



9/04/07

**NEBRASKA DEPARTMENT OF ENVIRONMENTAL  
QUALITY**

**AIR PROGRAM REVIEW**

**2007**

**REPORT**

**Conducted by:**

**U.S Environmental Protection Agency  
Region 7  
Air, RCRA and Toxics Division  
Air, Planning and Development Branch  
Air, Permitting and Compliance Branch  
And  
Environmental Services Division  
Environmental Assessment and Monitoring Branch**



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## **ACRONYMS LIST**

ACS – Annual Commitment System  
AERMOD -  
AFS - Aerometric Facility Data Systems  
AG – Attorney General  
APCO – Air Permitting and Compliance Branch  
APDB – Air Planning and Development Branch  
APTI – Air Pollution Training Institute  
AQD – Air Quality Division  
AQS – Air Quality System  
ARTD – Air, RCRA and Toxics Division  
CAA – Clean Air Act  
CAM – Compliance Assurance Monitoring  
CAP - Compliance Advisory Panel  
CERR - Consolidated Emissions Reporting Rule  
CMS – Compliance Monitoring Strategy  
CO - Carbon Monoxide  
CWA – Clean Water Act  
DCHD – Douglass County Health Department  
EI – Emission Inventory  
EIQ – Emission Inventory Questionnaires  
EQC – Environmental Quality Council  
FCE – Full Compliance Evaluation  
FFY – Federal Fiscal Year  
FTE – Full Time Equivalent  
FY – Fiscal Year  
HAP – Hazardous Air Pollutant  
HPV – High Priority Violation  
IDNR – Iowa Department of Natural Resources  
IIS – Integrated Information System  
ISC3 – Industrial Source Complex  
LLCHD – Lincoln Lancaster County Health Department  
MACT – Maximum Achievable Control Technology  
NAAQS – National Ambient Air Quality Standards  
NDEQ – Nebraska Department of Environmental Quality  
NEI – National Emissions Inventory  
NIF – NEI Input Format  
NIST - National Institute of Standards and Technology  
NPAP - National Performance Audit Program  
NSHL - Nebraska State Health Laboratory  
NSR – New Source Review  
NWS – National Weather Service  
O<sub>3</sub> - Ozone  
OAQC – Omaha Air Quality Control  
P&A – Precision and Accuracy

PM<sub>10</sub> - Particulate Matter – 10 micron  
PM<sub>2.5</sub> - Particulate Matter – 2.5 microns  
PPA – Performance Partnership Agreement  
PPG – Performance Partnership Grant  
PRO – Policy Research Office  
PSD – Prevention of Significant Deterioration  
QAPP – Quality Assurance Project Plan  
SBAP - Small Business and Public Assistance  
SCC – Source Classification Code  
SEA – State Enforcement Agreement  
SIP – State Implementation Plan  
SLAMS - State and Local Air Monitoring Station  
SM-80 – Synthetic Minor (80% of major source level)  
SO<sub>2</sub> - Sulfur Dioxide  
SOB – Statement of Basis  
SOP – Standard Operating Procedures  
SRF – State Review Framework  
SWDA – Solid Waste Disposal Act  
TEOM - Tapered Element Oscillating Microbalance  
TRS – Total Reduced Sulfur  
TSA – Technical Systems Audit  
UI – Universal Interface  
VOC – Volatile Organic Compound

**PART I**

**NEBRASKA DEPARTMENT OF ENVIRONMENTAL  
QUALITY**

## **INTRODUCTION**

Per the 1999 *Program Review Protocol* established by U.S Environmental Protection Agency (EPA), Region 7, a program review of the Nebraska Department of Environmental Quality's (NDEQ) Air Quality Division (AQD) was conducted during Fiscal Year 2007. EPA Region 7 also conducted a review of the permitting, enforcement & compliance, emission inventory and asbestos programs at two local agencies which have been delegated these programs.

This report is divided into three parts. Part I includes the summaries and reports pertinent to the program review of the NDEQ's air programs. Part II includes the reports from the program review conducted at the Lincoln Lancaster Health Department (LLCHD), and Part III includes the reports from the review conducted at the Omaha Air Quality Control Division (OAQC).



## **CHAPTER I - EXECUTIVE SUMMARY**

### **INTRODUCTION**

The following summarizes results from the U.S. EPA's program review of the Nebraska Department of Environmental Quality's Air Quality Division. EPA Region 7 staff completed an onsite evaluation of the AQD's programs on March 13-15, 2007. The program areas evaluated during this time include: planning, emission inventory, and compliance and enforcement. An onsite evaluation of the modeling program was conducted on February 27 and 28, 2007 due to time conflicts. Finally, in the interest of time and other factors explained in this summary, it should be noted that the permitting portion of the review at NDEQ was a "self-evaluation."

In addition to performing a review at NDEQ, EPA Region 7 staff evaluated the Omaha Air Quality Control Division's (OAQC) and the Lincoln Lancaster Health Department's (LLCHD) permitting, compliance and enforcement, emissions inventory programs. Also, a review of OAQC's asbestos program was also completed. These onsite evaluations took place from February 12-16, 2007. Reports summarizing the result from the local program reviews are located in the following Part II of this report.

This chapter addresses the summaries for the NDEQ's program review report only. For the ease of the reader, the summary will reference the location (page) of the report.

### **PLANNING**

#### **Regulatory Development**

The NDEQ AQD Program Planning & Development Unit staff are responsible for maintaining Nebraska's air quality regulations and ensuring that rules are updated accordingly and in a timely manner. Nebraska's air quality regulations are housed in Title 129 of Nebraska's Administrative Code. State regulations are adopted through the Environmental Quality Council (EQC). The EQC was established through the Nebraska Environmental Protection Act as the body that adopts rules and regulations which set air, water and land quality standards. The EQC conducts quarterly meetings during which public hearings are held on proposed regulations and stakeholders can provide written comments or oral testimony on the proposed rules.

The AQD currently operates under an informal and formal rule review process. The informal process can range from a staff review and comment period to initiating a stakeholder process to discuss the proposed revisions. The type of informal process that is undertaken depends greatly on the complexity of the revision (i.e., whether the revision consists of an administrative or substantive change and whether the proposed revision is expected to be controversial.) The formal review consists of a three-month process during which the proposed rules are reviewed by the Department's Legal Division and Director,

the Governor's Policy Research Office (PRO), the public, the EQC, and the Attorney General's office, after which they are approved by the Governor.

### Findings:

EPA commends the AQD for developing tools to continually improve the rule revision and rule making process. It should also be noted that communications between EPA and AQD have greatly improved since the previous program review.

EPA recommends the NDEQ consider submitting rules for information at an EQC meeting for public hearing, and submitting the rule for adoption at the subsequent EQC hearing. This is especially important for National rules such as the Clean Air Mercury Rule and the New Source Review reform rules. In addition, NDEQ should ensure the most current local rule revisions are included to the SIP as Lincoln/Lancaster and Omaha have Title V delegated programs.

The full report pertaining to this section is located on page 21 of this document.

### **Grants overview**

The NDEQ and EPA Region 7 continue to operate under a Performance Partnership Agreement (PPA) and Performance Partnership Grant (PPG). The NDEQ also receives CAA Section 103 funds, which are not part of the PPG, that are used to operate and maintain a fine particulate matter or particulate matter of 2.5 micrometers in diameter or less (PM 2.5) monitoring network. Two separate workplans cover activities that are eligible to be funded under the Section 105 and Section 103 funds, although reporting requirements (semi-annual reports) remain the same.

### Findings:

The AQD has done a commendable job to balance local, state and federal priorities in the negotiated workplan, especially in recent years where the EPA has experienced either a plateau or a decrease in Section 105 and 103 funds. EPA also applauds the AQD's efforts in submitting timely semi-annual reports as agreed in the PPA and as stipulated in the workplan.

EPA does not have any recommendations to offer on the NDEQ's AQD grant management activities.

The full report pertaining to this section is located on page 23 of this document.

### **Local Program Oversight**

The NDEQ currently has an interagency agreement with three local agencies and provides pass-through funds to each agency to carry out activities under the Section 105 and 103 programs. These local agencies are the Omaha Air Quality Control (OAQC), the

Douglass County Health Department (DCHD) and the Lincoln Lancaster Health Department (LLCHD). With the exception of the Title V program, the NDEQ is responsible of providing oversight of the local agencies, negotiating workplans, and ensuring that rule revisions are made as needed. The local agencies are required to submit semi-annual reports to NDEQ 20 days after the end of the reporting period.

Findings:

Review of the local workplans and interviews with NDEQ staff show that EPA, State and local priorities are reflected in the workplan activities and that the NDEQ conducts adequate oversight of each local agency's workplan activities.

EPA does not have any recommendations to offer on NDEQ's management of the local programs.

The full report pertaining to this section is located on page 24 of this document.

**Outreach and Training**

The AQD has and maintains a comprehensive education, communication and outreach plan. This plan provides a clear strategy for conducting outreach and educating the public on air quality issues. It also provides an emphasis on educating the other Department staff about air quality regulations and issues of public concern. Finally, it promotes good communication across the Division and the Department, especially on cross media issues, to ensure that all staff are knowledgeable of how actions in one program may affect another.

It is also the Department's goal to ensure that they have well trained and qualified staff. The Division has developed a number of resources such as individual development plans, a Training Resources Catalog, and learning groups that will allow them to determine, not only the type of training that will be needed in the future, but also what outside resources are available to meet their training needs.

Findings:

The AQD's efforts to improve internal communication and outreach to stakeholders are evident through the many publications, training sessions and stakeholder meetings. Continual improvement and the use of technology for alternative methods of training are notable. We commend the training staff for ensuring that the Division has well qualified staff by establishing methods resources (i.e., individual development plans, a Training Resources Catalog, and learning groups) to determine the training needs of the Division.

The full report pertaining to this section is located on page 25 of this document.

## **Emission Inventory**

The AQD's Monitoring and Emissions Unit staff is responsible for carrying out activities related to emissions data collection and emission inventory development for sources within the NDEQ's jurisdiction.

Please note that Nebraska has delegated the Title V program to two local agencies in the State, LLCHD and the OAQC. These two agencies are responsible for collecting emissions data within their jurisdiction, which include Lincoln Lancaster County and the City of Omaha, respectively. The emission inventory program of these local agencies is described in Chapters IX and VIII, respectively.

This review focused on the NDEQ's data collection and quality assurance process, the Department's oversight activities of the local agencies, data elements reported to the National Emission Inventory (NEI), and outstanding issues from the 2003 Program Review.

### **Findings:**

The NDEQ emission inventory staff are commended on conducting audits specifically on EIQs. This serves as an excellent quality assurance step by ensuring that reported values are comparable to those found in the facility's records. EIQs have also been updated to allow facilities to report ammonia and PM 2.5.

The Department conducts audits of the emission inventory programs at the local agencies. This serves as a good step to ensure that the local agencies are following the minimum quality assurance standards set by the Department and that emission estimation methods are consistent across the State. We recommend that the NDEQ use the grant negotiation process to ensure that any deficiencies found during the local agency audits are corrected within a timely manner. These audits can be found in Appendix B-10.

During the 2003 program review it was found that volatile organic compounds (VOCs) may have been underreported to the 2002 NEI. We recommend that at a minimum, NDEQ ensures all VOC emissions are being accurately reported as those emissions are important in determining contributions to PM 2.5 and ozone formation.

EPA also recommends that all HAP data be collected and submitted to the NEI. The use of the NEI for national rule makings is rapidly increasing. An example is the use of the NEI's HAP data to develop the Risk and Technology Review Rule.

Lastly, EPA recommends that NDEQ report to the NEI all data elements that have been submitted to them by a source. In recent modeling done to support the Best Available Retrofit Technology rule, it was found that inaccurate stack parameters were used for the modeling exercise. Although NDEQ collects this information, it was not submitted to the NEI.

The full report pertaining to this section is located on page 27 of this document.

### **Small Business Assistance Program**

The Nebraska Small Business Assistance Program (SBAP) Review was conducted via e-mail by Hugh Stirts, NDEQ, and Heather Hamilton, EPA Region 7. The SBAP questions were sent to NDEQ on December 21, 2006, which are included in the Planning and Development questionnaire. The questionnaire was completed by NDEQ and returned to EPA on February 9, 2007.

#### Findings:

No significant findings were noted, although there is one vacant Compliance Advisory Panel (CAP) position that should be filled. The NDEQ has done a notable job of maintaining the CAP as there are some states that have yet to fill CAP positions. Communications between EPA and NDEQ Small Business Liaison have significantly improved due to bi-annual meetings at the EPA offices.

The full report pertaining to this section is located on page 29 of this document.

### **Modeling**

The modeling portion of the program review for the NDEQ, was performed February 27 - 28, 2007. The modeling portion consisted of determining the qualifications of the current modeling staff and examining solutions to problems that have been encountered in reviewing/performing air quality analysis

The problem that all states/regions are encountering is the requirement of on-site meteorology if National Weather Service (NWS) meteorology from a local airport is not representative of the application site. The requirement for on-site meteorology data was not as critical when the Industrial Source Complex (ISC3) Models were the approved/recommended models, but with the introduction of AERMOD, this is crucial data.

NDEQ has obtained and processed five years of metrological data for use in AERMOD system for the NWS stations that are used for analyses in Nebraska and is available to anyone to use. If a company/consultant elects to obtain and process meteorological data instead of using the data from the NDEQ, it must be sent to NDEQ for review. The intent of NDEQ is to use its data to verify a company's analysis. The regulatory agencies in the adjoining states have also obtained, processed, and make available meteorological data for use in their state.

It should be noted that the NDEQ has lost their lead modeler. EPA Region 7 has identified some of the key competencies of the lead modeler's replacement and has offered assistance to NDEQ until another qualified modeler is obtained.

### Findings:

EPA will continue to support the NDEQ modeling program as resources allow until a replacement has been hired for the Lead Modeler. It was observed that air quality modeling reviews are following NDEQ modeling guidelines. NDEQ is commended in gathering meteorological data to support modeling reviews. In the future, it would be a good planning exercise for NDEQ and surrounding states to meet and review meteorological data to ensure consistency.

The full report pertaining to this section is located on page 29 of this document.

## **PERMITTING**

EPA has the latitude to choose a program for self-evaluation based on the level of comfort and confidence EPA has in a particular program area; therefore, the NDEQ was chosen by EPA to conduct a self-evaluation of their Title V and New Source Review (NSR) permitting programs. In lieu of an on-site evaluation at NDEQ, EPA chose to review the two approved local Title V permitting programs in Lincoln-Lancaster County and Omaha, Nebraska. The permitting agencies for these two local programs are the Lincoln Lancaster County Health Department and the Omaha Air Quality Control, whose jurisdiction falls within the limits of Lincoln Lancaster County and the City of Omaha, respectively. The findings of the local agency program reviews are found in Chapters XI and XII.

NDEQ self-evaluation covered permitting activities since the last program review (2003). The self-evaluation was based on NDEQ's completion of the December 2006 updated version of the "NSR Program Self-Evaluation Questionnaire" and the "Title V Program Self-Evaluation Questionnaire." The self-evaluation questionnaires were sent electronically on December 21, 2006. On-site file reviews were not part of this evaluation.

### Findings:

Neither the NDEQ nor the EPA identified major issues with NDEQ's national air permits program; however, some notable activities were identified during the exit conference.

NDEQ uses an internal peer review process prior to issuing NSR and Title V permits, and also shares a draft with the source. This activity has greatly reduced comments that were previously addressed after the comment period. NDEQ has proactively initiated activities such as revising the format of the Title V permit to make it more user-friendly, providing a statement of basis to assist the reader in understanding how NDEQ arrived at permitting decisions, and NDEQ is developing the compliance assurance monitoring (CAM) section of Title V applications and permits to clarify specific CAM requirements.

The NDEQ has various databases available to assist in conducting increment modeling; however, they do not have a data base system that specifically tracks increment consumption. A comment was provided during the close-out meeting that NDEQ may want to begin tracking increment more closely, particularly because they have an increasing number of ethanol permit applications.

The NDEQ identified an area for improvement as a result of the self-evaluation exercise. They discovered their public notices for modifications did not limit the public comments to only those changes stated in the revised permit. They reported that they were taking action to assure that the public notice will specify which provisions of the existing permit are open for comment.

The NDEQ reported that they do not get much attention from the public notices that they publish in the “legal notice section” of the local newspapers. The EPA encouraged them to continue posting the public notices on their website and to post other permitting documents on line as well. The NDEQ responded that updates to the web site were needed before it will accommodate large volumes of data.

The NDEQ reported, in its self-review, that it issued variances allowing a source to commence construction prior to receiving a permit. The EPA does not recognize, at this time, the issuance of a variance to construct. This issue is being addressed in another forum. Therefore, during the close-out meeting, it was agreed that the program review would not include discussion of the use of variances by NDEQ.

The full report pertaining to this section is located on page 31 of this document.

## **COMPLIANCE AND ENFORCEMENT**

This portion of the report documents the findings and recommendation of EPA’s review of the State’s air compliance and enforcement program based on the State Review Framework (SRF). This report examines 12 critical elements covering inspection implementation, enforcement activity, commitments in annual agreements and data integrity, consistent with the SRF issued by the Office of Enforcement and Compliance. These 12 critical elements are as follows:

- 1) Inspections/coverage of the regulated universe;
- 2) Documentation of inspection findings;
- 3) Timely and accurate completion of inspection reports;
- 4) Timely reporting of violations;
- 5) Inclusion of injunctive relief and return to compliance;
- 6) Timely initiation of enforcement actions;
- 7) Economic benefit calculations;
- 8) Collection of appropriate economic benefit and gravity portion of a penalty;
- 9) Meeting PPA/PPG/SEA agreements and commitments;
- 10) Timely data requirements;
- 11) Accurate data requirements; and

12) Complete data requirements, (compare the actual compliance and enforcement practices of the NDEQ with the CAA Stationary Sources Program polices and guidance).

The purpose of the SRF assessment is to provide a consistency in the level of core enforcement activity and thus in environmental protection across the country. Each of the elements that were reviewed and the findings are covered in their entirety starting on page 34 of this report.

Prior to the on-site portion of the review, a list of source files to be reviewed was prepared and provided to Nebraska via e-mail on March 9, 2007. The number of files to be reviewed was determined based on the protocol in the SRF Implementation Guide, and was based on the number of facilities in the universe, the number of inspections performed and the level of enforcement activity in the program. Each program file was selected randomly within a representation of types or program areas within each program. NDEQ is to be commended on organization of the files.

Region 7's assessment is that NDEQ is running a core compliance and enforcement program. Region 7 will continue to work closely with NDEQ to continuously improve those portions of the program that should be aligned with the SRF.

In addition to the files reviewed at NDEQ, EPA also reviewed files maintained by the City of Omaha and the Lincoln/Lancaster County Health Department. The reports for the local agency programs are found in Parts II and III.

The full report pertaining to this section is located on page 34 of this document.



## **CHAPTER V – COMPLIANCE AND ENFORCEMENT**

### **INTRODUCTION**

The U.S Environmental Protection Agency's (EPA) Office of Enforcement and Compliance Assurance, all ten EPA Regions, the Environmental Council of States Compliance Committee and other state representatives have jointly developed a method to assess state performance in the enforcement and compliance assurances program. This report reflects the review by Region 7 of Nebraska's compliance and enforcement program utilizing the State Review Framework (SRF). 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.

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

The purpose of this review is to assess Nebraska, specifically, the NDEQ's<sup>1</sup> compliance and enforcement activities to ensure that violations that are being identified by NDEQ are being reported to EPA, Region 7, and that timely and appropriate enforcement actions are taken on the violations. The review also includes an overall assessment of the enforcement program.

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<sup>1</sup> The NDEQ regulates an air program in all counties of Nebraska, except for the counties in Lincoln/Lancaster, and Douglas County. These air programs are delegated to the Lincoln/Lancaster Health Department (LLCHD) and the City of Omaha. The SRF does not differentiate data by county. Therefore, performance by the State reflects numbers from NDEQ, LLCHD, and the City of Omaha combined.

### **NDEQ ORGANIZATIONAL STRUCTURE**

The Nebraska Department of Environmental Quality was created pursuant to passage of the Nebraska Environmental Protection Act in 1971. Although the Department has grown and been given additional responsibilities over the years, its ongoing mission has remained the same — the protection of Nebraska's air, land and water resources. Presently, the Agency is authorized a staffing level of 217 full-time employees

The Field Office Section consists of 15 employees who conduct compliance inspections, complaint investigations, environmental sampling, project management, and local compliance assistance for the agency's Air Quality, Waste Management and Water Quality Divisions. Establishing local field offices has enabled the agency to provide the public with greater access to NDEQ staff. They are also able to provide more timely response to citizens and to develop a better understanding of local issues because NDEQ staff live and work in the local community

The objectives of the AQD are to achieve and maintain the ambient air quality standards, to protect the quality of the air in areas of the state that have air cleaner than the standards, and to implement air quality rules and regulations. By fulfilling these objectives, the Department is confident that public health and the environment will be adequately protected.

The major programs in the AQD are: the Permitting Section, which consists of a construction permit program, the operating permit program; the Compliance Section which consists of the monitoring and emission inventory unit, and the inspection and compliance unit. The planning and development program and the asbestos program are also part of the AQD.

Two local agencies -- the Lincoln Lancaster County (LLCHD) and the Omaha Air Quality Control (OAQC) have accepted, through contract with the NDEQ, responsibility for various facets of the program. These responsibilities include air quality monitoring, planning, permitting and enforcement within their areas of jurisdiction. Both the City of Omaha and the LLCHD air compliance and enforcement program were reviewed in February, 2007.

The Compliance Unit of the AQD is responsible for conducting compliance inspections of air pollution sources, responding to citizen complaints, observing and evaluating emission tests, ambient air monitoring, acid rain, and the annual air emissions inventory. The Compliance Unit consists of 15.7 full time equivalent (FTE) employees working in the air program. The Compliance Unit employees have a total of 28 years of inspector experience, 19 years of attorney experience, 32 years of supervisor/manager experience, 10 years of clerical experience, 35 years of data management and 13 years of stack tester and compliance assistance. An organization chart is located in Appendix B-2.

#### **FFY06-07 105 GRANT WORKPLAN**

The State and EPA signed a Performance Partnership Agreement in 2005. Basic or "Core" AQD Management Program components consists of:

- Compliance and Enforcement of the Air Quality Regulations
- Permitting in accordance with the State Implementation Plan, federal, and state regulations
- New Source Performance Standards
- Regulatory Development and Program Planning
- Hazardous Air Pollutants
- Ambient Air Monitoring and Stack Testing
- Emission Inventory
- Outreach, Training and oversight of Local Agencies
- Support and active participation in national, regional, state, and local organizations.

