



Ref: 8ENF-PJ

L. David Glatt, Chief
North Dakota Department of Health
918 E. Divide Avenue
Bismarck, ND 58501-1947

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

Dear Mr. Glatt:

Enclosed you will find the final SRF report summarizing evaluation of North Dakota's Clean Air Act Stationary Source, Resource Conservation and Recovery Act Subtitle C, and National Pollutant Discharge Elimination System enforcement programs for federal FY 2006. On April 27, 2007, we forwarded a draft of the report to you for review and comments on the report were received in a letter from you dated May 25, 2007. Those comments have been addressed in the final report, as appropriate, and a response to comments is enclosed. Some changes to the final draft report were also made in response to feedback received from EPA Headquarters (which reviewed all draft SRF reports) and the enclosed response to comments also summarizes changes made to the report as a result of those comments. We look forward to working with the North Dakota Department of Health in utilizing the results of this evaluation to advance our shared objective of protection of public health and the environment in North Dakota.

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: Teri Lunde, NDDOH
Dennis Fewless, NDDOH
Terry O'Clair, NDDOH
Scott Radig, NDDOH

bcc (w/o encl): Art Palomares
Diane Sipe
Martin Hestmark
Sharon Kercher
Cindy Reynolds

U.S. EPA Region 8 Review of North Dakota Department of Health
Compliance and Enforcement Programs
Federal Fiscal Year 2006

September 24, 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 North Dakota Department of Health (NDDH) 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 State Review Framework (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 program 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 NDDH'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 NDDH'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. 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. Seventeen CAA files were reviewed, 15 RCRA files were reviewed, and 20 NPDES files were reviewed. For each program, representative files were randomly selected. The file reviews occurred both on-site (at NDDH 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 has not submitted any 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 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 review of the CWA NPDES enforcement program identified some significant deficiencies in key areas. The following is a summary of key findings of the review for each review area.

Inspections

Inspection commitments identified for NPDES majors, minors, storm water, CAFO and Industrial User (IU) were met or exceeded. The only area where inspections were below projections was the number of PCI inspections and/or Audits (6 completed, 7 was the commitment). However, NDDH noted in its FY2006 inspection plan that its commitment to complete 7 pretreatment audits and/or PCIs was contingent on the State taking over the Pretreatment program which occurred after the beginning of the inspection year.

The State's NPDES major inspection coverage is consistent with regional expectations and exceeds the national average. NDDH completed 40 of the 41 reports in a timely manner, which is 98% of the reports where an issuance date could be established.

North Dakota inspected 100% of the CAA sources that it was required to by the CMS submitted to EPA. The CAA data metric report did not always reflect the State's activities accurately. For example, the data pull incorrectly showed that North Dakota had a 71.0% inspection rate. After a review of the data pull and the AIRs database it was determined the incorrect percentage was a result of data not being correctly captured in the OTIS system.

NDDH met and in some cases exceeded its RCRA inspection commitments for FY2006. Inspection reports received were timely and of good quality, clear, comprehensive and concise, and afforded appropriate compliance determinations.

Enforcement

In the four NPDES major files reviewed, violations which were identified during the inspections did not meet the definition of SNC and were appropriately classified. There were no formal enforcement actions issued by NDDH in FY06. It was determined from the storm water file review that NDDH did not escalate construction sites that are in violation to formal enforcement. Some of the issues identified are reflective of the difference in philosophies on enforcement between NDDH and EPA.

The state only had one CAA action that was able to be reviewed during the FY 06 review year. This action did not rise to the level of a HPV. The State proposed a significant penalty to deter non-compliance.

NDDH did a good job of following up on all the informal enforcement actions issued and compliance was achieved. North Dakota did not identify any violators to report as SNC and the files that were reviewed and reports from RCRAInfo support that finding.

Annual Agreements

For NPDES, the CAFO Mid-year and the Stormwater Permit Tracking (Quarterly) were the only agreements not delivered on time. The reports not received accounted for 2 of 8 PPA deliverables. For CAA and RCRA, the State met all of its annual commitments to EPA.

Data Management

The State generally does a good job of maintaining the NPDES Permit Compliance System (PCS) and RCRAInfo databases in a timely, accurate, and complete manner.

The CAA data metrics were found to contain errors that did not give the State the credit it deserved. At the end of FY 2006, the State implemented a new data system that will feed the

EPA data bases. As this system is updated by the State, and the State and EPA discover and correct existing errors in the data base, future data metric pulls will reflect accurate data.

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) for the CAA and RCRA programs. The next SRF review for the NPDES program is planned for FY 2009 (for the FY 2008 review period) as some significant deficiencies were found in key areas. 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 North Dakota Department of Health National Pollutant Elimination System (NDPDES) Program

EPA Contact: Aaron Urdiales, Environmental Scientist Phone: (303) 312-6844
U.S. EPA Region VIII Office of Enforcement, Compliance and
Environmental Justice
NPDES Technical Unit

State Contact: Dennis Fewless, Director Phone: (701) 328-5215
Gary Bracht, Manager Phone: (701) 328-5227

Introduction:

The NDDH NPDES group currently has 8 employees, and one vacant position. Of the 8 employees, 2.5-3 full time employees (FTEs) are committed to storm water, 3 FTEs for CAFOs, and the remainder (2.5-3 FTE) complete core NPDES work. All 8 NPDES employees are responsible for inspections, enforcement and permitting. In addition to the 8 employees from NPDES, there are 4 inspectors (from Municipal Facilities) that only do inspections of municipal facilities.

The NPDES evaluation involved the review of 20 permitted files consisting of majors, minors, CAFO, storm water construction and storm water industrial files. All permitted files reviewed contained inspection reports within the review period. The evaluation also included the review of an additional EPA storm water file review that took place September 12-13, 2005 at NDDH's office. The report from this file review was finalized in December of 2005. In addition, Region 8 utilized the SRF data metric report (dated February 8, 2007), pulls from PCS and ICIS, the Performance Partnership Agreement (PPA) for 2006, the 2006 End of Year Report, the 2006 Inspection Plan and various NPDES program documents to complete the review.

