



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

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Ref: 8ENF-PJ

Richard Opper, Director  
Montana Department of Environmental Quality  
P.O. Box 200901  
Helena, MT 59620

Re: Final State Review Framework (SRF)  
Evaluation Results for Fiscal Year (FY)  
2006

Dear Mr. Opper:

Enclosed you will find the final SRF report summarizing evaluation of Montana's Clean Air Act (CAA) Stationary Source, Resource Conservation and Recovery Act (RCRA) Subtitle C, and National Pollutant Discharge Elimination System (NPDES) enforcement programs for federal FY 2006. On August 16, 2007, we forwarded a final draft of the report to you for review and no comments were received. EPA Headquarters reviewed all draft SRF reports and provided feedback on the final draft report. Some changes were made to the report in response to that feedback, and a response to comments is enclosed summarizing those changes. We look forward to working with the Montana Department of Environmental Quality in utilizing the results of this evaluation to advance our shared objective of protection of public health and the environment in Montana.

If you have any questions regarding the SRF evaluation or the SRF in general, please contact me or have your staff contact the most knowledgeable person on my staff, Corbin Darling at (303) 312-6426. Any program-specific questions should be directed to the EPA program contacts identified in the report.

Sincerely,

Eddie A. Sierra  
Deputy Assistant Regional Administrator  
Office of Enforcement, Compliance and  
Environmental Justice

## Enclosures

1. Final SRF report
2. Response to comments

cc: Jenny Chambers, MDEQ  
John Arrigo, MDEQ  
Steve Welch, MDEQ  
Bonnie Lovelace, MDEQ  
Kari Smith, MDEQ  
Don Vidrine, MDEQ  
Ed Thamke, MDEQ  
John Wardell, EPA

U.S. EPA Region 8 Review of Montana Department of Environmental Quality  
Compliance and Enforcement Programs  
Federal Fiscal Year 2006

September 20, 2007  
FINAL

**EXECUTIVE SUMMARY**

**Background**

The United States Environmental Protection Agency (EPA) Office of Enforcement and Compliance Assurance (OECA), all ten EPA Regions, the Environmental Council of States (ECOS) Compliance Committee, and other state representatives have jointly developed a method to assess state performance in the enforcement and compliance assurance program. This report reflects the review by EPA Region 8 of the Montana Department of Environmental Quality (MDEQ) compliance and enforcement activities for the Clean Air Act (CAA) Stationary Sources program, the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) program, and the Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste program using the SRF and associated guidance. This review has been a collaborative effort between the Region and State and captures both successes of the state's program as well as any identified areas that need improvement. Future reviews will look at performance as a comparison to the level documented in this baseline review.

The purpose of the SRF assessment is to provide consistency in the level of core enforcement activity and thus in environmental protection and public health across the country. It provides a consistent tool for Regions to use in overseeing state enforcement programs and provides the basis for a consistent mechanism for EPA Regions to provide flexibility to states which can demonstrate a core program that meets standards.

The review consists of 12 core program elements and associated metrics. The 12 evaluation areas posed by this Framework are consistent with evaluation areas delineated in the 1986 guidance memorandum signed by Jim Barnes entitled "Revised Policy Framework for State/EPA Enforcement Agreements." Additionally, the Framework utilizes existing program guidance, such as national enforcement response policies, compliance monitoring policies, and civil penalty policies or similar state policies (where in use and consistent with national policy) to evaluate state performance and to help guide definitions of a minimum level of performance.

## **Process Followed in the Review**

Region 8's evaluation of MDEQ's core enforcement programs was conducted by staff from the Region's Air, RCRA, and Water enforcement programs using the Framework described above. Part of the review consisted of analyzing FY 2006 data metric reports regarding MDEQ's compliance and enforcement programs which came from EPA's Online Tracking Information System (OTIS) SRF website. The data metric reports were pulled in February 2007 and forwarded by the EPA reviewers to the State contacts for each program. One exception is the NPDES data metric report which was not available for this review due to the change from PCS to ICIS-NPDES. The data metric reports used are attached. A subsequent preliminary analysis of the data metric report for each program was forwarded to the State for discussion.

The number and type of files reviewed was determined based on the protocol in the Implementation Guide and was based on the number of facilities in the universe with activity during FY 2006, the number of inspections performed and the level of enforcement activity in each program. Fifteen CAA files were reviewed, fifteen RCRA files were reviewed, and twenty two NPDES files were reviewed. For each program, representative files were randomly selected. The file reviews occurred both on-site (at MDEQ offices) and off-site (at EPA offices). Information sources included in the review are listed in the program-specific portion of this report.

The review process has relied heavily on communication between EPA and the State which has occurred both before and during the review. Communications have occurred at management and staff levels and have included face-to-face meetings, conference calls, e-mails, and other written communications.

The report contains findings of the review for each program (including successful performance and areas for improvement), a discussion of information reviewed for each element and, if applicable, recommendations for corrective action. The State chose not to submit information for consideration under optional Element 13.

## **Summary of Findings**

The Region's review of the State's enforcement and compliance assurance program in the CAA Stationary Sources, the CWA NPDES and the RCRA Subtitle C hazardous waste programs has concluded that program standards are generally met; however, there are some areas for improvement which have been identified. The following is a summary of key findings of the review for each review area.

### ***Inspections***

For NPDES, Montana met the national goal of 100% inspection coverage for major discharger facilities. This inspection coverage number includes 10 major discharger facility

inspections completed by Region 8 EPA as part of the PPA assistance. Montana's inspection coverage of minor discharger facilities, storm water and CAFO facilities is greater than the number of inspections Montana had planned to complete during the evaluation period. Eighty-six percent of MDEQ inspections had inspection reports completed within 45 days of the inspection.

Region 8 EPA conducted 4 oversight inspections for NPDES and reviewed 21 inspection files. MDEQ inspectors subject to the oversight review were knowledgeable and professional and wrote complete, accurate reports documenting conditions of the sites inspected. File review of inspections completed by other inspectors appeared to accurately document findings of the inspections.

For CAA, overall, the MDEQ does an excellent job of creating and completing the Full Compliance Evaluation (FCE) inspections committed to within the Compliance Monitoring Strategy (CMS). MDEQ exceeded the minimum requirements of EPA's Clean Air Stationary Source CMS, dated September 13, 2005, by inspecting major and SM-80 facilities more frequently than required by the CMS policy and including numerous synthetic minor and minor source inspections in their CMS. MDEQ inspection reports (aka compliance monitoring reports) are timely and of very high quality. Reports document the findings of compliance monitoring activities, including accurate identification of violations.

MDEQ has a strong RCRA inspection program, consistently inspecting 100% of its operating TSDFs, 100% of its LQGs, and over 90% of its SQGs within the required timeframes. MDEQ has high quality RCRA inspection reports.

### ***Enforcement***

Montana NPDES orders generally contain injunctive relief in the form of compliance schedules; however, Montana relies heavily on Administrative Orders on Consent for enforcement. EPA review of enforcement files shows that, when violators do not comply with the injunctive requirements, these orders are often renegotiated with new compliance timelines. Also, these negotiated Administrative Orders on Consent generally do not contain gravity and economic benefit calculations and often do not have any documentation to explain how the lesser penalty amount was derived.

Montana did not meet the national goal for NPDES of less than 2% of major discharger facilities without timely and appropriate enforcement actions but results were better than the national average of 9%. EPA review of quarterly non-compliance reports showed no instances of significant non-compliance for any Montana major discharger facilities during the reporting period. However, the SSO Annual Inventory Report showed 5 SSOs reported by a major facility that were not reported as Significant Noncompliance (SNCs).

MDEQ identifies CAA High Priority Violations accurately and reports them to EPA; however, the upload from the MDEQ Oracle database into AFS has been problematic. The violating facilities are also returned to compliance in a timely manner. EPA has been working with MDEQ over the last several years to improve the number of HPV settlements that are

appropriate in accordance with the new MDEQ Penalty Calculation Rules. The main areas of focus have been concerns over the application of “History of Violation”, and the lack of a “Size of Violator” component within the calculations. During FY06, MDEQ continued to collect substantial penalties on the finalized enforcement actions. Overall, MDEQ has an excellent record of resolving HPVs and other violations in a timely manner. EPA and MDEQ will continue to work together through bi-monthly HPV meetings to increase the percentage of appropriate HPV settlements.