The overarching goal of the Clean Air Act (CAA) and Amendments is to authorize States to assume primary responsibility for implementing the air quality regulations. In order for a State to assume the regulatory lead as the implementing agency, it must be authorized by EPA to do so. The State of Nebraska, by Memorandum of Agreement with the U. S. EPA, dated July 3, 2003 has established policies, responsibilities and procedures for the Air Quality program. The Memorandum of Agreement, the current Performance Partnership Agreement (PPA), Performance Partnership Grant (PPG) and any additional agreement(s) should be consistent with the statutory and regulatory requirements.

**METHODOLOGY OF THE REVIEW**

The EPA enforcement on site review team included Mike Bronoski and Angela Catalano, both representing the Air Permitting and Compliance Branch (APCO) of the ARTD. Earlyne Hill, Data Manager, also in APCO, performed the data retrieval of the Nebraska SRF data prior to the on-site review. That data was frozen on January 8, 2007 and is the basis for review. A self-evaluation questionnaire (Appendix D-1) was developed by EPA to assist with the file review. The questionnaire was sent to Nebraska on December 12, 2006. The questionnaire was completed by NDEQ and submitted prior to the on-site audit. Todd Ellis and Kevin Stoner were the primary representatives for the NDEQ air compliance program.

Prior to the meeting with NDEQ, a list of source files to be reviewed was prepared and provided to Nebraska via e-mail on March 9, 2007. The number of files to be reviewed was determined based on the protocol in the SRF Implementation Guide, and was based on the number of facilities in the universe, the number of inspections performed and the level of enforcement activity in the program. Each program file was selected randomly within a representation of types or program areas within each program. The report contains findings of the review for each program and areas of concern with a full explanation of these concerns along with the recommendations for resolution. The file list included 19 inspection files and 7 enforcement files. Six of these files were MACT sources. Providing the file list in advance provided ample opportunity to Nebraska to pull all necessary information into a central location.

In addition to the files reviewed at NDEQ, EPA also reviewed files maintained by the City of Omaha and the Lincoln/Lancaster County Health Department. Source files were randomly selected with an effort made to include synthetic minors, and major sources subject to significant CAA requirements such as NSPS, NESHAP, and MACT. The Aerometric Facility Data Systems (AFS) data base was used to identify source files for the file review. The following files were reviewed:

Nebraska 07 Program Review  
Enforcement and Compliance File List

ID Number	Facility Name	
3100100001	FLOWSERVE	

3100100011	DUTTON-LAINSON CO	
3101900013	MONSANTO COMPANY	
3101900015	BALDWIN FILTERS INC	
3104700031	TENNECO AUTOMOTIVE INC	
3106700014	STORE KRAFT MANUFACTURING CO	
3107900016	SWIFT BEEF COMPANY	
3112700002	ARMSTRONG CABINET PRODUCTS	
3115100002	BUNGE MILLING INC	
3114100025	LINDSAY MANUFACTURING COMPANY	
3117900011	GREAT DANE LIMITED PARTNERSHIP	
3117700026	CONCRETE EQUIPMENT CO INC	
3114100035	FLEXCON COMPANY INC	
3101900061	LEPRINO FOODS	
3105300074	AERO-TEC INC	
3118500042	EVEN TEMP INC	
3104700048	PONY EXPRESS GREENHOUSE LLC	
3115300041	METZ BAKING COMPANY	
3117900011	GREAT DANE LIMITED PARTNERSHIP	
3117700032	CARGILL INC	
3111900078	APACHE MANUFACTURING	
3104700046	MANN HAY CO	
3106700014	STORE KRAFT MANUFACTURING CO	
3100100011	DUTTON-LAINSON CO	
3112700002	ARMSTRONG CABINET PRODUCTS	
3109500001	ENDICOTT CLAY PRODUCTS CO	

### **File Review**

A file checklist (Appendix D-2) was used by the EPA team to evaluate each file reviewed. The EPA review covered FY 2006 activities to the date of the on site review. EPA conducted the file review on March 13-15, 2007. Any additional enforcement information made available to EPA following the date of the file review was also included in the review. Any questions regarding file content or enforcement actions were presented to NDEQ either during the EPA visit or submitted via e-mail following the visit.

### **Information Considered From Other Reviews and Other Sources.**

In looking at negotiated commitments, the State Enforcement Agreement (SEA) was also reviewed and results of the FY 2005-2006 grant review were incorporated. There were no other recent (2 year) reviews that contained relevant information to this review. Nebraska is meeting all FY05/06 Section 105 Grant enforcement commitments. The State Enforcement Report for 2006 prepared by NDEQ was also reviewed.

### **OVERALL SUMMARY**

This report documents the findings and recommendation of EPA's review of the State's air compliance and enforcement program based on the SRF. This report examines 12 critical elements covering inspection implementation, enforcement activity, commitments in annual agreements and data integrity, consistent with the SRF issued by the Office of Enforcement and Compliance. These 12 critical elements are:

- 1) Inspections/coverage of the regulated universe;
- 2) Documentation of inspection findings;
- 3) Timely and accurate completion of inspection reports;
- 4) Timely reporting of violations;
- 5) Inclusion of injunctive relief and return to compliance;
- 6) Timely initiation of enforcement actions;
- 7) Economic benefit calculations;
- 8) Collection of appropriate economic benefit and gravity portion of a penalty;
- 9) Meeting PPA/PPG/SEA agreements and commitments;
- 10) Timely data requirements;
- 11) Accurate data requirements; and
- 12) Complete data requirements, (compare the actual compliance and enforcement practices of the NDEQ with the CAA Stationary Sources Program polices and guidance).

The NDEQ is implementing a comprehensive compliance and enforcement program in conformance with the CAA. Discussions have resulted in the State taking action concerning the areas of improvement. The Region will continue to work with the State to continuously improve the State's CAA program. In most instances, the NDEQ exceeded expectation and national averages for inspection coverage, identifying and addressing significant violators in a timely way. The report includes recommendations for improvement in several areas, the most significant of which is data entry into the state system which is then uploaded to EPA's data system. The NDEQ maintains its own data system, the Integrated Information System (IIS). In many instances, EPA found the state data to be more complete and reflective of the state's efforts than the data in the EPA database (AFS). EPA's goal is to address areas in which the data in the state's system did not match the data in EPA's databases.

## **PROGRAM ELEMENT REVIEW**

Review of the program elements was conducted primarily by evaluating the data NDEQ entered into AFS for Federal Fiscal Year 2006. The data was compiled, tabulated and made available for review on the U.S. EPA web site. The table summarizing the results is available at <http://www.epa.gov/idea/otis/stateframework.html> and (See Appendix D-3).

### **Section 1. Review Area: Inspections**

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

regional priorities). Data metrics a, b, c, d, e, f, and g, were discussed with NDEQ.

**Metric 1a - Inspections at Major Sources:**

The 2005-2006 PPA specified that the frequency for conducting Full Compliance Evaluations (FCEs) at major sources should be every two years. The level of inspection activity undertaken by Nebraska is indicative of a strong compliance/enforcement program and well above the national average in most areas, including inspections at major sources. This finding is supported by the information in both AFS and the Nebraska's data system. The NDEQ Compliance Monitoring Strategy (CMS), which NDEQ agreed to in the 06/07 Implementation Agreement, states that NDEQ will follow the guidelines for minimum inspection frequencies for major sources. The NDEQ CMS further states that a FCE will be conducted at major sources every two years. NDEQ conducted an FCE at 71 of the 96 major sources in FY06. Although 100% of the major sources in the State did not receive an FCE over the last two years, the 94.1% that did receive an FCE is well above the national average of 81%.

**Metric 1b - Inspections at synthetic minor (80% of major source level) – (SM80s):**

The universe of SM-80s includes those sources with an EPA or State classification code in AFS for synthetic minors with a CMS source Code for SM-80s. The CMS that NDEQ agreed to states that NDEQ will inspect facilities that emit or have the potential to emit at or above 80% of the major source threshold once every five years. The State is not required by the CMS policy to conduct a specific number of FCEs/Inspections at SM-80 and the PPA does not specify a percentage. The metrics data indicates that Nebraska conducted an FCE at 167 of the 285 synthetic minor sources over the past five fiscal years. This is below the national goal (100%) and the national average (84%).

All Region 7 states have a 5 year frequency for the 80% SMs universe. Using the current AFS universe and dividing by 5, the Nebraska yearly frequency is to conduct 33 SM-80 **facilities** FCEs. The breakdown provided by the Region shows a lower number of FCEs for Nebraska. It is recognized that CMS does not require the States to necessarily conduct FCEs at 20% of the universe each year. However, the Region will follow-up with Nebraska to ensure that the State will be making up any shortfall in the subsequent 4 years. (Appendix D-4).

It has been determined by NDEQ that the number of SM-80 in the AFS system for NDEQ is not 212, as shown in the data metric. The correct number of SM-80s for NDEQ is approximately 126 and not 212. Omaha has 40 and Lincoln has 14. This totals 180 SM-80 for the State of Nebraska. Coding changes will be made by NDEQ to correct the discrepancy in SM-80 facilities.

**Metric 1f – Review of Self-Certifications completed:** The State reviewed 95.1% of Title V certifications received in FY06. This review is well above the 81.2% national average. The data pull lists 102 Title V annual certifications received and 97 annual certifications reviewed. Due to current version of the IIS, results codes are not uploaded

to the AFS. Result codes are reported to EPA and are entered manually by EPA. Result codes for stack tests are also entered manually by EPA.

**Metric 1g - Sources with unknown compliance status designations:** AFS generates an unknown compliance status for CMS major sources when either an FCE was not done within two fiscal years or an FCE was completed but was not entered into AFS. NDEQ has zero facilities identified with an unknown compliance status.

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

The inspection reports generally appeared thorough and greatly improved from the 2003 audit. For the files reviewed, field inspection reports were timely in all instances. Of the violations found during the FCEs, the State appeared to resolve all such violations through the enforcement process. Comparing the State's reported high priority violators (HPVs) to the number of FCEs completed in FY06, the State finds violations 4.2% of the time. This metric falls within the national average of greater than ½ of the national goal of 8.7. Each inspection report reviewed contained a checklist that has been prepared for the facility. The checklist addressed permit requirements.

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

**Metric 1c.** Inspection reports reviewed were typically completed within one week of inspection. Violations were typically identified by the time the inspection report is completed. For all files reviewed by EPA, the FCE reports were completed well within 30 days after the actual inspection, based on comparing inspection dates and data entry of FCEs into the data system.

<u>CAA source Universe Info</u>	<u>Number of Sources in Universe in FY06</u>
Full Compliance Evaluations	71 major + 30 SM-80 = 101 FCEs
Partial Compliance Evaluations	N/A
Total Number of Evaluations	101
Number of inspection files	22 Reviewed

## **Section II. Review Area: Enforcement Activity**

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

**Metric 4a.** HPV discovery rate in the State, based on FCEs completed at major sources in FY 2006, is 4.1%. This places Nebraska just below the national goal of greater than ½ of the national average of 8.7%. Nebraska has a HPV discovery rate (per major source)

of 2.7%. This rate of discovery is below the national goal of ½ of the national average of 4%. 22 files were reviewed by EPA, including 2 HPV files and 3 non-HPV files where violations were found. While this metric is below the national goal and national average, Nebraska has an outreach and compliance assistance program that extends to almost every major and SM-80 facility. Therefore, the rate of noncompliance and HPV discovered are lower.

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

Findings:

<u>CAA source Universe Information</u>	<u>Number of Enforcement Actions FY06</u>
State formal enforcement actions	16 total, of which 4 addressed HPV
State informal enforcement actions	N/A
Total number of enforcement actions	16 total, of which 4 address HPV
Number of enforcement files for review	7

All files reviewed documented facilities’ return to compliance where violations were found. NDEQ rarely uses injunctive relief as controls were not warranted for the violations documented. The compliance staff will note if injunctive relief is recommended on their Legal referral sheet used by the Air compliance staff.

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

**Metric 6a.** The State had 3 facilities that went beyond the HPV time line. All have since been reported as addressed. Two of these remain on the Watchlist. Nebraska is below the national average in identifying HPVs. The discovery rate based on FCEs completed at major sources is 37.5%. This is a lower than the national average of 49.1% resulting in a greater number of HPVs being addressed with a formal action within 270 days of day zero. Region 7 will work with the State to continue its efforts in addressing its HPVs in a timely manner, per the policy. Of the facility files reviewed, which included an HPV, timelines were followed according to the policy. Once a referral to Legal or the attorney general is made, compliance staff has little control over future action.

Findings:

<u>CAA source Universe Information</u>	<u>Number of Enforcement Actions</u>
----------------------------------------	--------------------------------------



State formal enforcement actions	6 at major and SM sources. Original Metric lists 1
State informal enforcement actions	17 NOVs reported in AFS
Total number of enforcement actions	6
Number of enforcement files reviewed	7

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

NDEQ utilizes a penalty policy and the BEN model, where warranted. Penalty amounts for two facilities were not entered into the system. According to the NDEQ 2006 Enforcement Report, NDEQ was involved with a global settlement for Cargill, Incorporated which resulted in a \$61,538 penalty to the state. Sinca Industries, Inc., d/b/a Apache manufacturing also recorded a penalty of \$22,500. NDEQ will enter penalties for Apache and Cargill. Including the penalty for Store Kraft, already in the system, the total penalty amount for FY06 is \$99,238. So far in FY07, total penalty amounts are \$74,500.

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

The NDEQ Enforcement Policy of 2002 takes into consideration the gravity of the violation and the economic benefit to be gained by the violator. Documentation of the penalty calculations were found for all the orders reviewed by EPA. Penalties collected ranged from \$5,000 to \$22,000, and included \$10,000 for SEPs for the files reviewed. The file review indicated that Nebraska maintains documentation of penalty calculations, including a justification, in the case file for each penalty order issued.

Five files were reviewed where an HPV was assessed. Store Kraft and Apache both were assessed a civil penalty. Endicott Clay product was a paperwork violation where a penalty was not deemed appropriate. NDEQ was seeking penalties at Mann Hay when the business closed. Armstrong Cabinet is currently in the AG's office pending enforcement action. The State should be recognized for its efforts to document penalty assessments. Penalty calculations appeared clear from the worksheets found in the files reviewed. No penalty assessment included an economic benefit in the worksheets. NDEQ should seek to assess civil penalties that seek economic benefit.

	<u>National Avg.</u>	<u>Nebraska</u>
Penalties normally included with Formal enforcement action on HPVs	77%	14.3%

**Metric 8a and b.** While the penalties assessed were in accordance with the state penalty matrix contained in the state’s regulations, two of the files EPA reviewed warranted a penalty, however, none contained an economic benefit component. As such, EPA was not able to definitively state at this time whether the State is including economic benefit in its penalty calculations. The percentage of actions at HPVs with a penalty is 14.3%. This is below the national goal of 77% and the national average of 80%.

**Section III. Review Area: Agreements**

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

Language in the State grant work plan commits Nebraska to conduct timely enforcement actions against major and synthetic minor sources, consistent with the State’s enforcement policies and priorities. The grant contains specific enforcement commitments for 105 sources. Title V fees are used to cover compliance with enforcement of major sources. Semi annual and annual reports are provided by NDEQ for required reporting requirements. All enforcement commitments for FY06 were met.

The CMS policy requires that Title V sources be inspected every two years and SM80 facilities be inspected every five years. The state completed inspections at Title V (94.7%) and SM80 (58.6%).

**Section IV. Review Area: Data Integrity**

- 10. Degree to which the Minimum Data Requirements are timely. In July 2006, the AFS Business Rules Compendium, Section 1, identifies current minimum data reporting for agencies authorized with delegation of the CAA.

Findings:

<u>CAA Source Universe Information</u>	<u>Number of Sources in Universe</u>
Full Compliance Evaluations	101
Total Number of Evaluations	124
Number of inspection files review	19

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

**Metric10a.** Integrity of HPV data (timely entry). 25% of HPVs are entered to AFS more than 60 days after the HPV designation (day zero). This percent rates Nebraska at a higher rate of entering data into AFS than the national average of 57.8%. Region 7 will

continue to coordinate HPV data entry with Nebraska. Region 7 holds bi-monthly calls with Nebraska enforcement staff. AFS issues are part of the regular discussion in an effort to proactively address future date entry and emphasize the importance of timely entry of minimum data requirements. EPA will in the future, invite the data manage join conference calls with the state to ensure minimum data requirements are met.

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

Findings: The following table illustrates the type of discrepancies between data that is reported in the EPA database and data maintained by the State.

FED FY	Data Point	EPA Database	State Database	Difference
2006	Title V FCEs	110	92	18
2006	SM80 FCEs	212	126	86
2006	NOVs	23	19	4

**Metric 11a.** Number of HPVs/Number of NC Sources. 250% of Nebraska facilities in this category are below the 94% of HPVs of noncompliant sources. The discrepancy in the sources not in compliance count and the HPV count is due to the fact that five of the facilities on the HPV list are EPA violations involving global settlements. These facilities include two Archer Daniels Midland Companies, ADM Corn Processing, AGP Corn Processing, Inc., and American Laboratories. A compliance status code of “5,” meeting a schedule, was entered on these sources. The reason this was done by EPA, Region 7, is to prevent these facilities from continuing to appear on the Watchlist. While they now don’t appear on the Watchlist, this status code presents a trigger that would appear to indicate that the number of noncompliant sources is lower than the number of HPV sources. With the five additional facilities in violation, the ratio becomes 73% and is well below the national average of 94%.

**Metric11b.** Stack test results at federally-reportable sources. An area of significant concern is reporting of stack test observation in the EPA database. There are 34.8% of stack test results without pass/fail results. Due to current version of the IIS, results codes are not uploaded to the AFS. Result codes are reported to EPA and are entered manually by EPA Region 7. Result codes for stack tests are also entered manually by EPA.

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

Nebraska enters data in their IIS database. The Universal Interface (UI) uploads the IIS data to EPA Region 7, on the 15<sup>th</sup> of each month to AFS. Region 7 believes that

all minimum data requirements, except result codes are being entered into IIS. Result codes are manually sent to Region 7 and manually entered into AFS by the EPA data coordinator. The following information reflects the information found in AFS and the State's data:

Title V Universe: According to AFS, 131 sources are subject to the CAA Title V regulations (sources in AFS with Title V air program codes). Based on information received from the state, once a Title V permit is issued, the Title V air program code is applied to the facility in AFS.

State facility count: NDEQ indicated that there are 96 Title V sources. The City of Omaha has 17 and LLCHD has 14. This results in a total of 127 Title V sources. The 286 synthetic minor facilities was deemed inaccurate. Coding by both EPA and NDEQ will correct this discrepancy. NDEQ SM-80 count is at 212.

FCE Counts Complete: 101 FCEs were conducted in FY 2006 at major sources and SM-80s. This data was deemed accurate.

Violation Counts Complete: CAA Management Report, which uses data from AFS, lists 30 facilities with violations. According to state data, 19 violations were discovered in FY 2006.

Notice of Violation Counts Complete: The CAA Management Report lists 19 State Notices of Violation. According to State data, 19 Notices of Violation were issued to facilities in FY 2006.

HPV Counts Complete: AFS lists 16 individual HPVs at major sources identified in FY 2006. The State count is 17

Formal Action Counts Complete: The CAA Management Report indicates 16 formal enforcement actions were issued in FY 2006. The state data indicates 17 formal enforcement actions were issued in FY 2006.

Assessed Penalties Complete: The CAA Management Report showed penalties in the amounts of \$15,200 assessed in FY06. It was shown that the amount is inaccurate due to the state not reporting penalty amounts in the system. Two additional penalties will be entered for FY06.

Number of Major Sources Missing CMS Policy Applicability: No major sources were listed as missing a CMS Policy Applicability code in AFS.

Recommendation: The data in AFS needs to be maintained and comparable to what is maintained in the state database. Efforts should be made to reconcile the data in the two databases. EPA and the State will continue to explore methods/avenues to establish a mechanism for interface between federal and state databases, so that data can be electronically uploaded.

## **Summary of Findings**

After discussion with Nebraska concerning the areas of improvement, and the steps that the State is already taking, it is Region 7's assessment that Nebraska is running a core enforcement and compliance assurance program for the CAA stationary Sources. Region 7 will continue to work closely with Nebraska to continuously improve its program.

### **EPA Observations:**

#### **General Findings:**

Nebraska is to be commended for its file organization. Requested files were quickly located and provided to the EPA reviewers. Files are organized by identification number, which remains constant for a site.

NDEQ did an excellent job in filling out the responses to the questionnaire.

In April of 1973, the NDEQ established a regional field office in North Platte, Nebraska. The office serves the citizens in the western half of the state. Another field office was opened in Chadron, Nebraska in 1983. Due to the success of these offices in effectively responding to the citizens and monitoring the regulated community, the NDEQ opened additional field offices in Holdrege, Omaha, Norfolk and Scottsbluff in 2000. The addition of these new offices is intended to provide the public better access to NDEQ personnel. By having personnel in the area, the NDEQ can be timelier in their responses to the needs of the public. A copy of the NDEQ field components is attached (Appendix D-5). The creation of these additional field offices was seen as an enhancement to compliance activities.

#### **Findings on Inspection Reports:**

Inspection reports for the most part utilized a comprehensive inspection format, including lists of emission points and permit condition checklists resulting in a completeness and consistency in inspections.

Inspection reports are completed in a timely fashion. There is an average of less than 30 days for completion of reports.

Inspection reports indicated that corrective action/enforcement follow-up was handled in a timely manner.

Inspection report transmittal letter was inconsistent in the files reviewed. Some inspections included the letter, others did not.

Some inspection reports reviewed were not dated.

It was unclear as to what the compliance status was in some inspection reports reviewed.

#### Self Reporting, Test Reports and Complaints

The NDEQ files contained no documentation that self reports (e.g. annual compliance certification) were being reviewed.

Few, if any actions were taken in response to self reporting on noncompliance.

One of two test reports reviewed was not closed out with a letter.

Complaint form is good. Where there was follow-up to complaint, there was a good response. However, no follow-up documentation in file on some complaints was noted.

One self disclosure was reviewed in which there was no follow-up documentation in the file

Enforcement Five files reviewed included major enforcement actions.

Air staff provided a good background on enforcement information in referrals to Legal.

Air staff had quick turnaround to Legal, however, once in legal, air staff has little control over timeliness.

Penalty calculations produced by Legal met state penalty policy and sometimes included SEPS.

Penalty justifications/calculations were documented in the files reviewed where a penalty was assessed. NDEQ should assess civil penalties that consider economic benefit.

NDEQ uses injunctive relief rarely due to few enforcement actions requiring installation of controls.

HPVs. The State had 3 facilities that went beyond the HPV time line, and that appeared on the watch list.

Penalty justification/calculations documentation was found in all of the files where a penalty was assessed.

