

The New Mexico Environmental Department (NMED) Enforcement Program Framework Review 2004 Executive Summary

Overview:

Region 6 applauds NMED's leadership in being among the first States to participate in a State Enforcement Program Framework Review and appreciates the level of cooperation and support NMED has demonstrated throughout the Review process.

The Enforcement Program Review Framework is a collaborative effort by States and EPA to achieve greater consistency and results from environmental compliance. Under the Framework, the same 13 review elements apply across the Clean Air Act stationary source (CAA), the Resource Conservation and Recovery Act (RCRA) hazardous waste and the Clean Water Act NPDES enforcement programs.

In May 2005, Region 6 hosted a policy level meeting with NMED and other State enforcement managers to introduce and discuss the Review Framework. NMED also participated in the June 2005 Framework training co-hosted by the Environmental Council of States and EPA. In August 2005, the NMED and Region 6 Framework Review teams met (some participated telephonically) to review the Framework process and relevant data. On-site file reviews at NMED's offices were completed in October 2005.

NMED was authorized to administer programs under the CAA and RCRA in 1984 and 1985 respectively. The Department is organized into several program bureaus with the air enforcement program under the Air Quality Bureau and the RCRA hazardous waste enforcement program under the Hazardous Waste Bureau. NMED's success in administering these programs is due in large part to strong leadership through a dedicated and experienced management team and staff. This Framework Review describes the Department's success in terms of performance goals. It highlights achievements and where there are concerns, it describes the path forward. A brief summary follows:

Inspections – Review Elements 1-3:

NMED meets the RCRA program goal for coverage of treatment, storage and disposal facilities and approximates the national average for large quantity generator coverage. Inspection reports appear to be thorough and timely. In fact, the Hazardous Waste Bureau's standard procedure of leaving a copy of the inspection report with the facility at the time of the inspection will be noted as a best practice at the national level.

NMED CAA inspection coverage is consistent with national averages, but does not meet the programmatic goal of 100% coverage. Some of this is attributed to data issues and the Air Quality Bureau has completed the conversion to the TEMPO data system to improve data transfer between the State and national databases and thereby improve data quality and timeliness in the national database.

The City of Albuquerque Air Quality Division Enforcement Program Framework Review 2004 Executive Summary

Overview:

The Enforcement Program Framework is a collaborative effort by States and EPA to achieve greater consistency and results from environmental compliance. It applies the same 13 review elements across the Clean Air Act (CAA) stationary source, the Resource Conservation and Recovery Act (RCRA) hazardous waste and the Clean Water Act NPDES enforcement programs. . Region 6 applauds the City of Albuquerque Air Quality Division's leadership in being among the first to participate in a Framework Review and appreciates the level of cooperation and support the Air Quality Division has demonstrated throughout the Review process.

The City of Albuquerque was authorized to administer the CAA program in 1985. Its success in administering this program is due in large part to strong leadership through a dedicated and experienced management team and staff. This Framework Review describes the Division's success in terms of performance goals. It highlights strengths such as the use of the Post Inspection Notifications to help expedite compliance and reduce instances of repeat violations. Where there were concerns, it describes the path forward. A brief summary follows:

Inspections – Review Elements 1-3:

Overall, these review elements were met. Inspection coverage of major sources exceeds the national average, but does not achieve the program goal of 100% coverage.

Enforcement – Review Elements 4-8:

The review indicated that these elements were met. It appears that a potential significant violation of a source's Title V certification requirements was not identified by the Division. At the Division's request, EPA will provide HPV training during FY2006.

Enforcement Commitments – Review Element 9:

There were no commitments applicable to this element.

Data Integrity – Review Elements 10-12:

All data was timely, accurate and complete.

Other Compliance Assurance Activities – Review Element 13:

The Air Quality Division elected not to participate with this element.

NMED Enforcement Program Framework Review 2004

13. Pollution Prevention, Green Zia Environmental Excellence and Technical Assistance Programs

The New Mexico Environment Department (NMED) established the New Mexico Pollution Prevention Program in late 1996. The purpose of the program was to assist any business or organization that creates waste improve their process so that less waste or pollution is created. Workshops, waste assessments and trainings were held to provide assistance to businesses in the state, to introduce the Pollution Prevention concept.