MDEQ has historically done a good job entering SNCs into RCRAInfo; however, in FY06 no SNCs were identified. MDEQ should continue to work to improve in this area. MDEQ issued an appropriate number of formal RCRA enforcement actions, all of which contained adequate injunctive relief to return facilities to compliance within the required timeframes. MDEQ uses its “discretion” to arbitrarily terminate the extent of multi-day gravity penalty calculations, in spite of the actual documented days of violation. EPA has recommended that MDEQ eliminate this practice.

### ***Annual Agreements***

Montana submitted most of the PPA deliverables for NPDES on time and complete. EPA did have to request a quarterly report for the final quarter of the reporting period. MDEQ met its Performance Partnership Agreement commitments for CAA, CWA, and RCRA.

### ***Data Management***

Due to the migration of Montana’s data from PCS to ICIS for NPDES and the subsequent unavailability of accurate OTIS data metric reports, EPA cannot draw conclusions as to how Montana performed compared to the requirements of timeliness, accuracy and completeness of data entry. EPA is unable to determine this information from review of Montana’s inspection/permit files.

MDEQ has submitted the majority of the required CAA information to the AFS database; however, the upload of enforcement data into the database has been problematic because of problems with the universal interface.

MDEQ maintains accurate and timely data in RCRAInfo.

### **Follow-up and Planned Oversight Activities**

The State is already taking steps to improve its programs and address problem areas identified in this report. The Region will continue to work closely with the State to continuously improve its programs. Specific action plans developed to address problem areas identified in this report will be incorporated into the FY 2008 PPA and progress will be monitored by both the Region and OECA.

Based on the results of this review, EPA plans to conduct baseline oversight activities

and some targeted oversight activities for the FY 2007 and FY 2008 review periods. Minimum/baseline oversight activities which will occur each year will include: 1) review and documentation (through End of Year Report) of progress towards meeting grant commitments, 2) routine communications and information sharing with state (to discuss, for example, HPVs, SNC, QNCR, etc.), 3) Watch List review and follow-up, 4) Data Metrics review, 5) Follow-up on open action items/recommendations from previous reviews, and 6) other oversight activities required by national program guidance (e.g. oversight inspections, etc.).

Additionally, program-specific targeted oversight activities will be discussed with each program and incorporated into the PPA. Targeted oversight may include: 1) Targeted program improvement plans to address problems identified during the review, 2) more frequent communications and information sharing with state, 3) an increased number of oversight inspections, 4) targeted after-the-fact and real time review of files (e.g. proposed penalties, settlement documents, etc.).

Also based on the results of this review, EPA plans to conduct subsequent SRF reviews on a three-year cycle with the next review occurring during FY 2010 (for the FY 2009 review period). Should baseline or targeted oversight activities demonstrate that program performance has declined such that program standards are generally no longer met, or, there are significant deficiencies in key areas, then an SRF review may be conducted for the next performance period. The SRF process and guidance is currently undergoing evaluation by EPA, the Environmental Council of States (ECOS), individual states, and other organizations and that evaluation may result in revisions to the national SRF guidance. SRF guidance revisions may result in changes to the guidance regarding the frequency of SRF reviews.

## **PROGRAM-SPECIFIC REVIEW RESULTS**

### **EPA Review of the Montana Department of Environmental Quality (MDEQ) NPDES Enforcement Program FY 2006**

**EPA Evaluator:** David Rise  
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**State Contacts:** Kari Smith, Supervisor, Compliance and  
Technical Support Section  
(406) 444-6727

John Arrigo, Administrator, Enforcement Division  
(406) 444-5327

#### **Introduction:**

The NPDES evaluation involved the review of 21 inspection files and 6 enforcement cases initiated or concluded in the evaluation period. In addition to file reviews, EPA used the 2004–2006 PPA, the Consolidated Cooperative Enforcement Agreement (CCEA) between EPA and DEQ and quarterly reports submitted by DEQ under the requirements of the PPA. Because no ICIS/OTIS data metric information was available for Montana, selection of inspection files for review was based on inspection and enforcement information provided by Montana DEQ as part of their PPA requirements. Due to the State's conversion from PCS to ICIS-NPDES and the fact that data metric reports were not available from ICIS-NPDES, those data metric reports are not part of this review.

In addition to file reviews and the 2004 – 2006 PPA, EPA used the 2006 quarterly reports, 2006 End of Year Report, 2006 Inspection Plan and various NPDES documents to complete the review. Sources are listed for each specific element of the review.

Breakdown of inspection files reviewed is:

| Type        | # Reviewed |
|-------------|------------|
| Major       | 5          |
| Minor       | 5          |
| Storm Water | 9          |
| CAFO        | 2          |
| Total       | 21         |

Inspection file reviews were conducted by David Rise and Rosemary Rowe on January 18 and 29, 2007. Enforcement file reviews were conducted by David Rise on February 21, 2007. Inspection files reviewed were:

| <b>Name</b>                                   | <b>Permit Number</b>   | <b>Permit Type</b>  | <b>File Type</b> |
|---|------------------------|---|------------------|
| Pinnacle Energy Resources/Power River Gas LLC | MT0030660              | Minor   | Inspection       |
| City of Whitefish Smurfit-Stone Container     | MT0020184              | Major   | Inspection       |
| City of Deer Lodge                            | MT0000035              | Major   | Inspection       |
| America's Best Inn                            | MT0022616              | Major   | Inspection       |
| Gore Hill Travel Plaza                        | MT0029840              | Minor   | Inspection       |
| MDT-Bridger Creek Road                        | MTR101912              | Construction Storm Water  | Inspection       |
| City of Dodson                                | MTR101696              | Construction Storm Water  | Inspection       |
| Sleeping Buffalo Hot Springs                  | MT0021415              | Minor   | Inspection       |
| FWP-Washoe Park Hatchery                      | MT0030643<br>MTG770002 | Minor Chlorinated Water Concentrated Aquatic Animal Production Facility | Inspection       |
| Sidney Livestock Market                       | MTG130013              | CAFO  | Inspection       |
| Frank Eaton and Sons                          | MTG010141              | CAFO  | Inspection       |
| T & R Trucking                                | MTG010208              | Industrial Storm Water  | Inspection       |
| Western Sugar                                 | MTR000007              | Water   | Inspection       |
| City of Great Falls                           | MT0000281              | Major   | Inspection       |
|   | MT0021920              | Major   | Inspection       |

| <b>Name</b>  | <b>Permit Number</b>   | <b>Permit Type</b>                                   | <b>File Type</b>           |
|--|------------------------|--|----------------------------|
| Headquarters Building, Rocky Mountain Elk Foundation | MTR101399              | Construction Storm Water                             | Inspection                 |
| Perry Merkel Shop                                    | MTR000413              | Industrial Storm Water                               | Inspection                 |
| Pacific Steel & Recycling-Glasgow Empire Building    | MTR000291              | Industrial Storm Water                               | Inspection                 |
| Materials Jack Mountain Estates                      | MTR101125<br>MTR101811 | Construction Storm Water<br>Construction Storm Water | Inspection<br>Inspection   |
| MTD-Big Hole River Bridge                            | MTR101727              | Construction Storm Water                             | Inspection                 |
| City of Whitefish Point of View Ranch Project        | MT0020184<br>MTR10     | SSO<br>Construction Storm Water                      | Enforcement<br>Enforcement |
| Willow Creek Sewer District                          | MT0025                 | Permit Violations Permit                             | Enforcement                |
| Lewistown WWTP                                       | MT002                  | Violations/SSO                                       | Enforcement                |
| Bar S Livestock                                      | MTG010189              | Permit Violations/CAFO                               | Enforcement                |

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

*Findings:*

The 2006 PPA and 2006 Inspection Plan outline the inspection commitments for the 2006 inspection year. Montana Department of Environmental Quality committed to inspection all 41 major discharger facilities with EPA assisting by inspecting 10 of the major dischargers. MDEQ also committed to inspect 30 minor discharger facilities, which were selected based on permit backlog reduction priorities and 67 total storm water inspections, of which 45 were construction storm water and 22 were industrial storm water. MDEQ increased their CAFO inspection commitment from 7 inspections to 15 and committed to 5 sanitary sewer overflow inspections.

Since 2006 was used as a transition year for moving the NPDES inspection year from

Montana's State Fiscal Year of July through June to the Federal Fiscal Year of October through September, the evaluation period covers 15 months rather than 12 months. The 2006 Inspection Plan covered a 15 month period.