Randomly selected FY06 enforcement files (Oct. 1, 2005 – Sept. 30, 2006) and inspection files (July 1, 2005 – Sept. 30, 2006) were reviewed by Region 8 during September 27 – 29, 2006. NDDH staff members assisting Region 8 during this review were: Brady Espe, Karl Rockeman, Randy Kowalski, Jeff Roerick, Curtis Steier and Dallas Grossman. The following is a break down of the permitted files reviewed during the North Dakota SRF onsite file review:

- 4 Major NDPDES facilities;
- 3 Minor NDPDES facilities;
- 5 CAFO facilities;
- 5 Storm water Construction facilities;
- 3 Storm water Industrial facilities

The files reviewed on 9/27-30/06 were:

Facility	Type	Permit #
Wahpeton, City of	Major	ND0020320
Cargill Corn Milling	Major	ND0026000
Grand Forks, City of	Major	ND0022870
Minn Dak Farmers Coop.	Major	ND0024368
Newburg, City of	Minor	NDG321261
Edmore, City of	Minor	NDG322357
Berthoud, City of	Minor	NDG321938
Northstar Materials, Inc.	SWC	NDR10-1197
Dakota Sand & Gravel Co.	SWC	NDR10-1112
Boulder Ridge Sub-Division - First Addition	SWC	NDR10-1077
Meadowlark Hills	SWC	NDR10-0486
Mertz Builders, Inc.	SWC	NDR10-1358
Gutzmer Sand & Gravel	SWI	NDR32-0054
Minnkota Power Coop.	SWI	NDR05-0012
Sheyenne pit	SWI	NDR32-0036
Chase Dewitz Feedlot	CAFO	Approval to operate
5-STAR DAIRY	CAFO	Approval to operate
Mel Bosserman	CAFO	Approval to operate
Oak Valley Growers	CAFO	Approval to operate
Dakota Prairie Beef	CAFO	Approval to operate

Section I. Review Area: State Inspection Implementation

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

Findings:

NDDH met most of its inspection commitments for the NPDES program. In the FY06 PPA and Inspection Plan, NDDH agreed to inspect all 26 major facilities, twenty percent of the minor permitted facilities (75 of 375 facilities), 65 storm water sites, conduct 7 pretreatment audits and/or compliance inspections, and to inspect all high priority CAFOs (50 active/operating permitted facilities).

NDDH completed 41 inspections at 26 major facilities, 158 of 375 minor facilities, 92 storm water sites, and 76 AFO/CAFO inspections at 50 high priority CAFO sites. In addition, NDDH completed 5 PCI inspections and 1 pretreatment audit, as well as 7 Industrial User inspections. NDDH noted in its FY06 Inspection Plan that its commitment to complete 7 pretreatment audits and/or PCIs was contingent on the State taking over the Pretreatment program. NDDH was delegated the Pretreatment program on September 9, 2005, approximately 2 months after the start of the evaluated inspection year (7/1/05-9/30/06). Federal, regional, and state priority areas that pertain to North Dakota include AFOs, SSOs and storm water.

	PPA Commitment	# Completed	% Completed
Majors	26	26	>100
Minors	75	158	>100
PCI & Ptmt. Audit	7	6	86
IU	N/A	7	>100
CAFO	50	76	>100
SW	65	92	>100
CSO	None	N/A	N/A
SSO	20% of reported	0 (specific inspections)	N/A
Biosolids	Not delegated during period	N/A	N/A

Data Metrics Discussion

The data metrics evaluation period is not consistent with the FY06 inspection year period used to evaluate the state program. The FY06 inspection year is from 7/1/2005 – 9/30/2006. The evaluation period used for the data metrics pull is 10/1/2005 – 9/30/2006. NDDH had approximately 3 more months of inspections during the time frame from 7/1/05 to 8/30/05 that were not accounted for in the data metrics pull.

The data metrics listed NDDH as completing 25 of 26 Major inspections, which was 96.2% of the Majors universe. The national average for Majors coverage is listed as 59.2%. NDDH is above the national average however the universe of Majors in North Dakota is minimal compared to other states in the nation. The City of Mandan is the Major facility that is listed as not completed by the data metrics. North Dakota completed an inspection at the City of Mandan on September 22, 2006. Based on this, NDDH completed 100% of its Major inspections.

NDDH is listed in the data metrics as completing 11 minor inspections of a universe of 107 which equates to 10.2% coverage. The 107 minor facilities listed in the data metrics reflects the number of minor individual permits in North Dakota. This number includes EPA issued permits on tribal land (see Element #12). NDDH has 103 individual minor permits, with another 282 certifications under general permits for the core NPDES program (this number does not include storm water general permit coverage). The

number of inspections provided by NDDH in the FY06 “End of Year report” reflects the number of inspections at minor individual and general permits for the core program, which was 158 inspections. Most of these inspections are not tracked in PCS. Based on the universe of 385 (282 general and 103 minor individual), the inspection coverage equates to 41% coverage of minors. No national average was given for this data metric.

The “Inspection Coverage NPDES Other (not 1a or 1b)” portion of the data metrics is also inaccurate for North Dakota. The data metrics lists NDDH as only having a universe of 83 permitted facilities and only completing inspection coverage of 2.4% of those facilities. The universe of facilities listed by the data metrics includes many inactive permits, for example “Service Oil” which inactivated its permit coverage in June of 2004. The universe of facilities in the data metrics consists primarily of facilities that EPA conducted joint/oversight inspections at in North Dakota and entered into PCS. According to the North Dakota “End of Year” report, NDDH has 1,344 facilities covered under general storm water construction and industrial permits. NDDH also has 50 CAFO facilities currently with “Approval to Operate” (APO). The main reason for the inaccurate numbers is that NDDH does not put storm water and CAFO inspections into PCS, nor is this considered a requirement. Therefore, NDDH’s universe for storm water facilities and CAFOs is not established in PCS. In addition, NDDH does not issue permits to CAFOs within the state. NDDH has been issuing “Approvals to Operate” to CAFO facilities. NDDH provides EPA Region 8 with inspection and universe figures for storm water facilities and CAFOs along with its end of year report.

Citation of information reviewed for this criteria:

- a. ND FY06 PPA
- b. ND FY06 Inspection Plan
- c. ND End of year Report
- d. PCS retrievals for period 7/1/05 to 9/30/06
- e. Data Metrics

Recommendations if corrective action is needed:

Please see Element #12 for recommendation on minor facility data entry to PCS.

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

Findings:

No oversight inspections were performed during the FY06 evaluation period. EPA did perform 8 joint inspections with the state, 6 storm water and 2 CAFO inspections. EPA only had an opportunity to provide comments on the 6 storm water inspection reports before they were sent to the facilities. The joint inspections were not evaluated for this section. Only inspection reports reviewed during file reviews were

evaluated. The inspection reports evaluated were for majors, minors, CAFO and storm water industrial and construction.

