely, with the exception of the data errors discussed under elements 1 and 11.

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

Workplan, AFS, CMS

**Actions:**

No action needed for this element.

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

**Findings:**

As mentioned in the findings under element 4 above, there were two instances where LDEQ did not identify HPVs in AFS.

Data metrics 1.A.1 and 1.A.2 pulled in January 2007 (used for this review) show some disparity between the AFS and CMS majors universe (589 and 586 respectively). These numbers fluctuate. At the end of FY 2005, using a historical retrieval, there were 589 facilities classified as Title V majors and 612 facilities with a CMS major indicator. In 2006, there were 583 facilities classified as Title V majors and 628 facilities with a CMS major indicator. Presently, there are 583 facilities classified as Title V majors and 580 facilities with a CMS major indicator. LDEQ's TEMPO database matches with the AFS universe count. LDEQ staff attribute the difference among the universe counts to a data translator (Universal Interface) problem.

Metric 11.A indicates that there are more HPVs than non-compliant sources. The assumption behind the metric is that there should be fewer HPVs than non-compliant facilities; hence a percentage above 100% indicates possible data issues. The list reflects on data entered by both LDEQ and EPA (i.e., data questions for both LDEQ and EPA Region 6).

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

## **AFS/AIRS.**

### **Actions:**

LDEQ and Region 6 are working to determine why the data in TEMPO and AFS are different. Once this is done, the Agencies agree to correct the data discrepancies.

LDEQ and Region 6 are examining the current list of facilities associated with metric 11.A to determine what data corrections are needed. A time frame for completing the analysis and making corrections to AFS will be established by LDEQ and Region 6

## **12. Degree to which the Minimum Data Requirements are complete:**

### **Findings:**

With the exception of the data errors discussed under Elements 1 and 11 of this report, the review of the AFS/AIRS data requirements indicated that the Minimum Data Requirements entered by LDEQ are complete. The review of the data metrics and files did not reveal any chronic data completeness issues.

### **Citation of information reviewed for this criterion:**

AFS/AIRS

### *Section 5: Optional*

## **13. Evaluation of other projects.**

**Louisiana Department of Environmental Quality (LDEQ)  
Program Framework Review**

*Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES)*

<b>EPA Evaluators:</b>	<b>Phones: (214) 665-</b>
Gladys Gooden-Jackson	7494
Nancy Williams	7179
Mona Tates	7152
Thea Lomax	8089
Diane Taheri	7460
Carol Peters	3145

<b>State Contacts:</b>	<b>Phones: (225) 219-</b>
Joette Kenaley	3683
Gwendolyn Berthelot	3077
Celena Cage	3714
Betty Brousseau	3612

The purpose of the Framework review is to ensure that the State's NPDES Program is being operated in a manner consistent with the Clean Water Act (CWA); the NPDES Program Assumption Memorandum of Agreement (MOA) between the Environmental Protection Agency (EPA) and the LDEQ and the applicable federal and state regulations, guidelines, and policies.

At the time of LDEQ's NPDES program assumption, Region 6 retained the enforcement lead for facilities under EPA enforcement action at that time. Accordingly, in this report there will be references to EPA or LDEQ lead facilities. For the review period there were EPA enforcement lead facilities for which Region 6 maintained files, conducted inspections, entered PCS data, responded to violations, etc. EPA and agreed to conduct file reviews by accessing LDEQ's Electronic Data Management System (EDMS) remotely from EPA's Region 6 office in Dallas, Texas. A list of the thirty-five facilities selected for the review was submitted to LDEQ on April 10, 2007. Access to the EDMS was granted to EPA staff the week of April 23, 2007. The remote file review was conducted by EPA Water Enforcement staff the weeks of May 1<sup>st</sup> and May 7<sup>th</sup> at which time a list of questions/concerns were submitted to LDEQ for discussion in the May 15, 2007, conference call. The review is based on actual FY 2005 data (July 1, 2004 through June 30, 2005) in the Permit Compliance System (PCS). This was LDEQ's fiscal year 2005 and the most recent complete data year not significantly affected by hurricane Katrina. Following the remote file reviews and conference call, the Region then conducted a review with LDEQ Enforcement Division staff and managers at its offices in Baton Rouge, Louisiana May 21-23, 2007.

According to PCS, LDEQ conducted inspections at over 2200 facilities. The Department issued enforcement actions to over 300 facilities. From this universe of over 2500 facilities, 35 files were selected at random for review. The selected files were a mixture of majors, 92-500s (i.e., minor municipal facilities constructed with federal grant dollars) and significant minor facilities. LDEQ had projections for these in its Performance Partnership Grant(PPG). Of the thirty-five facilities selected, there were 15 NPDES and 10 Stormwater inspection files and 10 NPDES/92-500s/other minor enforcement files.

## ***Section 1: Review of State Inspection Implementation***

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

#### **Findings (including successful performance and areas for improvement):**

As of July 1, 2004, LDEQ had 256 major facilities and 1274 non-major facilities. Out of this non-major universe, there were 45 minor municipal facilities constructed with federal grant dollars (92-500 minors) and 89 facilities identified as significant minors. Consistent the NPDES Compliance Inspection Manual, the 2005 Performance Partnership Grant (PPG) for LDEQ included projections to perform compliance evaluation inspections at 90% of water majors and 92-500 minors and those significant minors selected from a list agreed to by LDEQ and EPA Region 6. This translated into 214 CEIs at majors, 13 oversight inspections, 45 92-500 minors and 89 other significant minors.

For the 2005 PPG period, Region 6 determined that LDEQ met its commitments conducting 215 CEIs at majors, participating in 10 oversight inspections, 48 92-500 inspections and 139 inspections of other significant minors.

According to the original Framework data metrics pull on February 6, 2007, LDEQ conducted 89.1% inspection coverage for majors. Data metric 12 A. shows 345 active majors, however, 93 of those were sludge facilities. On November 4, 2004, an additional five facilities were upgraded to majors and one facility was downgraded to a minor bringing the revised universe of majors to 256

From a review of the list of majors and 92-500 minor facilities inspected and discussion between EPA and LDEQ, it was noted that ten facilities had two inspections within the July 2004 through June 2005 timeframe. The discussion between the EPA and the LDEQ as to whether to count the number of facilities inspected or the number of inspections indicates the need for clarification in planning and reporting inspections.

#### **Citation of information reviewed for this criterion:**

NPDES Compliance Inspection Manual (September 1994)  
NPDES Compliance Inspection Strategy and Guidance  
Amended PPG FY05 Commitment between the EPA and LDEQ

#### **Actions:**

In order to clarify, Region 6 and LDEQ will count facilities inspected when measuring the percentage of the universe covered. LDEQ counts a facility as being inspected once in a fiscal year, for purposes of reporting, regardless of the number of visits during the year to that facility.