According to information provided by MDEQ in quarterly reports, inspection commitments were met or exceeded for all permit categories. Total inspection numbers were 205 during the evaluation period compared to 204 in FY 05. The largest increase in inspection numbers for a specific category occurred in the SSO area, where 5 inspections were committed to and 14 were completed compared to zero SSO inspections projected/completed in 2005. However one of the major inspections reviewed was a combination ground water and NPDES inspection conducted by a ground water inspector and did not address the portions of the permit relevant to the NPDES program.

|                             | <b>PPA<br/>COMMITMENT</b> | <b># COMPLETED</b> | <b>%<br/>COMPLETED</b> |
|-----------------------------|---------------------------|--------------------|------------------------|
| Major Facilities            | 41                        | 41*                | 100                    |
| General Minor<br>Facilities | 30                        | 38                 | >100                   |
| CAFO                        | 15                        | 18                 | >100                   |
| PCI                         | N/A                       |                    |                        |
| Pretreatment<br>Audit       | N/A                       |                    |                        |
| IU                          | N/A                       |                    |                        |
| Biosolids                   | N/A                       |                    |                        |
| I-SW                        | 22                        | 25                 | >100                   |
| C-SW                        | 45                        | 70                 | >100                   |
| SSO                         | 5                         | 14                 | >100                   |
| Total                       | 158                       | 205                | >100                   |

\* Includes 10 inspections completed by EPA as part of PPA requirements.

*Citation of information reviewed for this criterion:*

2006 Inspection Plan  
 2004 – 2006 PPA  
 Quarterly Progress Reports  
 File Reviews

*Recommendations if corrective action is needed:*

Combination inspections of major facility dischargers, such as major facility discharge permit and Montana ground water discharge permit, need to address all NPDES inspection requirements instead of focusing on the other inspection type criteria. In FY08, EPA will complete spot checks of Montana's files to determine if inspection reports address the required components of a NPDES inspection.

**2. Degree to which inspection reports and compliance reviews document inspection**

**findings, including accurate description of what was observed to sufficiently identify violation.**

*Findings:*

The following oversight inspections were conducted during the evaluation period:

| <b>Facility Name</b>                 | <b>Inspection Date</b> | <b>Date EPA Received State Inspection Report</b> | <b>Date EPA's Oversight Report Sent to State</b> |
|--------------------------------------|------------------------|--|--|
| Sterling Cattle Co.                  | 03/07/2006             | 03/29/2006                                       | 04/01/2006                                       |
| Milford Colony                       | 03/07/2006             | 03/29/2006                                       | 04/01/2006                                       |
| YMC Ranch Road Improvements          | 07/13/2006             | 07/24/2006                                       | 08/17/2006                                       |
| YMC Treated Effluent for Golf Course | 07/13/2006             | 07/24/2006                                       | 08/17/2006                                       |

EPA inspectors conducted oversight inspections by accompanying MDEQ inspectors on two CAFO inspections and two storm water inspections during the evaluation period. EPA found the inspections properly documented the findings and the inspectors were knowledgeable of their program areas and professional in their manner and demeanor during the inspections. File review of inspections completed by other inspectors appeared to accurately document findings of the inspections. All inspection files contained a detailed written narrative of what the inspector observed during the inspection.

The two inspectors monitored during oversight inspections were very competent and knowledgeable. Review of inspections files done by other MDEQ inspectors shows they are knowledgeable of their program areas, document their observations well and identify probable violations during inspections.

*Citation of information reviewed for this criterion:*

CAFO inspections conducted by Mark Ockey, MDEQ. EPA oversight reports.  
Stormwater inspections conducted by Gail Faber, MDEQ. EPA oversight reports.  
Inspection file reviews.

*Recommendations if corrective action is needed:*

None.

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

*Findings:*

Of the 21 inspections reviewed 17 inspection reports were completed within 45 days of the inspection. One additional report was completed 75 days after the inspection but only 29 days after analytical results of samples collected during the inspection were received making a total of 18 of the 21 inspection reports or 86% being completed in a timely manner. The three inspection reports not completed within 45 days of the inspection or receipt of analytical results were 2 major discharger facilities and one CAFO complaint follow-up. Inspection report completion times of the 3 reports exceeding 45 days varied from 54 days after the inspection to 121 days after the inspection. This is an improvement over FY 2005 when only 57% of reports were completed within 45 days of the inspection or receipt of analytical results, however, 121 days to complete an inspection report is not an acceptable time.

Citation of information reviewed for this criterion:

2004 – 2006 PPA  
Consolidated Cooperative Enforcement Agreement  
File Reviews  
Inspection file reviews

*Recommendations if corrective action is needed:*

MDEQ needs to ensure inspection reports are completed in a timely manner, which is within 45 days of the inspection or receipt of analytical results of samples collected during the inspection. Not completing an inspection report until 121 days after the inspection is completely unacceptable, especially when the inspection does not involve any sampling for which analytical results must be received from a laboratory. In FY08, EPA will complete spot checks of Montana's files to determine if reports are being completed within the 45 day timeframe.

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

*Findings:*

This question determines if significant noncompliance (SNC) as defined in 40 CFR 123.45(a)(2)(ii) and (iii) identified during inspections is accurately and timely reported to ICIS. SNC under these sections pertains to major permittees only. SNC definitions for areas such as storm water and CAFOs have not yet been developed and violations of these sorts are not currently required to be entered into ICIS. In the five major discharger files reviewed, violations

which were identified during the inspections did not meet the definition of SNC. Violations identified during the 21 inspections minor storm water and CAFO sites are not required to be entered into ICIS.

One of the enforcement files reviewed included information regarding sanitary sewer overflows (SSO) which occurred during FY 2006. Five SSOs were reported by the major facility but none were entered into ICIS as Single Event Violations.

In FY 2006 no major facility appeared as SNC in the quarterly noncompliance report (QNCR). This compliance rate far exceeds the national average (19.8% of major dischargers in SNC).

*Citation of information reviewed for this criterion:*

QNCRs  
File reviews

*Recommendations if corrective action is needed:* Single event violations for major dischargers are required to be entered into ICIS-NPDES, and may lead to additional facilities being found in SNC. MDEQ must ensure that this information is entered into the national database within the time frames identified in the ICIS-NPDES policy. The FY08 PPA contains language addressing the entry of single event violations into ICIS.

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

*Findings:*

During FY 06 MDEQ issued 10 formal enforcement actions involving 6 cases and entered into settlement agreements which resolved previous NOV/AOs. One judicial action was also concluded in FY 06. During the on-site review, EPA reviewed all 10 formal enforcement files.

Of the actions reviewed 4 required injunctive relief. Of those formal actions which included injunctive relief 2 included specific enforceable compliance schedules to address the violations. Of the remaining eight enforcement actions one did not include specific language that the schedule developed by the violator to address the noncompliance would be incorporated into the NOV/AO. The remaining seven actions were construction storms water NOV/AOs. The NOV/AOs did not include specific language requiring that a schedule to address the violations needed to be developed and implemented. From the file reviews it appears that the facilities had addressed the noncompliance issues within 30 days but did so without injunctive relief requirements in the enforcement action.

*Citation of information reviewed for this criterion:*

Enforcement files.

*Recommendations if corrective action is needed:*

MDEQ needs to include injunctive relief requirements in all enforcement actions as required by the CCEA. Enforceable timelines, consistent with the CCEA and Enforcement Response Guide, should also be included in all enforcement actions to ensure that violators return to compliance within a reasonable time and if they do not, that appropriate enforcement escalation is taken. In FY08, EPA will complete spot checks of Montana's enforcement actions to determine if they include injunctive relief with enforceable timelines.

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

*Findings:*

The State and EPA Region 8 Montana Office have signed a Consolidated Cooperative Enforcement Agreement (CCEA), which describes timely and appropriate enforcement actions for authorized programs, including the Clean Water Act (CWA).

The CCEA is generally consistent with the EPA's criteria for an effective Environmental Management System as it requires a response to each violation. Each subsequent violation receives a stronger response and formal enforcement action is required before a facility is included on the exceptions/watch list. However, the CCEA does not contain specific response actions for specific violation types and only addresses significant violations at major facilities, which means storm water and CAFO violations are not included in the significant violation criteria. Permit compliance schedule violations and violations identified during inspections are not covered in the CCEA. The state has submitted a draft Enforcement Response Guide (ERG), which generally parallels the EPA Region 8 ERG, for review/approval by the EPA Montana Office. Montana's ERG addresses violations at both majors and minors as well as wet weather facilities. When approved, this document will supplement the CCEA.