#### State Review Framework (SRF) comments

1. The NDEQ meets EPA's full compliance evaluation coverage for majors.

2. SM-80 full compliance evaluation coverage is below the national average. This appears to be a coding issue. When data changes are made, the region believes the inspection coverage will be consistent with regional expectations and national goals;
3. Investigations were entered that were not meeting the definition of investigation; The NDEQ compliance staff will correct this data entry error.
4. NDEQ meets the goal for review of self certifications at Title V sources. However, only 78 certifications were entered out of 96 Title V sources.
5. The metric HPV discovery rate per FCE was below the national goal. This may be due to higher level of outreach/compliance assistance.
6. One penalty entered into database in FY06. NDEQ will enter penalty amounts on two additional facilities.
7. NDEQ meets the timely and appropriate enforcement actions goals, in accordance with policy. Enforcement on HPVs were within the 270 day timeframe.
8. The number of sources in “automatic unknown” compliance status is a 0. This is also a good indicator of state inspection coverage;
9. Results codes for stack test and compliance certifications are not uploaded into AFS due to the outdated version of the Universal Interface. Stack test result codes are reported to EPA for entry. Until the UI is upgraded, EPA will work with NDEQ to upgrade the UI with the newest version.

Recommendations:

Staff are encouraged to provide coding information which results in data changes at the facility, i.e., operating status, reclassification, etc., to the data manager as soon as practicable so the data will be current and accurate.

An inspection report cover letter back to the facility needs to be sent and be part of the record.

A “signed” copy of the inspection reports should be in the file;

Staff are encouraged to attend the AFS training in KC in July. EPA will notify the appropriate staff when the training has been finalized.

SRF Recommendations:

1. SM-80 universe to be corrected.

Recommendation: Both NDEQ and EPA will work together to reconcile the SM-80 data in the AFS and IIS. A high percentage of Synthetic Minor 80% sources are being recoded to accurately define this universe of sources. NDEQ will replace SM codes with B codes. EPA will delete the “S” flag on low emitter

sources and enter the true SM sources which have been identified by NDEQ. Data will be reviewed with the next quarter update to determine if discrepancies are fixed.

2. Investigations entered by state into their data systems are inaccurate.

Recommendation: NDEQ to correct entry on 2 investigations.

3. HPV discovery rate per FCE is below the national goal.

Recommendation: Because NDEQ has a higher level of outreach and compliance assistance, HPV discovery rates from FCEs are low. NDEQ is aware and will target source review/inspections to increase HPV discovery.

4. Penalties are not being entered when settlements are entered into the IIS.

Recommendation: NDEQ to enter two additional penalty amounts for FY06. Penalties will be entered on future settlements. It is important that staff continually update enforcement data. Continual knowledge of how and what to enter into the IIS is needed. With the addition of penalty amounts, the sources as well as the public will be aware that penalties are part of the state enforcement program.

5. Result codes for stack test and compliance certification are not uploaded in AFS. While staff are entering the appropriate result code into the IIS, the NDEQ is utilizing a version of the UI which does not populate the result code data into AFS

Recommendation: NDEQ is working with TRC to upgrade the UI with the latest version. EPA will assist NDEQ with this upgrade where necessary. A target date of July 07, 2007 is the goal for completion. This will improve data accuracy and timeliness. This will also reduce information requests from EPA.

6. The SRF database will be reviewed periodically by EPA and NDEQ to reconcile ongoing discrepancy in class coding. EPA will work with NDEQ to evaluate each data metrics for any discrepancies and what actions will be taken to correct discrepancies.

### **Source Specific Findings**

<b>Source ID #</b>	<b>Facility Name/Location</b>	<b>File Review Comment</b>
3104700031	TENNECO AUTOMOTIVE INC COZAD, NE	Inspection reports of 6/29/06 and 2/24/05 not dated. A compliance certification of 7/25/06 included



		several permit requirements out of compliance. Unclear from the file if any follow-up was done.
3106700014	STORE KRAFT MANUFACTURING CO BEATRICE, NE	Basis for proposed penalty included in file, however, AG downward calculations not shown.
3112700002	ARMSTRONG CABINET PRODUCTS AUBURN, NE	Two inspections of 1/10/06 and 10/6/06 discovered some of the same violations. Greater than 270 days to address.
3114100025	LINDSAY MANUFACTURING COMPANY LINDSAY, NE	An LOW was sent 3/10/05 following a 2/11/05 inspection. It was unclear from the inspection what the violation was. Inspection reports should clearly identify and cite violations.
3117900011	GREAT DANE LIMITED PARTNERSHIP WAYNE, NE	Letter to facility following a 6/13/06 inspection indicated that all HAPS were not being tracked. LOW or NOV would have been appropriate.
3117700026	CONCRETE EQUIPMENT CO INC BLAIR, NE	Inspection of 11/16/04 not dated
3114100035	FLEXCON COMPANY INC, COLUMBUS, NE	Source test was done on 5/6/06. Test report was submitted 87 days instead of the 45 days after the test. A letter was sent on 10/30/06 to advise source. An LOW or NOV would have been appropriate.
3105300074	AERO-TEC INC FREMONT, NE	Inspection of 10/21/04 not dated.
3104700048	PONY EXPRESS GREENHOUSE LLC GOTHENBURG, NE	Inspection reports of 7/8/04 and 8/3/06 not dated. Operating status is "operating" in AFS while NDEQ indicated the facility was closed.
3115300041	METZ BAKING COMPANY BELLEVUE, NE	Inspection of 5/23/06 did not include a transmittal letter back to the source. Deviations noted in the 2006 annual certification with no apparent follow-up
3111900078	APACHE MANUFACTURING NORFOLK, NE	Penalty not entered into AFS
3109500001	ENDICOTT CLAY PRODUCTS CO ENDICOTT, NE	Title V certification of 3/25/05 and 3/24/06 both noted deviations. Unclear from the file what follow-up, if any was taken

December 20, 2006

Ms. Shelley Kaderly, Administrator  
Nebraska Department of Environmental Quality  
Air Quality Division  
P.O. Box 98922  
1200 "N" Street, Suite 400  
Lincoln, NE 68509-8922

Dear Ms. Kaderly:

The purpose of this letter is to confirm that the FY-2007 Program Review of the Nebraska Department of Environmental Quality (NDEQ) Air Quality program has been tentatively scheduled for the week of March 13-15, 2007 (pending resolution of any conflicts with NDEQ's move schedule). We will hold an entrance conference on March 13, 2006. The goals of the entrance conference are to (1) introduce the EPA review team members, (2) establish the ground rules for the review, and, (3) to obtain your input concerning the program review. We will also hold an exit conference where we will present our preliminary review findings. The exit conference is currently scheduled to be held at your offices at 1:00 P.M. on Thursday, March 15, 2006.

The format of this Program Review is somewhat different as we are relying more on technology to transmit checklists/questionnaires and questions between NDEQ and EPA. A list of the checklists/questionnaires that will be used for the program reviews is enclosed in this letter. The checklists/questionnaires will be transmitted electronically to NDEQ's program review contact. Onsite evaluations of the Planning, Modeling, Compliance, Small Business and Emissions Inventory programs will be conducted during the week scheduled for the review. Per your request to conserve personnel resources, the Monitoring Program is also planning to perform the on-site document review portion of the Technical Systems Audit to coincide with the program review.

NDEQ has been chosen to complete a self-certification of their Permit Program, thus an onsite evaluation of this program will not be conducted at the NDEQ offices; however, EPA reviewers will be in attendance at the exit conference to present their preliminary findings on the self-certification. In addition, EPA will be conducting onsite evaluations of Lincoln Lancaster County Health Department's and Omaha's Air Quality Control Division's permit and modeling programs. The findings from these onsite reviews will be included as an appendix to NDEQ's final program review report.

We would appreciate it if the NDEQ staff could complete the checklists/questionnaires for the onsite review and return them electronically to their EPA counterpart by February 9, 2007. We also ask that the Permit Program self-certification be completed by February 23, 2007.

File requests for the Compliance Program will be initiated at least 5 business days prior to the scheduled program review. File requests from other programs will be made onsite. Requests will be made directly from EPA personnel to NDEQ personnel via e-mail. For your convenience, a list of EPA's main contacts for each program is also enclosed in this letter.

Arrangements have been made with your staff to locate space where EPA personnel can work on the Review.

Planning, Modeling, Monitoring, Compliance, Small Business and Emissions Inventory personnel from EPA will be at the NDEQ offices during the week scheduled for the Review. The Permitting, Title V and Asbestos personnel will be in attendance during the exit conference to present their preliminary findings of NDEQ's self-certification reports.

EPA has established a goal of 90 days from the exit conference with which to complete the Program Review report. This timeframe gives EPA and NDEQ 30 days for development of final comments on the report. Our intent is to fulfill this goal in a timely manner to allow us to integrate the successes and areas for improvement in to the partnership agreement negotiation process.

We greatly appreciate the efforts of your staff in assisting EPA with this Review. If you have any comments or questions, please contact Shelly Rios at (913) 551-7296, or [rios.shelly@epa.gov](mailto:rios.shelly@epa.gov), or me at (913) 551-7606, or [tapp.joshua@epa.gov](mailto:tapp.joshua@epa.gov)

Sincerely,

/s/

Joshua A. Tapp  
Branch Chief  
Air Planning and Development Branch  
Air, RCRA and Toxics Division

Enclosures:

cc: Carol Kather, ARTD  
JoAnn Heiman, ARTD/APCO  
Jeff Robichaud, ENSV/EWCM

Bcc: (electronic)  
Michael Bronoski, APCO  
Jon Knodel, APCO  
Richard Daye, APDB  
James Regehr, EWCM  
Larry Hacker, RALI  
Richard Tripp, APCO  
Pat Scott, APCO  
Angela Catalano, APCO  
Earlyne Hill, APCO

## **Appendix B – Chapter III – Planning and Development**

- B-1: Planning and Development Questionnaire
- B-2: NDEQ Organizational Chart
- B-3: *Regulatory Manual: A guide for developing rules and regulations, August 2005*
- B-4: Local Workplan Agreements
- B-5: Outreach Plan
- B-6: Individual Development Plans
- B-7: Training Resources Catalog
- B-8: Emission Inventory data collection and QA summary
- B-9: NEI Elements submitted by NDEQ
- B-10: EIQ
- B-11: EI Local Agency Audits done by NDEQ

Please contact Shelly Rios-LaLuz, Nebraska Coordinator at [rios.shelly@epa.gov](mailto:rios.shelly@epa.gov) or (913)551-7296 for more information on these appendices.

## **Appendix C – Chapter IV – Permitting**

C-1: NSR Program Self-Evaluation Questionnaire

C-2: Title V Program Self-Evaluation Questionnaire

Please contact Shelly Rios-LaLuz, Nebraska Coordinator at [rios.shelly@epa.gov](mailto:rios.shelly@epa.gov) or (913)551-7296 for more information on these appendices.

**Evaluation of State/Local  
Air Quality Compliance and Enforcement Activities**

**Prepared for  
ARTD/APCO  
U.S. Environmental Protection Agency  
Region VII  
901 N. 5<sup>th</sup> Street  
Kansas City, MO 66101**

by  
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September 2003

Revised by APCO December 2006

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## Introduction

The purpose of this document is to provide consolidated program review criteria for use by the Region when evaluating State and local agencies' stationary source air compliance and enforcement programs. The Region believes that developing these criteria will benefit both the EPA and the State/local agencies by ensuring that air program review criteria are applied consistently to all agencies, and by ensuring that the reviews are conducted in a manner that is streamlined and efficient. By establishing and communicating well in advance the information to be collected and evaluated during a program evaluation, the data gathering efforts immediately preceding the on-site review can be minimized.

The program review/evaluation offers a constructive opportunity for stakeholders to assess the quality and progress of the implementation of the air program. It affords an opportunity to provide feedback and identify areas in which program improvements can be made. It provides a framework within which the implementing agency can pause and reflect on what obstacles may be impeding success, and to seek assistance, where possible, in working through challenges. In addition, it can be used to identify and highlight "best practices" which may be beneficial to share with other implementing agencies.

A successful stationary air source program is one that protects human health and the environment by implementing all applicable regulations to prevent air pollution. The success of an air compliance/enforcement program is judged in large part by its conformance to the criteria established in two documents issued by EPA, copies of which are included in the Appendices.

- "Clean Air Act Stationary Source Compliance Monitoring Strategy" (CMS), April 2001, (Appendix A), and
- "The Timely and Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs)," June 1999, (Appendix B).

This document can be used as follows:

- By EPA during on-site interviews with the State/local agency;
- By the State/local agency prior to EPA's on-site visit; or
- By the State/local agency as part of a self-evaluation.

In addition to providing a consistent framework for discussion, this document can also be used as a guide to structure the review report.

Please note that the *shaded* areas of the tables are intended to be populated *by the Region* with the appropriate data from the AIRS Facility Subsystem (AFS), the national air information data management system, prior to the review. The State/local agency should then confirm the accuracy of that data.



## 1.0 Resources & Universe

### RESOURCES

- How many people within the State/local organization are devoted to enforcement and compliance assistance of the stationary source air program?  
Total: \_\_\_\_\_
- Provide a breakdown of these resources in the table below.

Area of Work	Full Time Equivalent (FTE) Employees Working on Air Program		
	Compliance	Enforcement	Compliance and Enforcement
Inspectors	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
Case Officers/Project Managers	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
Attorneys	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
Supervisors/Managers	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
Clerical	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
Data Management	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
Other (Specify) _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
Total	_____	_____	_____

- Are any of these positions currently vacant?  Yes  No  
If yes, specify how many and which ones.

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- For each category of resources, approximately how many total years of air program experience are represented? Complete the table below.

Area of Work	Approx. Total Number of Years of Air Program Experience
Inspectors	
Case Officers/Project Managers	
Attorneys	
Supervisors/Managers	
Clerical	
Data Management	
Other (Specify) _____	

- Is retention of trained and experienced staff a problem?  Yes  No  
If yes, provide specifics.

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- Are the resources available adequate?  Yes  No  
If no, provide specifics.

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- Is training adequate and available for staff?  Yes  No  
If no, provide specifics (e.g., inadequate training funds available, inadequate travel funds available, unable to locate needed training) and list any subject matter for which there are specific training needs.

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1.8 Are there separate fiscal accounting systems in place to properly monitor expenditures of Section 105 grant funds and Title V money?  Yes  No

**UNIVERSE**

1.9 Provide definitions for the terminology used to differentiate between types of sources (e.g., Major (Title V), synthetic minor, etc.).

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1.10 For Fiscal Year 06, how many stationary sources does the State/local agency regulate?

Total Number of Sources Regulated	
Megasites	
Major Title V	
SM 80	
True SM	

1.11 If any of the stationary sources listed in 1.10 are designated as “megasites,” list them.

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1.12 Have the numbers of regulated stationary sources changed significantly over the past four years?  
 Yes  No

If yes, have they  Increased  Decreased?

Provide specifics (e.g., regulations have changed resulting in significant increases or decreases in the numbers of sources subject to regulation).

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## 2.0 Organization & Management

### ORGANIZATION

2.1 How do the Compliance Monitoring/Enforcement group(s) relate to the Compliance Assistance group? Supply any documentation such as organizational charts, memorandums of agreement (MOAs), memorandums of understanding (MOUs), or other documents.

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2.2 Describe how enforcement and compliance monitoring resources are organized. Provide an organizational chart and any relevant MOAs, MOUs, or other documents.

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2.3 Is this organizational structure efficient (e.g., does it allow for effective communication among all parties and sufficient oversight)?  Yes  No  
If no, provide specifics.

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2.4 What, if anything, could be changed to allow greater effectiveness?

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### MANAGEMENT

2.5 Are self-evaluations performed to assess the effectiveness of the programs?  Yes  No  
If yes, describe the process, measurement criteria, frequency, and most recent results.

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2.6 For State agencies only:

a. Are there local agencies under the State's jurisdiction?  Yes  No  
If so, list them.

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b. Describe how the effectiveness of these local agencies' programs is determined.

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### 3.0 EPA - State/Local Partnership

#### AGREEMENTS

3.1 Does the State/local agency have a written performance agreement with EPA?  Yes  No

If yes, what type? Check all that apply.

- Performance Partnership Agreement (PPA)  
 Performance Partnership Grant (PPG) Workplan  
 State-EPA Agreement  
 Memorandum of Understanding (MOU)  
 Specific Enforcement Agreement  
 Compliance Monitoring Strategy (CMS) Plan  
 Other (specify): \_\_\_\_\_

a. Does the agreement include specific commitments/activities?  Yes  No

If yes, provide specifics.

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b. Does the agreement clearly define all roles and responsibilities, including oversight?

Yes  No

If no, provide specifics.

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c. Is the agreement revised/renewed/reissued periodically?  Yes  No

If yes, on what cycle?

Semi-annually  Annually  Biennially  Other (specify): \_\_\_\_\_

d. Were the commitments accomplished (for the most recently completed agreement cycle)?  Yes  No

If no, provide specifics.

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3.2 Does the State/local agency submit a separate CMS plan to EPA?  Yes  No

If yes, on what frequency is the plan submitted?

Annually  Biennially  Other (specify): \_\_\_\_\_

If no, what formally negotiated document is used in lieu of the CMS plan?

Selective Enforcement Agreement

Performance Partnership Agreement

Grant Workplan

Other (specify): \_\_\_\_\_

3.3 Are evaluation commitments based on the minimum frequencies specified in EPA's CMS guidance?  Yes  No

If no, have alternate frequencies been negotiated with EPA?  Yes  No

If alternate frequencies have been approved, provide specifics.

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3.4 Does the State/local agency prioritize the goals of its air quality program?  Yes  No

If yes, how often?

Annually  Biennially  Every 3 years  Other (Specify): \_\_\_\_\_

If yes, provide specifics.

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## COMMUNICATION

3.5 Does the State/local agency participate in regular face-to-face meetings with the EPA Region to discuss compliance/enforcement issues?  Yes  No

If yes, how often?

Semi-annually

Monthly

As needed

3.6 Does the State/local agency participate in regular monthly conference calls with the EPA Region to discuss compliance/enforcement issues?  Yes  No

If no, on what schedule are conference calls with the EPA Region held?

Quarterly

Weekly

As needed

3.7 Are your meetings/conference calls with the EPA Region useful?  Yes  No

If no, how could they be improved?

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3.8 How is the relationship between the State/local agency and the EPA Region best characterized?

- Excellent – The State/local agency has a proactive relationship with the Region and communicates with the Region more frequently than monthly.
- Good – The State/local agency has a proactive relationship with the Region and communicates with the Region on a monthly basis.
- Satisfactory – The State/local agency has a neutral relationship with the Region and communicates with the Region on a monthly basis.
- Needs Improvement – The State/local agency has a neutral or antagonistic relationship with Region and communicates with the Region on an infrequent basis.

If you characterize the relationship between the State/local agency and the EPA Region as good or excellent, explain how the favorable relationship is maintained.

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If improvement is needed, provide specifics.

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3.9 How is the relationship between the State/local agency and the regulated community best characterized?

- Excellent – The State/local agency has a very proactive relationship with the regulated community and maintains frequent communication with them.
- Good – The State/local agency has a proactive relationship with the regulated community and communicates with them on an as-needed basis.
- Satisfactory – The State/local agency has a neutral relationship with the regulated community and communicates with them on an infrequent basis.
- Needs Improvement – The State/local agency has an antagonistic relationship with the regulated community and rarely communicates with them.

If you characterize the relationship between the State/local agency and the regulated community as good or excellent, explain how the favorable relationship is maintained.

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If improvement is needed, provide specifics.

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## 4.0 Compliance Monitoring

### EVALUATIONS

4.1 For Federal fiscal year 06, how many compliance evaluations have been completed by the State/local agency.

	Megasites	Major Title V	SM 80	True SM
Full				
Partial				
Investigations Site Visits				
On Site Visit At least once every 3 years	<input type="checkbox"/> Yes <input type="checkbox"/> No			
At least once every 2 years		<input type="checkbox"/> Yes <input type="checkbox"/> No		
At least once every 5 years			<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

Total \_\_\_\_\_ ‡

4.2 How many of the evaluations identified in 4.1 included on-site visits.

4.3 Did the numbers of full compliance evaluations completed satisfy the minimum frequency requirements?

4.4 For any negative responses in the table above, provide specifics (e.g., What percentage of the commitment was met? Why was the goal not met?).

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4.5 Does the State/local agency have a written inspection protocol?  Yes    N  
If yes, attach a copy and/or describe.

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4.6 How are facilities targeted for inspection?

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4.7 Are the State/local inspections unannounced?  Yes  N  
 If no, provide specifics.

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4.8 Were all Title V compliance certifications, and underlying reports, received and reviewed?

Total Number of Certifications Received	
Total Number of Certifications Reviewed	
Total Number of Certifications Reporting Deviations	

4.9 Do you document compliance evaluations?  Yes  N

4.10 If source compliance evaluations are documented, what type of information is included? Check all that apply. Note: Some information may be provided for the compliance evaluation by appending the appropriate section of the source's permit or other documentation.

- Date
- Compliance Monitoring Category (Full, Partial, or Investigation)
- Official Submitting Report
- Facility Name
- Facility Location
- Mailing Address
- Phone Number
- Title V or Megasite Designation, if applicable
- All Applicable Requirements
- Inventory and Description of Regulated Emissions Units and Processes
- Identification of Process and Emission Units Evaluated
- On-Site Observations
- Compliance Assistance Provided (yes/no)
- Action Taken During Inspection to Come into Compliance
- Findings and Recommendations Related to Facility During the Compliance Evaluation (if applicable)

### SOURCE TESTING

4.11 Does the State/local agency have written source testing policies/procedures?  Yes  N  
 If yes, describe and/or attach a copy.

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4.12 Does the State/local agency perform source testing?  Yes  No  
 If no, who performs source testing?

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4.13 Does the State/local agency monitor source testing?  Yes  N

If yes, what percentage of source testing is monitored? \_\_\_\_\_%

If no, describe the State/local agency's role in source testing.

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4.14 Who evaluates the testing procedures and results?

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## VIOLATIONS

4.15 How many of the evaluations reported in 4.1 identified violations?

Magasites	
Major Title V	
SM 80 %	
SM Less than 80%	
Total number of Compliance Evaluations Completed where violations were identified	

4.16 How is a violation documented?

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4.17 What types of violations are most frequently found (e.g., recordkeeping, construction without a permit)?

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4.18 Were there any exceedances/violations of the national ambient air quality standards (NAAQS)?

Yes  No

If yes, provide specifics.

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4.19 Were there violations of major source potential for significant deterioration/new source review (PSD/NSR) requirements?  Yes  No

If yes, how many in FY 06?

FY - 06\_\_\_\_:PSD\_\_\_\_, NSR\_\_\_\_

(Optional) How many minor source NSR permitting violations occurred in FY 06s?

FY\_06\_\_:\_

4.20 Does the State/local agency conduct any trends analysis to determine whether certain violations are becoming more or less frequent?  Yes  No

If yes, provide specifics.

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4.21 Have compliance rates over the last 4-year period changed significantly?  Yes  No

If yes, have they  Increased or  Decreased?

Provide specifics, including probable cause for change.