LDEQ submitted its Compliance Monitoring Plan to Region 6 for approval as part of the 2008 PPG. The resulting negotiated inspection levels will reflect LDEQ and EPA priorities. They



should achieve national program goals given current flexibilities (e.g., 50% majors coverage annually).

**2. Degree to which inspections (compliance monitoring) reports document inspection findings, including accurate description of what was observed to sufficiently identify violations.**

**Findings (including successful performance and areas for improvement):**

LDEQ's standard operating procedures require inspectors to complete a Field Interview Form (FIF) and leave a signed copy of it with facility officials upon the completion of an inspection. The purpose of the FIF is to document that discovered areas of concern were communicated to the facility. The inspector also indicates that further review may indicate additional concerns (e.g. sampling results). The FIF then becomes part of the inspection report or in cases of compliance, the FIF will be the inspection report.

The LDEQ inspection SOP also guides inspectors in the development of inspection reports. Standard forms exist for each media. Inspectors are encouraged to include information relevant to the 9 factors used for penalty assessments (see element 7) in their narratives.

Inspection reports that result in enforcement are placed into the EDMS once the enforcement action has been issued. The FIFs are placed into EDMS regardless of enforcement status.

The review indicates that LDEQ does a good job of documenting inspection findings. Of the fifteen NPDES inspection files reviewed in EDMS, there were ten completed inspection reports using the standard inspection format. All 10 reports included thorough documentation of inspection findings. They followed procedures set forth in LDEQ's inspection SOP, the NPDES inspection guidance and the LDEQ NPDES program assumption MOA. The other 5 EDMS files included the FIFs which documented concerns identified by the inspector. Full inspection reports were not generated on these 5 because either no concerns were identified or the concerns did not warrant formal enforcement action.

Based upon the 10 stormwater inspection files reviewed, LDEQ field staff use the FIF to report inspection findings for full compliance evaluations as well as partial evaluations (e.g. complaint investigations). It is difficult to determine, however, from the FIF by itself, if a complete stormwater inspection was conducted.

The inspection reports that were reviewed contained adequate documentation of inspection findings.

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

NPDES Compliance Inspection Manual (September 1994)

LDEQ Memorandum of Agreement (MOA) between the EPA and LDEQ

LDEQ PPG FY05 Commitment

**Actions:**

The Department will forward to EDMS inspection reports/narratives associated with enforcement actions that are currently being issued. As time allows, the documents for previously issued enforcement actions will also be submitted to EDMS.

The Region also recommends that DEQ also include the NPDES inspection checklist with the FIF in EDMS to document full inspections.

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

**Findings (including successful performance and areas for improvement):**

According to LDEQ's inspection SOP, inspection reports should be completed by the inspector within 20 working days of the inspection or after all the necessary information is obtained (e.g., analytical results). It then goes to the inspector's supervisor for review. This review step should be completed within 10 working days and the report goes to LDEQ's main office in Baton Rouge.

Within 5 working days of the inspection, the inspector should enter the inspection into LDEQ's database, TEMPO.

Based upon the file review, LDEQ Surveillance Division continues to do a good job in completing inspection reports in a timely manner. The concerns identified by the inspector are well documented and deficiencies are entered into PCS in a timely fashion. Under the Program Assumption MOA, LDEQ agrees to forward copies of inspection reports to Region 6 within 30 days.

Of the 15 NPDES inspection files reviewed, 10 were completed in a timely manner in accordance with LDEQ's inspection SOP. Five files contained FIFs only. Eleven of the 15 inspection reports/FIFs identified deficiencies. In 2 cases, violations noted in the inspection reports extended back more than one year. All but 2 of the 11 files contained a record of the enforcement response. All 11 inspection reports/FIFs identifying deficiencies were entered into PCS in a timely manner.

In one case, an inspection report had been signed off by Surveillance and was noted to have been routed to Enforcement for further action, when in actuality it had not been forwarded to the Enforcement Office for further enforcement action. This was discussed with LDEQ and appeared to be an isolated instance.

Results of reviewing ten stormwater files indicated that the LDEQ Surveillance Branch adequately documents, NPDES stormwater violations and relative findings. The reports also indicated that the inspections were conducted according to proper procedures.

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

LDEQ FY05 PPG Work plan  
Quarterly Noncompliance Report (QNCR)  
Electronic Data Management System (EDMS)

**Actions:**

No action needed.

*Section 2: Review of State Enforcement Activity*

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

**Findings (including successful performance and areas for improvement):**

Ten enforcement files were selected for review. Areas reviewed for this measure included Discharge Monitoring Reports (DMRs), permit and enforcement compliance schedule reports, and inspection report deficiencies. All ten files reviewed addressed SNC violations. Violations were accurately coded in PCS in timely manner.

Based upon the Framework data metrics from the February 6, 2007 pull, LDEQ is to be commended for entering single event violations data. The file review affirmed LDEQ's entry of this data (see Actions below). The metrics also indicate an SNC rate of 19.4% for a count of 67 facilities. It should be noted that of those 67 facilities, LDEQ was the enforcement lead for 47.

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

LDEQ Program Delegation Documents  
Permit Compliance System (PCS)  
Framework Data Metrics Spreadsheet

**Actions:**

LDEQ is entering single event violation data. The single event flag is being raised on majors, 92-500s and significant minors. It is also being raised on other minors. From a house keeping standpoint, EPA recommends that the flag only be raised on other minors where LDEQ plans to take formal enforcement action.

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

**Findings (including successful performance and areas for improvement):**

In reviewing the enforcement actions issued by LDEQ, it was noted that all 10 actions required full compliance or the submittal of a comprehensive report detailing actions to become compliant within a 30 day time frame for all NPDES files.

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

Permit Compliance System (PCS)  
Environmental Data Management System (EDMS)

**Actions:**

No action needed.

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

**Findings (including successful performance and areas for improvement):**

For the NPDES program, a formal enforcement action, addressing significant non-compliance (SNC) should be issued within 90 days of the SNC.

Enforcement actions are issued by the Office of Environmental Compliance; either by the Surveillance Division or the Enforcement Division. Enforcement Actions issued by the Surveillance Division are informal actions that address minor areas of concern discovered during inspections. The Surveillance Division will issue a Notice of Corrected Deficiency for a minor area of concern corrected at the time of inspection or a Notice of Deficiency for a minor area of concern that can be corrected within 30 days. If not corrected, the matter is referred to the Enforcement Division for further action.