As the MDEQ ERG is not yet approved, the Region 8 ERG was used to determine the appropriateness of MDEQ's enforcement actions. Six enforcement cases were reviewed for timely and appropriate enforcement actions. Of these actions, two were timely and appropriate, 3 were not, and 1 extended compliance dates from a previous AOC. In 2 of these actions, the violator did not comply with the injunctive relief requirements. Failure to comply with injunctive relief requirements did not result in enforcement escalation. Instead AOCs with new compliance dates were issued. Two of the enforcement cases were at major facilities. Neither action was timely resulting in 5% of Montana's active major universe without timely and appropriate enforcement action. Montana does not meet the goal of 2% of the active major universe without timely and appropriate enforcement action but did perform better than the national average of 9% of the active major universe without timely and appropriate actions. This was determined by comparison of violation letters in compliance files to enforcement files.

*Citation of information reviewed for this criterion:*

2004 – 2006 PPA  
CCEA  
Compliance files  
Enforcement file reviews  
EPA Region 8 ERG

*Recommendations if corrective action is needed:*

Montana needs to initiate enforcement within a reasonable time after a violation is discovered and ensure that failure to comply with enforcement actions results in appropriate enforcement escalation. This is especially important as the general statute of limitations in Montana is two years. Failing to initiate timely and adequate enforcement actions also sends a message to the public that pollution to state waters is not taken seriously by the state. In FY08, EPA will complete spot checks on Montana's enforcement actions to determine if they were timely and appropriate and result in enforcement escalation when appropriate.

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

*Findings:*

Three formal enforcement actions with penalties finalized in FY 06 were reviewed for this measure. One of the three enforcement actions considered both gravity and economic benefit calculations in the proposed penalty amount. This proposed penalty was determined to be appropriate as compared to the interim clean water act settlement penalty policy. The two remaining actions included appropriate gravity calculations done according to the Montana penalty rules but did not contain any economic benefit calculations in the enforcement files.

*Citation of information reviewed for this criterion:*

Enforcement case-file review.

*Recommendations if corrective action is needed:*

To ensure a level playing field, Montana needs to ensure economic benefit calculations are done on every penalty and an economic benefit component is included in every penalty. This is to ensure violators do not benefit from violating environmental laws. Due to the fact that the State Review Framework period may be up to three years prior to formal review of enforcement actions, EPA is asking all states to share information on all actions on a real time basis. EPA and the State will hold quarterly meetings, coinciding with RNC runs, to discuss penalty calculations and monitor progress.

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

*Findings:*

As stated above one of the three penalty actions reviewed calculated appropriate gravity and economic benefit of non-compliance. The penalty amount collected in this case was less than the proposed penalty though still deemed appropriate using the EPA interim clean water act settlement penalty policy, municipal litigation consideration. However no documentation was included in the file on how this reduced penalty amount was reached and whether the final penalty included economic benefit and gravity components.

*Citation of information reviewed for this criterion:*

Enforcement case-file review.

*Recommendations if corrective action is needed:*

Final enforcement action penalties need to retain an economic benefit component to ensure violators do not benefit from violating environmental laws. The final penalty actions also need to retain a gravity component, which ensures a more severe penalty for more egregious violations. Due to the fact that the State Review Framework period may be up to three years prior to formal review of enforcement actions, EPA is asking all states to share information on all actions on a real time basis. EPA and the State will hold quarterly meetings, coinciding with RNC runs, to discuss penalty calculations and monitor progress.

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

*Findings:*

Montana DEQ met their PPA deliverable requirements as indicated in the following table:

| <b>PPA Deliverable</b>  | <b>Date Due</b> | <b>Submitted</b> | <b>On Time</b> | <b>Complete</b> |
|-------------------------|-----------------|------------------|----------------|-----------------|
| Quarterly Reports       | Quarterly       | Y                | Y              | Y               |
| List of permitted CAFOs | 12/31/2005      | Y                | Y              | Y               |
| CAFO inventory status   | 12/31/2005      | Y                | Y              | Y               |
| CAFO inspection status  | 12/31/2005      | Y                | Y              | Y               |

| <b>PPA Deliverable</b>                   | <b>Date Due</b> | <b>Submitted</b> | <b>On Time</b> | <b>Complete</b> |
|--|-----------------|------------------|----------------|-----------------|
| Draft enforcement response guide         | 03/31/2006      | Y                | Y              | Y               |
| Inspection plan (final)                  | 09/30/2005      | Y                | Y              | Y               |
| List of storm water inspections          | Annually        | Y                | Y              | Y               |
| Final Orders & Demand Letters            | As issued       | Y                | Y              | Y               |
| Permit public notices                    | As issued       | Y                | Y              | Y               |
| Violation letters and inspection reports | As issued       | Y                | Y              | N               |
| SSO occurrence inventory                 | 09/30/2006      | Y                | Y              | Y               |

*Citation of information reviewed for this criterion:*

2004 – 2006 PPA  
Correspondence between Region 8 Montana Office and MDEQ

*Recommendations if corrective action is needed:*

Not all violation letter copies had inspection report information included. MDEQ needs to ensure all required components of deliverables are submitted. The FY08 PPA contains language addressing the submittal of violation letters and inspection reports for major facilities to EPA.

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

*Findings:*

EPA is unable to determine the results for this element from review of Montana's inspection/permit files. The timeliness of DMR data entry can not be determined since there are not any dates of data entry or initials of the individual who entered the data into ICIS on any DMRs reviewed by EPA. A review of enforcement actions pulled from ICIS on February 14, 2007 and compared to MDEQ enforcement files discovered two enforcement actions dated August 3, 2006 and September 27, 2006, which were not in ICIS.

EPA's Office of Wastewater Enforcement and Compliance (OWEC) and Office of Water (OW) 1992 Permit Compliance System (PCS) Quality Assurance Guidance Manual requires that Measurement/Violation Data (DMRs) be date stamped when received and entered in PCS within 10 working days of receipt of the DMR. The Manual also requires that inspection data be entered within 10 working days of receipt of the inspection report.

*Citation of information reviewed for this criterion:*

DMRs during inspection/permit file review  
 Enforcement case file review  
 ICIS  
 OTIS

*Recommendations if corrective action is needed:*

MDEQ needs to ensure all DMRs are dated stamped on receipt and the information is entered in to ICIS, which is the replacement for PCS within 10 days. Montana also needs to ensure inspection information is entered in to ICIS within 10 days of the inspection being conducted. EPA recommends that the DMRs be date stamped when received and initialed when entered into ICIS. The FY08 PPA contains language addressing the timely entry of ICIS data.

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

*Findings:*

The last available data metric information does not show Montana linking any enforcement actions to violations. A review of enforcement actions pulled from ICIS on February 14, 2007 and compared to MDEQ enforcement files revealed discrepancies as shown in the following table.

| ICIS Enforcement Identifier | Enforcement Action Name      | Enforcement Date | ICIS Enforcement Action Type | MDEQ File Enforcement Action Type        |
|-----------------------------|------------------------------|------------------|------------------------------|--|
| MT-N00000616                | City of Whitefish            | 12/15/05         | AOC <sup>1</sup>             | None in file, only an email on this date |
| MT-N00000655                | MT Gold & Sapphires          | 02/09/06         | AOC <sup>1</sup>             | Letter for violating AOC <sup>1</sup>    |
| MT-N00000968                | Sleeping Buffalo Hot Springs | 03/16/06         | AOC <sup>1</sup>             | AOC <sup>1</sup>                         |
| MT-N00000974                | Pointe of View Ranch         | 03/27/06         | AOC <sup>1</sup>             | NOV-ACPO <sup>2</sup>                    |
| MT-N00000656                | Willow Creek Sewer           | 04/24/06         | AOC <sup>1</sup>             | NOV-ACPO <sup>2</sup>                    |
| MT-N00000973                | City of Lewistown            | 04/28/06         | AOC <sup>1</sup>             | AOC <sup>1</sup>                         |

| ICIS Enforcement Identifier | Enforcement Action Name      | Enforcement Date | ICIS Enforcement Action Type | MDEQ File Enforcement Action Type                                 |
|-----------------------------|------------------------------|------------------|------------------------------|---|
| MT-N00000658                | Point of View Ranch          | 07/18/06         | AOC <sup>1</sup>             | AOC <sup>1</sup>  |
| MT-N00000657                | Bar S Livestock              | 07/26/06         | AOC <sup>1</sup>             | Demand letter with penalty calculation and draft AOC <sup>1</sup> |
| MT-N00000660                | Sleeping Buffalo Hot Springs | 07/26/06         | AOC <sup>1</sup>             | Letter for violating AOC <sup>1</sup>                             |
| Not in ICIS-NPDES           | City of Whitefish            | 09/27/06         | N/A                          | AOC <sup>1</sup> with SEP <sup>3</sup>                            |
| Not in ICIS-NPDES           | Bar S Livestock              | 08/03/06         | N/A                          | Amended NOV & AOC <sup>1</sup>                                    |