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4.22 Has ambient air quality over the last four-year period changed significantly?  Yes  No

If yes, has it  Deteriorated  Improved?

Provide specifics, including probable cause for change.

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4.23 How many HPVs were identified in FY 06?

Identified During FY 06	
Carried Forward from Previous Year	
Total at End of FY 06	

4.24 Is the State/local agency's HPV definition consistent with EPA's?  Yes  No

If no, how is it different?

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4.25 If violations are found, are follow-up inspections required?  Yes  No

If yes, when are they conducted?

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## 5.0 Enforcement

### TIMELY & APPROPRIATE ENFORCEMENT

The "Timely and Appropriate (T&A) Enforcement Response to High Priority Violators (HPVs)" policy provides guidance for prioritizing enforcement efforts. The following questions pertain only to HPVs.

5.1 For Federal fiscal 06, how many enforcement actions have been taken?

Administrative Order	
Judicial Referrals	
Notices of Violation	
Other	

Provide any additional comments.

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5.2 For fiscal year 06, what is the average number of days from the date the violation is discovered until the date of the enforcement action.

Number of Days from Date of Discovery of Violation to Date of Enforcement Action

Average Number of Days for Fiscal Years	
Number of Times the Number of Days was greater than 180 days	

Provide any additional comments.

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5.3 What is the typical enforcement response for a source that violates air quality regulations?

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5.4 What is the overall enforcement process for handling a violation by a facility?

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5.5 Are the enforcement actions taken appropriate for the violations per the T&A HPV guidance?

Yes  N

Explain below.

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5.6 For fiscal year 06, how many of the enforcement actions taken were for failure to comply with NSR or PSD (major source construction permitting) requirements?

FY: 06\_: \_\_\_\_\_

5.7 How many citizen complaints were received in each of the fiscal year 06?

FY: 06\_: \_\_\_\_\_

5.8 For fiscal year 06 how many of the enforcement actions taken were for violations discovered as a result of complaints?

FY: 06: \_\_\_\_\_

5.9 How are citizens informed of actions against violators?

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5.10 Does the State/local agency have a written enforcement response policy?  Yes  N

If yes, attach a copy. If no such written policy exists, create a flow diagram of the typical enforcement process and attach.

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5.11 What process is followed in determining whether a violation exists?

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5.12 What process is followed in deciding whether to pursue a formal enforcement action against a confirmed violation?

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5.13 What is the typical enforcement response to a violation such as a failed stack test?

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5.14 What is the typical enforcement response to a self-reported violation?

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5.15 Does the State/local agency have a written self-audit/self-disclosure of violations policy?

Yes  N

If yes, attach a copy and/or provide specifics.

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5.16 What process is followed in determining which type of action to pursue – Administrative v.

Judicial; Civil v. Criminal?

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5.17 In fiscal year 06, has the State/local agency ever cited anyone for failing to provide truthful and accurate information?  Yes  No  
If yes, provide specifics.

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5.18 Where EPA had the lead in enforcement, or had assumed the lead, how often was the State/local agency invited to join the case?

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5.19 How many Federal overfiling actions did EPA pursue in Federal fiscal year 06? What were the reasons for the overfiling actions?

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5.20 For State agencies only. If the agency has districts and/or local agencies within its jurisdiction, what are the quality assurance/quality control (QA/QC) procedures in place to ensure that they are taking timely and appropriate enforcement actions?

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## PENALTIES

5.21 Does the State/local agency have a written penalty policy?  Yes  No  
If yes, attach a copy of the policy.  
If no, how is the penalty amount determined and documented in the file?

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5.22 Is the recovery of economic benefit considered?  Yes  N

If yes, how is it determined and documented in the file (e.g., BEN)? If no, provide specifics.

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5.23 How is a source's inability to pay claim evaluated and documented in the file (e.g., ABEL)?

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5.24 What is the maximum penalty allowed by your agency?

\$ \_\_\_\_\_ per violation per day.

5.25 How often is the maximum penalty assessed?

- Always (100% of the time)
- Frequently (26% to 99% of the time)
- Rarely (1% to 25% of the time)
- Never (0% of the time)

Provide specifics.

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5.26 How are payments ensured and tracked?

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5.27 What are the total penalty settlements within Federal fiscal year 06?

Total Penalties Assessed (\$)	
Total Penalties Collection (\$)	
Average Collected Penalty (\$)	
Maximum Single Penalty (\$)	

5.28 What does the penalty policy say about repeat violations?

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5.29 At what point does legal counsel get involved in a settlement?

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5.30 What is the criteria used for allowing a supplementary environmental project (SEP) in lieu of penalties?

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## 6.0 Information Management

### SOURCE CASE FILES

6.1 Does the State/local agency have written guidelines pertaining to case source file management?

Yes  No

If yes, attach a copy.

If no, briefly describe how case source files are maintained and organized (e.g., What documents are maintained in the files? Are they organized by subject categories or in chronological order? Hard copies or electronic copies? Individual documents in file indexed or not?)

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6.2 Are the files readily accessible?  Yes  No

If no, provide specifics.

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6.3 Is all information about the source (permitting, enforcement, etc.) kept in one file?

Yes

No

If not, explain how they are maintained.

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6.4 In what order are the files maintained?

- Chronological
- By Subject (e.g., permits, enforcement)
- Other (specify): \_\_\_\_\_

6.5 Is it possible to determine through a review of the file which regulations are applicable to a facility?  Yes  No

If no, provide specifics.

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6.6 Through a review of the file, is it easy to determine the compliance status of a source?

- Yes  No

If no, provide specifics.

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**CONFIDENTIAL BUSINESS INFORMATION**

6.7 What types of policies, procedures, and/or guidelines does the State/local agency have in place for handling Confidential Business Information (CBI)? (Attach copies and/or provide specifics.)

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6.8 What types of information does the State/local agency allow to qualify for treatment as CBI (e.g., production rates, emission limits)?

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6.9 Describe how CBI files are stored (separate, with other files, etc.).

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6.10 Does the State/local agency have a basic security and storage system in place to protect CBI files

from alteration, loss, or unauthorized access?  Yes  No

6.11 Does the State/local agency have a document control officer (DCO) or a file manager?  
 Yes  No

6.12 Does the State/local agency maintain an authorized access list of those who may access the CBI files?  Yes  No

6.13 What type of tracking system, if any, is in place to record pertinent information (e.g., date received, CBI control number, document description, transfer information, destruction record, etc.)?

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## DATA MANAGEMENT

6.14 Are the minimum data elements (e.g., inspections completed, HPVs identified) in the AFS data system complete and accurate?  Yes  No  
If no, provide specifics.

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6.15 Is there a data integrity analysis or other QA/QC procedure in place to monitor the accuracy and completeness of the minimum data elements in AFS?  Yes  No  
If yes, attach and/or describe.

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6.16 Who enters the minimum data elements into the AFS database?  
 EPA Region  State/local agency  Jointly  Other (specify): \_\_\_\_\_

6.17 How are the data entered into the AFS database?  
 Manually  Electronically uploaded by State/local agency  Other (specify): \_\_\_\_\_

6.18 How does the State/local agency track and report compliance/enforcement activities?  
 AFS  State/local data system  Manually  Other (specify): \_\_\_\_\_

6.19 How often are the minimum data elements in AFS updated?  
 Weekly  Monthly  Quarterly  Other (specify): \_\_\_\_\_

**Nebraska 2006 Audit  
Source Case File Review Checklist  
Compliance and Enforcement**

Reviewed by: \_\_\_\_\_ Date: \_\_\_\_\_

Source Name: \_\_\_\_\_ Source (AFS) ID# \_\_\_\_\_

Source Location: \_\_\_\_\_

Permit Type(s): \_\_\_\_\_ Permit Number(s) (if applicable): \_\_\_\_\_

Were violations identified?  Yes  No  
Was site identified as a High Priority Violator?  Yes  No

**I. Inspection Reports**

Evaluation Type (FCE/PCE) \_\_\_\_\_ Date of Inspection \_\_\_\_\_ Date of Report \_\_\_\_\_

General Info & Facility Information:  Yes  No  
Are the applicable regulations, including any permit limitations, listed in the inspection report?  Yes  No  
If not, please explain.

Inventory/Description of Regulated Units:  Yes  No  
Enforcement History:  Yes  No  
Compliance Monitoring Activities:  Yes  No  
Findings and Recommendations:  Yes  No  
Inspection completed in a timely manner:  Yes  No  
Did the inspection report document any violations found during the inspection (e.g., constructing without a permit; failure to meet permit conditions)?  Yes  No  
If a violation was found, Please provide information regarding the enforcement response taken:

Type of Action	Date of Action	Reason for Action	HPV?	If HPV, Date of resolving/address action

Did the enforcement action return source to compliance:  Yes  No

**II. Self-Reporting Submittals/Excess Emission Reports (EERs), Certifications**

What other types of reports are present within the file?

Excess Emission Reports  Other Self-Reporting Submittals  Certifications

EERs - For the reporting period: Was the total duration of excess emissions greater than 5% of the total operating time or did the total continuous emission monitoring system/continuous opacity monitoring system (CEM/COM) downtime exceed 5% of the total operating time?  
 Yes  No

Did the file contain other self-reporting submittals documenting exceedance for a restriction for which the submittal is required, e.g., MACT semi-annual reports.  Yes  No

Did the file contain a Title V certification:

Yes  No

Describe the violation and enforcement and fill in the table below

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Did the enforcement response for EERs follow the guidance set forth in the “Timely and Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs) (T&A HPV) policy?  Yes  No

Describe the violation and enforcement and fill in the table below

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III. Performance Tests, Citizen Complaints, Others

Did the file contain a performance test documenting the source’s failure to comply with a regulatory limitation?

Yes  No

Describe the violation and enforcement and fill in the table below

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Did the file contain evidence of a violation as a result of responding to a citizen complaint?

Yes  No

Describe the violation and enforcement and fill in the table below

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Was there any other evidence or documentation of a violation in the file?  Yes  No

Describe the violation and enforcement and fill in the table below

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Type of Action	Date of Action	Reason for Action	HPV?	If HPV, Date of resolving/address action

Did the enforcement action return source to compliance:  Yes  No

Additional comments/notes:

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Attach copies of enforcement related documents as necessary (e.g., NOV, Administrative Order and Consent Agreement, etc.)

**CAA Data for Nebraska** (Review Period Ending: FY06 YTD)

**Please note:** For display purposes, some important explanatory details about the data metrics are not included on the metrics results screen. To see detailed information about each data metric, refer to the [data metrics informational spreadsheet](#) [Microsoft Excel, 82 KB] when reviewing the data. For more information on data quality, please see the [known data problems](#) page. For more info on non-monthly variables, please see the [recent data updates](#) page.

Metric	Measure Type	Metric Type	National Goal	National Average	Nebraska (Metric=x/y)*	Count (x)	Universe (y)	Not Counted (y-x)	
1. Degree to which state program has completed the universe of planned inspections/compliance evaluations (addressing core requirements and federal, state and regional priorities).									
A	CAA Major Full Compliance Evaluation (FCE) Coverage (2 FY)	Goal	State	100%	80.0%	94.7%	<a href="#">124</a>	131	<a href="#">7</a>
			Combined		81.0%	94.7%	<a href="#">124</a>	131	<a href="#">7</a>
A	CMS Major Full Compliance Evaluation (FCE) Coverage (2 FY)	Data Quality	State	100%	84.0%	94.6%	<a href="#">123</a>	130	<a href="#">7</a>
			Combined		85.0%	94.6%	<a href="#">123</a>	130	<a href="#">7</a>
B	CAA Synthetic Minor 80% Sources (SM-80) FCE Coverage (5 FY)	Goal	State	100%	84.8%	58.6%	<a href="#">167</a>	285	<a href="#">118</a>
			Combined		85.1%	59.4%	<a href="#">170</a>	286	<a href="#">116</a>
C	CAA Synthetic Minor FCE and reported PCE Coverage (5 FY)	Informational-Only	State			60.7%	<a href="#">181</a>	298	<a href="#">117</a>
			Combined			61.2%	<a href="#">183</a>	299	<a href="#">116</a>
C	CMS Synthetic Minor FCE and reported PCE Coverage (5 FY)	Informational-Only	State			61.6%	<a href="#">178</a>	289	<a href="#">111</a>
			Combined			62.1%	<a href="#">180</a>	290	<a href="#">110</a>
D	CAA Minor FCE and Reported PCE Coverage (5 FY)	Informational-Only	State			14.0%	<a href="#">344</a>	2,459	2,115
E	CAA Stationary Source Investigations (5 FY)	Informational-Only	State			<a href="#">2</a>	NA	NA	NA
F	Review of Self-Certifications Completed (1 FY)	Goal	State	100%	81.2%	95.1%	<a href="#">97</a>	102	<a href="#">5</a>
G	Number of	Review	Combined			0	NA	NA	NA

Sources with Unknown Compliance Status (Current)	Indicator								
Percent of Planned R FCEs/Negotiated PCEs Completed	Check coverage for a list of facilities over a specified time frame using the <a href="#">OTIS Clean Air Act Query</a>								
4. Degree to which significant violations (e.g., significant noncompliance and high priority violations) and supporting information are accurately identified and reported to EPA national databases in a timely manner.									
A	High Priority Violation Discovery Rate - Per Major FCE Coverage (1 FY)	Goal	State	> 1/2 National Avg	8.7%	4.1%	<u>4</u>	<u>97</u>	93
			Regional		23.8%	0.0%	0	<u>1</u>	1
B	High Priority Violation Discovery Rate - Per Major Source (1 FY)	Review Indicator	State	> 1/2 National Avg	4.0%	2.7%	<u>4</u>	<u>148</u>	144
			Regional		0.3%	0.0%	0	<u>148</u>	148
C	No Activity Indicator - Number of HPVs (1 FY)	Review Indicator	State			<u>4</u>	NA	NA	NA
D	Percent Actions With Prior HPV (1 FY)	Review Indicator	State	> 1/2 National Avg	77.5%	100.0%	<u>5</u>	5	0
6. Degree to which a state takes timely and appropriate enforcement actions, in accordance with policy relating to specific media.									
A	Percent HPVs Unaddressed for >270 Days (1 FY)	Review Indicator	State		49.1%	37.5%	<u>3</u>	8	<u>5</u>
			Regional		60.3%	0 / 0	0	0	
B	Percent HPV Pathways Exceed 270 Days** (1 FY)	Review Indicator	State		NA	0 / 0	0	0	
C	No Activity Indicator - Number of Actions (1 FY)	Review Indicator	State			<u>16</u>	NA	NA	NA
8. The degree to which penalties in final enforcement actions include economic benefit and gravity in accordance with applicable penalty policies.									
A	No Activity Indicator - Actions with Penalties (1 FY)	Review Indicator	State			<u>1</u>	NA	NA	NA
B	Percent Actions at HPVs With Penalty (1 FY)	Review Indicator	State	≥ 80%	77.0%	14.3%	<u>1</u>	7	<u>6</u>

10. Degree to which the Minimum Data Requirements are timely.									
A	Percent HPVs Entered > 60 Days After Designation, Timely Entry*** (1 FY)	Review Indicator	State		57.6%	25.0%	<u>1</u>	4	<u>3</u>
11. Degree to which the Minimum Data Requirements are accurate.									
A	Number of HPVs/Number of NC Sources (1 FY)	Data Quality	Combined	≤ 100%	94.4%	250.0%	<u>15</u>	<u>6</u>	NA
B	Stack Test Results at Federally-Reportable Sources - % Without Pass/Fail Results (1 FY)	Goal	State	0%	17.1%	34.8%	<u>8</u>	23	<u>15</u>
	Stack Test Results at Federally-Reportable Sources - Number of Failures (1 FY)	Data Quality	State				<u>2</u>	NA	NA
12. Degree to which the minimum data requirements are complete, unless otherwise negotiated by the region and state or prescribed by a national initiative.									
A	Title V Universe: AFS Operating Majors (Current)	Data Quality	NA				<u>127</u>	NA	NA
	Title V Universe: AFS Operating Majors with Air Program Code = V (Current)	Data Quality	NA				<u>122</u>	NA	NA
	Source Count: Majors (Current)	Data Quality	NA				<u>127</u>	NA	NA
B	Source Count: Synthetic Minors (Current)	Data Quality	NA				<u>287</u>	NA	NA
	Source Count: NESHAP Minors (Current)	Data Quality	NA				<u>1</u>	NA	NA
C	CAA Subpart Designation: NSPS (Current)	Informational-Only	NA				<u>100</u>	NA	NA



	CAA Subpart Designation: NESHAP (Current)	Informational-Only	NA			<u>4</u>	NA	NA	NA
	CAA Subpart Designation: MACT (Current)	Informational-Only	NA			<u>70</u>	NA	NA	NA
	Compliance Monitoring: Sources with FCEs (1 FY)	Data Quality	State			<u>165</u>	NA	NA	NA
D	Compliance Monitoring: Number of FCEs (1 FY)	Data Quality	State			<u>176</u>	NA	NA	NA
	Compliance Monitoring: Number of PCEs (1 FY)	Informational-Only	State			<u>39</u>	NA	NA	NA
E	Historical Non-Compliance Counts (1 FY)	Data Quality	Combined			<u>30</u>	NA	NA	NA
	NOV: Number Issued (1 FY)	Data Quality	State			<u>23</u>	NA	NA	NA
F	NOV: Number of Sources (1 FY)	Data Quality	State			<u>19</u>	NA	NA	NA
	HPV: Number of New HPV Pathways (1 FY)	Data Quality	State			<u>4</u>	NA	NA	NA
G	HPV: Number of New HPV Sources (1 FY)	Data Quality	State			<u>4</u>	NA	NA	NA
	Formal Action: Number Issued (1 FY)	Data Quality	State			<u>16</u>	NA	NA	NA
H	Formal Action: Number of Sources (1 FY)	Data Quality	State			<u>11</u>	NA	NA	NA
I	Assessed Penalties Complete (1 FY)	Data Quality	State			\$15,200	NA	NA	NA
J	Major Sources Missing CMS Policy	Review Indicator	Combined			0	NA	NA	NA

Applicability								
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▼ **Save Results** (a comma delimited text file)

▼ **Save Results** (Excel file)

Data Refreshed: December 9, 2006

# ACS Commitments and Organizational Assessment Commitments<sup>1</sup>

OECA's FY 2007 Targets (Sept. 28, 2006)				
CODE	MEASURE	NPM-OECA	R7 COMMITMENT	COMMENTS
CAA01	The Compliance Monitoring Strategy requires 50% of Title V majors receive full compliance evaluations (FCEs) annually. This default applies to state projections only and may vary from state-to-state depending on what is negotiated between the regions and states. The number of federal FCEs at Title V majors.		<del>30</del> 34 34	BID NOT ACCEPTED - OECA comment: Reject bid contingent upon additional information. The FY07 bid is less (34 to 30) than last year, as are the bids for 80% SMs (17 to 15), and PCEs (5 to 0). The Region should explain why it can not meet or even increase its FY06 FCE commitment given the overall reduced evaluation effort in the Region. <b>Region 7 accepts HQ offer.</b>
CAA01.s	The CMS requires 50% of Title V majors receive full compliance evaluations (FCEs) annually. This default applies to state projections only and may vary from state-to-state depending on what is negotiated between the regions and states.  The number of state FCEs at Title V majors.		<del>627</del> 615 707	BID NOT ACCEPTED - OECA comment: IA, KS, and NE – Accepted MO – Reject bid of 205 FCEs contingent upon Regional confirmation that this bid represents 50% of the “CMS A” universe as demonstrated in AFS on 9/30/06 per a prior regional commitment to ensure that the State source universe is corrected by that date. Otherwise, the HQ counterbid is 283 FCEs – 50% of the “CMS A” universe as indicated in the 8/9/06 AFS data pull.  Iowa - 160 Kansas - 185 Missouri - <del>205</del> 193* 205 Nebraska - 77  <b>*Based on 9/11/06 data pull from AFS</b> <b>Region 7 accepts HQs offer.</b>

<sup>1</sup> Organizational Assessments commitments are highlighted in Grey.