The Enforcement Division issues actions for areas of concern that are referred to it from various sources. These include but are not limited to referrals by the Surveillance and Permits Division, self-reporting (e.g., DMRs, non-compliance reports, etc.), referrals from criminal investigators, from EPA and/or other state and federal agencies.

The Enforcement Division's enforcement process begins with the issuance of a Warning Letter. The Warning Letter puts the respondent on notice of the concerns and that LDEQ is considering enforcement action. A description of LDEQ's civil enforcement options and its process follows:

Notice of Violation (NOV) - This notice is issued for minor violations that can be corrected in a short period of time. This is an informal enforcement action.

Notice of Corrected Violation (NOCV) – This notice is issued to the respondent when a violation has been corrected. The NOCV is an informal enforcement action.

Notice of Potential Penalty (NOPP) – This notice is issued prior to issuance of a Penalty. LDEQ is required by state statute to notify a respondent before it issues a penalty. It advises the respondent that LDEQ is considering a penalty action. Once a NOPP is issued, the Department must wait ten days before a Penalty Assessment (described below) can be issued. This allows the respondent to contact the Department to discuss the violations and basis for a penalty. The NOPP is issued when the violations have already been corrected. It is not considered to be a formal enforcement action.

Compliance Order (CO) - This action is issued to the respondent alleging violations and requiring action on the respondent's part to correct the violations cited. The CO is not a penalty action. However, failure to comply with the CO may trigger the NOPP process.

Compliance Order and Notice of Potential Penalty (CONOPP) – This is a formal action where both a penalty and injunctive relief are deemed necessary.

Penalty Assessment (PA) – If after the NOPP or CONOPP the Department has determined that a penalty will be issued, the penalty is calculated in accordance with the Department’s Penalty Rule.

Expedited Penalty – This is a penalty action that may be issued for a specific list of violations. This Penalty requires attainment of compliance and allows for a reduced penalty amount. The payment of the Expedited Penalty is completely voluntary and may require attendance at a class designed to prevent recurrence of certain violations (e.g., records keeping). If the respondent decides not to participate in this voluntary penalty, a formal NOPP and Penalty will be issued using the Penalty Rule calculations.

Of the actions issued by the Enforcement Division, the Compliance Order and the Penalty Assessment can be appealed. The appeal must be filed within 30 days of receipt of an enforcement action. If the Department grants the appeal the case goes through the adjudicatory process. If the Department denies the appeal, the respondent can appeal the action in the State’s 19<sup>th</sup> District Court. The Notices issued by the Department are not subject to the appeals process. Actions become final if an appeal is not filed within 30 days.

The Respondent may enter into settlement negotiations with the Department when violations are alleged by the Department. This settlement process may be initiated at anytime beginning with the discovery of a violation. The settlement process is guided by the Enforcement Division’s Settlement Agreement SOP. It is not necessary for an action to be issued in order to begin settlement negotiations. This settlement process culminates in a Settlement Agreement which cites the violations, the necessary injunctive relief and the settlement amount. The Settlement Agreement is sent to the respondent for signature and for public notice (45 day comment period). It is also sent to the State’s Attorney General for signature.

LDEQ’s time frames for the above civil enforcement options are guided by time frames established in NPDES program assumption MOA and the PPG. For majors, 92-500 minors and significant minors, LDEQ agrees to initiate enforcement action within 90 days of receipt of DMRs (or DMR due date for failure to submit) and within 90 days of the completed inspection report.

## **NPDES**

For the 10 enforcement files reviewed, LDEQ took appropriate enforcement actions within the prescribed time period. The actions consisted of 2 Settlement Agreements, 2 Expedited Penalty Agreements, 2 Compliance Order/Notice of Proposed Penalty actions and 4 Compliance Orders.

Data reported in the Framework data metric 6.A from the February 6, 2007, pull indicated that 2.9% of enforcement actions taken against majors were not timely. The metric shows 10 facilities, however, the list supporting the metric has only 9. One of the facilities was decommissioned and no longer appears on the list. Of the 9 remaining, 3 were LDEQ lead facilities. These were discussed with LDEQ: One facility was SNC for its failure to submit DMRs. The DMRs were submitted with the wrong reporting period, the company resubmitted the DMRs promptly and LDEQ decided not to pursue the matter as SNC. One facility under a construction schedule notified LDEQ of the need for an schedule extension (as provided for under the associated order). LDEQ did not realize that the facility had requested an extension and entered the SNC for the facility's failure to comply with the schedule. LDEQ granted the extension and elected not to pursue the matter as a schedule violation. The third SNC was properly designated by LDEQ and a formal action was taken in February 2007. The action was against a large municipality and involved protracted negotiations. The Region concurs with LDEQ's determinations regarding these 3 SNCs.

### **Stormwater**

LDEQ's internal enforcement response policy prescribes the issuance of a notice of deficiency that grants at least thirty days to comply. If compliance is not achieved within this timeframe, LDEQ Surveillance may conduct a follow up inspection or contact LDEQ Enforcement to initiate escalated enforcement action

Investigation reports of citizen complaints, routine inspections and enforcement actions for storm water cases are documented in EDMS by different LDEQ media programs or offices that are engaged in managing the various aspects of the storm water regulatory program. Some entries of these findings are abbreviated in EDMS, which, based upon EPA's review, presented difficulties in gathering information. This could complicate the development of a comprehensive history of administrative and enforcement activities for storm water.

From the 10 stormwater inspection files reviewed in EDMS, there were two in which violations were found requiring enforcement action. None appeared to warrant formal enforcement. One of the 2 files (AI 40570) included a Notice of Deficiency. Records were not found in the remaining file AI 30357 that indicated a Letter of Deficiency or enforcement action was issued for storm water violations. The, two files (AI 30357 and AI 40570) included copies of the Notice of Corrected Deficiency and the Deficiency Clear Letter respectively.

In the case of one of the stormwater inspection files warranting enforcement, it appears that an additional follow up inspection may have been appropriate. On June 10, 2005, LDEQ issued a notice of deficiency because the facility failed to perform quarterly visual inspection of their storm water discharges, as required by the permit. LDEQ issued a deficiency clear letter on July 20, 2005, indicating that the area of concern had been adequately addressed. During the file review, the EPA reviewer could not locate a copy of a visual inspection that the facility reported it performed on June 7, 2005, in EDMS. According to LDEQ, the permittee did submit a copy of the June 7, 2005, visual observation field log in response to the notice of deficiency and that this document is in EDMS. A follow up inspection to determine that the Respondent was performing this permit requirement may have been appropriate.

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

Performance Partnership Grant (PPG)  
Program Integrity Profile  
Program Description and Standard Operating Procedures  
Memorandum of Agreement (MOA)

**Actions:**

The following are suggestions for ease of storm water case development:

- To improve consistency, attach the NPDES inspection checklist to the FIF.
- Schedule time in the year to perform a quality control review of EDMS entries for storm water inspections and associated enforcement actions.