<sup>1</sup> Administrative Order on Consent

<sup>2</sup> Notice of Violation and Administrative Compliance and Penalty Order

<sup>3</sup> Supplemental Environmental Project

*Citation of information reviewed for this criterion:*

ICIS-NPDES  
Enforcement case file review

*Recommendations if corrective action is needed:*

Montana must ensure that accurate information is entered into ICIS and that it is entered in a timely manner including linkage of enforcement actions to violations. This is especially important as the PPA between Montana and EPA states that EPA will obtain Montana inspection and enforcement information from EPA databases and Montana is reluctant to provide information to EPA on request because of this PPA clause. Without linkage of enforcement actions to violations in ICIS, EPA cannot obtain complete enforcement results from ICIS. The FY08 PPA contains language that Montana will enter data into ICIS in a timely and accurate manner.

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

*Findings:*

Due to the migration of Montana's data from PCS to ICIS-NPDES and the subsequent unavailability of accurate OTIS data metric reports, EPA can not draw conclusions as to how Montana performed compared to the requirements of this data metric. Information covered by this data metric will require further review and discussion between EPA and the state.

*Citation of information reviewed for this criterion:*

ICIS  
OTIS  
Montana DEQ Files

*Recommendations if corrective action is needed:*

Not applicable, not able to measure how Montana performed compared to the requirements of this data metric.

**EPA Review of the Montana Department of Environmental Quality (MDEQ) Clean Air Act Stationary Sources Enforcement Program  
FY 2006**

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**Introduction:**

EPA's evaluation of the Clean Air Act portion of the Montana Department of Environmental Quality's (MDEQ) program involved a review of the MDEQ Compliance Monitoring Strategy (CMS) and its implementation, timeliness and appropriateness of enforcement activities, implementation of the appropriate portions of the EPA/MDEQ Performance Partnership Agreement, and database integrity. The FY06 review followed the national State Reviews Framework (SRF) process, a change from the Uniform Enforcement Oversight System used in previous years.

Database trend review (data metrics) reflected favorably on MDEQ's program, showing major source inspection coverage and completion rates exceeding national averages. MDEQ completed a review of 100% of the Title V Self-Certifications. In addition, the percent of high priority violators (HPVs) with penalties collected exceeded the national averages. The data quality concerns that have been raised in the body of this report relate directly to the problems with the universal interface between the MDEQ database and AFS. A thorough review of the criteria for the data metrics shows that the work was completed by MDEQ; however, the completed information has not all been entered into AFS.

As a requirement of the protocols detailed in the Consolidate Cooperative Enforcement Agreement (CCEA), MDEQ submits to EPA copies of all Compliance Monitoring Reports (CMRs) for full compliance evaluations (FCEs) and copies of all enforcement correspondence with major and synthetic minor at 80% of potential emissions (SM-80) sources. EPA selected eleven files within the Montana EPA Office for a comprehensive review. The files were selected randomly with care taken to include a report written by each inspector. The files selected included a mixture of eleven major sources. The EPA file review included summaries of Stack Test reports; Title V Certifications and Semi-Annual Monitoring reports; and permit modifications.

EPA and MDEQ communicated by conference call, e-mail, individual telephone calls, and

regular mail. EPA introduced the national SRF process to MDEQ by a letter dated September 15, 2006 from Carol Rushin, then Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice to Richard Opper, Director of the Montana Department of Environmental Quality. Conference and individual calls were used by EPA to kick off and then work through the SRF process with first and second level managers. Early in March, EPA and MDEQ met to discuss the data metrics. A decision was made to thoroughly evaluate the CMS and data metrics and allow MDEQ to evaluate the gaps.

EPA's findings suggest minor changes MDEQ can make to improve their program. There were no issues that rose to the level of making formal recommendations for corrective action.

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

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

##### *Findings:*

Overall, the MDEQ Air Resources Management Bureau (ARMB) does an excellent job of creating and completing the FCE inspections committed to within the CMS. MDEQ exceeded the minimum requirements of MDEQ's Clean Air Stationary Source CMS, dated September 12, 2005, by inspecting major and SM-80 facilities more frequently than required by the CMS policy and including numerous synthetic minor and minor source inspections in their CMS. MDEQ has established a process to complete the CMRs to document the completion of the FCE. First, the MDEQ does an on-site inspection and codes it in AFS as a Partial Compliance Evaluation (PCE); secondly, a file review is completed in conjunction with the on-site PCE and; thirdly, MDEQ completes the process by writing a CMR according to their FCE protocol and coding the final report as an off-site FCE. EPA commends MDEQ for taking the initiative to develop a CMR template that is in accordance with the revised CMS. All of the state inspectors follow the MDEQ FCE protocol, and this ensures that all of the CMRs provide the necessary documentation and a sufficient narrative to fully detail the compliance activities and findings.

##### Inspections at Major sources:

The CMS requires that all active major sources receive a FCE every 2 years. Overall, ARMB's major source FCE coverage of 86% exceeds the national average of 81% and is close to the national goal of 100%. The data metric incorrectly counts facilities on tribal land, an area which is EPA's and not ARMB's responsibility. Additionally, the data metric shows the universe of sources as 80. The CMS lists 68 major sources, and the data metric reports 69 inspections completed. Discrepancies in the data metrics arise from the data gap between the CMS and AFS. Using the CMS data, ARMB has completed 68 of 68 CAA major source full compliance evaluations for a 100% coverage rate.

Eleven sources were identified as not being inspected. Three of the major sources counted as not inspected are on Indian Reservations and are under EPA jurisdiction. Four of the

sources listed were identified as “B”, or minor sources, in the CMS. The remaining four sources listed were not listed in the CMS.

ARMB will verify the universe of Major sources during FY2007.

Inspections at SM-80s - (synthetic minor  $\geq$ 80 percent of major source level):

Active SM-80 sources should receive a FCE every 5 years. ARMB’s conduct of FCEs at least every 5 years at SM-80 facilities was 54.4%, falling below the national average of 85%.

The data metric 1B identified 41 sources that did not have an FCE with the five- year FCE period. Of these sources, EPA identified six sources that were erroneously reported as SM-80’s, but are actually minor sources. Twelve sources were not listed on the CMS and appear to be mostly portable asphalt plants and associated equipment. Seventeen sources were identified in the September 12, 2005 CMS, as scheduled for inspection in FY2007-2009. Finally, six sources were slated for inspection in FY2005 or FY2006 and have not had an inspection conducted. The six SM-80 sources not inspected are temporary asphalt plants that were not operating during FY2005 and FY2006.

ARMB will verify the universe of SM-80 sources during FY2007.

Inspection at Synthetic Minor sources:

Active synthetic minors should receive a FCE every five years. ARMB conducted FCEs at 65.2% or 86 of 132 facilities in the last five years. ARMB has very good coverage for inspecting synthetic minor and minor sources which are prioritized in the CMS that covers the time period of FY2005 to FY2009.

Title V Annual Compliance Certifications received and reviewed:

EPA’s CMS Policy requires all self-certifications due and received in FY06 to be reviewed. ARMB reviewed and entered results into the database for 100% of the 53 Title V Certifications recorded in AIRS and OTIS. While this exceeds the national average of 81% and meets the national goal of 100%, the number of certifications received and reviewed seems low compared with the number of Title V permits issued to date.

ARMB will verify the universe of Title V sources prior to the end of FY2007.

Sources with Unknown Compliance Status Designations:

ARMB had no instances of unknown compliance status.