During the on-site file reviews, inspection reports were reviewed to determine whether observations were clearly recorded to document inspection findings, including whether an accurate description of what was observed to identify violations was recorded. While specific issues were not identified in most of the reports reviewed, some of the reports did not contain sufficient details on possible violations.

Several of the inspections performed at minor and major facilities had samples taken during the inspection. The follow-up letter sent from NDDH informing the facility of exceedences identified did not outline whether the exceedence was a violation of its permit and/or whether the facility was discharging at the time of sampling. The notification letter to the facility did not request a response from the facility outlining how the exceedences will be corrected and/or possible reasons for the exceedences. In addition, based on information reviewed in the inspection file, it is not clear whether NDDH does any follow up with facilities that have exceedences during NDDH sampling events.

NDDH inspectors are knowledgeable about the storm water program and provide good information to the facilities concerning utilization of various BMPs to help reduce offsite sediment loading. Furthermore, the storm water inspection reports have been enhanced since the initial September 2005 storm water file review to include more detailed descriptions of site conditions. That being said, there are still areas of concern with the storm water inspection reports and proper identification of violations. The areas of concern are as follow:

- Inspection reports do not adequately document if site conditions are in compliance with the permit, or if there are violations at the site. In order to support enforcement proceedings, violations need to be adequately documented on the reports;
- In some inspections, NDDH did not address all violations marked on the inspection checklist in the follow-up inspection letter;
- Inspectors do not routinely review all records associated with permit coverage. SWPPPs are not consistently reviewed to determine if they are updated and inspection reports often times are not being reviewed and/or requested. It is unclear in several reports if inspection records even exist. In some cases, NDDH did not list inspection records not being completed as a violation in the inspection report;
- Storm water checklists do not contain all aspects of permit compliance making it unclear whether all violations are documented. For example, it is unclear what BMPs have been implemented on site, because there is not a comprehensive description of the BMPs implemented and where, or if all the BMPs are adequate. Often times the inspectors notes describe in detail compliance issues observed onsite, but these written notes are not always consistent to what is recorded on the checklist. Additionally, there is no place

for SWPPP review, and only a few inspection checklists documented a review of the site's self inspection reports. As a result of these inspection report deficiencies and incomplete documentation, inspection reports provide insufficient evidence of a violation and would not be considered appropriate evidence in an enforcement proceeding.

These concerns were also outlined in the December 2005, "Storm Water Enforcement File Review Report" that was provided to NDDH after the September 12-13, 2005 file review.

Photo documentation should be collected, printed out and kept as a part of the official inspection file for all types of inspections. Inspection files reviewed contained minimal photo documentation. Details regarding the results of the inspection file reviews have been sent to the State.

The State has responded that they are continuing to revise their inspection checklists and reporting procedures, as well as drafting an enforcement response/inspection guide outlining follow-up procedures on deficiencies and/or violations.

Citation of information reviewed for this criteria:

Inspection reports reviewed during file review on September 27-29, 2006 and the storm water file review performed on September 12 & 13, 2005 at the North Dakota Department of Health Office in Bismarck North Dakota and final report issued on December 2, 2005.

Recommendations if corrective action is needed:

NDDH should review the recommendations provided in the storm water file review report and adjust its inspection procedures as necessary. Inspectors should include accurate descriptions of what was observed to sufficiently identify potential violations. Follow up on potential or documented violations should be routinely completed and should follow the timeline established in the State's storm water EMS. NDDH will include in the PPA a schedule for addressing this deficiency. Based on discussions between the EPA Regional Administrator and the NDDH Director, EPA will conduct more inspections and conduct enforcement where appropriate.

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

Findings:

Written inspection reports reviewed by EPA were used to evaluate this measure. A total of forty-nine (49) inspection reports were reviewed. Forty (40) of these inspection reports were completed within 45 days of the inspection or the receipt of

sampling results. One (1) report was issued after 45 days and the date of issuance could not be established for eight (8) reports. NDDH completed 40 of the 41 reports in a timely manner, which is 98% of the reports where an issuance date could be established. A date could not be established for 8 reports because it appeared that the cover letter that was sent with the inspection report was not maintained in the inspection file.

Citation of information reviewed for this criteria:

Inspection File Review

Recommendations if corrective action is needed:

NDDH must maintain all inspection records including cover letters in the inspection file. EPA will periodically check NDDH files to ensure that this process is occurring.

Section II. Review Area: 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 EPA national databases in a timely manner.**

Findings:

This element determines if significant noncompliance (SNC), as defined in 40 C.F.R. §§ 123.45(a)(2)(ii) and (iii), identified during inspections is accurately and timely reported to PCS. 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 in PCS. In the four major files reviewed, violations which were identified during the inspections did not meet the definition of SNC. Violations identified during the 49 inspections at minor, storm water and CAFO sites were not required to be entered into PCS.

EPA will keep NDDH informed of any changes to the SNC definitions for the wet weather priority areas. As these definitions are finalized, the requirement that SNC be tracked in PCS for these facilities will be implemented in a phased approach. EPA will work with NDDH on any necessary changes to the enforcement agreement once the wet weather SNC definitions are finalized.

Citation of information reviewed for this criteria:

Enforcement and Inspection files reviewed during file review on September 27-29, 2006. (listed above).

Inspection reports reviewed during file review on September 27-29, 2006 and the storm water file review performed on September 12 & 13, 2005 at the North Dakota Department of Health Office in Bismarck North Dakota and final report issued on December 2, 2005.

Recommendations if corrective action is needed: None

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

Findings:

There were no formal enforcement actions (*i.e.* NOVs/AOs, executed settlement agreements, and penalty actions) issued by NDDH in FY06. NDDH is the only Region 8 state which did not issue any enforcement actions during the review period. NDDH and EPA have differing philosophies regarding formal enforcement. For example, with storm water violations, NDDH does not believe that the identification of a deficiency during an inspection necessarily constitute a violation. NDDH believe that the owner/operator should be allowed to correct deficiencies, dependant upon their severity and environmental impact, within a reasonable time without enforcement occurring. EPA maintains that deficiencies identified during inspections, which are violations of the regulations, are violations at the time that they are identified. States and EPA must then use their respective enforcement response guides to determine the appropriate enforcement follow up.

Citation of information reviewed for this criteria: N/A

Recommendations if corrective action is needed: N/A

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

Findings:

There were no formal enforcement actions issued by NDDH in FY06. Therefore, EPA could not evaluate the States enforcement actions and policy. However, based on the information reviewed in the storm water files for construction sites, EPA believes that the lack of formal enforcement actions against sites in non-compliance is inadequate. It was determined from the storm water file review that NDDH does not escalate construction sites that are in violation to formal enforcement. Boulder Ridge (large builder) and Mertz builders (small builder) are examples of the lack of formal enforcement against facilities

continually in non-compliance.