For the 2 facilities discussed above where LDEQ determined the SNC designations needed to be removed, the historical SNC entries have been corrected in PCS.

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

**Findings (including successful performance and areas for improvement):**

By statute, LDEQ's penalty assessment process requires the issuance of a notice NOPP. The NOPP places the respondent on notice that the State intends to seek a penalty for alleged violations and invites the respondent to meet and/or provide any relevant information for consideration in the matter.

At any point in the enforcement process, the respondent can propose a settlement. Settlement may be pre-NOPP and is distinguished from a procedural standpoint from penalty assessment by LDEQ – see Element 8 below.

LDEQ penalty calculations are guided by State Rule. Penalties are calculated by applying 9 factors to a penalty event (e.g., violation or day of violation). The factors are: 1 violation gravity; 2 degree of risk caused by the violation; 3 violation history; 4 gross revenues of respondent; 5 degree of culpability; 6 efforts to mitigate damage; 7 whether the violation was reported; 8 monetary benefit from violation and 9 costs of bringing and prosecuting the case.

Factors, 1 and 2, are used to find a penalty range matrix cell from the Penalty Matrix. Factors 3-7 are used to determine the penalty amount within that range. This is calculated for each individual penalty event. The values of the individual penalty events are added together. If there has been a monetary gain (economic benefit) from noncompliance, this is calculated and added to the penalty figure. In addition, the Department calculates its costs in taking the action (e.g., staff time, monitoring costs, etc.) and adds that to the penalty amount.

Of the ten enforcement actions reviewed, 5 had penalties (2 Expedited Penalty Agreements, 3 Settlement Agreements). The penalty figures in Expedited Penalty Agreements are preset, corresponding to a fixed set of violations. Those preset values

come from LDEQ's penalty rule. LDEQ's records indicated that the gravity components were appropriately calculated. There were no separate calculations for economic benefit and the violations. It is recognized that this process may yield a lower penalty, however, one of the Agreements reviewed cited sludge operation and maintenance violations for which EPA might have included an economic benefit component. The file did not indicate if monetary benefit was considered and the penalty in general was lower than what EPA's penalty policy might have generated. These were discussed with LDEQ. At the time of issuance, the Discharge Monitoring Reports had not been submitted to the Department to indicate whether the sludge and solids located in the treatment plant actually affected or caused excursions in the discharge. This coupled with no evidence of solids in the receiving stream was the basis for pursuing compliance through the expedited penalty option.

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

Clean Water Act (CWA) Settlement Penalty Policy  
Performance Partnership Grant (PPG)  
Program Integrity Profile  
Program Description and Standard Operating Procedures  
Memorandum of Agreement (MOA)  
Louisiana Penalty Rule

**Actions:**

Region 6 will schedule for training for LDEQ on the use of the BEN model in FY 2008.

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

**Findings (including successful performance and areas for improvement):**

LDEQ distinguishes final Penalty Assessments from Settlement Agreements. Like Penalty Assessments, Settlement Agreements are guided by LDEQ's Penalty Rule. A settlement figure, proposed by the respondent, is evaluated against the penalty range given in the matrix cell (gravity is considered in selecting the matrix cell). Economic benefit is included in determining the acceptable penalty range. LDEQ documents settlement calculations. These documents are considered to be enforcement confidential and are not included in EDMS.

Three of the 10 enforcement actions selected for review were Settlement Agreements. The review team could not locate 2 of those Agreements in EDMS. LDEQ later provided a copy of one and plans to provide a copy of the other. The team could not locate the supporting calculation worksheets in EDMS, but LDEQ later provided a copy of the worksheet supporting one of the Agreements.

One of the Settlement Agreements reviewed did not specify an economic benefit component, but the calculation worksheet documented the inclusion of economic benefit with that action. In general the penalty amount was lower than what EPA's penalty policy might have generated.



The other Settlement Agreement reviewed specifically identified an economic benefit component in the Agreement itself. This was a multi-facility, multi-media action and the economic benefit component was not broken out by facility or media. The supporting calculation worksheet could not be located.

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

Clean Water Act (CWA) Settlement Penalty Policy  
Performance Partnership Grant (PPG)  
Program Integrity Profile  
Program Description and Standard Operating Procedures  
Memorandum of Agreement (MOA)

**Actions:**

LDEQ now places the Settlement Agreements and supporting penalty calculation documentation into EDMS once the final Agreements are issued.

LDEQ will make a copy of the third Settlement Agreement and supporting calculation worksheet available to Region 6 for review (electronically or hard copy).

***Section 3: Review of Other Enforcement Agreements***

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

**Findings (including successful performance and areas for improvement):**

The PPG and Program assumption MOA include requirements for LDEQ to send copies of certain inspection reports and enforcement actions to EPA. LDEQ forwards copies within the specified 30 day timeframe.

The PPG includes provisions for inspection coverage as described in Section 1 above. It also includes provisions to conduct pretreatment inspections at one third of the approved programs. The PPG includes provisions to initiate enforcement actions as described in element 4 above.

The FY 2005 PPG End-of-Year report concluded that LDEQ met its enforcement commitments.

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

2005 LDEQ PPG, NPDES Program Assumption MOA.

**Actions:**

No action needed.

***Section 4: Review of Database Integrity***

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

**Findings (including successful performance and areas for improvement):**

The review indicate that LDEQ entered data into PCS in a timely fashion.

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

Permit Compliance System (PCS)

LDEQ Electronic Data Management System (EDMS)

**Actions:**

No action needed.

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

**Findings (including successful performance and areas for improvement):**

Of the total 2,094 lines of DMR data reviewed, all the data had been entered accurately except one facility's data for one monitoring period had been entered for two monitoring periods although the correct DMRs had been received and scanned into the state's EDMS database. It was also noted that corrected DMR data, received for at least two facilities, were scanned into the EDMS but the DMR data in PCS still reflected the original submittal.

Facility reports for six of the fifteen NPDES facilities reviewed contained incorrect cognizant officials, facility address and/or contact numbers.

Three of the fifteen facilities' limit summaries contained incorrect sample types, loading requirements and/or frequency of analysis for requirement parameters.

One facility was coded using the override status for pH and fecal coliform resulting in the generation of incorrect effluent violations.

Inspection report dates were in PCS for the files reviewed, however, the date for one inspection spanning several days was not coded properly.

Overall, with the enormous amount data, LDEQ maintains a high degree of data accuracy; at least 98%.

Data metric 11.A indicates that LDEQ exceeds the national goal for actions linked to violations, 91.3% compared to the national goal of 80%.