*Citation of information reviewed for this criterion:*

1. FCEs are required pursuant to and are defined in the Clean Air Act Stationary Source Compliance Monitoring Strategy, April 2001 (CMS). The CMS and supporting guidance and policies provide the basis for these evaluation criteria.
2. The ARMB CMS for FY 2005 through FY 2009, revision dated September 12, 2005.
3. AFS/OTIS databases

*Recommendations:* none

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

*Findings:*

Overall, ARMB CMRs are of very high quality. Reports document the findings of compliance monitoring activities, including accurate identification of violations. The ARMB has developed a template for the CMR that covers all of the required elements that are detailed in the “Clean Air Act Stationary Source Compliance Monitoring Strategy”, April 2001. If evidence is needed to support enforcement actions, the documentation level in the State’s reports provide the necessary documentation to support an enforcement action.

*Citation of information reviewed for this criterion:*

EPA selection of eleven source files for review.

The “Clean Air Act Stationary Source Compliance Monitoring Strategy”, April 2001, lists minimum information requirements for inspection or compliance monitoring reports. The general categories for review are General Information, Facility Information, Applicable Requirements, Inventory and Description of Regulated Units, Enforcement History, Compliance Monitoring Activities, and Findings and Recommendations.

*Recommendations:* none

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

*Findings:*

All of the CMRs reviewed were completed in a timely manner. Overall, MDEQ has a very good record of completing inspection reports and identifying violations in a timely manner. The MDEQ has an internal policy deadline of completion for CMRs of 30 days. Four of the eleven CMRs documented violations that were discovered during the inspection,

stack test review or Title V compliance certification review. All of the CMRs identified violations in a timely manner. Two of the facilities identified to be in violation were determined to be HPVs, and two were non-HPV violators.

*Citation of information reviewed for this criterion:*

List of 11 files reviewed identified above.

EPA and MDEQ have previously agreed that CMRs should be completed no later than 60 calendar days following the on-site evaluation or in-office report review. The Uniform Enforcement Oversight System reviews over the past seven years have used the 60 day standard.

*Recommendations:* none

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

*Findings:*

Of seven new HPVs in FY06, one or 14% was reported to EPA in a timely and accurate manner. The six new HPVs were not entered into the AFS database in a timely manner, due to problems with the universal interface between the MDEQ database and the EPA AFS database. The HPVs were reported to EPA in a timely manner through the NOV's issued, monthly telephone conversations and bi-monthly HPV meetings between EPA and MDEQ. Written copies of all NOV's are submitted to the Region 8 Montana Office.

Data Metric: High Priority Violation Discovery Rate – New HPVs identified in the fiscal year by the State divided by the number of facilities with FCE or PCEs performed in the fiscal year. The data metric indicates that there was one HPV identified in FY2006. MDEQ and EPA are working to resolve the universal interface problem to correctly report the actual number of HPVs in a timely manner. As of July 2007, it appears that that progress in being made by MDEQ on completing HPV entries for FY2006 to present. The actual number of 7 new HPVs for the 29 FCEs committed to in FY2006, represents a HPV discovery rate of 4%.

*Citation of information reviewed for this criterion:*

“Policy on Timely and Appropriate Enforcement Response to High Priority Violations”; December 22, 1998. (a.k.a.: HPV Policy”)

List of eleven files reviewed identified above.

The ARMB CMS for FY 2005 through FY 2009, revision dated September 12,

2005.

*Recommendations:* none

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

*Findings:*

The evaluation for this criterion is based on the percent of MDEQ enforcement actions that specifically require the appropriate measures (improved work practices, installation of emission controls, cessation of violating activity/practice, etc.) that must be performed to attain compliance and that specify a reasonable compliance schedule for completing such activity and attaining compliance.

Of the eleven HPV cases addressed and/or resolved by MDEQ in FY06, the State obtained appropriate injunctive relief or/ or appropriate penalty in all eleven cases which were promptly returned to compliance. Resolution included additional control equipment or additional compliance determinations (i.e. stack tests). The eleven cases are: Montana Refining Company, ExxonMobil Refining, Columbia Falls Aluminum, Yellowstone Energy Limited Partnership, Montana Refining Company #2, Plum Creek Columbia Falls, Thompson River Co-Gen, NorthWestern North Moulton, Northern Border #3, MDU Glendive, and CHS.

Information on compliance status is exchanged between EPA and MDEQ during bi-monthly HPV meetings.

*Citation of information reviewed for this criterion:* File reviews for the High Priority Violation files listed above.

*Recommendations:* none

**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:*

Of the fourteen HPV cases in FY06 (7 new and 7 carried over from FY2005), MDEQ took enforcement action in a timely manner for eleven. Three HPVs carried over from FY2005 did not meet the timely criteria – Montana Refining Company, ExxonMobil Refining and Columbia Falls Aluminum. The Region 8 Montana Office and MDEQ had numerous communications during the fiscal year to expedite the enforcement proceedings in

these complicated cases.

Of the seven HPVs identified in FY06, one will be resolved in FY07, six were resolved with negotiated Consent Decrees.

*Data Metric:* MDEQ's timeliness in taking enforcement actions is evident from the above discussion. The data show 1 out of 5 that exceeded the timeliness criteria, for a value of 20%. However, the data collected during the SRF enforcement review indicates that 3 out of 14 HPVs (21%) exceeded the 270 day timeliness guideline, significantly better than the national average of 44%

*Citation for information reviewed for this criterion:* File and data metric reviews for the fourteen HPVs.

*Recommendations:* none

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

*Findings:*

MDEQ provided EPA with both gravity and economic benefit calculations for all eleven HPV penalties resolved in FY06. MDEQ calculates penalties using the new Penalty Calculation Rules. The new rules were promulgated as a result of legislative rulemaking during the 2005 Montana Legislative Session. The penalties collected during FY2006 were significant, considering that the new rules eliminated criteria for "Size of Violator" and limits the qualification of "Historical Considerations". EPA has independently reviewed the MDEQ penalty calculations and has determined that for the FY2006 HPVs the penalty calculations were appropriate for both the gravity and economic benefit components of the calculations.

*Citation of information reviewed for this criterion:*

File reviews for the HPVs resolved in FY06.

*Recommendations:* none

## **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:*

MDEQ calculates penalties using the new Penalty Calculation Rules. The penalties collected during FY2006 were significant, considering that the new rule eliminated criteria for "Size of Violator" and limits the qualification of "Historical Considerations". EPA has

independently reviewed the MDEQ penalty calculations and has determined that for the FY2006 HPVs the penalty calculations were appropriate for both the gravity and economic benefit components of the calculations.

EPA's review finds that all of the resolved HPV settlements in FY06 are appropriate since they collect economic benefit, when applicable, and gravity portions of a penalty, in accordance with penalty policy considerations.

*Data Metric:* The data show that MDEQ collected penalties in 85.7% of the HPV settlements; however, once the universal interface issues are addressed and the data is entered into AFS, the data will show that penalties were collected in 100% of the HPV settlements. This exceeds the national average of 77% and the national goal of >80%.

*Citation of information reviewed for this criterion:* File reviews for above listed HPVs

*Recommendations:* none

**9. Enforcement commitments in the PPA are met and any products or projects are complete.**

*Findings:*

The Performance Partnership Agreement for the CAA compliance/enforcement has a commitment which was met by MDEQ's timely delivery of the FY06 Compliance Monitoring Strategy for EPA's review and approval on September 12, 2005. The CMS was delivered in draft form to EPA and provisions were negotiated prior to the final version of September 12, 2005

*Citation of Information Reviewed for this Criterion:* Montana PPA and MDEQ CMS.

*Recommendations:* none

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

*Findings:*

From the Data Metric, Montana reported none of the HPVs to the AFS database before the 60-day reporting threshold. Once the universal interface problem is corrected and all of the enforcement data is correctly entered into AFS, this ratio should approach 0%.

*Citation of Information Reviewed for this Criterion:* AFS and OTIS.

*Recommendations:* none

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

*Findings:*

MDEQ does an excellent job keeping the AFS database accurate. All eleven files selected above were compared with data in AFS. The majority of the data evaluated was accurate.

*Data Metric:* Stack test results - % without pass/fail results: The Montana metric was 0.7%, as compared to the national average of 16.2%. Out of 143 stack tests, only 1 did not accurately report the test results.

*Data Metric:* Montana's ratio of number of HPVs to the number of sources in noncompliance is 133.3%, does not meet the national goal of being < 100%. Once the universal interface problem is corrected and all of the enforcement data is correctly entered into AFS, this ratio will fall below 100%. A review in July 2007, indicates that MDEQ has been successful in inputting a majority of the enforcement information into AFS.