Boulder Ridge sub-division was permitted as a large construction site and is approximately 40 acres had 4 inspections completed at the construction site from August of 2005 to September of 2006.

- The first inspection (8/24/05) stated that a SWPPP was available at the office but did not appear to have been reviewed. No inspection records were being kept and there was evidence of soil erosion onsite. The construction site was noted as being adjacent to wetlands.
- The second inspection (3/22/06) stated that the facility needed to update its SWPPP and set a required date of 4/19/06 for the company to submit the updated plan to NDDH. The report cited again that no inspection reports had been kept, streets needed to be cleaned of all deposits, inlet protection needed to be installed, concrete washout needed to be bermed and marked, seed or temporary mulch added to vacant lots where the top soil had been removed, sediment control devices (silt fence) needed to be added to lots being actively worked on with no vegetation in place and that track out pads need to be utilized.
- The third inspection (5/4/06) NDDH was accompanied by the City of Bismarck. The report included a “Letter of Violation” (LOV), which is considered informal enforcement in ND, to the facility for not submitting an updated SWPPP to the department as required in the 3/22/06 inspection report. The inspectors noted that wind blown dirt was observed, small amounts of concrete washout in the streets and gutters, earth berms being utilized as BMPs were being bypassed, the rock dam was full of silt and needed cleaned and again that no records of inspections were being kept.
- The facility responded on 5/19/06 with a very generic SWPPP consisting of one page with basically 4 items outlined for onsite sediment control, such as, use silt fence on un-stabilized lots. The response also included inspection records. The records were only from 3/06 to 5/06, approximately 6 inspections.
- The fourth inspection (9/22/06) stated that not all the inlets were protected, the detention pond was full, a discharge was occurring during the inspection and the storm water was reaching the initial waterway. A sample was taken of the discharge, as well as photos. The inspection report had not yet been sent to the facility at the time of the file review.

Since NDDH does not have a finalized Storm Water Enforcement Management System, Best Professional Judgment (BPJ) should be used to determine appropriate follow up, based on other Region 8 states and EPA’s BPJ. Formal enforcement should have been taken within 90 days of the initial violation findings. It took the facility approximately 9 months to send inspection records to the department. The inspection records that were submitted did not cover the life of the permit. Inadequate BMPs were noted on every report and numerous opportunities were given to the facility to come into compliance. NDDH did a good job of continually inspecting the construction site; however, the facility still had not come into compliance after a year of inspections.

Mertz Builders is permitted as a small builder in North Dakota. NDDH performed 2 inspections in May of 2006 at one of the Mertz Builders construction sites.

- The first inspection (5/11/06) stated that the builder did not have a SWPPP plan, no inspection records existed and no BMPs were utilized onsite. The inspection report did not identify these issues as violations, only recommendations were provided on what needed to be done.
- The second inspection (5/25/06) had a LOV included with its report to the builder for the findings in both inspections. This report stated that the site still did not have BMPs in place. NDDH also requested that the annual location record and SWPPP be sent to the department. The LOV gave the builder until 6/7/06 to install BMPs at the site and to provide the annual location record and SWPPP.

Based on the information gathered during the file review performed on 9/28/06, there is no evidence in the file that NDDH ever followed up on the LOV to the builder. There was no copy of the SWPPP or annual location record in the files and the department did not perform a follow-up inspection to ensure that BMPs had been installed onsite as required in the LOV. BPJ should have been used in this situation and formal enforcement should have been issued within 90 days of the initial violations. NDDH should also perform follow-up inspections at facilities where informal enforcement has been taken.

An appropriate escalation policy for effluent violations which do not reach SNC status and un-permitted discharges should be included in the EMS. NDDH should update its EMS to address newer areas of the NPDES program such as storm water and CAFOs once a national EMS is available for these areas. NDDH should work on updating its EMS to include wet weather areas, enforcement time frames should be developed for those areas added to the EMS.

Citation of information reviewed for this criteria:

- NDDH Enforcement Management System (EMS)
- EPA Region 8 EMS
- The Enforcement Management System, National Pollutant Discharge Elimination System (Clean Water Act), 1989
- Enforcement and Inspection files reviewed during file review on September 27-29, 2006. (listed above).

Recommendations if corrective action is needed:

Violations identified during inspections and through other compliance review activities should be escalated per NDDH's EMS and best professional judgement. NDDH should utilize formal enforcement in its storm water program in order to bring facilities into compliance in a timely manner, please see the discussion of differing enforcement philosophies in Element #5. NDDH must establish a system for identifying repeat violators and following up appropriately. NDDH should finalize their storm water

EMS within 6 months of the date that the national storm water EMS is available. Due to the fact that the State Review Framework review 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 with EPA.

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

Findings:

North Dakota is the only state in Region 8 where no formal enforcement actions were issued in FY06. EPA could not evaluate the State's penalties. EPA will expect that any penalty actions taken by NDDH in the future will include appropriate gravity and economic benefit calculations.

Citation of information reviewed for this criteria: N/A

Recommendations if corrective action is needed: None

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

There were no formal enforcement actions issued by NDDH in FY06. EPA could not evaluate the States penalties. EPA will expect that any penalty actions taken by NDDH in the future will collect appropriate gravity and economic benefit of noncompliance.

Citation of information reviewed for this criteria: N/A

Recommendations if corrective action is needed: N/A

Section III. Review Area: 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.

The CAFO Mid-year and the Stormwater Permit Tracking (Quarterly) were the only agreements not delivered on time. These reports accounted for 2 of 8 PPA deliverables as shown below, therefore, 2 of 8 deliverables were not provided as required in the PPA.

The State has responded that they are currently in the process of upgrading their database system which is used to track stormwater facilities and CAFOs. The State also

stated that they will work to resolve the reporting issue and make the necessary database changes to increase functionality and improve the overall reporting.

	PPA Deliverable	Date Due	Submitted	On Time	Complete
1.	CAFO Mid-year, end of year.	03/31/06, 12/31/06	No, Yes	No, Yes	No, Yes
2.	Reporting of Inspections, mid year & end of year	03/31/06, 12/31/06	Yes, Yes	Yes, Yes	Yes, Yes
3.	Non-Major Facilities Non-compliance Report	2/28/06	Yes	Yes	Yes
4.	Inspection Plan	7/01/06	Yes	Yes	Yes
5.	CAFO Inventory	12/31/2006	Yes	Yes	Yes
6.	End of year SSO & CSO Report	12/31/2006	Yes	Yes	Yes
7.	Stormwater Permit End of Year	12/31/2006	Yes	Yes	Yes
8.	Stormwater Permit Tracking (Quarterly)	01/15/06, 04/12/06, 07/15/06, 10/15/06	No	No	No

Citation of information reviewed for this criteria:

PPA and PPA deliverables.