The Region provided LDEQ a preliminary model data analysis and requested LDEQ's review and comment on that data. LDEQ analyzed data pulled on April 9, 2007 and provided corrections to that data and explanations for the changes as follow:

<b>Metric</b>	<b>Count</b>	<b>Correction</b>	<b>Explanation</b>
4.B – majors in SNC	66	46	discussion in element 4
6.A – majors without timely action	10	1	discussion in element 6
12.A.1 – majors universe	343	256	discussion in element 1
12.B.1 – majors with correctly coded limits	243	220	32 facilities EPA lead, 2 facilities not majors 11 majors not included
12.B.3 – majors manual SNC override rate	5	0	all 5 EPA lead
12.C.1 – non-majors correctly coded limits	201	133	3 EPA lead 65 minors not tracked in PCS

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

Permit Compliance System (PCS)  
LDEQ Electronic Data Management System (EDMS)  
Quarterly Non-Compliance Report (QNCR)

**Actions:**

The Region provided a list of the specific data inaccuracies described above to LDEQ. LDEQ responded with specific corrective actions for each.

In the circumstances of the inspections conducted over two or more days, the State should enter all inspections with the first day of the inspection into the PCS.

All revised DMR data should be promptly entered into the PCS with the new DMR received date to ensure accuracy of the facility' compliance with the required permit limits. In mid-2006, LDEQ began attaching DMR error sheets to the DMRs that have specific errors so these will be more easily distinguished.

Data inaccuracies from the use of the override status have been corrected.

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

**Findings (including successful performance and areas for improvement):**

Permit requirements for quarterly progress reports in two of the selected facilities were not entered into the PCS.

LDEQ permits for municipalities have a requirement to generate Municipal Water Pollution Prevention (MWPP) Audit Reports annually and retain copies. PCS does not reflect this permit requirement.

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

Permit Compliance System (PCS)  
LDEQ Electronic Data Management System (EDMS)  
Framework Data Metrics

**Actions:**

LDEQ reviewed the missing data and has made the necessary corrections or will provide a schedule for making the corrections by October 1, 2007.

Because the above referenced Water Pollution Prevention Audit Reports are required in the permit, they should be included as permit requirements in PCS.

<i>Section 5: Optional</i>
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**13. Evaluation of compliance assistance and innovative projects.**

**Findings (including successful performance and areas for improvement):**

LDEQ continues to provide compliance assistance, as staff and finances are available, to the regulated community to help entities achieve compliance with the storm water permit requirements and improve their erosion control and best management practices.

In FY 05-May 07, LDEQ provided MS4 training and guidance (some training was coordinated with EPA) for MS4 Directors and Managers in the implementation of the Storm Water Management Plan and complying with the MS4 Permit. In addition, LDEQ provides a 24 hour Single Point of Contact hotline for citizens to report environmental problems. Citizen complaints are addressed within five working days.

# **Louisiana Department of Environmental Quality**

## **State Framework Review**

### **Draft Report**

#### **Resource Conservation and Recovery Act (RCRA) Hazardous Waste Enforcement Program**

<b>EPA Evaluators:</b>	<b>Eva Steele</b>	<b>(214) 665-7211</b>
	<b>Craig Lutz</b>	<b>(214) 665-2190</b>
<b>LDEQ Contacts:</b>	<b>Steve Aguiard</b>	<b>(225) 219-3718</b>
	<b>Lourdes Iturralde</b>	<b>(225) 219-3713</b>
	<b>Toni Evans</b>	<b>(225) 219-3719</b>
	<b>Phyllis Luke</b>	<b>(225) 219-3617</b>
	<b>Betty Brousseau</b>	<b>(225) 219-3612</b>

#### **Information Sources Included in Review:**

The Louisiana Department of Environmental Quality (LDEQ) and Region 6 agreed to conduct the review using data and activities for the period July 1, 2004 – June 30, 2005. This was the most recent complete data year that was not significantly impacted by Hurricane Katrina.

Presently, and for the review period, the LDEQ has 9 regional offices and a central office in Baton Rouge. These Regional offices conduct inspections, some enforcement and maintain related files. The central office processes enforcement referrals from the regional offices and/or initiates enforcement, manages the enforcement process, maintains files and manages data functions. LDEQ enters inspection and enforcement related data into the State's database TEMPO and enters the data into RCRAInfo. LDEQ uses an Electronic Data Management System (EDMS), exclusively, to maintain all public records associated with inspections and enforcement actions.

Prior to conducting the file review portion of this Framework review, the Region conducted a "dry run" training with LDEQ in February 2007. The Regional review team met with LDEQ at its Baton Rouge office to review the data metrics and demonstrate the use of the Framework file review metrics using LDEQ's EDMS. Following the on-site dry run, LDEQ and Region 6 successfully piloted the use of the EDMS from the Region 6 office in Dallas, Texas.

Based upon the success of the pilot, this RCRA Framework file review was conducted by accessing LDEQ's EDMS via the internet from the Dallas EPA Regional Office. All Resource Conservation and Recovery Act (RCRA) information was reviewed both for inspections and enforcement actions through EDMS. LDEQ staff and managers from its central office provided clarification, etc. as needed during the electronic review. No staff or managers from the regional offices were interviewed.

The review encompassed two data sources: the national RCRAInfo data system and information located in the State's EDMS system. The LDEQ conducted 505 inspections at 494 facilities in FY 2005. Twenty (20) facilities with a total of 22 inspections (conducted in 2005) were reviewed. Facilities for this review were selected randomly.

#### FY 2005 RCRA Facilities Reviewed for Inspections

Treatment, Storage and Disposal Facilities	5
Large Quantity Generators	6
Small Quantity Generators	3
Conditionally Exempt Small Quantity Generators	3
Transporters	1
No Universe	2

According to the OTIS State Review Framework data metrics (pulled February 6, 2007) for federal FY05, LDEQ issued 29 formal enforcement actions to 27 facilities. According to a pull from RCRAInfo for the period of July 1, 2004 to June 30, 2005 (LDEQ's Fiscal Year) in FY 2005, LDEQ issued 51 formal enforcement actions to 47 facilities. EPA selected 10 of those facility files, at random, for review. According to the data metrics for federal FY05 LDEQ also issued 72 informal enforcement actions to 69 facilities, however, according to a pull from RCRAInfo for the State FY05, LDEQ issued 83 informal enforcement actions to 78 facilities, and 6 of those facilities were selected randomly for review this review.

#### FY 2005 RCRA Facilities Reviewed for Enforcement

Treatment, Storage and Disposal Facilities	5
Large Quantity Generators	3
Small Quantity Generators	2
Conditionally Exempt Small Quantity Generators	3
Transporters	1
No Universe	2

From this universe of 619 facilities receiving inspections and/or enforcement actions during the review period, a total of 36 files were selected for review as described above. Geographic distribution (e.g., representative sampling from each LDEQ regional office) was not a consideration in file selection.