## OECA's FY 2007 Targets (Sept. 28, 2006)

<i>CODE</i>	<i>MEASURE</i>	<i>NPM-OECA</i>	<i>R7 COMMITMENT</i>	<i>COMMENTS</i>
CAA02	<p>The CMS specified FCEs at 20% of the universe for "80%" synthetic minors" and other sources (as appropriate). This default applies only to the state projections and may vary from state-to-state depending on what is negotiated between the region and states.</p> <p>The number of federal FCEs at "80%" synthetic minors" and other sources.</p>		15	<p>AGREED</p> <p>Region 7's universe is 2,206</p>
CAA02.s	<p>The number of state FCEs at "80% synthetic minors" and other sources.</p> <p>The CMS specified FCEs at 20% of the universe for "80%" synthetic minors" and other sources (as appropriate). This default applies only to the state projections and may vary from state-to-state depending on what is negotiated between the region and states.</p>		<del>354</del> <b>422</b>	<p>BID NOT ACCEPTED - OECA comment: Reject bid contingent upon additional information. All Region 7 states have a 5 year frequency for the 80% SMs universe. Using the current AFS universe (8/9/06) and dividing by 5, IA should be conducting 167 FCEs; KS conducting 152; MO conducting 70; and NE conducting 43. The state breakdown provided by the Region shows a lower number of FCEs for each State. It is recognized that CMS does not require the States to necessarily conduct FCEs at 20% of the universe each year. However, the Region should confirm that each State will be making up any shortfall in the subsequent 4 years.</p> <p>Iowa – <del>423</del> <b>167</b>            Kansas – <del>446</del> <b>152</b>            Missouri – <del>55</del> <b>70</b>            Nebraska – <del>30</del> <b>33</b></p> <p><b>Region 7 accepts HQ offer.</b></p>
CAA03	<p>The number of federal PCEs. Regions should project the number of Partial Compliance Evaluations (PCEs) - this is a minimum data requirement.</p>		<del>0</del> <b>10</b>	<p>BID NOT ACCEPTED – OECA comment: Reject bid contingent upon additional information. In comparison to FY06 the Region is reducing the number of FCEs at both majors and 80% SMs, and reducing the number of PCEs from 5 to zero. The Region should explain why the Region cannot conduct additional PCEs given the overall reduced evaluation effort.</p>

## OECA's FY 2007 Targets (Sept. 28, 2006)

<i>CODE</i>	<i>MEASURE</i>	<i>NPM-OECA</i>	<i>R7 COMMITMENT</i>	<i>COMMENTS</i>
				HQ agrees with R7 bid.
CAA03.s	<p>The number of state PCEs to be conducted that were the result of the negotiation process for the year (could be the result of redirecting resources from FCEs to PCEs).</p> <p>The number of state negotiated PCEs by state.</p>		0	AGREED
CAA05	<p>Regions should project the number of investigations to be initiated in FY2007.</p> <p>Investigation projections should be provided by air program (e.g., MACT, NSPS).</p>		4 HAP	AGREED

CAA16	Regions should ensure that delegated agencies have written agreements to provide complete accurate, and timely data consistent with the Agency policies and ICR. If delegated agencies do not have written agreements, provide explanation in the regional comment field.	100%	100%	<p>BID NOT ACCEPTED – OECA comment: Region must identify the agreement(s) and send copies of the relevant language to HQ under separate cover.</p> <p><b>Region has sent agreements to HQ. We will be confirming this commitment with a letter to the states around October 1, 2006.</b></p> <p><b>HQ agrees with R7's counter proposal.</b></p>
CAA17	Regions and delegated agencies should enter all MDRs in AFS consistent with the agency policies and the ICR. If for some reason a delegated agency does not agree to enter the MDRs, the region is responsible for ensuring that the data is entered into AFS in a timely manner. Provide an explanation if the region will not meet the benchmark. If the region is responsible for entering state/local/tribal data identify the delegated Agency that has not agreed to do the data entry in the regional comment field.	100%	100%	AGREED
CAA19	The regions should identify the delegated agency in the regional comment field. Regions should conduct in-depth evaluations of delegated programs consistent with CMS.  At a minimum the region should conduct one in-depth evaluation of a delegated program.	1	1	<p>BID NOT ACCEPTED – OECA comment: Region must provide state name.</p> <p><b>Region 7 will be conducting a SRF of the state of Nebraska.</b></p> <p><b>HQ agrees with R7 counter proposal.</b></p>
PBS-ATX03	Number of MACT investigative activities. Achieve an annual reduction of at least 12,000 pounds of air emissions regulated by the MACT standards during the priority period through the investigation and enforcement of strategically chosen MACT standards.	6	<del>3</del> 7	<p>BID NOT ACCEPTED – OECA comment – Region must provide explanation for why they cannot meet the operating bid of 6.</p> <p>Baseline for Region 7 is seven (7).</p> <p><b>HQ agrees with R7 counter proposal.</b></p>
SRF-01	The number of State Review Framework reviews to be completed in FY07.	1	1	<p>AGREED</p> <p>CAA – 2007 (Nebraska)</p>

**NSR/PSD (October 3, 2007)**

ACS	Measure	Proposed '07 Collection Process	Proposed '07 Data Source	Comments
<p><b>Goal 1: by the end of FY 07 EPA will have investigated (through information requests, inspections or active negotiations) 40% of the capacity of portland cement manufacturing plants in the U.S.</b></p> <p><b>Goal 2: by the end of FY 07 EPA will have investigated (through information requests, inspections or active negotiations) 35% of the capacity of sulfuric and nitric acid plants in the U.S.</b></p> <p><b>Goal 3: by the end of FY 07 EPA will have investigated (through information requests, inspections or active negotiations) 35% of the major source glass plants in the U.S.</b></p>				
PBS NSR ?	<p>Report the number of sector plants which have been inspected, have received information requests of are in active negotiations for PSD/NSR compliance.</p> <p>For this report, report separately the number of plants for the cement, acid and glass sectors.</p>	Regions report directly into ACS	Manually	MY and EOY
PBS NSR ?	<p>Report the number of sector plants which have been referred to DOJ for PSD/NSR compliance.</p> <p>For this report, report separately the number of plants for the cement, acid and glass sectors</p>	Regions report directly into ACS	Manual	MY and EOY
PSB NSR ?	HQ report the percentage of cement plant capacity under investigation.	HQ - MY and EOY		
PBS NSR ?	HQ report the percentage of acid plant capacity under investigation	HQ - MY and EOY		
PBS NSR ?	HQ report the percentage of glass plants under investigation.	HQ - MY and EOY		

Appendix G – OAQPS Commitments

ACS Code	Expected Commitment to OAR	National Target	R7 BID	HQ Agree	Comments
OAQPS T06	Regions delegate and provide implementation assistance to S/L/Ts for toxic requirements, as needed. This includes the residual risk and the area source programs. Value in cell is yes/no. End of year progress report required.	Yes	Yes	Yes	
OAQPS P07	Regions complete continue working on completing, per agreed upon schedules, any remaining first-round Title V program evaluations pursuant to March 2002 OIG report. Value in cell is yes/no	Yes	Yes	Yes	All Parties in agreement. Yes. <i>This is R7's priority commitment.</i>
OAQPS P11	Regions encourage States to submit receive timeliness data from States on Title V permits for new and significant permit modifications and enter into TOPS. Bid yes or no.	Yes	Yes	Yes	All Parties in agreement
OAQPS P12	States ensure timely issuance of Title V permit renewals. Bid yes or no.	Yes	Deleted	<input type="checkbox"/>	
OAQPS P13	Region obtains commitment from States continue to issue Title V initial permits and significant modifications, as practicable. Bid yes or no.	Yes	Yes	Yes	All Parties in agreement
OAQPS P14	Region obtains commitment from States cooperate to work with EPA in Title V permit program evaluations, set with a target to respond within 90 days to EPA's evaluation report and implement recommendations as the States believe are warranted. Value in cell is yes/no	Yes	Yes	Yes	All Parties in agreement



ACS Code	Expected Commitment to OAR	National Target	R7 BID	HQ Agree	Comments
OAQPS P15	Regions take action on all NSR Reform SIP/TIP's submitted in FY2006 within 18 months of receipt. Value in cell is number of Federal Register actions taken on NSR SIPs and TIPs.	37	Deleted	<input type="checkbox"/>	
OAQPS P17	States provide all RBLC data, including timeliness data on NSR permits issued for new major sources and major modifications by entering data into the RBLC national database. Bid yes or no.	Yes	Yes	<input type="checkbox"/>	All Parties in agreement
OAQPS P18	Issue all remaining initial Part 71 permits and issue any permit modifications or renewals due in Indian Country in a timely manner.		Deleted	<input type="checkbox"/>	
OAQPS P20**	Regions work with their states/local and tribal governments to implement the Title V and NSR permit programs. Regions shall bid yes/no and include in the comments which of the individual Title V and/or NSR ACS commitments they expect to be most relevant/highest priority in their Region. Determining if this commitment is met will then be based on meeting the bids in the individual ACS items identified for that Region.	Yes	Yes	<input type="checkbox"/>	R7 will be conducting a review the City of Omaha and the LLCDDH. Both of these local agencies, in Nebraska, have approved Title V programs.
OMB PART	Percent of new Title V operating permits issued within 18 months of receiving a complete permit application. Baseline is FY2004, 74%.	87%			
OMB PART	Percent of significant Title V operating permit revisions issued within 18 months of receiving a complete permit application. Baseline is FY2004, 85%.	94%			

ACS Code	Expected Commitment to OAR	National Target	R7 BID	HQ Agree	Comments
OMB PART	Percent of major NSR permits issued within one year of receiving a complete permit application. Baseline is FY2004, 61%.	75%			
OMB PART	Reduce percentage of cancer causing toxic pollutant emissions. Base year is 1993.	22%			
OMB PART	Reduce percentage of non-cancer causing toxic pollutant emissions. Base year is 1993.	55%			

## **Appendix D – Chapter V – Enforcement and Compliance**

D- 5: NE Field Office Chart

Please contact Shelly Rios-LaLuz, Nebraska Coordinator at [rios.shelly@epa.gov](mailto:rios.shelly@epa.gov) or (913)551-7296 for more information on this appendix.

## **Appendix E – Chapter VI – Monitoring**

E-1: Air Monitoring System Audits Questionnaires

E-2: Copies of actual air monitoring results

E-3: List of state wide monitoring sites

Please contact Shelly Rios-LaLuz, Nebraska Coordinator at [rios.shelly@epa.gov](mailto:rios.shelly@epa.gov) or (913)551-7296 for more information on these appendices.

## **Appendix F – Chapter VII - LLCHD Emission Inventory**

G-1: Emission Inventory Questionnaires (EIQ)

G-2: EIQ spreadsheet

G-3: CERR Data elements Table

Please contact Shelly Rios-LaLuz, Nebraska Coordinator at [rios.shelly@epa.gov](mailto:rios.shelly@epa.gov) or (913)551-7296 for more information on these appendices.

## **Appendix G – Chapter VIII – LLCHD Permits**

- I-1: List of source files reviewed
- I-2: Specific details/comments for each review
- I-3: Permit renewal timeline matrix
- I-4: List of NSR project permits issued during 2004 – 2006
- I-5: Title V Self Evaluation Questionnaire
- I-6: NSR Self Evaluation Questionnaire

Please contact Shelly Rios-LaLuz, Nebraska Coordinator at [rios.shelly@epa.gov](mailto:rios.shelly@epa.gov) or (913)551-7296 for more information on these appendices.

## **Appendix H – Chapter IX – LLCHD Enforcement and Compliance**

K-1: LLCHD's Self Evaluation Questionnaire

Please contact Shelly Rios-LaLuz, Nebraska Coordinator at [rios.shelly@epa.gov](mailto:rios.shelly@epa.gov) or (913)551-7296 for more information on this appendix.

## **Appendix I – Chapter X - OAQC Emission Inventory**

H-1: OAQC EIQ

H-2: CERR Elements Table

H-3: OAQC QA document Waiting for OAQC to send e-version

H-4: NDEQ QAPP

Please contact Shelly Rios-LaLuz, Nebraska Coordinator at [rios.shelly@epa.gov](mailto:rios.shelly@epa.gov) or (913)551-7296 for more information on these appendices.



## **Appendix J – Chapter XI – OAQC Permits**

- J-1: List of source files reviewed
- J-2: Specific details/comments for each review
- J-3: Permit renewal timeline matrix
- J-4: List of NSR project permits issued during 2004 – 2006
- J-5: Title V Self Evaluation Questionnaire
- J-6: NSR Self Evaluation Questionnaire

Please contact Shelly Rios-LaLuz, Nebraska Coordinator at [rios.shelly@epa.gov](mailto:rios.shelly@epa.gov) or (913)551-7296 for more information on these appendices.

## **Appendix K – Chapter XII – OAQC Enforcement and Compliance**

L-1: OAQC's Self Evaluation Questionnaire

Please contact Shelly Rios-LaLuz, Nebraska Coordinator at [rios.shelly@epa.gov](mailto:rios.shelly@epa.gov) or (913)551-7296 for more information on this appendix.

## **Appendix L – Chapter XIII – Asbestos**

F-1: Asbestos Self-Evaluation Questionnaire

Please contact Shelly Rios-LaLuz, Nebraska Coordinator at [rios.shelly@epa.gov](mailto:rios.shelly@epa.gov) or (913)551-7296 for more information on this appendix.

**Enforcement Program Review**  
**Nebraska Department of Environmental Quality**  
**Lincoln, Nebraska**

**I. EXECUTIVE SUMMARY**

**A. GENERAL PROGRAM OVERVIEW**

- **Agency Structure:** The structure of the Nebraska Department of Environmental Quality (NDEQ) consists of program offices, a separate legal department and five regional field offices, located throughout the state. The NDEQ program staff conduct hazardous waste compliance evaluations and perform the necessary enforcement follow up on each inspection. Formal enforcement is managed through the legal department and the Attorney General's (AG) office.
- **Compliance/Enforcement Program Structure:** Each program (water, air, waste) has its own division, management and staff for compliance and enforcement. The legal department is separate from the program offices and serves all program offices.
- **Roles and responsibilities:** The program staff within the waste management division is responsible for conducting inspections and appropriate enforcement follow up. Formal enforcement actions are referred to the legal department. Penalty actions are subsequently referred to the AG's office for resolution. Coordination and communication between the NDEQ and the AG's office is minimal.

**B. PROCESS FOR SRF REVIEW**

- **Review Period:** Fiscal Year 2006 was evaluated in this review.
- **Key Dates:** The NDEQ was initially notified of the enforcement program review on January 29, 2007. The initial data review of the SRF data metrics was conducted on February 26, 2007. The on-site review was conducted at NDEQ's offices in Lincoln, Nebraska, from February 28 through March 2, 2007. The on-site file review was completed in a subsequent visit to the NDEQ offices on March 9, 2007.
- **Communication with the State:** At the close of the on-site review, a briefing was held with EPA and NDEQ personnel in attendance. The preliminary findings of the review were discussed with NDEQ at that time. NDEQ management present at the briefing included Tom Lamberson, Deputy Director for Administration; David Haldeman, Administrator, Waste Management Division; Bill Gidley, Waste Management Section Chief (by conference phone); and Morgan Leibrandt, Compliance Unit Supervisor. Donald Toensing, RCRA Enforcement and State Programs Branch Chief participated by

conference phone, with branch staff also in attendance. Subsequent phone calls were held between EPA and NDEQ to further discuss the data matrix elements.

- **State and regional lead contacts for review:** Morgan Leibrandt, Compliance Unit Supervisor served as the state lead contact for this review. Beth Koesterer, RESP, served as EPA Region 7's lead contact for this review.

### C. MAJOR STATE PRIORITIES AND BEST PRACTICES

- **Priorities:** NDEQ's RCRA priority for inspection in FY06 was to verify the compliance status of hazardous waste generators through on-site inspection, including those facilities that are suspected of presenting an imminent threat to human health or the environment. Large quantity generators (LQGs), small quantity generators (SQGs), and operating treatment/storage/disposal facilities (TSDFs) were targeted for inspection, with the goal of maintaining high quality management of hazardous waste within the state.
- **Best Practices:** In FY06, NDEQ initiated a new approach for issuing letters of warning to smaller or less sophisticated (with regard to regulatory knowledge) facilities in the state. Through file reviews, EPA observed that NDEQ includes more prescriptive language in letters directing such facilities to return to compliance. For example, rather than merely instructing a facility to conduct a hazardous waste determination on a particular waste stream, NDEQ provides additional instruction to the facility in order to achieve a more direct return to compliance by the facility. Industry in Nebraska supports this practice.

### D. SIGNIFICANT MEDIA-SPECIFIC FINDINGS AND RECOMMENDATIONS

- **Data Metrics:** Based on the data metrics report generated on February 26, 2007 for the review period ending FY06, NDEQ's hazardous waste program exceeded the national average on all measures except two, measures 8 and 10. The state was below the national average in the percent of final formal actions with penalty (66.7% vs 81.9%) and above the national average in percent of SNCs entered more than 60 days after designation (50% vs 43.6%).
- **File Review:** The file reviews revealed that the state conducts thorough inspections, prepares complete inspection reports, and collects the information necessary to document return to compliance. Issues identified by the file reviews include the lack of consistent penalty calculation and documentation in formal enforcement cases, both between cases and with the state's penalty policy. Lack of adequate and effective communication between the NDEQ and the AG's office, and the AG's failure to include knowledgeable NDEQ staff in negotiation and resolution of enforcement actions are noted as practices

needing improvement.

- **Structure/Organization:** Program structure within NDEQ separates the enforcement and legal staff into different divisions. FY06 is the first program review conducted since the NDEQ shifted the responsibility for penalty calculation from the enforcement to the legal staff. Penalties are negotiated and collected by the AG's office. NDEQ provides input to the AG, but does not participate in case settlement activities.
- **Resources:** Resources do not appear to be a contributing factor to the program review findings.
- **Resolved Issues:** No major issues have been addressed with respect to the SRF metrics. The data for metrics 8 and 10 indicate that a change in NDEQ operating procedures could help the state improve its performance in the areas of penalty assessment and timeliness of SNC determinations. The lack of accurate penalty information in RCRAInfo was addressed by NDEQ as of the date of this report.

## **II. MEDIA PROGRAM REVIEWS**

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Media Program Evaluated: RCRA Subtitle C

Regional Contact: Beth Koesterer

Phone: 913-551-7673

State Contact: Morgan Leibbrandt

Phone: 402-471-1774

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### **A. BACKGROUND INFORMATION**

#### **Structure**

NDEQ's organization is separated by media into the waste, water and air programs. The legal services division is separate from the media programs but serves all program offices.

Enforcement/inspection staff is located in the program office. The staff is responsible for targeting and conducting routine and focused inspections, and conducting the necessary enforcement follow up for each inspection. Compliance assistance is also provided by a separate staff member of this group. Compliance assistance reports are not used to target compliance evaluation inspections, unless serious violations or other circumstances warrant. Formal enforcement actions are developed by the legal department. Enforcement actions for civil penalties are referred to the AG's office.

#### **Authorities**

The Nebraska hazardous waste regulations mirror the federal requirements for the most part. The Part 279 used oil requirements had not been adopted by the state for the time period covered by this review, but this did not affect the review process or report.

#### **Source Universe**

According to the OTIS State Review Framework Results table, dated February 26, 2007, there are four operating treatment/storage/disposal facilities (TSDFs), 80 large quantity generators (LQGs) and 460 small quantity generators (SQGs) in Nebraska. During FY2006, the state conducted evaluations at four operating TSDFs, 27 LQGs and 106 SQGs. These evaluations included compliance evaluation inspections (CEI), financial record reviews (FRR), focused compliance inspections (FCI) and operations and maintenance inspections (OAM). There were no major discrepancies noted in the inspection information, as the state inputs data directly into RCRAInfo.

## **Corrections**

No major corrections to the RCRAInfo data were necessary on the part of NDEQ. Some penalty information required correction, but this was considered insignificant compared to the amount of data entered into RCRAInfo by NDEQ. As of the date of this report, NDEQ has already corrected much of the penalty data in RCRAInfo.

## **B. REVIEW PROCESS**

### **Key Dates**

- Review period is Federal FY06.
- The initial notification to the state, setting the date of the on-site review, was by letter dated January 29, 2007.
- The data analysis was completed in part prior to the on-site review. At the time of the review, some of the data analysis was discussed with the state. Telephone conversations were held subsequent to the completion of the on-site file reviews as necessary to discuss all data metrics of concern.
- The on-site file reviews and interviews with program staff and management occurred from February 28, 2007 through March 2, 2007. An additional day of review was conducted at the state office on March 9, 2007.
- *The draft program review report was sent to the state for comment on -----.*
- *Comments were received from the state on -----.*
- *The final program review report was sent to the state on -----.*

### **Review Process**

The program review was conducted at NDEQ's main office in Lincoln, Nebraska, from February 28 through March 2, 2007. File reviews were also conducted at NDEQ's office on March 9, 2007, to review legal files, which completed the file review portion of the program review. The five regional field offices were not visited, as all program files are maintained at the main office. Beth Koesterer, Deborah Finger and Edwin Buckner, all of the RCRA Enforcement and State Programs Branch, conducted the enforcement program review. Morgan Leibrandt, NDEQ, served as the main state representative for the review. The program and legal files contained much of the information discussed in this report, with additional information provided by NDEQ staff via on-site interviews and subsequent phone calls.



## **C. FILE SELECTION PROCESS**

### **Universe**

A total of 32 facilities were targeted for review during the on-site visit to the NDEQ's office in Lincoln, Nebraska, based on enforcement or inspection activity in FY06. NDEQ recorded formal enforcement actions at ten facilities in FY06. Eight of these facilities were targeted for file review. Twenty-four facilities were randomly selected from a universe of facilities where some type of state inspection activity occurred during FY06, primarily CEIs and compliance assistance visits (CAVs), and to cover all TSDF and generator universe types. 24 of the 32 selected files were reviewed during the on-site visit.

### **File Selection**

- File selection was based on several factors. First, a list of all formal enforcement actions filed by the state in FY06 was generated. Actions were taken at 10 facilities, so eight facility files were selected for review. An additional facility was selected for enforcement action review, since the enforcement process was fairly far along, even though the actual enforcement action was not issued until November 2006.
- Second, a list of all evaluations conducted by the state in FY06 was generated. Twenty-four facilities were selected for review from this list. The facility files were randomly divided among the various generator universes, covering on-site CEIs, CAVs and FCIs. Two of the four operating TSDFs were inspected (CEIs) by NDEQ in FY06, and both facilities were targeted for review.
- State oversight inspections conducted by EPA were also included in the review. Region 7 conducted two oversight CEIs of NDEQ in FY06.
- The facilities selected for review included inspections conducted by all inspection staff in the waste management program.
- A review of the SRF data did not indicate that the file selection needed to be biased to cover any particular area of the program.

### **File Maintenance**

Facility files are maintained by the individual media programs in the Lincoln, Nebraska office. No CBI materials were encountered during the review. The files are maintained by dedicated staff, in chronologic order. Enforcement documents for current and closed cases are maintained by the legal department in a secure area. Although the files lacked an index of documents, the system appeared adequate and seems to work well for the state.

## **D. ELEMENT-BY-ELEMENT DESCRIPTION**

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

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

#### **Findings:**

Based on the FY2006 OTIS data, NDEQ inspection coverage in Nebraska is consistent with or above the national average for inspecting LQGs and TSDFs, and NDEQ was able to inspect a considerable portion of the SQG universe. Specifically, according to the data metrics:

- 33.8% of the LQGs (27 inspections in a universe of 80 LQGs) were inspected in 2006. This is above the national average of 16.2% and well above the 20% core requirement.
- 65% of LQGs were inspected by NDEQ over a five year period, which is above the national average of 43%, though less than the 100% core requirement. The inclusion of EPA inspections at Nebraska LQGs brings this to 88.8%.
- 23% of SQGs were inspected over a five year period. There is currently no national average or core requirement set for inspection of this universe of hazardous waste generators.
- 100% of the TSDFs (a universe of 4 operating TSDFs) in Nebraska were inspected over two years, which is above the 91.3% national average and meets the 100% core requirement set by federal statute.

In FY06, NDEQ committed to inspect all active federal TSDFs (Offutt AFB) and all TSDFs found to be noncompliant in the previous year. NDEQ also committed to inspect commercial TSDFs which receive CERCLA waste on a semi-annual basis (Clean Harbors incinerator), as well as 15 LQGs and 24 SQGs. CESQGs could be inspected at a 2:1 ration trade off for SQGs. Based on RCRAInfo data for FY06, NDEQ inspected 20 LQGs, 20 SQGs and 22 CESQGs, which exceeded NDEQ's commitment for the year. NDEQ also conducted two inspections of the Clean Harbors facility during the year. The other TSDFs and the federal facility TSDF were inspected by EPA in FY06. Given the small universe of operating TSDFs in the state, NDEQ and EPA frequently share the responsibility for these inspections from year to year.

NDEQ also conducts compliance assistance visits (CAVs) at facilities throughout the state. In FY06, nine CAVs were conducted. One staff person consistently conducts these visits, which include a thorough review of facility processes and waste management. The resulting report is very detailed and provides valuable information to the facility in the areas of waste reduction, improved waste management practices and recycling.

**Citation of information reviewed for this data metric:** NDEQ's FY06-07 grant work plan,

RCRA Subtitle C; RCRAInfo.

**Recommendations if corrective action is needed:** None.

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

**Findings:**

Sixteen facility files were selected for review of CEI inspection reports. These reports covered TSDFs, LQGs, SQGs and CESQGs. Routine inspections and complaint investigations were included in these CEI reports. All of the reports were determined to be complete, and included the necessary narrative, checklists, photos, and copies of facility records to document violations and/or compliance with the regulations. The checklists are included as an attachment to the inspection report. After an inspection report is completed, the inspection/enforcement staff develops a letter to the facility, for management signature, which identifies and describes the violations found during the inspection. A copy of the inspection report is provided to the facility at that time.