Recommendations if corrective action is needed:

NDDH should work to ensure all PPA deliverables are submitted on time. Discussion of upcoming PPA deliverables will be conducted between EPA and Division during quarterly calls in FY08.

Section IV. Review Area: Database Integrity

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

Findings:

North Dakota uses multiple databases for managing their NPDES program. PANDA (Permitting Assistant for North Dakota in Access) Database is used for tracking inspections and DMRs and uploaded to PCS. Major NPDES information is entered directly in PCS. North Dakota has separate access databases for managing Storm Water and CAFOs.

The timeliness of data entry was evaluated (File Review Metric B) during the file reviews by noting indications of data entry (*i.e.* date and initials) in the files and comparing timeliness with National PCS data quality guidance. EPA's Office of Wastewater Enforcement and Compliance (OWEC) and Office of Water (OW) 1992 Permit Compliance System (PCS) Quality Assurance Guidance Manual indicates that Measurement/Violation Data (DMRs) are to be date stamped when received and entered in PCS within 10 working days of receipt of the DMR. The Manual also indicates that inspection data are to be entered within 10 working days of receipt of the inspection report.

Fifteen of the 38 DMRs reviewed had dates of data entry (and 33 were initialed) and, of those, most (11) were entered in a timely manner. For the remaining files reviewed, there were no indications of when and by whom data was entered into PCS and so the reviewer was unable to determine if the State is meeting the standard for timeliness. The State should initial and date both DMRs and inspection reports so that the timeliness of data entry can be evaluated.

Citation of information reviewed for this criteria:

SRF OTIS Data Metric Report dated February 8, 2007.

Recommendations if corrective action is needed: EPA will monitor progress towards noting indications of data entry (*i.e.* date and initials).

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

Findings:

North Dakota did not issue any enforcement actions during FY06. Therefore there were no violations linked to enforcement actions and no enforcement actions were in PCS (data metric 11.A). File Review Metric 11.B. shows that, for the Major facility files reviewed, data were accurately reflected in PCS. Inspections done at five unpermitted CAFO facilities and eight storm water facilities are not tracked in PCS with the exception of one Industrial User storm water inspection.

Citation of information reviewed for this criteria:

SRF OTIS Data Metric Report dated February 8, 2007.

Recommendations if corrective action is needed: None

12. The degree to which the Minimum Data Requirements are complete.

Findings:

The State has been asked to provide feedback regarding the completeness of the data reflected in the metrics for this review element. After reviewing the two measures North Dakota reported the following discrepancies:

(1) Some of EPA's direct implementation (tribal) facilities were showing up as North Dakota facilities. 12(a) Active Facility Universe: NPDES Non-Major Individual Permits should be 103 not 107. The following facilities are listed in the 107 and should not be included. These are tribal facilities covered by EPA not North Dakota.

ND0023647 - Belcourt Public Utilities (E)
ND0030821 - Four Bears/Dragswolf (E)
ND0030864 – White Shield, Community of WT; and
ND0030970 – Fort Yates MRI WTP

(2) 12(c) Compliance Monitoring: Facilities inspected should be 181 not 124. Compliance Monitoring: Number of Inspections should be 212 not 132. North Dakota currently has taken over the Pretreatment Program from EPA Region 8. Any Pretreatment inspections are included in the 212. The timeframe used to determine the counts for the number of inspections was 07/01/2005 through 09/30/2006. It appears that the spreadsheet used the timeframe 07/01/2005 through 06/30/2006 to determine the inspection counts.

Data Metric 12b indicates that the state exceeds both the national average and the national goal for correctly coded limits at major facilities. Data Metric 12b also indicates that the state has significantly exceeded the national average and the national goal for DMR entry at major facilities.

Citation of information reviewed for this criteria:

SRF OTIS Data Metric Report dated February 8, 2007.

Recommendations if corrective action is needed:

NDDH should enter inspection information into PCS for individual minor permits.

**EPA Review of the North Dakota Department of Health
Clean Air Act (CAA) Stationary Sources Compliance and Enforcement Program**

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Introduction:

The State Review Framework (SRF) evaluation for North Dakota's implementation of the compliance and enforcement provisions of the Clean Air Act (CAA) consisted of a data metrics review and off-site reviews of the States Department of Health's (ND or State) air compliance and enforcement program files for randomly selected CAA sources. The SRF data metric report (dated February 9, 2007) and preliminary data analysis were forwarded to the State and discussed.

The SRF Review was conducted by Joshua Rickard of EPA's Region 8 Technical Enforcement Program. The State and EPA began discussing the SRF at the start of the fiscal year and had frequent conversations throughout the year so that both parties would have an understanding of the results and the process before the State saw the first draft report. File reviews were limit to the Regional Office due to the cost of travel to North Dakota. North Dakota regularly sends copies of its inspection reports to the Region and these were used in the SRF review.

The State Review Framework File Selection Protocol suggests that the Region select at least 15 files from FY06. Region 8 selected 17 files to be evaluated for this review. North Dakota has a small universe of facilities with a low HPV rate; therefore, Region 8 selected a variety of sources that covered different inspections and inspectors and industry types (Title V, synthetic minor (SM) and minor sources). North Dakota sends all of its inspection reports to EPA via postal and/or electronic mail and the file review was accomplished in the Regional office. The files selected for review were:

Facility Name	ID	Size
Alchem	38-099-00003	Synthetic Minor

Continental Resources	38-011-00010	Title V
Hawkeye CS	38-053-00004	Title V
Wil Rich, LLC.	38-077-00104	Title V
St. Alexius Medical Center	38-015-00004	Synthetic Minor
American Crystal Sugar	38-097-00019	Title V
Tesoro Petroleum Company	38-059-00003	Title V
ND National Guard Central Heating Plant	38-071-00025	Synthetic Minor
ADM Processing	38-049-00005	Title V
Minn-dak Farmers	38-077-00026	Title V
Siluran CS	38-105-00095	Minor
Masonite Prime board	38-077-00103	Minor
Cavendish Farms	38-093-00033	Synthetic Minor
Nordic Fiberglass	38-071-00027	Title V
GPK Products	38-017-00101	Synthetic Minor
Chs, Inc.	38-101-00041	Synthetic Minor

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:

It should be noted that North Dakota completed its FY05 Compliance Monitoring Strategy (CMS) plan and is on track to meet its FY07 CMS commitments to EPA.