*Citation of Information Reviewed for this Criterion:*

AFS database and information from the eleven files listed above.

*Recommendations:* none

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

*Findings:*

MDEQ does an excellent job at keeping AFS complete for the Minimum Data Requirements. Comparison of the data from the eleven file reviews with the AFS database revealed that a high percentage of the Minimum Data Requirements are complete.

*Citation of Information Reviewed for this Criterion:*

AFS database and information from the eleven files listed above.

*Recommendations:* none

**EPA Review of the Montana Department of Environmental Quality (MDEQ)  
RCRA Enforcement Program  
FY 2006**

**EPA Evaluator:** Linda Jacobson, Environmental Engineer  
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Environmental Justice—RCRA Technical Enforcement Program

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Hazardous Waste Permitting Section

Ed Thamke, Bureau Chief  
Hazardous Waste and Underground Storage Tank Bureau

**Introduction:**

The RCRA evaluation involved the review of 2 formal enforcement actions and 29 inspection reports generated during FY2006. EPA's review covered large quantity generators (LQGs), SQGs, treatment, storage and/or disposal facilities (TSDFs), transporters, and used oil facilities. In addition, Region 8 utilized EPA Headquarters' data retrievals (metrics) generated from national enforcement and compliance databases (the January 2007 OTIS report), and pulls from the RCRAInfo national database. This information was used to assess 12 specific elements. The 12 elements address four specific topics: Inspection Implementation; Enforcement Activity; Commitments in Annual Agreements; and Database Integrity.

Randomly selected FY2006 enforcement case and inspection file information was reviewed by EPA Region 8 during August 2006 and February 2007. These files were reviewed at the MDEQ offices. MDEQ staff members assisting EPA during this review were Mark Hall, Robert Reinke, and Debbie Walker.

Nearly all of the issues of concern have been discussed with the Montana Department of Environmental Quality (MDEQ) during exit conferences following file review sessions held in August 2006 and February 2007. The MDEQ was provided a copy of the EPA Headquarters' data metrics report for FY2006 in an February 14, 2007, email. A copy of EPA's preliminary draft findings report was provided to the state via an email on March 14, 2007. Issues raised in this report were discussed with the state in a conference call on April 10, 2007. Numerous issues were covered during the close-out meeting in February 2007, including identification of the LQG universe and assessment procedures for multi-day penalties.

#### Information Sources Included in the Review:

1. EPA RCRAInfo, and OTIS databases;
2. State of Montana Department of Environmental Quality hazardous waste compliance monitoring and enforcement files;
3. State of Montana/EPA FY2004-2006 Performance Partnership Agreement (PPA);
4. Montana FY2006 RCRA End-of-Year Evaluation Report;
5. EPA Revised RCRA Inspection Manual, dated 1998;
6. EPA Hazardous Waste Civil Enforcement Response Policy (ERP), dated December 2003;
7. OTIS State Review Framework (SRF) Results (review period: FY06), dated January 19, 2007;
8. EPA RCRA Civil Penalty Policy, dated June 23, 2003;
9. State of Montana DEQ Annual PPA Inspection Schedule for FY2006;
10. Memorandum of Agreement (MOA) between the State of Montana and Region 8, dated February 8, 2007;
11. 40 CFR Section 271.15(b)(2)—Requirements for Compliance Evaluation Programs;
12. RCRA Section 3000(a), FR Vol. 46/No. 16/Monday/Jan. 26, 1981—Requirements for Authorization of State Hazardous Waste Programs;
13. OECA FY2005-07 National Program Managers Guidance (NPG);
14. Final FY2006 Update NPG, Office of Enforcement and Compliance Assurance, dated June 2005;
15. State Review Framework Training Manual, dated April 2006;
16. Consolidated Cooperative Enforcement Agreement between US EPA Region VIII and State of Montana DEQ, September 2000;
17. EPA Supplemental Environmental Projects Policy, May 1, 1998;
18. Enforcement Response Manual, Montana DEQ, October 1999;
19. Montana Procedural Rules, Subchapter 3, Penalty Calculation Procedures, 17.4.301 through 17.4.308, June 30, 2006;
20. Montana DEQ Penalty Calculation Factors, undated;
21. MDEQ Penalty Policy for the Hazardous Waste Program, undated;
22. MDEQ Hazardous Waste/Used Oil Complaint Management Protocol flowchart, undated;
23. Waste and Underground Tank Management Bureau Hazardous Waste Permitting Section Spill Protocol and Screening/Cleanup Goals Guidance Statement, updated 2/12/2007;
24. State of Montana Hazardous Waste Administrative Rules, Title 17, Chapter 53, 12/22/06;

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

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

### *Findings:*

Per the Montana Environmental Performance Partnership Agreement, the DEQ committed to develop an annual compliance monitoring strategy. Annual inspection targets were met for all those facilities identified in the inspection plan, which included inspections of the four operating TSDFs, inspection of 40 LQGs, and inspection of 61 SQGs for FY 2006. The state achieves excellent coverage of its entire generator universe. MDEQ achieved 100% inspection coverage of its four operating TSDFs, 100% of its 44 LQGs every five years, and over 90% of its universe of 65 SQGs.

The OTIS State Review Framework Results Report indicates that MDEQ's inspection coverage included two operating TSDFs (Metric 1a), which is above the national average and that MDEQ meets the national goals for inspections at TSDFs and LQGs, achieving 100% LQG coverage every 5 years for the 44 LQGs in its universe. The MDEQ has clarified that it oversees 4 operating TSDFs rather than the 2 noted in the OTIS report.

There is a discrepancy between the LQG universe in the OTIS drilldown report and that list of facilities produced by state staff from RCRAINFO. The difference in the identified universe, which needs to be rectified, includes ten facilities which the MDEQ feel are not LQGs.

The state inspects a high percentage of its SQG universe. Metric 1d indicates that more than 90 percent of SQGs, or 61 of 65, were inspected during a five-year period. The state confirmed that the identified universe of 65 SQGs is accurate.

Environmental Justice (EJ) was not considered in development of the state inspection plan; but, coverage of some of the EJ areas occurs by default. The state is receptive to have the region develop and provide maps of EJ areas in Montana which can be factored into inspection targeting.

The OECA FY2005-07 NPG and Federal Register Notice, Vol. 46/No. 16/Monday, January 26, 1981, Requirements for Authorization of State Hazardous Waste Programs stipulates that all regional programs should respond to tips, complaints, and referrals from private citizens.

The state has a complaint data base and referral system. Materials were received during the file review visit in February 2007 and were reviewed to determine the adequacy and completeness of the state's procedures. The complaints are divided between the Enforcement Division and the Waste and Underground Tank Management Bureau Hazardous Waste Permitting Section, pursuant to a flow chart procedure and Guidance Statement updated on February 12, 2007. The MDEQ Enforcement Response Manual, October 1999, specifies Complaint and Spill Management Procedures, including assignment of initial responsibility, recording of the complaint, validation and investigation of the complaint, tracking the status of the complaint/spill, and spills and emergency response.

*Information sources utilized for this criterion: 1, 2, 3, 7, 9, 12, 13, 15, 22, 23*

*Recommendations and Actions:*

The Region and state need to work together to refine the LQG universe. The region commits to work with the state to ensure the four operating TSDFS inspected by the state are appropriately identified in RCRAInfo.

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

*Findings:*

EPA's Revised RCRA Inspection Manual (OSWER Directive #9938.02b) states that RCRA inspection reports are comprised of 3 elements: a narrative discussion (including a description of facility operations and inspection findings), an inspection checklist, and supporting documentation.

All 29 MDEQ inspection reports were of high quality, thereby allowing appropriate compliance determinations. All of the reviewed reports met the basic requirement of completely determining the compliance status for the appropriate areas reviewed under Montana hazardous waste regulations. MDEQ readily identifies all apparent violations during or just after inspections upon completion of inspection reports.

EPA conducted ten oversight inspections during FY06. The state inspectors are well trained, conduct high quality, thorough inspections, and couple compliance evaluation with technical and regulatory assistance.

*Information sources utilized for this criterion: 2, 5*

*Recommendations and Actions: None*

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

*Findings:*

Inspection reports were completed in a timely manner for 28 of the 29 inspection files reviewed. One inspection report was completed in 68 days, exceeding the established criteria of report completion within 45 days from the first day of the inspection.