Five CAVs were also selected for review, covering all categories of hazardous waste generators. A CAV was not conducted by NDEQ at any operating TSDF in FY06. The CAV reports were also determined to be complete and included detailed narrative of the facility processes and waste management. Violations are not cited during CAVs, therefore, copies of documentation, checklists and photos are not routinely included as part of these reports. CAV reports are provided to the facility.

**Citation of information reviewed for this data metric:** NDEQ Enforcement Manual, January 2002; RCRA Inspection and Enforcement File Review Worksheets completed as part of this program review.

**Recommendation if corrective action is needed:** None.

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

**Findings:**

Sixteen facility files were selected for review of CEI inspection reports. These reports covered TSDFs, LQGs, SQGs and CESQGs. Routine inspections and complaint investigations were included in these CEI reports. Fourteen of the CEI reports were completed in a timely manner (38 days or less) and identified the violations within 150 days of the inspection. One report required 80 days to complete, but the violations were identified in a timely manner. One report was completed in a timely manner, but the violations were not identified in the database until

after the file review was completed. Based on the data in RCRAInfo for these facilities, it appears that the violations are entered into the database when the initial letter is sent to the facility that identifies the violations.

**Citation of information reviewed for this data metric:** NDEQ Enforcement Manual, January 2002; RCRA Inspection and Enforcement File Review Worksheets completed as part of this program review.

**Recommendations if corrective action is needed:** None. Although timeliness issues were identified in two different facility files, the low number of instances does not indicate that corrective action is necessary on the part of NDEQ. In both cases, it appears that some additional case development was necessary before the report could be completed, or the violations identified.

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

### **Data Metric 4. Degree to which significant violations and supporting information are accurately identified and reported in RCRAInfo in a timely and accurate manner.**

#### **Findings:**

Based on the information in OTIS, the NDEQ's SNC identification rate at sites with evaluations is 6%, which is above the national average of 3.1%. The state identified 5 SNCs in a universe of 84 evaluations. NDEQ enters the SNY evaluation into RCRAInfo after management's decision that a facility is a significant non-complier. The remaining facilities were secondary violators, and were identified as such in a timely manner as well. See the discussion of Data Metric 10, below, for further information regarding the timeliness of SNC evaluations.

OTIS data also indicates that the state exceeded the national average of percent of formal actions with a prior SNC designation. In this case, the national average is 54.3%, and NDEQ took formal enforcement actions at 87.5% of facilities with a prior SNC designation.

The reviewers noted that two additional facilities could have been designated as SNCs, however, NDEQ indicated that these facilities were determined not to be SNCs after consulting their state enforcement manual. One of these facilities was already in the formal enforcement process for violations noted in a prior inspection. Nonetheless, these facilities returned to compliance as a result of the informal enforcement actions issued as a result of the violations.

NDEQ requires management approval of all SNC designations prior to entering that data into RCRAInfo. This process provides for consistency within the state's enforcement program with regard to how and when these decisions are made.

**Citation of information reviewed for this data metric:** NDEQ Enforcement Manual, January

2002; interviews conducted during the program review.

**Recommendations if corrective action is needed:** None. Given the percentage of SNC designations by NDEQ, there does not appear to be any need for corrective actions in this area. If situations arise in the future where a SNC designation appears questionable or not immediately apparent, based on the type and severity of the violations present, NDEQ may want to include information in the file to indicate why the facility was not considered a SNC. See Data Metric 10, below, for further discussion regarding timeliness of SNC evaluations.

**Data Metric 5. Degree to which NDEQ enforcement actions include required corrective or complying actions that will return facilities to compliance in a specific time frame.**

**Findings:**

Based on file reviews for eight facilities that received formal enforcement actions in FY06, and an additional facility that received a formal enforcement action shortly after the end of the fiscal year (as explained in Data Metric 7, below), all files contained enforcement actions (formal and informal) that required complying actions to return the facility to compliance within a specific time frame. NDEQ traditionally uses informal enforcement to return a facility to compliance while a formal action is being prepared for the collection of penalties or other corrective actions.

This approach was used in all nine cases. Six of nine facilities achieved full compliance, via informal enforcement actions, prior to issuance of the formal enforcement actions, some of which required payment of civil penalties. The remaining three facilities received formal enforcement actions that included requirements for closure or other clean-up actions.

**Citation of information reviewed for this data metric:** NDEQ Enforcement Manual, January 2002; facility and legal files.

**Recommendations if corrective action is needed:** None.

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

**Findings:**

Nine facility files were reviewed for timely and appropriate formal enforcement actions. NDEQ issued timely formal enforcement actions to six of the facilities, and all formal enforcement actions were found to be appropriate to address the violations detected. The three cases where the enforcement actions were not timely involved closure of illegal waste management units (two cases) and a large number of ongoing violations (one case). Given NDEQ's practice of working with a facility to achieve compliance prior to or concurrent with the development of a formal enforcement action, complicated cases involving closure or a large number of violations would

require more time for case development.

**Citation of information reviewed for this data metric:** NDEQ's Enforcement Manual, January 2002; facility files; interviews conducted during the program review.

**Recommendation if corrective action is needed:** None.

**Data Metric 7. Degree to which NDEQ 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:**

Civil penalties are calculated by the legal department, using the Civil Penalty Policy and Guidance (Chapter 6 of the NDEQ Enforcement Manual, January 2002). The policy uses a method of assigning points to the various aspects of the nature of the violation and the actual or potential for harm, which in turn determines the matrix cell for the gravity penalty. The legal department does not consistently apply the policy when calculating civil penalties, which are part of the referral documentation that is provided to the AG's office. Program staff are not routinely consulted regarding the calculation of civil penalties in the hazardous waste program. Nine facility files were reviewed where formal enforcement actions were taken during FY06 (or shortly thereafter, as discussed above), consisting of one administrative case, three referrals to the AG's office, and five judicial consent decrees filed by the AG.

- The administrative case did not include a civil penalty, nor was a calculation necessary, since NDEQ does not have the authority under statute to assess and collect penalties in administrative cases. This particular action was issued in November 2006, but was included in the review in order to evaluate this type of enforcement action.
- Of the three referrals made to the AG's office in FY06, one referral sought the assessment and collection of waived penalties from a previous consent decree. A separate penalty calculation was not necessary in this case. One referral was a multimedia case with air and hazardous waste violations combined. The penalty calculation in this case assessed a gravity component, but the rationale for selection of the penalty figure was very brief and did not include details as to why certain points were assigned to the violations. No separate calculation or mention of economic benefit was included in the penalty calculations for this case. The remaining referral included penalty calculation documentation that provided some brief explanation of the cells chosen in the calculation, and used a multi-occurrence multiplier. Economic benefit was not calculated in this case.
- Of the five judicial consent decrees, two case files did not contain any penalty

calculation information. Three cases included penalty calculations by the legal department, which were then provided to the AG's office for their use in issuing the enforcement actions. The narrative explanations provided in two of the three penalty calculations were not sufficient to determine if the selection of matrix cell was appropriate for each violation. The narrative in one case was more detailed than the others, and provided more information regarding the selection of matrix cell and why it was appropriate for each violation.

- The application of a per-day penalty amount was not consistently applied in the three cases. One case did not include any assessment of per-day penalty, even though the violations continued for a number of days; one case applied the per-day assessment for more than 180 days, resulting in a multimillion dollar assessment; and the third case assessed a per-day penalty with narrative explanation to substantiate the penalty. It was also noted that the calculation resulting in the multimillion dollar assessment was reduced to \$30,000 when the request for enforcement was made to the AG's office, with no explanation in the file as to why \$30,000 was an appropriate penalty amount for the violations cited.
- Economic benefit was calculated in one case, consisting of an estimate of the delayed disposal costs multiplied by an interest rate. The other two cases did not include any calculation of economic benefit.
- None of the nine files included any penalty calculations (gravity or economic benefit) to substantiate the settled penalty amounts.

NDEQ program and legal staff do not participate in the settlement of enforcement actions once the case is referred to the AG's office. During the course of the program review, it became evident that information regarding AG case settlements is not routinely provided to the NDEQ. It is necessary for the NDEQ to receive this type of information for purposes of tracking compliance with the consent decree, ensuring payment of penalties, and tracking progress at those facilities performing SEPs as part of settlement.

**Citation of information reviewed for this data metric:** NDEQ's Enforcement Manual, January 2002; legal department files.

**Recommendations if corrective action is needed:** NDEQ should develop a standard operating procedure for the application of the Department's penalty policy, including peer or management review of calculations, minimum narrative explanation requirements, and the calculation and assessment of economic benefit. The AG's office should be included in the use of this SOP. The AG's office should consult with appropriate NDEQ personnel in the course of pursuing and resolving RCRA enforcement cases. Lines of communication between the NDEQ and AG's office should also be established so that case information is provided to NDEQ in a timely

manner. Information regarding case settlement, consent decree requirements, civil penalties and supplemental environmental projects must be provided to NDEQ as the state entity responsible for implementation of the hazardous waste program.

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

**Findings:**

According to the OTIS State Review Framework Results for NDEQ for FY06, 40% of NDEQ's initial formal enforcement actions included a penalty. This is below the national average of 44.6%. 66.7% of NDEQ's final formal actions included a civil penalty, compared to a national average of 81.9%.

Five judicial consent decrees were filed by the AG's office in FY06. This is the only tool available to NDEQ to assess and collect civil penalties. None of these decrees included a separate calculation or assessment for economic benefit. As stated above, there was no information in the facility or legal files to indicate how the settlement penalty figures were calculated or why the amounts were appropriate for each case.

Four of the five cases included supplemental environmental projects which required payment of money into the AG's Environmental Protection Fund "to be used for environmental safety, training, public awareness, or other related uses as permitted by state law, at the sole discretion of the Nebraska Attorney General". One case settled for no gravity-based penalty and a SEP payment of \$30,000 into this AG fund. The other three cases included some civil penalty in addition to payment of a sum of money into the AG fund.

The AG's Environmental Protection Fund is administered by the AG, with no apparent input from or coordination with the NDEQ. As a result, it is unknown whether supplemental environmental projects funded through this process meet NDEQ's SEP policy. The five consent decrees referenced above resulted in approximately \$104,300 in civil penalties paid, and \$131,500 in payments to the AG's Environmental Protection Fund.

NDEQ program and legal staff are not consulted by the AG nor do they participate in negotiations with Respondents. Based on the files reviewed, it appears that the AG is not familiar with NDEQ policies regarding the calculation and documentation of civil penalties and economic benefit, nor the application of guidance regarding supplemental environmental projects.

**Citation of information reviewed for this data metric:** NDEQ's Enforcement Manual, January 2002; legal department files.

**Recommendations if corrective action is needed:** It is recommended that the NDEQ and the AG's office develop enforcement procedures that include NDEQ's participation in the



negotiation of case settlements. Such practices should ensure that appropriate penalties are assessed and collected, the necessary penalty documentation is generated and placed in facility files, and SEPs that meet the NDEQ's SEP criteria are obtained.

### **Section 3: Review of Performance Partnership Agreement of State/EPA Agreement**

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

##### **Findings:**

NDEQ met its PPA work plan requirements as described in element #1, above. NDEQ's FY06 work plan included commitments for inspection of LQGs, SQGs, and operating TSDFs. NDEQ exceeded its commitments in the following areas:

- LQG inspections – commitment of 15 inspections was exceeded by conducting 20 inspections at LQGs.
- SQG inspections – commitment of 24 SQG inspections, with a 2:1 substitution of CESQG for SQG inspections, was exceeded by 20 SQG inspections and 22 CESQG inspections in FY06.
- Operating TSDFs – commitment of semi-annual inspection at Clean Harbors, was met by the NDEQ. Commitment to inspect all active Federal TSDFs annually was met by the NDEQ in FY05 and EPA in FY06. EPA and NDEQ frequently exchange the responsibility to annually inspect this facility.
- The commitment to inspect all active TSDFs which were found to be in noncompliance the previous fiscal year was met by NDEQ in FY06 at the Safety-Kleen facility in Grand Island, NE. The EPA inspected the Safety-Kleen facility located in Omaha in FY05, and this facility is not due for re-inspection until FY07.

**Citation of information reviewed for this data metric:** FY06 Hazardous Waste Management Program grant work plan; CM&E data in RCRAInfo.

**Recommendations if corrective action is needed:** None.

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

#### **Data Metric 10. Degree to which the minimum data requirements are timely.**

##### **Findings:**

According to the OTIS State Review Framework Results for NDEQ for FY06, NDEQ entered 50% of SNCs more than 60 days after SNC designation. The OTIS data indicates that NDEQ

entered two SNCs within seven days of designation, but required 109 days and 253 days to enter two other SNCs into the RCRAInfo database. One of these cases involved criminal investigation, which delayed the entry of certain data. The other case involved complicated regulatory issues and a later decision to combine enforcement actions with other media programs. These situations resulted in a delay of data entry, however, NDEQ tried to reflect in RCRAInfo the date on which they obtained adequate information to determine that these facilities were significant non-compliers.

During the program review, the contents of the facility files were compared to the data in the CM&E module of RCRAInfo. With the exception of the above-mentioned SNCs, and some additional penalty payment information, the majority of the enforcement data appears to have been entered in a timely manner. The issue regarding penalty payment information will be discussed in data element 11, below.

**Citation of information reviewed for this data metric:** RCRAInfo CM&E data; facility files.

**Recommendations if corrective action is needed:** None. It appears from the OTIS data that NDEQ is entering SNCs into RCRAInfo in a timely manner, except when complicated regulatory issues, multimedia enforcement or criminal investigations are encountered.

#### **Data Metric 11. Degree to which the minimum data requirements are accurate.**

##### **Findings:**

Based on the file reviews, it appears that the majority of the inspection, violation and enforcement data have been entered accurately by NDEQ. The data concerning penalty assessment and payment was found to be missing in some cases, mainly due to the lack of communication between NDEQ and the AG's office.

**Citation of information reviewed for this data metric:** RCRAInfo CM&E data; facility files; legal files.

**Recommendations if corrective action is needed:** See recommendations for data metrics 7 and 8. Subsequent phone conversations between EPA and NDEQ, and data entry by NDEQ resulted in complete penalty information in RCRAInfo for the cases filed in FY06.

#### **Data Metric 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:**

The minimum data requirements appear to be complete. NDEQ enters all Handler information directly into RCRAInfo. See Data Metric 11 with respect to the civil penalty information in

RCRAInfo.

**Citation of information reviewed for this data metric:** RCRAInfo.

**Recommendations if corrective action is needed:** None.

# **Major Findings and Recommendations of the Nebraska NPDES Enforcement Program Review September 21-24, 2004 Final**

## **Background**

Staff from the Environmental Protection Agency Region 7 (EPA) conducted a review of the Nebraska Department of Environmental Quality's (NDEQ's) NPDES program in the following areas: general enforcement, pretreatment, CAFO enforcement and stormwater enforcement. Outcomes for the last program review and the Partnership Performance Grant (PPG) were also discussed. During the review, the EPA referred to the NDEQ's 2002 Enforcement Manual and the 1999 Enforcement Manual Appendix A; the NDEQ's 2001 Compliance Assistance Protocol; the NDEQ Enforcement Reports for 2001, 2002, and 2003; State of Nebraska Program Integrity Profile; the EPA's Office of Enforcement and Compliance Assistance FY 2003 Permit Compliance System (PCS) data pulls; and information obtained during the file reviews and interviews with the NDEQ staff.

The NDEQ's Wastewater Section is comprised of three units: Technical Assistance Unit, NPDES Permit Unit and the Compliance Unit. The CAFO permits and enforcement are handled by the Agricultural Section. Approximately two years ago, The NDEQ reorganized its regional office structure, including deploying staff from the regional central office in Lincoln to five field offices throughout the state.

## **Findings and Recommendations**

### **Case Management and Enforcement Decisions**

Prior to 2004, the NDEQ used a watershed approach for scheduling inspections. Currently the NDEQ targets for noncompliant facilities and the mandatory annual inspection of major and pretreatment facilities. Targeting also addresses impaired water bodies and new facilities. Human health and environmental concerns are the highest priority, followed by enforcement and field presence. Stormwater permittees are targeted based on complaints. CAFOs are inspected on a frequency based on Animal Units.

The Department inspects only major municipal and industrial facilities, as well as pretreatment facilities outside of Lincoln and Omaha each year. The rest are inspected at least once every five years based on permitting renewal or basin unless there is a complaint or problem. In that case, there may be more frequent inspections. The NDEQ stated that they completed 100% of their major inspections for this year, as required by the PPG. However, data retrieved from PCS on August 5, 2004 by the EPA's Office of Enforcement and Compliance Assistance indicates that only 40% of these facilities were

inspected. The Department believes the timing of the data pull in August did not represent the business cycle on which the state functions.

The NDEQ verbally indicated that inspection reports were completed within two weeks of an inspection and sent to the compliance manager for review and determination if enforcement is warranted. Inspection reports reviewed during the file review appeared accurate and complete with all required information; however, not all violations in the files reviewed were discovered through inspections.

The NDEQ uses its voluntary compliance process as its main enforcement tool, and only uses administrative enforcement actions and referrals to the Attorney General's office (AG) as a last result. The NDEQ includes most of its compliance schedules in permits. If voluntary compliance is not achieved via permit, construction schedules or a Notice of Violation, the case is referred from program staff to counsel. The NDEQ counsel will then calculate the penalty and refer the case to the AG. The NDEQ staff do not participate in the penalty negotiations. The department does not have statutory authority to seek administrative penalties.

There were several instances discovered during the file review where the compliance assistance approach was not effective as violations continued over a series of years while multiple actions were being taken by the NDEQ. In the cases reviewed, the NDEQ issued up to four Notices of Violation (NOV) or Letters of Warning (LOW) and two formal actions before returning the facility to compliance.

The NDEQ does not initiate a significant number of judicial enforcement actions, however the few that they do initiate are very comprehensive and capture penalties, injunctive relief and economic benefit when it is warranted.

In reviewing past enforcement actions over a three year period, the NDEQ's Enforcement Reports for 2001, 2002, and 2003, enforcement was sought on NPDES cases and injunctive relief and economic benefit were collected in some cases. During FY 2003, the AG issued 21 enforcement actions, an increase from 12 enforcement actions issued in FY 2002 and FY 2001, respectively. Penalties also increased significantly over the three year period: 2001 - \$40,900, 2002 - \$28,750, and 2003 - \$150,664. Overall, the enforcement program is moving in a positive direction.

### Recommendations

The NDEQ may continue to use its voluntary compliance assistance process to assist intermittent violators to reach compliance. However, the enforcement response to violations should be guided by the NDEQ Enforcement Manual. The NDEQ should evaluate all violations for the appropriate enforcement response, and respond to the violations in a timely and appropriate manner in accordance with the Enforcement Management System.

The NDEQ must consider escalation of its enforcement actions against facilities that are in noncompliance beyond a reasonable time frame to ensure that all noncompliant facilities are addressed timely and appropriately.

The NDEQ should continue their efforts with working with the AG in collecting penalties, injunctive relief and economic benefit against noncompliant violators.

The NDEQ is commended for their effort during the past three years to increase the emphasis on enforcement, as needed, and collect appropriate penalties.

### **NPDES File Review**

#### **Norfolk Waste Water Treatment Facility (WWTF) NE0033421**

The latest permit, NE0033421, was issued on January 20, 2004. The facility was in significant non-compliance (SNC) and was on the Watch List for incomplete and deficient daily monitoring reports (DMRs) in February 2004, March 2004 and May 2004. There was no enforcement response documented in the file; however, the NDEQ staff indicate that the data was submitted on time. The facility used DMRs from the old permit, which did not match the new permit and were rejected by PCS. The NDEQ is in the process of entering the data in PCS.

#### **Recommendation**

The NDEQ should ensure that PCS is corrected on a timely basis when these types of errors occur. department must consider the lengthiness of allowing a facility to remain in noncompliance prior to issuing a formal enforcement action.

#### **Aurora WWTF NE0031810**

The latest permit was issued June 2003. The facility is in SNC and is on the Watch List for not submitting DMRs since April 2003. There were five letters (April 2003, October 2003, January 2004, June 2004 and July 2004) requesting the facility to submit the DMR information. The letters issued in January 2004 and June 2004 requested the facility to submit a plan within 30 days that would ensure that the facility would submit its DMRs timely. There was no documentation in the file that the facility submitted the DMRs or the plan in response to either letter. There was no enforcement response documented in the file. The NDEQ staff indicate that the facility used the DMR from their old permit, which did not match the new DMRs and PCS rejected the data. In addition, the NDEQ staff stated that the facility is sending in the data to complete the June 2003 data entry into PCS.

#### **Recommendation**

The NDEQ should ensure facilities submit their DMRs and that that PCS is corrected on a timely basis when these types of errors occur.

### **Lincoln Theresa WWTF LP3A Salt Creek NE0036820**

A new permit was re-issued to this facility on January 1, 2004. The permit expires December 21, 2008. This facility is currently in SNC for Total Suspended Solids (TSS) 7 day average violations, February 1 - 18, 2004. Lincoln also has TSS and Technical Review Criteria (TRC) monthly violations in May and June 2004. This facility is listed on the Watch List and has been identified as noncompliant 7 out of 8 quarters. The facility appears on the third quarter noncompliance report for the TRC May and June 2004 violations. Lincoln has explained their continued violations to the state by saying that they believed the wet weather TRC schedule was included in their effluent TRC limits. Upon notification from the state that they were incorrect in their assumption and that the schedule did not cover the TRC limits, Lincoln immediately installed temporary dechlorination. In the Quarterly Non-Compliance Report (QNCR) the department suggests that they are considering enforcement against this facility. The NDEQ has placed the compliance schedule in the reissued permit that was issued on January 1, 2004. The schedule requires the facility to reach compliance by January 2009.

#### Recommendation

The region recommends that the NDEQ puts the current schedule into an enforceable document to ensure that compliance is achieved past the 5 year permit cycle. It appears that the schedule in this permit has approved final compliance in January of 2009. This is longer than the 5 year permit cycle. The NDEQ must consider putting schedules into enforceable documents.

### **Tyson Fresh Meats NE0001392**

This facility is currently under a joint EPA/State Consent Decree which dates back to October 12, 2001. The facility has experienced recent fecal coliform and whole effluent toxicity (WET) violations. This facility changed names from IBP to Tyson Fresh Foods in 2003. The NDEQ has a state Wastewater Treatment Facility (WWTF) construction permit program and any construction at this location must be approved by the State.

#### Recommendation

The NDEQ should consult with the EPA prior to making any decisions on improvements by the facility.