Inspections at Major sources: The State CMS that was submitted to EPA specified the frequency for major sources as annual for facilities with actual emissions greater than 100 tpy. Other major sources are on 2-year inspection cycle and, where deemed appropriate, a 5-year

cycle. The nation goal of the EPA and the State is to achieve a 100% inspection rate of majors on a 2-year cycle. The data metric pull shows that the State inspected 71.0% of major sources; below the national average of 81.1%. In discussions with the state it was discovered that certain facilities should not have been counted as not inspected in this data metric. In the CMS agreement, EPA allowed the State to inspect certain groups of major sources at a frequency of every 5 years. Of the 20 facilities listed as not inspected, 12 are remotely located natural gas compressor stations; 6 are portable asphalt plants and are incorrectly identified as majors; and 2 are landfills. All of these facilities are correctly labeled as major sources with an inspection frequency of every 5 years. The annual certifications and compliance status is reviewed by North Dakota annually between onsite inspection visits. The system also shows that these sources have been inspected in the 5 year time frame; however, this is not captured in the data metrics. Comparing the CMS submitted to EPA, the inspections conducted and the Data Metrics, North Dakota is meeting 100% of the required inspections for FY06.

Five sources had the incorrect designation in the data pull as mega sources. This issue had been corrected and the sources are identified as majors in the database.

The State and EPA will continue to work together to make sure that the data metric is correctly identifying the State's level of FCE major inspection rate.

Inspections at Synthetic Minor (80 percent of major source level)–(SM-80): The national goal for inspection rate for SM-80's is 100%. Even though the State did not meet this goal with a rate 85.7%, they are comparable to the national average of 84.9%. It is also possible that the State has not correctly identified SM-80's correctly in AFS. This is mostly due to the fact that some SM-80's may be labeled as SM's in the database. It should be noted that the State inspects SM sources on a 2 or 5-year inspection cycle. Because SM-80's are a subset of this universe, the State would be inspecting SM -80's at the 5 year rate that EPA feels appropriate. The State and EPA are working together to figure out how to best track this universe for reporting purposes and practical implementation. Both EPA and the State will strive to update the database to reflect the State's work inspecting its SM-80 universe.

Title V Annual Compliance Certifications received and reviewed: EPA's CMS Policy requires that all self-certifications due and received in FY06 are to be reviewed. The State reviewed 100% of the compliance certifications, meeting the national goal of 100%. In contrast, the national average was 80.8%.

Sources with Unknown Compliance Status Designations: At the time of the pull, the data metrics showed that 5 sources had unknown compliance status, after further review and looking at the updated data base, the number has changed to zero. Because the facilities that comprised the five unknown compliance status were not captured in the official data pull, and have been lost in a recent refresh, these facilities cannot be evaluated in this report.

North Dakota places an emphasis on being responsive to citizen inquires and complaints. EPA Region 8 has been copied on or informed of several "Thank You" notes and results of the complaint resolutions. Complaints are always given top priority. For example, Dakota Gasification Company (DGC), a CAA Title V source, has historically been a subject of

odor complaints. North Dakota has worked with DGC personnel in order to develop an odor control program for odorous emissions. Part of the program includes certifying DGC personnel to periodically conduct site odor assessments in an attempt to note and remedy problems before they become the subject of a complaint. In addition, DGC personnel also directly respond to public complaints. Because they are available 24 hours per day, this results in a timely inspection. Complaint information is then submitted to the Department in a monthly odor report. Results are also part of periodic meetings and Department inspections. This proactive approach has significantly reduced odor emissions and complaints.

In another example, a group of 12 grain bins (a small emitter) has been the source of repeated complaints of dust and odors by a single complainant. The source has no regulations that apply. In addition, no excessive odors or dust have been observed or substantiated by numerous government agencies involved. Still, the Department has developed a program where periodic site checks are made to monitor emissions rather than no longer respond to the complainant. Efforts made by the Department in these cases demonstrate a strong commitment to complaint assessment and resolution.

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 North Dakota CMS for FY 2006, dated October 6, 2005, which includes FY 2006 and FY 2007 CMS and Compliance Program Operating Plan.
3. AFS/OTIS databases

Recommendations:

The State and EPA will do a semiannual data metric pull to identify potential data quality issues that may be present. EPA and the State will then decide the best action to correct data issues and update the database whenever possible.

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

Findings:

The State's reports follow a standard format, were complete, contained all of the required general information, and the key elements such as enforcement history and recommendations. The State documented facility's compliance status. The tables that were included in the reports made the reports easy to follow and enhanced overall report quality. Narratives were used to describe significant activities during the inspection. It is also important to note that the State clearly shows how it determined emissions from each unit. Permit conditions were identified in the permit and contained enough information to identify if an FCE had been completed.

The State could enhance its reports further by adding the emissions information for the greatest single HAP. For example, the report for Continental Resources, Inc., Medicine Pole Hills (AFS # 38-011-00010) inspected September 21, 2006, documents that the facility emitted 11.2 tons of HAPs in 2004. If this was mainly formaldehyde from the engines, then it is possible that the facility has a potential to emit more than 10 tons of a single HAP, and would be a major MACT source. Identifying the greatest single HAP would be a beneficial addition to the reports.

Citation of information reviewed for this criterion:

1. List of 17 files reviewed identified above.
2. 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 seventeen reports that were reviewed by EPA were completed within 30 days after the inspection. The Tesoro report lacked a completion date, but the inspection was completed on March 21, 2006, and was delivered to EPA with the group of reports dated March 24, 2006. Even though reports did not have a completion date, it could not have been completed later than March 24, 2006, well in the time frame required. The State is performing very efficiently at writing reports in a timely manner.

Citation of information reviewed for this criterion:

List of 17 files reviewed identified above.

Recommendations: none

4. Degree in which significant violations are reported in a timely manner.

Findings:

Of the seventeen files that were reviewed, only one of the facilities was in violation. The violation does not meet the HPV criterion. Due to ongoing negotiations by the State and

company, it will be referred to as Facility A for this report. File reviews show North Dakota is conducting adequate investigations into sources to determine compliance.

Citation of information reviewed for this criterion:

1. "Policy on Timely and Appropriate Enforcement Response to High Priority Violations"; December 22, 1998. (a.k.a.: HPV Policy")
2. List of 17 files reviewed identified above.