In 1998 it was clear to the NMED Pollution Prevention Program that in order to engage businesses in pollution prevention there had to be an incentive or a “carrot” approach to entice businesses to participate in the program. Under the NMED Pollution Prevention Program, an environmental recognition program was created called the Green Zia Environmental Excellence Program. This program is a performance-based program that includes Core Values and Criteria that serve as a valuable self-assessment tool for any organization, regardless of size or sector. This approach has become very successful as businesses began to see the benefit of implementing pollution prevention practices. This recognition program not only recognizes organizations that are improving their environmental impacts, but it also supplies businesses with a set of tools that can be easily adopted into core business practices. These tools are referred to as the Green Zia Tools. The Green Zia Environmental Excellence Program has three progressive levels of participation that encourage continuous improvement and learning. The three categories are: Commitment Recognition – for organizations that are beginning to put an environmental management system in place; Achievement Recognition – for organizations that have a system in place and are demonstrating progress and good results; and the Excellence Award – for organizations with a mature, well deployed environmental management system. Excellence Level recipients have sometimes gone beyond environmental compliance.

The Green Zia Environmental Excellence Program does not focus specifically on a particular environmental media but includes water, waste and air. Measurements include cost savings, hazardous waste reductions, solid waste reductions and diversions, energy savings and water conservation. Green Zia applicants, at the top two levels, report (category 7 of application, RESULTS,) their reductions. Those reductions are calculated and reported to the EPA, Region 6, Pollution Prevention Coordinator. Over 100 organizations have participated in the Green Zia Program from 1999 to 2005. Minimum cost savings reported from 1999 – 2004 has been approximately \$46.6 million as a result of environmental improvements and pollution prevention. Specifically in the year 2004, Green Zia participants saved approximately \$213,500.00, reduced over 200,000 lbs. of hazardous waste and diverted and recycled approximately 31,772 tons of material from the landfill.

The Pollution Prevention Program continues to offer workshops, waste assessments, technical assistance and support for New Mexico businesses. Outreach material has been

developed for specific industries to reduce pollution by best management practices, product substitutions and waste reduction, for jewelry manufacturing, auto repair shops, printing, dry cleaning and woodworking. Over the last six years, many pollution prevention workshops have been offered to entice businesses in New Mexico including hospitals, dry cleaners, jewelry manufacturers, automotive shops and businesses near the Mexico border area to adopt pollution prevention policies and practices. A workshop was held in the Santa Teresa, New Mexico Industrial Park of May 2004. There were approximately 75 participants who were interested in waste management techniques and waste control in general. The workshop was very successful and participants attended an additional workshop held a year later in Juarez, Mexico, by the NMED P2 Program.

Outreach and compliance efforts also include our Air Quality Bureau, and our Hazardous Waste Bureau.

Air Quality Small Business Assistance Program (SBAP)

The Small Business Assistance Program (SBAP) provides publications and technical assistance for small businesses with respect to the New Mexico air quality regulations and requirements. The SBAP assists small businesses in understanding the environmental regulatory requirements associated with doing business in New Mexico, helps small businesses meet air quality regulation exemptions, and provides assistance in filling out permit applications. The SBAP is not an enforcement program, but helps businesses through the process.

The Air Quality Bureau defines "Small business" in 20.2.75 NMAC as a company that employs no more than ten (10) employees at any time during the calendar year. Employees include part-time, temporary, or limited service workers. For new sources, the company must certify that the source does not expect to employ any more than ten (10) employees in the first year of operations. In addition, "small business" does not include:

- any source which may emit more than fifty (50) tons per year of any regulated air contaminant for which there is a National or New Mexico Ambient Air Quality Standard, or seventy-five (75) tons per year of all regulated air contaminants for which there are National or New Mexico Ambient Air Quality Standards; and
- any major source for hazardous air pollutants under 20.2.70 NMAC.

For sources that satisfy the definition of "small business", the permit fee is reduced by 50%. Because General Construction Permits (GCPs) issued by the Air Quality Bureau allow for up to 95 tons per year of certain regulated air contaminants, fee reduction does not apply to this type of permit.