*Information sources utilized for this criterion: 2, 6*

*Recommendations and Actions: None*

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

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

*Findings:*

The RCRA enforcement national core program standards and the Memorandum of Agreement between the State of Montana and the Region require the state to maintain timely data entry in the RCRAInfo national database, and classify all facilities meeting the definition of a significant non-complier (including used oil transporters/ processors/ marketers) as SNC in the RCRAInfo database. The Hazardous Waste Civil ERP stipulates that the SNC determination shall be made within 150 days of the first day of any inspection completed.

As noted for OTIS Metric 4a, Enforcement Activity, SNC Identification, of the 40 LQG inspections and the 61 SQG inspections conducted, the state did not identify any SNCs. This rate is below half of the national average of 3.1%.

Metric 4d, percent of actions with prior SNC listings, is also at 0. This is below half of the national average. The region and state have had discussions regarding the low SNC identification rates.

As reflected in OTIS Data Metric 10a, when the state reports SNCs, it does so in a timely manner. The regional reviewer broadened the SNC review to include the past 5 fiscal years and discussed the identification of SNCs (or HPVs at that time), the initiation of an enforcement action to address the SNC, and the removal of the SNC designation after return-to-compliance was achieved by the state. The state data pulls indicate that enforcement follow-up and data maintenance was occurring for identified SNCs. EPA discussed the designation of the two facilities for which formal enforcement actions had been taken as SNC; EPA and the state agreed that doing so would be untimely and unwarranted. As noted in the recommendation below, the state has committed to identify, enter, and pursue the enforcement of future SNCs in a timely fashion.

*Information sources utilized for this criterion: 1, 2, 6, 7, 10*

*Recommendations and Actions:*

As it has done historically, the state should ensure that identified SNCs, are entered into RCRAInfo no later than 150 days after the first day of the inspection, proper enforcement is pursued, and the return-to-compliance and removal of the SNC designation is entered, as

appropriate into the data base.

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

*Findings:*

The Hazardous Waste Civil ERP requires state enforcement actions to include a 240-day return-to-compliance date for significant violators. The MDEQ Enforcement Response Manual, October 1999, specifies that settlement agreements or consent decrees should describe the required compliance measures, a schedule for compliance, and stipulated penalties (if any) for the failure to meet the schedule.

For secondary violators, enforcement actions contain adequate injunctive relief and meet the criteria for timeliness. Eleven of the twenty-nine reviewed inspections resulted in an informal enforcement action. These informal enforcement actions (Warning Letters) appropriately and completely addressed the violations identified in the inspection reports. The Warning Letters included either a compliance schedule or required corrective measures to ensure return to compliance (RTC), which was further verified by non-financial records review, phone call, or return site visit.

*Information sources utilized for this criterion:* 1, 2, 4, 6, 18

*Recommendations and Actions:* None

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

*Findings:*

The Consolidated Cooperative Enforcement Agreement (CCEA) between the US EPA Region VIII and the State of Montana DEQ, September 2000 requires the MDEQ to complete enforcement actions and settlements within specific timeframes. Table II of the CCEA describes the milestones and target timeframes for DEQ enforcement actions. Within 45 days from the date the violation is detected or reported, the MDEQ must send a Violation Letter for significant violations or a Warning Letter for minor violations. On day 90, an enforcement request for SVs is submitted. From day 90 to day 210, the enforcement action is drafted and a penalty is calculated. Formal enforcement actions are issued within 210 days of discovery (versus the 150-day national standard). Final settlements are required to be completed within 330 days from the date of inspection/violation discovery, versus the 300-day national standard.

For OTIS Data Metric 6—Timely and Appropriate Enforcement Actions: Although data is not yet provided for Metric 6a, based on the state's prior work, review of state files, and review of RCRAINFO for high priority violators, the region understands that the state takes

timely and appropriate action when a SNC is reported. Please see the discussion in Element 4 above regarding compliance requirements, compliance schedules, and return-to-compliance followup activities as a component of formal and informal enforcement actions.

*Information sources utilized for this criterion:* 1, 2, 7, 16

*Recommendations and Actions:* None

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

*Findings:*

There were no penalties collected by MDEQ in FY 2006. Two formal enforcement actions, with assessed penalty, were issued. One facility declared bankruptcy, preventing penalty collection; the other facility, which had gone out of business, demonstrated an inability-to-pay.

The region has a concern with the state's multi-day gravity penalty calculation procedure. The state uses its "discretion" to terminate the extent of the multi-day violation at 10 days, in spite of the actual documented days of violation. For example, for one of the assessed penalties, there were 290 days of documented violation; but, the state used 10 days in computation of the gravity component.

*Information sources utilized for this criterion:* 1, 2, 4, 7, 8, 18, 19, 20, 21

*Recommendations and Actions:*

The state and EPA should further review the state's multi-day gravity penalty computation and adjustment procedures. The state should change its process for calculation of the gravity component on a per day basis and should eliminate the artificial termination of "days of violation." EPA will evaluate the state's penalty procedures on a periodic basis that is no less than semi-annually.

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

*Findings:*

As reflected in the OTIS Report Metric 8, the state is below half the national average for formal actions with a penalty, metric 8a. The state also falls below the national average for the percent of final formal actions with penalty, achieving 0 %, with the national average being 81.7%. Two enforcement actions were taken in FY 2006 for which penalties were assessed. One company was out of business and demonstrated an inability to pay; the second company declared bankruptcy. These circumstances cannot be captured in a purely data metric review of

the state's performance.

Although the assessed penalties contained both an economic benefit and gravity component, the gravity component for multi-day appears to have been arbitrarily truncated. This is an area of concern and further discussions regarding penalty calculation procedures will be held.

Reviewed enforcement responses were appropriate. Gravity and economic benefit calculations are included in penalty assessments, but further discussion of procedures to determine the multi-day component of the gravity is necessary.

*Information sources utilized for this criterion:* 1, 2, 7, 8, 18, 19, 20

*Recommendations and Actions:*

The state and EPA need to further discuss and review the penalty computation procedures for the multi-day component of the gravity portion of the penalty to identify any necessary changes and an agreed upon timeframe for implementation, within the confines of the state's administrative and judicial procedures.

### ***Section 3: Review of Commitments in Annual Agreements***

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

*Findings:*

Copies of inspection reports and enforcement actions were provided in a timely manner. Annual inspection work plan commitments were all met. All of the LQG, TSDF, transporter, and used oil inspection/enforcement accomplishments were reported to RCRAInfo.

*Information sources utilized for this criterion:* 2, 3

*Recommendations and Actions:* None

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

**10. Degree to which the Minimum Data Requirements (Nationally Required Data Elements for the RCRA program) are timely.**

*Findings:*

As agreed in the Memorandum of Agreement between the State of Montana and the

Region, the DEQ maintains timely, accurate, and complete information in the national electronic database. The state ensures entry of its data pursuant to the most recent Region 8 Program Performance Standards and Oversight Procedures.

*Information sources utilized for this criterion:* 1, 2, 7, 10

*Recommendations and Actions:* None

### **11. Degree to which the Minimum Data Requirements (Nationally Required Data Elements for the RCRA program) are accurate.**

*Findings:*

As agreed in the Memorandum of Agreement between the State of Montana and the Region, the Department is maintaining timely, accurate, and complete information in the national database. EPA's review of files, in conjunction with OTIS and RCRA data pulls, verified the accuracy of the state's data entry.

Metric 11a shows that the state has only four sites in violation for greater than 3 years. EPA has verified that these entries derived from EPA inspections and will take appropriate follow-up action to close these outstanding violations.

*Information sources utilized for this criterion:* 1, 2, 7, 10

*Recommendations and Actions:*

EPA will ensure that the four facilities in violation for greater than three years are appropriately evaluated and returned to compliance. EPA will strive to ensure inspection close-out includes timely entry of a return-to-compliance designation for those facilities for which we have inspection lead.

### **12. Degree to which the Minimum Data Requirements (Nationally Required Data Elements for the RCRA program) are complete.**

*Findings:*

The RCRAInfo database was maintained for all required data elements. All of the LQG, TSD, transporter and used oil facility information for both inspections and enforcement actions are being entered. Based on file reviews and review of data from RCRAInfo, the data elements are complete. As noted previously, refinement of the LQG universe will be necessary.

*Information sources utilized for this criterion:* 1, 2

*Recommendations and Actions:* None