Recommendations: none

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

Findings:

No actions at major and SM-80's facilities were concluded in the FY06 and, therefore, EPA was unable to evaluate the State's performance for this review element. Actions that were taken by the State addressed things such as open burning and other violations of State only regulations and were not evaluated by EPA for this review element. An action at a major facility is underway but settlement has not been reached. EPA and the State will discuss this action at its projected conclusion in FY07 as part of EPA's normal oversight function. ND in the past has been able to take actions with companies in a timely manner to ensure compliance.

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:

EPA believes that the State is taking appropriate enforcement actions against companies based on the file reviews that were conducted for this report. Because most sources are in compliance, only one enforcement action is available to evaluate. EPA believes that the State promptly and correctly took action against Facility A. Specific details are withheld from the report at this time to protect the integrity of ongoing settlement negotiations.

Citation for information reviewed for this criterion:

File and data metric reviews listed in item 4.

Recommendations: none

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

Findings:

The State's penalty calculation addressed both gravity and economic benefit appropriately for the violation at Facility A. The State's penalty calculation reflected all the essential components of EPA's policy and generated a significant penalty to deter non-compliance.

Citation of information reviewed for this criterion:

File review of Facility A, the proposed penalty calculated by North Dakota, and the EPA Clean Air Act Stationary Source Civil Penalty Policy.

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:

When the final action concerning Facility A is reached, the State and EPA will discuss the outcome as part of EPA's normal oversight function and provide feedback to the State if appropriate.

Citation of information reviewed for this criterion: none available

Recommendations: none

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

Findings:

Elements in the PPA:

A. Compliance Monitoring Strategy

North Dakota submitted its FY06 CMS to EPA in a timely manner and implemented it during the fiscal year. The CMS was submitted to EPA on October 6, 2005.

B. Conduct Complaint Investigations

North Dakota was very responsive to citizen complaints.

C. Multimedia Inspections

No EPA multimedia inspections were conducted in North Dakota during FY06.

D. Significant Violations

No significant violations were found in North Dakota during FY06.

E. Compliance/Enforcement Reports

North Dakota submitted all reports to EPA in accordance with the PPA. The State has taken steps to submit reports to EPA in electronic format. Any reports that could not be submitted electronically were sent by mail. The State continues to improve its system so that all reports can be sent electronically.

F. Compliance/Enforcement Data Base Integrity Management.

North Dakota has worked with EPA throughout FY06 year in conducting data quality checks and the State has implemented a new reporting system. The State is also making an effort to update the database as permit renewal applications are submitted to determine the universe accurately.

G. Continuous Emission Monitoring Compliance

North Dakota observed stack tests and entered the results into AFS. Stack test reports and AFS data were reviewed as part of the file review.

H. Inspector Training

North Dakota continues to train new staff to make sure that State personnel are able to implement and enforce the Clean Air Act. The State would like to see EPA offer more satellite classes to help the State continue to enhance its knowledge and expertise. The Region will help the State with any questions that it encounters and attempt to provide training when requested.

Citation of Information Reviewed for this Criterion: North Dakota PPA and CMS.

Recommendations: none

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

Findings:

Each file review included an AFS pull for the facility and information in the file was compared to the database. In all cases, data was entered into AFS before 60 days. Most of the facilities were imputed into AFS before 30 days. The state is meeting the requirements of this metric.

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

Recommendations: none

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

Findings:

Data Metric 11a is in error. It shows that the State's HPV to Non-Compliance Ratio is 125%. The data shows that these are EPA lead actions (Minnkota, ADM and Cargill) and not State Actions. EPA will update AFS.

According to the data metrics, North Dakota is meeting the national goal of 0% for Stack Test Results at Federally-Reportable Sources - % Without Pass/Fail Results (1 FY). In comparison the national average is 16.2%. Because North Dakota enters all required data so that 0% of its sources are missing the data, it is meeting the national goal.

During the file reviews, data in the files was compared with data in AFS and AFS was found to be accurate.

Citation of Information Reviewed for this Criterion:

AFS database and information from the 17 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:

According to the official data pull, North Dakota has zero major sources missing CMS Policy Applicability. This would indicate that the State is meeting the requirements for this metric.

The State feels that the rest of the information presented in this metric could be enhanced to better reflect the efforts of the State and the data that it tracks. In January of 2007, North Dakota began using a new database. As permits are renewed, North Dakota plans to input data into the new database where it will be more globally accessible for use in-state and for reporting to EPA. As this process takes place, North Dakota feels that the numbers reflected in this metric will accurately reflect its universe.

One of the features of the new database is that North Dakota will begin tracking of categories such as:

1. Major/synthetic minor/minor source status with respect to Title V.
2. Major/synthetic minor/minor source status with respect to PSD.
3. Major/synthetic minor/minor source status with respect to MACT.
4. Applicable subparts for sources with respect to NSPS and MACT.

This information was previously maintained in individual source files and it was used when drafting permits and conducting FCE's. However, it was not "globally" tracked. For example, a boiler subject to NSPS Subpart Dc was regulated as such but North Dakota did not have a list of all boilers that were subject to Subpart Dc in its old system. The new system will be able to produce these lists. This data will then be uploaded into EPA data bases. As this occurs, the data that is presented will accurately reflect the State's universe of facilities.

Citation of Information Reviewed for this Criterion:

AFS database and information from the 17 files listed above.

Recommendations: none

**EPA Review of the North Dakota Department of Health
Resource Conservation and Recovery Act (RCRA) Compliance and Enforcement Program**

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Information Sources Included in the Review:

1. EPA RCRA/Info, RCRA Rep, and OTIS databases;
2. State of North Dakota RCRA compliance monitoring and enforcement files;
3. State of North Dakota/EPA Environmental Performance Partnership Agreement;
4. NDDH 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 2007;
8. EPA RCRA Civil Penalty Policy, dated June 23, 2003;
9. State of North Dakota Annual PPA Inspection Schedule for FY2006.
10. EPA Hazardous Waste Civil Enforcement Response Policy, dated October 2003;
11. EPA RCRA State Review Framework Metrics Report, February 8 2007;
12. EPA RCRA Civil Penalty Policy, dated June 23, 2003;
13. EPA 2004 OECA MOA Guidance Manual, dated June 2005;
14. EPA State Review Framework Training Manual, dated April 2006;

Introduction:

The RCRA evaluation involved the review of fifteen (15) inspection reports, which included three large quantity generators (LQG), two TSDFs facilities, four small quantity generators (SQG), and six conditionally exempt generators (CESQG) during FY2006. The facilities reviewed covered large quantity generators, transporters, and used oil facilities. In addition, Region VIII utilized the OTIS SRF data metric report (January 2007 OTIS report) and the RCRA/Info national database. This information was used to address 12 specific elements.