### *Section 1: Review of State Inspection Implementation*

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

**Findings:**

The national program goal for inspection coverage of treatment storage and disposal facilities (TSDs) is 100% coverage every 2 years. LDEQ exceeded this program goal for the review period.

LDEQ projects inspections according to its fiscal year (i.e., the review period). Those projections are reflected in its annual Performance Partnership Grant. For its 2005 PPG, LDEQ projected 30 TSD inspections. LDEQ met their commitment by conducting 30 TSD inspections. The RCRA Program requires States to conduct inspections at treatment, storage and disposal facilities (TSDF) once every 2 years. Data metric 12.a.1 shows the Louisiana TSDF universe at 30. Data metric 1.a shows the State inspected 100% of their TSDF Universe (30 out of 30), exceeding the national average of 90.8% and exceeded the national goal by inspecting the universe of TSDs during the review period.

The RCRA program has national goal of inspection 100% of the large quantity generator (LQG) universe every 5 years and 20% of the universe annually. In the 2005 PPG, LDEQ projected 30 large quantity generator (LQG) inspections. According to RCRA Info, and as reported in the 2005 PPG end-of-year report, LDEQ inspected 107 LQGs, 79 small quantity generators and 68 conditionally exempt generators. LDEQ met its PPG projections for hazardous waste generator inspections. Data metric 1.b shows LDEQ inspected 146 out of the 1,119 LQG's universe (13%). For the 5 year period, 2001 – 2005, the data metrics (1.c) shows LDEQ inspected 31% of the LQG universe.

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

RCRA State Review Framework Metrics and the national RCRAInfo data system.

**Actions:**

LDEQ submitted its Compliance Monitoring Plan to Region 6 for approval as part of the 2008 PPG. The resulting negotiated inspection levels will reflect LDEQ and EPA priorities. The Plan achieves the national goal for TSD coverage. The Region will work with LDEQ on an equivalent LQG coverage, taking into account an exchange rate for LQG coverage (e.g., SQGs and other handlers), approaching 20%. Other inspection priorities will be factored into the LQG coverage levels as well.

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

LDEQ's standard operating procedures require inspectors to complete a Field Interview Form (FIF) and leave a signed copy of it with facility officials upon the completion of an inspection. The purpose of the FIF is to document that discovered areas of concern were communicated to the facility. The inspector also indicates that further review may indicate additional concerns (e.g. sampling results). The FIF then becomes part of the inspection report.

The LDEQ inspection SOP also guides inspectors in the development of inspection reports. Standard forms exist for each media. Inspectors are encouraged to include information relevant to the 9 factors used for penalty assessments (see element 7) in their narratives.

Inspection reports that result in enforcement are placed into the EDMS once the enforcement action has been issued. The FIFs are placed into EDMS regardless of enforcement status.

The total number of inspections conducted by LDEQ as reflected in RCRAInfo from a April 4, 2007 data pull, using LDEQ's FY 2005 (July 1, 2004 to June 30, 2005) was 505. EPA reviewed 22 of these inspection reports (20 facilities) from a random selection of the 505 inspections (494 facilities). LDEQ used a standard format. Where concerns were identified, the inspection reports had detailed narratives of what was found during the inspection. Where there were no concerns, the report contained a one page handwritten note with "no concerns" noted or just the 2 page Field Interview Form, with minor details noted. Some of the inspection files on EDMS which indicated that photographs were taken did not include copies of the photographs.

There was a total of 8 reports where potential violations were identified. Seven of those reports identified secondary violations. One of those secondary violations, EPA might have designated as significant non-compliance (SNC). That instance was communicated to LDEQ. One out of the 8 reports cited potential violations designated as SNC. With the possible exception of the one instance where EPA might have designated an SNC, all other violations appeared to be identified accurately.

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

LDEQ inspection and enforcement facility files (electronically stored on the EDMS system), The Hazardous Waste Civil Enforcement Response Policy, dated December 2003.

**Actions:**

Regarding inspection documentation, LDEQ standard procedures for RCRA call for the full inspection report regardless of whether or not the inspection identified compliance concerns. The Surveillance group has re-emphasized the need for the formal written reports for RCRA and is moving toward all media having to do the same thing.

Regarding SNC identification, see Actions under element 4.

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

**Findings:**

According to LDEQ's inspection SOP, inspection reports should be completed by the inspector within 20 working days of the inspection or after all the necessary information is obtained (e.g., analytical results). Within 5 working days of the inspection, the inspector should enter the inspection into LDEQ's database, TEMPO. It then goes to the inspector's supervisor for review. This review step should be completed within 10 working days and the report goes to



LDEQ's main office in Baton Rouge. This constitutes a referral to the Enforcement Division, where it is evaluated by the assigned Enforcement Writer and the RCRA Enforcement Program Manager. Based upon this review, an SNC designation is made and entered into RCRAInfo.

Fourteen of the 22 inspection reports reviewed had no violations. As mentioned above, 7 of the inspections denoted secondary violations (one inspection report noted secondary violations that EPA might have designated as significant non-compliance). One inspection report reviewed was identified as an SNC. That SNC designation was timely entered into RCRAInfo.

All 22 inspection reports reviewed were completed in a timely manner per LDEQ's inspection SOP. With the possible exception of the one instance, all of the violation determinations were made within 150 days of the inspection as prescribed by the Hazardous Waste Civil Enforcement Response Policy.

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

LDEQ inspection and enforcement facility files (electronically stored on the EDMS system), The Hazardous Waste Civil Enforcement Response Policy, dated December 2003

**Actions:**

See Actions under element 4.

***Section 2: Review of State Enforcement Activity.***

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

**Findings:**

LDEQ uses EPA's enforcement response policy for SNC identification time frames (150 days to identify SNC from the inspection date).

Of the 16 enforcement files selected for review, 10 were formal enforcement actions. Of those 10 actions, 4 cited violations that had been designated as SNC in RCRAInfo in a timely manner.

Sixteen inspection reports associated with the enforcement actions were reviewed (not all inspections took place in the review period, therefore they are not part of the inspection file count above). From the review of the enforcement actions and supporting inspection reports, there were 2 actions that cited violations that EPA might have designated as SNC that were not designated as SNC in RCRAInfo. Data metrics 4 a, c and d indicate relatively low SNC designations. The metrics and the 2 actions were discussed with LDEQ. They indicate that DEQ recognized and responded to significant violations, but needed to better manage the administrative follow through to get the SNC designations into RCRAInfo in a timely manner.