### **Leigh WWTF, South Beech Street NE0112101**

A new permit was re-issued March 1, 2004. The permit expires February 28, 2009. A state inspection was performed, identifying past ammonia (NH<sub>3</sub>) violations and improper collection of influent composite samples. A response letter dated March 10, 2004, was observed in the file from the Village of Leigh regarding the city's non-compliance for 3 years. On April 29, 2004, the state issued an NOV for Carbonaceous Biochemical Oxygen Demand (CBOD) and NH<sub>3</sub> violations. On March 25, 2004, a

voluntary compliance letter was sent to the facility for failure to notify the department of effluent violations.

#### Recommendation

The NDEQ must consider the length of time a facility is allowed to remain in non-compliance prior to issuing a formal enforcement action. Formal enforcement should be considered with penalties and a compliance schedule, as appropriate.

#### **Murray WWTF NE10 Rock Creek NE0032107**

The NDEQ conducted a compliance inspection on March 5, 2002. The problems identified included organic overload to the facility, preventing proper chlorination from taking place prior to the effluent discharge. Other problems included influent delivery experienced high volumes during high precipitation, lack of aeration, pretreatment and flow equalization storage volume. It was identified at this time that the facility had reached the end of its design life. This facility has had continued NH<sub>3</sub> violations through April 30, 2004. The facility has diligently contacted the department to report any non-compliant permit violations. This facility has received a Clean Water State Revolving Fund (CWSRF) grant, Project # C317250. The city of Murray on March 4, 2003, passed a resolution for new set sewer rates. A letter submitted by the city and city engineer to the department shows that the city chose the option of a mechanical treatment facility over other options such as the controlled discharge lagoon option as well as the option of the city to connect to Beaver Lake. In addition, the project proposal included the cost of providing a centralized sewer system into the unsewered areas of the village. The sewer user charge revenues are the dedicated revenue source for repayment of the CWSRF loan, depending on the type of financing available to them. Bids for this project were received by the department on September 20, 2004.

#### Recommendation

Information regarding the CWSRF grants should be documented and linked to the compliance file to show that additional compliance work is being done by the NDEQ regarding this non-compliant facility and should also be linked to PCS. The region recommends that the NDEQ put these upgrades into a schedule and an enforceable document that is linked to PCS.

#### **Nucor Steel Norfolk Elkhorn NE0111287**

On December 13, 2000, a LOW was issued for violations in the third quarter of 2000 for TSS, oil/grease, and temperature, as well as, for violations in the second quarter of 2000 for TSS, CBOD and toxicity. The EPA issued a national Consent Decree in approximately 2000. No copy of the Consent Decree is in the file. The EPA Consent Decree alleges violations of storm water Storm Water Pollution Prevention Plan (SWPPP) requirements and NPDES process and cooling water discharges. Nucor Steel began submitting monitoring and sampling reports to the EPA in 2003. The DMR and



PCS show oil/grease violations in November 2002 and February 2003 for outfall 001. PCS shows TSS and Biochemical Oxygen Demand (BOD) violations for outfall 003 in December 2002.

Recommendation

The NDEQ should address the violations that occurred in November 2002 and February 2003. Additional documentation in the file regarding actions being taken to resolve these violations would be helpful.

**Plainview Waste Water Treatment Plant (WWTP) Elkhorn NE0021741**

On September 28, 1993, the NDEQ prepared a request for a Consent Order for alleged violations in 1991. On April 11, 2002, an NOV was issued for SNC with NH3, CBOD, and TSS. The NOV requests plans for a new plant. In June 2003, a consent order was issued requiring a new plant to be built by January 1, 2006. It took 10 years to get a Consent Order in place.

Recommendation

The length of time between identification of serious violations and formal action to correct those violations should be significantly shortened. Additional documentation in the file regarding actions being taken to resolve these violations would be helpful.

**Flying J Travel Plaza Lower Platte NE0123862**

On May 10, 1996, a letter was issued citing failure to sample monthly for all required parameters. Documents in the file indicate that from May 1996 through September 2004, the facility had problems with the oil/water separator, which resulted in violations of the limitations for oil/grease, fecal coliform, TRC, and acute toxicity. There has been no action taken during the 8 years of violations. The NDEQ verbally indicated that an NOV is being developed.

Recommendation

The length of time between identification of serious violations and formal action to correct those violations should be significantly shortened. Formal enforcement should be considered with penalties and a compliance schedule, as appropriate.

**Lindsay WWTP LP 15 NE0027278**

On October 10, 1995, a letter was issued alleging BOD violations during 1995. The letter requested the plant to fix the violations by November 3, 1995. On January 11, 1996, an NOV was issued alleging BOD violations in 1995 and requesting a proposal to fix the violations by February 16, 1996. On April 4, 1996, a letter was issued by the NDEQ stating that the wrong CBOD/BOD tests may have been used in 1995 and the NDEQ will

evaluate CBOD for 6 months. The file does not indicate what evaluation was performed. Also, there is no data in the file on a Dissolved Oxygen (DO) stream study that was to be done by May 6, 1996. On June 13, 1996, an LOW was issued for failure to sample for CBOD in May 1996. On March 26, 1998, an LOW was issued for significant violation of CBOD and TSS in 1997 and requested a plan to fix these violations by April 22, 1998. On September 10, 1998, a Complaint, Compliance Order and Opportunity for Hearing was issued. This action required plant improvements to be done by December 31, 2000. On June 19, 2001, a Consent Decree was issued (this enforcement action was not in the file). The Consent Decree required a penalty payment of \$2,000.00 and completion of a new plant by September 1, 2003. The file shows violations of the 30 day averages for TSS and BOD in 2003, but none were after September 1, 2003, because the plant has not discharged since then. It took eight years to get the plant rebuilt, following several enforcement actions issued by the NDEQ or the AG. Although there is no penalty documentation in the file, it is highly unlikely that the \$2,000.00 penalty recovered economic benefit. At this time, it is still not clear if compliance was achieved since the plant has not discharged since September 2003.

#### Recommendation

The length of time between identification of serious violations and formal action to correct those violations should be significantly shortened. Additional documentation in the file regarding actions being taken to resolve these violations would be helpful.

#### **SID # 1 Butler County NE0114901**

This is a minor facility. The permit was issued on January 14, 1999. There was no information in the file regarding permit re-issuance. An LOW was sent to the facility on July 8, 1996, regarding BOD and TSS violations. An NOV was issued by the NDEQ on December 8, 2000, for CBOD, TSS and NH<sub>3</sub> violations. There is a request for legal action from the program staff to the legal services division, but no information on the result of that request was in the file. However, the file contained information regarding improvements to the facility. A copy of an e-mail dated June 2004 indicated that the new treatment unit was in start-up phase, and that the process seemed to be working properly. An inspection by the NDEQ was scheduled for July 19, 2004, but results of that inspection were not yet in the file.

#### Recommendation

The length of time between identification of serious violations and formal action to correct those violations should be significantly shortened. Additional documentation in the file regarding actions being taken to resolve these violations would be helpful.

#### **Gering WWTP NE0027936**

The City has had on-going violations of the permit limitations for CBOD monthly average and daily maximum from 1997 through 2003, and for NH<sub>3</sub> monthly average and

daily maximum from 2000 through 2003. An Administrative Order on Consent was issued on July 28, 2003, which contains a compliance schedule for construction of facilities necessary to meet secondary standards and water quality standards for NH<sub>3</sub> and CBOD. Construction is to be completed by October 1, 2005, with operation in compliance with the permit by December 1, 2005. The Order contains no interim limits for compliance, therefore continuing non-compliance with the permit limitations continue to accrue. No penalties were assessed. There is no information in PCS that indicates that the Order issued in 2003 has a schedule to resolve the on-going violations. The NDEQ conducted inspections on May, 29, 2003 and August 26, 2004. A draft permit was placed on public notice on August 9, 2004.

#### Recommendation

When an enforcement action is not expected to immediately resolve NPDES violations, the NDEQ should include information in the comment field for PCS sufficient to explain whether a compliance schedule is part of the action and the pertinent deadlines for action under the schedule.

#### **Ponca WWTP NE0021687**

This is a minor facility. The permit expired on June 17, 2003, and was administratively extended by the state by letter dated June 13, 2003. No information was in the file regarding planned permit re-issuance. An NOV for NH<sub>3</sub> violations was issued on April 29, 2002. An Administrative Order on Consent was issued on May 1, 2003, with a schedule to complete necessary improvements to achieve compliance by January 1, 2006. No information regarding the city's compliance with that Order was contained in the file.

#### Recommendation

Although information was not available in the file review to indicate how long the city had been out of compliance with the permit, the time frame between issuance of the April 2002 NOV and the May 2003 Compliance Order does not appear to be unreasonable. Additional information regarding the underlying cause of the violations and their duration would be helpful.

#### **West Point NE0023965**

This is a minor facility. The city is operating under an expired permit, which was administratively extended by a letter from the NDEQ dated March 20, 2003. The city has had on-going violations in the spring and summer for CBOD, TSS, NH<sub>3</sub> and fecal coliform. There have also been violations for toxicity and TRC. The NDEQ issued an NOV on December 8, 2000. An Administrative Consent Order was issued on April 30, 2002, that required the city to build new facilities to meet the NPDES limitations by December 1, 2004. No penalties were assessed. There are no interim limits in the Order. A letter from the city dated October 13, 2003, requests an extension of time to complete construction under the Order, with a new compliance date of October 1, 2005. The file

reviewed contained no information regarding quarterly updates from the city as required by the Order or whether the request for extension had been granted. That information may be in the construction program's file, which was not provided for this review.

#### Recommendation

The state should enter sufficient information in PCS to describe whether a compliance schedule is included in an administrative order, and information on the required date for compliance.

#### **Tilden NE0027910**

This is a minor facility. The permit for this facility was re-issued on June 27, 2002. The city has experienced ongoing violations (since at least 1997) of the limitations for NH<sub>3</sub>, nitrate-nitrogen, TSS, CBOD and fecal coliform. The NDEQ issued a NOV for CBOD and fecal coliform violations in March 1998, and an NOV for ammonia, nitrate-nitrite, TSS, CBOD and fecal coliform violations in March 2000. There is no information in the file regarding any follow-up to the NOVs, nor is there any information regarding planned enforcement action

#### Recommendation

This facility has experienced a long history of non-compliance with no action to ensure compliance. Unless information in other state files (e.g., for the construction program) indicates the violations have been or are about to be resolved, formal enforcement action should be strongly considered to ensure timely compliance.

### **Concentrated Animal Feed Operations (CAFO) Enforcement and File Review**

#### Background

Nebraska has 290 CAFO facilities that qualify under the old CAFO rule. The Livestock Waste Control Program is making preparations for facilities to be in compliance with the new CAFO rule. The NDEQ hopes to be prepared for this transition by January 1, 2005. As a result of the new federal regulations, 710 additional facilities are estimated to be covered, which will expand the universe of facilities needing to be assessed for compliance and enforcement to 1000. The NDEQ hopes that further training and guidance from the EPA regarding new rule requirements will create a smoother transition.

CAFOs are managed by the Livestock Waste Control Program, which is part of the Agriculture Section of the NDEQ. The Program has eight inspectors, based out of the main office in Lincoln, as well as in two field offices: North Platte and Holdrege. The inspectors assess facilities for compliance based on three different types of inspections: initial request (to determine whether a permit is needed), routine (check status of compliance) and complaint investigations. Routine inspections are scheduled by the

individual inspector for that region. The inspectors decide who to inspect within the set guidelines that Class IV facilities (20,000 animal units or more) and Class III (5,000-20,000 animal units) are to be inspected annually. Class II facilities (1,000-5,000 animal units) are inspected once every two years, and Class I facilities (less than 1,000 animal units) are inspected every three to four years. Inspectors will often inspect a facility more frequently than the required timeframe if a facility has a history of non-compliance. Stop-ins and drive-bys are also conducted. The inspectors also write permit requirements, and the engineers review the permit specifications and assess the applications.

If a facility is found to be out of compliance, the inspectors determine whether referral for enforcement is necessary. When facilities are referred for enforcement, the case is sent to the program office in Lincoln, where approval of the enforcement request is determined. The program sends potential cases to the Policy Team, who ultimately decides whether the case deserves enforcement. Administrative Orders are compiled with the assistance of the legal department. The legal department also determines whether the case is appropriate for the assessment of penalties. Penalties are selected based on past history. The Livestock Waste Control Program does not follow an escalation policy or a penalty policy. As a result of recent changes, the NDEQ no longer has the authority to assess penalties directly. All cases eligible for penalties are sent to the AG, with a recommendation from the program and legal.

### Case Specifics

During the program review, the EPA staff reviewed eleven CAFO files. The files reviewed were: Anderson Livestock, Beattie and Ferguson Livestock, CTC Farms—Coufal Feedyards., DCK Partnership East, Double Dutch Dairy, Eugene D. Friesen Livestock, Halimage Farms, Henn House Dairy, LeRoy W. Thom Livestock, Newsome Holsteins, Inc., Paul Johnson and Sons South and Warren Wortman Livestock. Findings regarding specific facilities were as follows:

**Anderson Livestock:** This non-permitted facility contains 5,600 feeder cattle. The NDEQ advised the facility that it needed to apply for a permit in March 1999. The application was submitted in December 1999. An inspector documented that construction began in December 2001. The facility requested an extension in May 2003 because it was waiting for Environmental Quality Incentives Program (EQIP) funds. The extension was approved, but an Order was sent in May 2004 requiring that construction be complete by September 2004. An e-mail dated July 15, 2004 was sent to the NDEQ, stating that the facility was on track with the Order. The facility requested a 3 month extension in August 2004 to finish installation of controls. While the facility began the process of meeting the criteria need for an NPDES permit in December 1999, the facility still is not permitted 5 years later. More frequent inspections checking on the progress of the facility and administration of a more timely Order could have assisted the facility in reaching compliance sooner.

**Beattie and Ferguson Livestock:** This unpermitted facility has 5,000 feeder cattle. The facility was inspected in October 2003. Correspondence was sent to the facility on November 5, 2003 stating that controls were not needed as long as two conditions were met in the Northwest feedlot: 1) the grass area below the pens is maintained to act as a filter and 2) the facility continues to plant crops near the pens in the summer months to utilize nutrients. The facility is 250 yards away from Holt Creek, which needs to be protected from discharges. It was difficult to know from the file whether the facility existed previous to 2003 and how the facility qualified for filter strips, as opposed to controls. Use of a concrete reason backed by science could aid in determining whether grass filters are sufficient to contain effluent.

**CTC Farms, Inc.—Coufal Feedyards.:** This facility occupies the facility formerly known as Barr Feedlot, Inc. Barr Feedlot was issued a permit in 1993. However, the permit was never transferred to CTC Farms, Inc.—Coufal Feedyards. CTC has rented the facility from Barr since 1997. The facility was notified in May 2002 that it needed to construct controls by August 1, 2002. The application was submitted in March 2003, and the NDEQ informed the facility that their application was complete in August 2003. Barr Feedlot has not begun construction due to an unresolved question between the Natural Resource and Conservation Service and the NDEQ regarding a dam. The file does not contain sufficient documentation to explain why that decision has not yet been made, nor justify why the facility has not begun construction of controls.

**DCK East:** This unpermitted facility has 1,500 feeder cattle. Correspondence from July 1999 indicates that the NDEQ originally exempted the facility from a permit, as grass filter strips were in use. However, a May 2002 inspection revealed that the filters were not working. The NDEQ requested that the facility apply for a construction permit prior to February 2002. In March 2003, the facility submitted a request for extension to the NDEQ due to unavailability of EQIP funds. The extension was granted until September 1, 2003. On August 28, 2003, the NDEQ received another request for an extension from the facility due to unavailability of EQIP funds. The NDEQ administered a Compliance Order in February 2004 stating that the facility must submit a construction permit application for controls, submit an application for an NPDES permit and finish construction. The Order required monthly progress reports. Monthly progress reports were not present in the file. In April 2004, the facility sent correspondence stating that they were considering de-populating and planned to seek an extension. On June 11, 2004, the NDEQ administered another Order with the same requirements as the Order sent in February 2004.

**Double Dutch Dairy:** This facility has been permitted since October 2002, and is currently permitted for 5,600 wet dairy cattle and 1,000 dry cattle. An inspection conducted in May 1999 verified that controls were needed. The facility was notified of this in June 1999. The facility submitted a request for expansion to 4,000 wet cattle and 1,000 dry cattle in January 2003. In June 2004, the NDEQ requested that the facility change treatment. The NDEQ stated during the review that they were preparing to seek enforcement. There was no documentation as to non-compliance in the file.

**Friesen Livestock:** This facility contains 3,445 swine. The NDEQ received a complaint in November 2003 that pumping of the lagoon resulted in effluent run-off to a nearby campground. The facility transferred ownership in September 2004. The current owners plan to close down the hog operation and utilize the grain bins and phosphorus. There are no documented inspections in the file. The NDEQ does not have a permit in place for swine operations, making it difficult to hold these facilities to a standard.

**Halimage Dairy:** This unpermitted facility contains 1,800 dairy cattle. The file documents 10 recorded discharges: June 1998 (complaint), September 2000 (inspection), December 2000 (reported), January 2001 (inspection), May 2001 (inspection), September 2001 (complaint), October 2001 (inspection), March 2002 (inspection), June 2002 (inspection), December 2002, and February 2003 (inspection). Three NOVs were issued in March, November and December 2000 for failure to apply for a construction permit. An emergency Order was issued in December 2000 to lower lagoon levels, land apply wastes and de-populate. The facility contested the order and requested a hearing. The Order was appended in January 2001 requiring that the storage pit be certified. A \$30,000 penalty was sought in May 2001, with a \$15,000 counter-offer. The facility was given a week to accept the offer, prior to consideration for referral to the AG. The facility did not accept the offer, and the case was referred to the AG on June 29, 2001. The court ruled that the facility must come into compliance and pay a \$6000 penalty in October 2002. Halimage sought bankruptcy in September 2003, and the court ruled in May 2004 that the facility was still responsible for paying the penalty. The case is still in progress. While the case has gone on for several years, timely and appropriate actions were taken. The NDEQ escalated their actions through use of a Compliance Order, penalty and then referral to the AG.

**Henn House Dairy:** This dairy expanded from 425 head to 900 head in 1999. The facility submitted an application for a construction permit in August 1999, prior to expansion. Inspections in September 2002 and September 2003 document that the facility was in compliance. The facility was asked to pump liquid levels in the Spring, resulting from an inspection in January 2001. The facility was asked to install a staff gauge in March 2002. Correspondence in the file indicates that the gauge was installed in May 2002. Groundwater monitoring conducted in May 2004 indicated high nitrate levels of 103 ppm. While timely actions were taken, high liquid levels could have resulted from the facility neglecting to dewater their lagoon the previous fall. However, there were no records in the file to address this possibility and no NOV was issued.

**Jessen Livestock:** This unpermitted facility consists of 2,350 feeder cattle. The facility was granted a conditional exemption in March 2000, which was attributed to the layout of the facility. The facility uses vegetative filter strips and debris basins for controls, and has two areas of cropland. In April 2001, and the NDEQ inspector noted run-off from the facility and recommended re-inspection. The facility was re-inspected in May 2002, and the facility was notified that a berm was needed to channel runoff. The facility was later notified of the need to install traditional controls and apply for a permit, resulting from findings of an inspection conducted on April 19, 2004. The EPA conducted an inspection on May 20, 2004, as communicated to the NDEQ in March 2004. Duplication of

resources could be avoided with improved communication among the NDEQ and EPA. It was difficult to know from the file how the facility qualified for use of filter strips, as opposed to controls. The facility sits 350 yards away from Little Bazile Creek, which needs to be protected from discharges. Use of a concrete reason backed by science could aid in determining whether grass filters are sufficient to contain effluent. Timeliness in re-assessing the facility's need for controls, as noted by the NDEQ in 2001, and addressed in 2004 could be improved.

**LeRoy W. Thom Livestock:** This permitted facility contains 2,500 feeder cattle. The facility completed construction in April 1998 and was issued an NPDES permit in June 1998. In December 1999, an inspector of the NDEQ discovered that controls were not built to the specifications submitted. A modified construction permit was approved in February 2000, which placed the facility in compliance.

**Newsome Holsteins:** This unpermitted facility has contained up to 593 dairy cattle, and is currently estimated to have 300 dairy cattle. Five recent discharges are documented in the file: January 2001 (inspection), May 2001 (inspection), June 12, 2001 (inspection), June 20, 2001 (inspection), and March 2002 (inspection). Several NOV's were issued as a result. Discharges as far back as July 1996 are also documented in the file. The facility was referred for enforcement in 2001, but the NDEQ decided to postpone enforcement and focus on compliance assistance. The NDEQ inspectors have made frequent visits to the facility for a variety of problems associated with poor environmental operation and maintenance. Despite compliance assistance, the facility continues to be at risk for discharges.

**Paul Johnson and Sons South:** This unpermitted facility contains 16,500 feeder cattle. Two discharges are documented in the file, occurring in February 2001 and April 2003. The facility installed controls without a permit in October 2002. The NDEQ notified the facility that controls were required with a permit in April 2003. An NOV was administered in August 2003. The NDEQ requested a civil penalty assessment in January 2004. The file contains no other follow-up information regarding the request or describing the current status of the facility.

**Warren Wortman Livestock:** This unpermitted facility contains 1,000 feeder cattle and 2,073 swine over 55 pounds. The NDEQ notified the facility that a permit application was needed in August 2001 during an inspection. A request for an extension was granted until August 2003. An additional request for an extension was granted until February 1, 2004. An Order was administered on February 13, 2004 requiring the facility to submit an application for a construction permit, submit an application for an NPDES permit and complete construction of controls by June 2004. Monthly progress reports were also required. Correspondence from the facility sent to the NDEQ in March 2004 states that the facility is waiting on EQIP funds until June. The file contains no information as to the current status of the facility or why the previous extensions were granted. Deadlines in the Order need to be enforced.



### Enforcement Trends

Recent changes in the Livestock Waste Control Program have contributed to more efficient enforcement. The EPA commends the Livestock Waste Control Program for this progression. As illustrated in the table below, the frequency and extent of enforcement actions has increased within the past four years.

Year	Administrative Orders	AG Referrals	Penalties collected
2001	0	3	\$ 8,250
2002	0	4	\$12,750
2003	3	2	\$41,000
2004	28		TBD

### Case Management and Enforcement Decisions

While enforcement has increased, the NDEQ's CAFO program continues to place a strong emphasis on compliance assistance. Because the NDEQ conducts inspections on a consistent basis and maintains communication with facilities, the department is well informed of the current activity of CAFOs in their state. However, due to compliance interaction, there may be some hesitation on referring a facility for enforcement.

Findings discovered during the file review indicate that referral for enforcement is often inconsistent. Some employees deem enforcement necessary when the potential to discharge exists, others initiate referral for enforcement once a discharge has occurred. Factors contributing to inconsistent decisions also include the willingness of the facility to cooperate and success of the business. The Livestock Waste Control Program has expressed that a potential to discharge constitutes justification for a referral for enforcement.