Fifteen (15) FY2006 inspection report files were randomly selected with six (6) informal

enforcement actions for this evaluation. The files selected for this evaluation were provided by the NDDH to the EPA Solid and Hazardous waste program. During FY2006, the Regional staff and the NDDH staff remained in contact throughout the year via various phone calls to discuss and resolve concerns related to the implementation of the RCRA program. The NDDH was provided a copy of the OTIS SRF data metrics report for FY2006 via e-mail on February 8, 2007. There were no issues raised from the NDDH concerning the data metrics report.

Section 1: Review of State Inspection Implementation

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

Findings:

The annual inspection target of 52 inspections was met for all the facilities identified in the FY06 Inspection Plan. The NDDH has met and in some cases exceeded its commitment for FY2006. Inspection reports received were of good quality, clear, comprehensive and concise, and afforded appropriate compliance determinations. Inspection reports reviewed were completed in a timely manner.

The large quantity hazardous waste generator universe consists of fourteen (14) facilities in North Dakota and they are routinely inspected at least every other year, which exceeds the requirement to inspect 100% every five (5) years. For this report, there were five LQGs inspections report chosen to complete this review, 36% of the LQGs universe. The remaining 33 inspections conducted were at CESQG and SQG facilities.

There are five (5) operating TSDFs in North Dakota. They were all inspected within the required two (2) year timeframe. However, the two Safety-Kleen facilities in North Dakota only store waste onsite therefore, are excluded from waste management totals. There are two (2) LDFs facilities in North Dakota. They were both inspected within the required three (3) year timeframe.

During FY06, all citizen complaints referred to the State were investigated within a few weeks of the referral, and a written detailed report was provided to the Agency. In addition, North Dakota provided compliance assistance to their constituents in the form of training and community outreach.

Information sources utilized for this criterion: 1, 3, 4, 7, 10, 12, 13, 14

Recommendations and Actions: None

2. Degree to which inspection reports and compliance reviews document inspection findings, including accurate identification of violations.

Findings:

EPA's Revised RCRA Inspection Manual (OSWER Directive #9938.02b, 1998) 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.

There were 15 inspection/compliance reports reviewed for this evaluation. All the reports reviewed met the basic requirement of completely determining the compliance status for the appropriate areas evaluated under the North Dakota Hazardous Waste Management rules and regulations. All hazardous waste violations observed during the inspection or after further evaluation are identified.

LQG/SQG compliance checklists adequately cover hazardous waste regulation requirements for the types of facilities inspected. Facilities are notified in writing to return to compliance within 30 days where deficiencies are found.

Information sources utilized for this criterion: 2, 10, 12

Recommendations and Actions: None

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

Findings:

All 15 of the inspection reports reviewed to complete this evaluation were completed within the 45 days timeframe as required by the North Dakota and EPA Enforcement Agreement. All violations found during an inspection or after further evaluation are made within the required timeframe in most cases violations determination are made within a week or two after the completion of an inspection.

Information sources utilized for this criterion: 1, 3, 10, 13

Recommendations and Actions: None

Section 2: Review of State Enforcement Activity

4. Degree to which significant violators are accurately identified and reported to EPA's national database in a timely and accurate manner.

Findings:

North Dakota determined there were no significant violators to report as SNC. The files that were reviewed and reports from RCRAInfo support that finding. There were 23 informal enforcement actions taken in North Dakota for various minor violations such as mislabeled

drums or not having proper satellite accumulation date and record reviews. North Dakota did not take any formal enforcement actions.. The informal enforcement actions reviewed were timely and appropriate and resulted in compliance from those facilities.

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

Recommendations and Actions: None

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

Findings:

North Dakota took no formal enforcement actions in FY06. North Dakota took a total of 23 informal enforcement actions, none of which required injunctive relief or any economic benefit calculation. Compliance and enforcement data were reported into RCRA/Info in a timely manner. Based on the inspection reports reviewed, all the enforcement actions taken were timely and appropriate. All the informal enforcement actions that were reviewed for return-to-compliance were found to be in compliance within 30 days. Verification of the data has shown that the state has returned those facilities into compliance. There were no Significant Non-Compliers (SNC) identified in North Dakota. Due to their small universe, the majority of facilities in North Dakota, including large quantity and most small quantity hazardous waste generators, are frequently inspected by state inspectors facilitating their ability to remain in compliance.

Information sources utilized for this criterion: 1, 2, 3, 6

Recommendations and Actions: None

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

Findings:

There were 23 informal enforcement actions taken in North Dakota for various minor violations such as mislabeled drums or not having proper satellite accumulation date. No formal enforcement actions were taken. The warning letters reviewed were timely and appropriate and resulted in compliance from those facilities

Information Sources utilized for this criterion: 1, 2, 3, 6,13

Recommendations and Actions: None

7. Degree to which a state includes both gravity and economic benefit calculations for all penalties, using the BEN model or similar state model.

Finding:

There were no formal enforcement actions taken in North Dakota this year that required penalties or economic benefit calculations.

Information sources utilized for this criterion: 1, 2, 3, 6

Recommendations and Actions: None

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

Findings:

There were no final formal enforcement actions taken in North Dakota this year that required penalties or economic benefit calculations.

Information sources utilized for this criterion: 1, 2, 3, 6

Recommendations and Actions: None

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

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

Findings:

The state of North Dakota has met all PPA commitments (*e.g.* inspection plan, draft PPA, data management, End of Year report, etc.) and deliverables were on time and complete.

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

Recommendations and Actions: None

Section 4: Review of Database Integrity

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

Findings:

This data metric measures the lag time between the date of a SNC determination, and the actual reporting of the SNC to RCRAInfo. According to EPA's ERP, SNC data is to be entered at the time of SNC determination (the metric "flags" SNC entries made more than 60 days after the determination).

There were no SNC identified in North Dakota to measure the SNC date of determination versus the actual reporting of the SNC to RCRA/Info.

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

Recommendations and Actions: None

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

Findings:

Based on the files that were reviewed and reports from RCRA/Info for this review all the data were verified to be 100% accurate.

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

Recommendations and Actions: 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:

Based on the files that were reviewed and reports from RCRA/Info for this review all the data were verified to be 100% complete. The State reviewed the results for these data metrics and no discrepancies were identified.

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

Recommendations and Actions: None