At the time of the review, LDEQ did not have written procedures for SNC designations. As described above, inspection reports are reviewed by the inspectors and regional office supervisors and managers. At that point they are held for enforcement circuit rider review. If, based upon that review, formal enforcement action appears warranted, the case is referred to LDEQ's Enforcement Division. There the assigned Enforcement Writer reviews the inspection report and makes a preliminary determination as to the appropriate enforcement response. That recommendation is reviewed with the RCRA Enforcement Program Manager. At that point the SNC determination is made, however, the SNC entry (or non-compliance entry) into RCRAInfo is not made until the enforcement action is issued. National guidelines call for entering SNCs into RCRAInfo within 60 days of the SNC determination. SNC determinations should be made within 150 days of discovery (e.g., inspection date).

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

LDEQ inspection and enforcement facility files (electronically stored on the EDMS system), The Hazardous Waste Civil Enforcement Response Policy, dated December 2003.

**Actions:**

LDEQ reviewed the 2 instances cited above; both addressed as SNC, but not designated as such in RCRAInfo. The 2 should have been designated as SNC in RCRAInfo. DEQ made the corrections to RCRAInfo and has made some procedural changes that it believes will help ensure timely SNC designations in RCRAInfo. In addition, LDEQ is planning on internal SNC training and is discussing coordinated training with Region 6. The SNC training will be scheduled for FY 2008. The Region also recommends that LDEQ establish written procedures for SNC designations.

Regarding SNC entries into RCRAInfo, see element 10.

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

**Findings:**

LDEQs formal enforcement actions include compliance related activities to be completed within a specified time frame from the effective date of the Order. This could be on the effective date of the Order, or within 30 or 45 days of the effective date of the Order. Secondary Violation Letters also require the facilities to document to LDEQ their return to compliance within a specified period of time, usually 30 days. All enforcement actions reviewed met this review element.

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

LDEQ inspection and enforcement facility files (electronically stored on the EDMS system), The Hazardous Waste Civil Enforcement Response Policy, dated December 2003

**Actions:**

No action needed.

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

The Hazardous Waste Civil Enforcement Response Policy (ERP), provides 2 options for timely and appropriate enforcement for violations deemed to be SNC. One is to issue a proposed formal enforcement action within 240 days of day zero (i.e., first day of the inspection identifying the violation). The other option is to issue a final formal enforcement action within 360 days of day zero. The Policy also contains provisions for alternative schedules for issuing formal enforcement actions to address SNCs.

Enforcement actions are issued by the Office of Environmental Compliance; either by the Surveillance Division or the Enforcement Division. Enforcement Actions issued by the Surveillance Division consist of actions for minor areas of concern discovered during inspections. The Surveillance Division will issue a Notice of Corrected Deficiency for a minor area of concern corrected at the time of inspection or a Notice of Deficiency for a minor area of concern that can be corrected within 30 days. If not corrected, the matter is referred to the Enforcement Division for further action.

The Enforcement Division issues actions for areas of concern that are referred to it from various sources. These include but are not limited to referrals by the Surveillance and Permits Division, self-reported non-compliance (non-compliance reports, permit deviation reports, etc.), referrals from criminal investigators, from EPA and/or other state and federal agencies.

The Enforcement Division's enforcement process begins with the issuance of a Warning Letter. The Warning Letter puts the respondent on notice that the Enforcement Division received an inspection referral and is considering enforcement action. A description of LDEQ's civil enforcement options and its process follows:

Notice of Violation (NOV) - This notice is issued for minor violations that can be corrected in a short period of time. This is an informal enforcement action.

Notice of Corrected Violation (NOCV) – This notice is issued to the responded when a violation has been corrected. The NOCV is an informal enforcement action.

Notice of Potential Penalty (NOPP) – This notice is issued prior to issuance of a Penalty. LDEQ is required by state statute to notify a respondent before it issues a penalty. It advises the respondent that LDEQ is considering a penalty action. Once a NOPP is issued, the Department must wait ten days before a Penalty

Assessment (described below) can be issued. This allows the respondent to contact the Department to discuss the violations and basis for a penalty. The NOPP is issued when the violations have already been corrected. The NOPP by itself is not a formal enforcement action.

Compliance Order (CO) - This action is issued to the respondent alleging violations and requiring action on the respondent's part to correct the violations cited. The CO is not a penalty action. However, failure to comply with the CO may trigger the NOPP process.

Compliance Order and Notice of Potential Penalty (CONOPP) – This is a formal addressing action where both a penalty and injunctive relief are deemed necessary.

Penalty Assessment (PA)– If after the NOPP or CONOPP the Department has determined that a penalty will be issued, the penalty is calculated in accordance with the Department's Penalty Rule. The PA is a formal action under the Hazardous Waste Civil Enforcement Response Policy.

Expedited Penalty – This is a penalty action that may be issued for a specific list of violations. This Penalty requires attainment of compliance and allows for a reduced penalty amount. The payment of the Expedited Penalty is completely voluntary and may require attendance at a class designed to prevent recurrence of certain violations (e.g., records keeping). If the respondent decides not to participate in this voluntary penalty, a formal NOPP and Penalty will be issued using the Penalty Rule calculations. The fully executed Expedited Penalty document, signed by the respondent and the State is a formal action under the Hazardous Waste Civil Enforcement Response Policy.

Of the actions issued by the Enforcement Division, the Compliance Order and the Penalty Assessment can be appealed. The appeal must be filed within 30 days of receipt of an enforcement action. If the Department grants the appeal the case goes through the adjudicatory process. If the Department denies the appeal, the respondent can appeal the action in the State's 19<sup>th</sup> District Court. The Notices issued by the Department are not subject to the appeals process. Actions become final if an appeal is not filed within 30 days.

The Respondent may enter into settlement negotiations with the Department when violations are alleged by the Department. This settlement process may be initiated at anytime beginning with the discovery of a violation. The settlement process is guided by the Enforcement Division's Settlement Agreement SOP. It is not necessary for an action to be issued in order to begin settlement negotiations. This settlement process culminates in a Settlement Agreement which cites the violations, the necessary injunctive relief and the settlement amount. The Settlement Agreement is sent to the respondent for signature and for public notice (45 day comment period). It is also sent to the State's Attorney General for signature.

LDEQ enforcement responses are guided by the LDEQ Code Title 33 and Title 30. LDEQ timeframes for issuing enforcement actions addressing SNC are governed by the Hazardous Waste Civil Enforcement Response Policy.