The NDEQ strives to work alongside the CAFO sector by providing ample opportunity to achieve compliance. However, timeliness may be compromised when applying certain methods. The methods used to steer the facility into compliance include: extending construction permit applications (Anderson, Warren Wortman, DCK East, Barr/CTC and J & S), granting use of filter strip technologies as opposed to traditional controls (Jessen, Beattie & Ferguson), and postponing action to wait for EQIP funds (Anderson, Warren Wortman). The Livestock Waste Control Program acknowledges this predicament, and has recently begun granting fewer extensions, primarily advocating traditional controls while dismissing EQIP as an excuse. The Livestock Waste Control Program has stated that they plan to administer no more than two extensions per facility, only under extenuating circumstances, and that EQIP is no longer an excuse to delay installation of controls or apply for a permit.

## Recommendation

Consistency can be improved by providing guidance as to what constitutes the potential to discharge thereby clarifying appropriate circumstances surrounding the decision. Organizing the guidance in writing also places less burden on the inspectors in making the decision for referral to enforcement. By doing so, they are in a better position to develop working relationships with facility owners with the primary goal of compliance. The NDEQ should consider specifying timeframes within the guidance to address facilities where past inspections have revealed that further controls are necessary to prevent discharges. Facilities reviewed during the file review that may have benefited from this guidance include Halimage, Newsome Holsteins, Jessen and Paul Johnson and Sons South.

## Follow-Up to FY 2000 CAFO Program Review

The 2000 Program Review listed two main findings with recommendations: The NDEQ was urged to take formal action against facilities that discharge and to consider referring cases for joint enforcement among the EPA and the State in order to recoup economic benefit.

Since the NDEQ no longer assesses penalties, making changes in their program to reflect an increase in monetary fines may be difficult. However, the NDEQ has the potential to take a more firm stance against facilities that are out of compliance. The FY 2000 Program Review finding is similar to the FY2003 finding in that there is little deterrence against discharging.

## Storm Water Enforcement and File Review

Due to resource constraints, the NDEQ's inspections for stormwater compliance are limited to response to complaints from the public. However, as time and resources permit, the inspector will investigate other sites with potential violations that are observed on the way to the inspection generated by the complaint. The program continues to grow, for example, the NDEQ received approximately 200 Notice of Intents (NOIs) two years ago and currently they are receiving approximately 1,800 NOIs per year.

During the program review, the EPA staff reviewed 9 storm water files. In most cases, the NDEQ appears to be consistent in addressing potential storm water violations. The department was prompt to respond to the complaints they received. Of the files reviewed: 1) two had penalties assessed, 2) two had NOV's issued and came into compliance, and 3) five are still under development.

#### **Hartland Homes Southwest NER101294**

The inspection occurred on March 29, 2004, the violations documented included: failure to comply with best management practices (BMPs), failure to comply with permits terms and conditions, and failure to comply with Best Practicable Control Technology (BPCT). An NOV was issued on May 27, 2004, requesting a copy of the facility's SWPPP and development of a plan explaining what steps have been taken and are going to be taken to eliminate the problem of soil erosion and transportation of sediment within 10 days. The plan must be implemented within 20 days. A letter from the facility dated June 4, 2004, stated that the site sends out a man "with our bobcat to clean the streets and gutters after each significant rain to prevent run off of the mud into the storm water system." There was a follow-up inspection conducted on June 23, 2004, which documented that the site was still in non-compliance. The NDEQ verbally stated that this case is pending.

#### **Husker Off Road Riding Club NER101727**

The inspection occurred on March 3, 2004, and the following violations were documented: failure to comply with BMPs, 2) failure to comply with permits terms and conditions, and failure to comply with the BPCT. An NOV was issued on April 5, 2004, requesting the facility to submit a complete action for a stormwater permit and to implement erosion controls within 10 days. The NOV also requested a letter from the facility explaining what steps have been taken to eliminate erosion within 15 days. The facility obtained a storm water permit and provided the information requested by the NOV. A follow-up inspection was conducted on April 21, 2004, which documented that the site was in compliance.

#### **Northern Lights Subdivision NER100672**

On April 19, 2001, a letter was issued to the facility requesting a seeding and site stabilization plan pursuant to the requirements of the storm water permit. It also stated that an effective vegetative cover needs to be completed within 30 days. An inspection was conducted on May 17, 2001, to determine compliance with the April 19, 2001, letter. The inspector observed that the site had not been seeded. Subsequent inspections on May 31, 2001, and August 8, 2001, showed that there was no evidence that the site had been seeded and no grading had been done to remove the gullies prior to seeding. On September 25, 2001, the NDEQ staff contacted the project engineer and discussed the need to seed and stabilize the site prior to winter. On October 17, 2001, an inspection was conducted and revealed that no seeding had occurred. On October 24, 2001, the engineering firm was contacted again by the inspector. The inspector was told that the site owner did not want to seed the site as he had tried before and it didn't work. The inspector explained that getting the site stabilized was a permit requirement. On November 5, 2001, an inspection was conducted and it was determined that the site had not been stabilized. On March 25, 2002, an NOV was issued for failure to apply adequate erosion control. The NOV stated that the violations have been forwarded to the legal department. An inspection was conducted on May 30, 2002, and showed that the

site had been seeded and other BMPs were in place; however, they were not effective. An on-site meeting between the NDEQ and the facility was held on June 3, 2002. NDEQ discussed their concerns about the lack of effective BMPs. On August 26, 2002, a settlement proposal was offered by NDEQ. Several subsequent inspections were conducted between August 2002 and April 2004, which revealed that the site's BMPs were still not effective. On July 1, 2004, a Consent Decree was issued with a penalty of \$4,000 and a \$1,000 supplemental environmental project. Timeliness in re-assessing the facility's need for controls, as noted by NDEQ in 2001, and addressed in 2004 could be improved.

#### **Grayhawk Subdivision NER101242**

An inspection was conducted on April 16, 2002, which documented the facility's stormwater violations. On May 7, 2002, an NOV was issued to the facility for failure to apply adequate erosion control and for failure to establish adequate vegetative cover or apply alternative stabilization methodologies. On September 11, 2002, NDEQ issued a settlement proposal. Settlement negotiations occurred from December 2002 until May of 2003. On January 5, 2004, a letter was sent to the facility's legal representative stating that a complaint will be filed on January 12, 2004, due to failure to settle. A Consent Decree was filed on March 9, 2004, with a \$5,000 penalty.

#### **Crofton Lakeview Golf Course NER101860**

On June 28, 2004, a letter was issued to the facility advising that an inspection would be conducted to determine if construction began without a permit, whether storm water from the construction activities discharged in the Missouri River, and required the facility to submit its SWPPP. An inspection was conducted on June 29, 2004. On July 29, 2004, an NOV was issued for failure to apply for and obtain a storm water permit for a construction site. The NOV requested the facility to submit a complete application for a storm water permit and implement erosion controls within 10 days. It also requested a plan explaining what steps have been taken to eliminate soil erosion within 10 days. In August 2004, a letter was sent from the facility to the NDEQ stating that it had submitted the application and was told to start the project. The letter also explained the erosion control measures that have taken place. During the program review, the NDEQ verbally stated that the case is pending.

#### **Southridge Village NER101279**

On April 17, 2002, the NDEQ staff met with the facility and discussed the requirement for submitting an NOI for the permit. They also discussed the lack of proper BMPs. On May 7, 2002, an NOV was issued for no permit coverage and inadequate sediment controls. The letter required immediate attention toward implementing corrective actions. The matter was referred to the legal department on May 15, 2002. There was handwritten note in the file stating the facility submitted the NOI, seeded the site, and closing the case dated March 27, 2003.

### **High Point Subdivision NER100775**

On June 30, 2000, an inspection was conducted and identified ineffective BMPs. On November 28, 2001, the NDEQ staff was contacted concerning the city's concerns about excessive erosion. On December 4, 2001, an inspection was conducted with documented stormwater violations. On December 20, 2001, a re-inspection was conducted documenting that some of the work had been done but there were still BMPs violations.

On March 25, 2002, an NOV was issued for inadequate sediment controls. The NOV required immediate attention toward implementing corrective actions. On April 8, 2002, an inspection was conducted which documented BMP violations. There is no further documentation concerning this case in the file. The NDEQ verbally stated that this case should be closed. The NDEQ should provide documentation in the file as to why the case is closed.

### **Pratt's Old Oak Estates NER101853**

On March 16, 2004, a complaint was received by the NDEQ staff. An informal inspection conducted by the NDEQ staff identified that there were no storm water pollution prevention measures in place. During a March 22, 2004, telephone discussion with the facility, the NDEQ learned that there was no permit coverage. On April 21, 2004, an NOV was issued for failure to apply for and obtain a storm water permit for a construction site. The NOV requested a complete application for the permit and implementation of erosion controls within 10 days. The NOV also requested a letter explaining what steps have been taken to eliminate erosion within 15 days. On May 12, 2004, an extension to the NOV was granted. On May 7, 2004, the facility's legal counsel sent a letter to the NDEQ advising that the site in question may be less than 1 acre. On May 24, 2004, a written complaint concerning continuing storm water violations at the site and providing photographs was received by the NDEQ. On May 29, 2004, a written complaint and photographs, by the same party, was received by the NDEQ. On June 2, 2004, the NDEQ received a copy of a letter that was sent to the County Planning and Zoning Department, from the same party, concerning subdivision covenants. There is no additional documentation available in the file. The NDEQ staff verbally state that this case is pending as there was a delay due to the death of the developer's son.

### **Wilderness Park Estates NER101909**

On May 6, 2004, an inspection was conducted at the site which documented storm water violations. On May 27, 2004, an NOV was issued for discharging from a construction site without a permit. On June 21, 2004, the NDEQ received an incomplete NOI. On June 23, 2004, a follow-up inspection was conducted which documented continuing BMP violations. During the program review, the NDEQ verbally stated that the case is still pending.

## Recommendations

Although the NDEQ has shuffled staff around or given additional work to staff to help implement storm water programs, due to the storm water program's rate of growth, the Department should consider additional resource allocations for it.

The EPA would like to see the NDEQ conduct some storm water inspections targeted by the state. Since the NDEQ has admittedly significant resource constraints, it would provide a ripple in the pond effect for the state to conduct some well chosen inspections and follow-up with appropriate enforcement actions.

The NDEQ should consider the length of time a facility is allowed to remain in violation prior to issuing a formal enforcement action.

The NDEQ should be commended for its continuing efforts to improve the storm water program while on a limited budget.

## Pretreatment Enforcement and File Review

### Introduction

The State of Nebraska is one of the few states that has elected to implement the pretreatment program as both the Control Authority and Approval Authority. In other words, the state is not delegating Pretreatment programs to municipalities. The state has, however, entered into Memorandums of Understanding (MOU) with 11 of its largest cities transferring some of the program activities to the city to perform. The two cities with the greatest amount of participation, Omaha and Lincoln, perform sampling and analysis of regulated pollutants and provide that data to the NDEQ, which is used to determine compliance with the NDEQ issued permit.

The last time the EPA performed a pretreatment program evaluation of the NDEQ was four years ago. At that time the state was just starting to establish field offices in five new cities and move most of the inspection activities from the Lincoln office to these field offices. At that time there was some question how the field offices would interact with the Lincoln office to ensure the pretreatment program was properly implemented. In the past four years those details have pretty much been worked out.

### The NDEQ's Structure

The pretreatment program is implemented with responsibilities distributed between the Lincoln office and five of six field offices. Each field office is responsible for conducting annual inspections and sampling of each of the regulated industries within the field office boundary. All permitting, however, is done from the Lincoln office. In addition, those counties that are part of the Lincoln office receive inspections and sampling from personnel in the Lincoln office.

## Sampling and Inspections

It is the NDEQ's intention to inspect and sample each pretreatment industry once per Federal fiscal year. (Sampling done by Omaha and Lincoln are acceptable surrogates for the state's activities). A PCS report, however, shows that all Significant Industrial Users (SIUs) are not being inspected annually. The NDEQ believes that the inspections are being done but records of some of the inspections are not getting into PCS. The NDEQ should use PCS at the end of each year to determine those facilities that appear to have not been inspected and ask the field offices to provide the information in order to complete the PCS data.

Once an inspection is conducted by a field office, a report is written and sent to Lincoln for review. A review of the format of the reports and contents showed them to be of excellent quality. Each report that is submitted to Lincoln has a form attached that contains all of the information needed for PCS. The administrative assistant detaches that form and sends it to the PCS data manager for input into the system. Once the reports are reviewed by the Lincoln office they are sent to the industry directly. As a check to determine if the inspections are being done or the reports received there are two possibilities. A table of SIUs can be kept and when the report is received the appropriate industry is checked off. Then one could see at a glance which industrial inspections or reports are outstanding. Because the reports are processed only by the administrative assistant and reviewed only by one person, tracking at either point would be effective.

To fulfill the regulatory obligation of sampling all SIUs a minimum of once per year, grab samples are taken at the industries by the respective field office. The samples are preserved and submitted to the state's laboratory for analysis. Once analysis is complete the results are sent directly to the supervisor of the file team, where the documents are given a bar code so they can be cataloged and tracked in IIS. Once logged in, copies are sent to the appropriate field office and evaluated for compliance. If a violation is noted the field office is to follow up with composite sampling since the permit almost always specifies composite sampling for compliance demonstration. The state does not keep central records of which facilities had violations detected by grab sampling and whether follow-up composite sampling was undertaken or what composite sampling found. It is recommended that the central office initiate a reporting system from the field offices that identifies the results of the grab samples, if follow-up sampling was warranted and performed, and what the results of the composite samples showed.

Self-monitoring results performed by the industries are processed similarly. Except for some very small industries all SIUs report on a quarterly basis, even if their sampling frequency is greater. DMRs consisting of two copies are received by the administrative assistant, who assigns a bar code to the file copy. The other copy is sent to the PCS administrator for entry into PCS. That copy, once entered, is forwarded on to the respective field office for evaluation. Once every six months a print out is evaluated to determine the compliance status of the state's SIUs based on this DMR data.

As part of the MOU with the EPA, the NDEQ is to provide a summary once every 6 months (in February and September) of the compliance status of each SIU. The compliance status is to be reported as either C (full compliance), I (infrequent noncompliance), or SNC (significant noncompliance). If the facility is in SNC the reason is to be indicated. However, the state has not been submitting this report in this format. Instead a copy of the PCS print out of those facilities having violations is submitted. This is inadequate. First, it can not be determined from the PCS print out if the facility is in SNC because only the violations are reported. It is not known how many samples were taken, which is essential for determining the ratio of violations to compliant results. Moreover, the PCS print outs do not identify SNC with respect to reporting nor does it show what facilities have achieved SNC through interference or pass through. The state must provide the compliance status reports in the format agreed to in the MOU.

### Local Limits

The General Pretreatment regulations require that all facilities who have experienced interference and pass through develop local limits to prevent reoccurrence. See 40 C.F.R. 403.5(c)(2). Since the NDEQ is implementing the program at the state level this responsibility falls to them. In the past few years Wakefield, Hastings and David City have all experienced interference or pass through from conventional pollutants but no local limits have been developed.

In addition, the 11 MOU cities, where the greatest number of industries are located, have never been evaluated for local limits. The NDEQ claims that because these facilities have never had any NPDES permit violations for metals and because their sludge is always compliant with the 40 C.F.R. Part 503 regulations no local limits are needed. However, since most cities do not have metals limits in their NPDES permits they are not sampling their effluent and therefore do not have an accurate picture of their discharge. Moreover, this "approach" does not identify a Maximum Allowable Headworks Load, which will allow identification of how heavily loaded a plant is with respect to the allowable discharge. The NDEQ needs to reconsider their attitude toward local limits.

### Enforcement

Every 6 months PCS data is reviewed to determine which facilities have had violations (this is the basis for the report submitted to the Region, discussed above). The PCS printout is not sent to the field offices, however, any facility that has had violations is discussed with the respective field office to determine if enforcement actions are needed. If the decision is made that enforcement action is appropriate the field office will draft an NOV and submit it to the Lincoln office. Following review and editing it is prepared for signature. Once the action has been issued it is tracked in an Access database to ensure that any deliverables are received. At the time of the program review the Access database was being phased out and future tracking will all be done in IIS.



The NDEQ has two methods of enforcement at their disposal: the NOV and the Administrative Order (AO), however, neither can carry a penalty with it. If a penalty is warranted the case must be referred to the AG.

The list of facilities that the state recognized as being in SNC for 2003 was reviewed and the enforcement actions noted. At the time of the program review this list was still considered draft and the industries had not yet been published in the newspaper. The following table identifies the facility and the enforcement action taken.

<b>Pretreatment Facilities to be Published for Being in SNC- 2003</b>			
<b>Industry</b>	<b>Enforcement Action</b>	<b>Date of Violation</b>	<b>Date of Action</b>
Chief Automotive Systems	None		
G&G Manufacturing	None		
Great Dane Trailer	NOV	09/16/03	04/20/04
Hydraulic Components Inc.	None		
Omaha Antique....	None		
Orthman Mfg, Inc, South	None		

The NOV to Great Dane was the only NOV issued in 2003 to a pretreatment facility for violations that occurred in 2003. One other Pretreatment enforcement action was issued in 2003, however, it was to Nebraska Energy for causing interference at the Aurora WWTP in 2002.

From the PCS report that is reviewed every 6 months, 6 industries have been determined to be in SNC for the period ending June 30, all of them with discharge limits. Two of these industries, Hydraulic Components Inc. and Omaha Antique were also in SNC in 2003, as the table above indicates. At the time of this program review none of the industries had been issued an NOV.

However, there were two other industries in SNC for the period ending in June which the state did not put on the list. Waldbaum Co. caused interference and/or pass through at the Wakefield plant, and Abengoa Bioenergy had failed to report noncompliance. Both of these facilities received an NOV. Consequently, of the 8 SIUs in SNC for the period ending June 30, two had enforcement actions taken against them.

If Nebraska pretreatment was not a state-run program and these industries were regulated by cities with approved pretreatment programs enforcement would have been taken according to an approved Enforcement Response Plan (ERP). Under an ERP all of the industries would have received, at a minimum, at least one NOV. Consequently, the NDEQ's program is not on par with city programs in the other states in the Region. The state must begin issuing NOVs, at a minimum, to those industries in SNC.

One practice that could be hurting the ability for the NDEQ to take timely and appropriate enforcement action is not having appropriate limits in permits for non-Categorical SIUs. For instance, the Waldbaum permit that was reissued in 2001 did not contain any limits even though the previous permit did. Consequently, when the Wakefield wastewater treatment plant began to experience operational problems there were no limits to enforce. Because the Waldbaum facility is the only discharger to the Wakefield industrial plant limiting at least flow would have brought the problem to the NDEQ's attention before interference and pass through occurred.

### Permits

As part of the program evaluation, 17 files were reviewed with the focus being on those industries that new to the program since the last the EPA evaluation four years ago. All of the permits reviewed were of excellent quality. Particularly impressive is the permit format that has been developed over the past few years. The NDEQ's pretreatment permit is the only one EPA has seen that contains a table of contents, a very helpful feature for quick reference for the permit holder.

Of the 89 SIUs in the NDEQ Pretreatment Program, 13 have expired permits waiting to be reissued. This constitutes a 15% backlog, which while greater than the 10% target, is still a manageable number.

### Data Management

The NDEQ relies on four databases for program implementation. The first, PCS, is used to provide programmatic information to the EPA. The state's own database, IIS, is more comprehensive, user friendly, and powerful and eventually the state would like to use it exclusively for all NPDES activities. Until IIS can be expanded and upgraded, the state is also using two desktop databases to track enforcement actions and permitting activities. However, at the time of the program review the enforcement database was being phased out because of recent upgrades to IIS. During the program review, the Region was given a demonstration of the current capabilities of the state's IIS system. The program appears to be an excellent database and should be effective when the system is completed.

The NDEQ uses PCS, but does not rely solely on it. The NDEQ feels that PCS is difficult to use, so many of the NDEQ's compliance personnel use the IIS to keep track of the DMR results for their facilities. The NDEQ is aware that several required PCS elements are not being input. The EPA is particularly concerned that there is no enforcement data entered into PCS. This occurs in part because the NDEQ refers all of their enforcement cases to the AG, and, in part because they are focusing their resources on maintaining IIS. It appears that IIS has the data fields that are required by PCS. The NDEQ anticipates IIS to be able to upload into PCS, but does not have a definite time frame for this to occur. Keeping PCS accurate and current is necessary to ensure that reliable data is in PCS, the national database system, and provide correct information for public access to information in the Enforcement and Compliance History Online system.

## Recommendation

The NDEQ must enter the required PCS data elements until IIS data can be transferred into PCS.

## Follow-up to the 2000 Program Review

The 2000 Nebraska NPDES Program Review listed the following main recommendations:

- 1) The NDEQ should use program management measures and executive summaries of program status as tools for describing and managing the status of its programs.

The NDEQ has reorganized its NPDES program since the 2000 Program Review. Since that time, the QNCR process has improved and is timely. Although the program is still going through changes, there has been substantial improvement in their enforcement program.

- 2) The NDEQ should develop a penalty policy to aid in consistency and facilitate the decision process. It was noted that NDEQ was in the process of developing a penalty policy at the time.

Chapter 6 of the NDEQ's 2002 Enforcement Manual addresses the calculation of penalties, including gravity and economic benefit.

- 3) The NDEQ needs to have accurate recordkeeping of reported Sanitary Sewer Overflow (SSO) discharges. The NDEQ and the EPA need to work together to implement a strategy to address SSOs.

The NDEQ should implement an accurate recordkeeping system of reported SSO dischargers. The EPA and the NDEQ continue to work on implementation of an SSO strategy.

- 4) The NDEQ's new data base needs to be linked to PCS.

The NDEQ is still in the process of developing and implementing its database, IIS. Although they anticipate that it will be able to be uploaded to PCS, it currently is not and no date has been set for this to occur.

## Performance Partnership Grant (PPG)

The NDEQ has 55 major facilities. The PPG required the NDEQ to inspect all major facilities during FFY 2003. Data retrieved from PCS indicates that only 40% of major facilities were inspected during FFY 2003; however the NDEQ management verbally indicated that all of the NPDES major facilities are inspected every year.

The PPG required the NDEQ to track enforcement actions/schedules in PCS. In addition, it requires the department to maintain accurate and complete information for the WENDB data elements. Currently, there is no enforcement data being entered into PCS.

The PPG required the NDEQ to develop an SSO reporting tracking system to centralize information about SSO problems in the State. In IIS, the NDEQ tracks when SSO reports were submitted, but has no system for tracking the SSOs themselves. Therefore, IIS does not meet this PPG commitment.

### Recommendations

The EPA and the NDEQ need to resolve the data discrepancy concerning the inspections of all major facilities.

The NDEQ needs to perform the work they committed to in the PPG. The NDEQ and the EPA should re-evaluate the PPG for FY 06/07 to determine what additional enforcement products need to be included into the work plan.