Ten formal enforcement actions, issued in LDEQ's FY 2005, were reviewed. They consisted of 2 COs, 1 CONOPP, 3 Penalty Assessments and 4 Settlement Agreements. Four of these actions, cited violations designated as SNC in RCRAInfo. One of these exceeded the 360 day time frame for timely enforcement. This was discussed with LDEQ. The action addressed multiple facilities and media and according to LDEQ, this required more time.

All the formal actions reviewed that addressed SNC met the criteria for appropriateness. They all clearly described the bases for violation findings. They included complying actions and time frames. Each SNC action also included a penalty.

RCRAInfo (data metric 6.b) shows that LDEQ issued 29 formal enforcement actions to 27 facilities in 2005. Twenty-nine (29) were coded as final Agreed Orders. Nineteen (19) of these final Agreed Orders were issued within 360 days of day zero. These formal enforcement actions consisted of 4 Penalty Assessments, 18 Compliance Orders and 7 Settlement Agreements.

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

LDEQ inspection and enforcement facility files (electronically stored on the EDMS system). The Hazardous Waste Civil Enforcement Response Policy, dated December 2003, LDEQ Enforcement Standard Operating Procedures

**Actions:**

The review indicates that LDEQ's enforcement process can deliver timely and appropriate enforcement on a consistent basis. Outside of the Actions under element 4 above dealing with SNC identification, no additional action is needed for this element.

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

**Findings:**

LDEQ has a penalty rule. Penalties are calculated by applying 9 factors to a penalty event (i.e., a violation or violation day). The factors are: 1. violation gravity; 2. degree of risk caused by the violation; 3. violation history; 4. gross revenues of respondent; 5. degree of culpability; 6. efforts to mitigate damage; 7. whether the violation was reported; 8. monetary benefit from violation and 9. the costs of bringing and prosecuting the case.

Factors, 1 and 2, are used to find a penalty range matrix cell from a Penalty Matrix. Factors 3-7 are used to determine the penalty amount. This is calculated for each individual penalty event. The values of the individual penalty events are added together. If there has been a monetary gain (economic benefit) from noncompliance, this is

calculated and added to the penalty figure. In addition, the Department calculates its costs in taking the action (e.g., staff time, monitoring costs, etc.) and adds that to the penalty amount.

Of the 10 formal enforcement actions reviewed, 7 included penalties. Three of the 7 were final penalty assessments. A review of penalty calculations for the facilities that received formal enforcement actions noted that the penalty calculation sheets were marked to show that both gravity and economic benefit were considered. In general the penalties were comparable to what EPA's penalty policy might have generated.

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

Penalty Policy for LDEQ. RCRA Civil Penalty Policy

**Actions:**

No action needed.

**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 the penalty policy considerations.**

**Findings:**

LDEQ distinguishes final Penalty Assessments from Settlement Agreements. Like Penalty Assessments, Settlement Agreements are guided by LDEQ's Penalty Rule. A settlement figure, proposed by the respondent, is evaluated against the penalty range given in the matrix cell (gravity is considered in selecting the matrix cell). Economic benefit is included in determining the acceptable penalty range. LDEQ documents settlement calculations. These documents are considered to be enforcement confidential and are not included in EDMS.

Four of the 7 penalty actions reviewed were Settlement Agreements. One of the 4 Settlement Agreements, 1 included an economic benefit component. This was a multi-media, multi-facility action. The economic benefit component specified in the Agreement was not broken down by media or facility. For the penalty actions reviewed, penalty payments were verified in RCRAInfo.

LDEQ collects the penalties associated with their final formal enforcement actions. Settled penalties issued in one fiscal year may be collected in the next FY or beyond. Some facilities pay in installments. According to the data metrics report, penalties assessed in 2005 totaled \$250,675.

According to the Framework data metric 8.b.2, 17.2% of LDEQ's 2005 final formal enforcement actions carried penalties. In 2005, LDEQ issued 29 final Agreed Orders. Five of these had penalties. This percentage (17.2%) does not meet the corresponding national average of 78%. It should be noted that approximately 80% of the formal

enforcement actions issued by LDEQ address secondary violations which do not require penalty assessments.

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

The RCRAInfo CME Formal and Informal Enforcement Actions with Timeliness Data Report, dated 4/4/07; the Hazardous Waste Civil Enforcement Response Policy, dated December 2003.

**Action:**

No action needed.

***Section 3: Review of Other Enforcement Agreements***

**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.**

**Findings:**

LDEQ has a PPA and PPG with Region 6. Those documents reference the Multi-media Enforcement Memorandum of Understanding (MOU). The MOU, PPA and PPG include projections for inspections and for TSD inspection coverage as well as timely and appropriate enforcement. The FY 2005 end of year report concluded that LDEQ met its enforcement related PPA, PPG and MOU commitments.

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

The Enforcement Memorandum of Understanding between LDEQ and EPA.

**Action:**

No action needed.

***Section 4: Review of Database Integrity***

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

**Findings:**

LDEQ enters data into its State database, TEMPO. The data is also entered into RCRAInfo. Based upon the 35 files reviewed, LDEQ met the Minimum Data Requirements for entering data into RCRAInfo in a timely manner.

Metric 10.a indicates that 1 of 2 SNCs were not entered into RCRAInfo within 60 days of designation.

As discussed under element 4, LDEQ does not enter SNCs into RCRAInfo until the enforcement action is issued. This can delay the SNC data entry.

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

RCRA State Review Framework Metrics; LDEQ inspection and enforcement files (electronically stored on the EDMS system), and the RCRAInfo Data System

**Actions:**

The Region recommends that LDEQ enter SNCs into RCRAInfo within 60 days of the SNC determination date. The Region and LDEQ will discuss options for meeting this guideline.

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

**Findings:**

The file review denoted the following data inaccuracies in RCRAInfo: These were provided to LDEQ.

- Inspection was entered into RCRAInfo, however, the report was not in EDMS. According to DEQ staff, that inspection was initiated, but not completed due to Hurricane Katrina damages.
- Inspection entered into RCRAInfo as a CDI, but EDMS documentation reflects CEI.

Metric 11.B indicates 55 facilities in violation for greater than 3 years with no return to compliance indicated in RCRAInfo.

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

RCRA State Review Framework Metrics; LDEQ inspection and enforcement files (electronically stored on the EDMS system) and the RCRAInfo Data System.

**Actions:**

LDEQ deleted the record of the incomplete inspection from RCRAInfo. The CDI entry in RCRAInfo has been updated to reflect a CEI.

LDEQ evaluated the status of the facilities in violation greater than 3 years and has updated RCRAInfo.

**12. Degree to which the Minimum Data Requirements are complete:**

**Findings:**

- No warning letter for one facility in EDMS or issued in RCRAInfo.

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

RCRAInfo Data System

**Actions:**

LDEQ should endeavour to issue warning letters consistent with its enforcement SOP.