The SBAP offers assistances to small businesses for all of New Mexico, with the exception of Bernalillo County and Tribal Lands. The City of Albuquerque/Bernalillo

Air Quality Assistance Program (AQAP) regulates businesses located in the County of Bernalillo. All major sources are permitted by the U.S. EPA.

January – December 2003

Miscellaneous help was given to small businesses, including popcorn processing, welding (fumes), biogas generation and biogas engine emissions, and cultured marble. Help consisted of:

- Discussion of regulations pertaining to an industry (including MACTs)
- Explanation of what permit application form to use
- Help filling out permit applications
- Process mapping and emission calculations
- Dust control methods for roads and industry (particularly aggregate)
- Pollution prevention methods
- Maintaining permit exemption status
- Record keeping requirements
- Odor and dust regulations

The time spent with each business ranged from 15 minutes to two months.

Miscellaneous questions concerned air quality regulation overviews, amnesty for small businesses, MACT and other regulatory applicability, and health risks from forest fire smoke. Responses included site visits, telephone, letter and fax correspondence.

Complaints were recorded and sent on to Enforcement.

SBAP personnel also gave presentations during this year. A presentation about the permitting process for sand and gravel operation was given to member of the Association of General Contractors in Albuquerque during August; the presentation was posted on the SBAP web site and has been reviewed and downloaded numerous times. The material developed for this presentation was modified for outreach and presentations to fulfill the State and Tribal Assistance Grant (STAG) process, which EPA awarded to the state for the aggregate industry. A presentation concerning Small Business Assistance Providers in New Mexico was presented at the NM Environmental Health Conference in October and the Air and Waste Management Association in November.

January – December 2004

State and Tribal Assistance Grant: The Small Business Assistance Program was instrumental in developing a compliance course for Aggregate and Hot Mix Asphalt (HMA) Plants during 2004. The U.S. EPA Office of Enforcement and Compliance Assurance (OECA) State and Tribal Assistance Grants (STAG) funded the project. The two-hour course consists of a 20-minute video, PowerPoint presentation and booklet. The course targets the most common compliance issues that result in Notices of Violation in these industry sectors, and is designed to help these industries stay in compliance with conditions in their air quality permits.

The training video is available both in DVD and VHS format, and include English/ Spanish closed captioning (DVD) and closed captioning in English or open captioning in Spanish with Spanish graphics (VHS). The video has been made available to the industry and the general public.

The course booklet consists of 28 pages of information related to both industry sectors, and includes all of the forms the Air Quality Bureau requires aggregate and HMA operators to use for permitting, equipment substitutions, relocation, and record keeping. Guidance packets were put together for all of the course attendees, and included an evaluation form, generic setback distance map, course booklet, and a pre- and post-test, which were used to evaluate the training methods.

Outreach efforts for the course included a press release, a direct mail-out, phone calls, and site visits. Four evening classes have been offered to industry at locations throughout the state. Classes are taught with Air Quality Bureau small business, permitting and enforcement personnel present so that industry members can have questions answered during the course.

The general response from the two industry sectors has been very positive and the Bureau has received praise for the training. Overall, 119 people have attended the trainings to date, and the majority of them have shown an improvement between the pre-test and post-test results. Industry representatives requested an additional class, and this was performed at one new location.

All course materials are available to the public and requests for these materials have been gratifying, with several of the requestors stating that the materials will be used as in-house training courses for current and new employees. The materials have been requested by one out of state environmental agency and the National Asphalt Paving Association in Washington D.C.

The course will continue to be taught during 2005; the NMDOT has requested the course, and the Albuquerque/Bernalillo Environmental Health Department Air Bureau has also requested course materials.

The SBAP provided direct help to small businesses, which included a flexography printing operation; secondary aluminum smelting shop, and a custom cultured marble facility. Help consisted of:

- Discussion of regulations pertaining to an industry (including MACTs)
- Explanation of what permit application form to use
- Help filling out permit applications
- Process mapping and emission calculations
- Dust control methods for roads and industry (particularly aggregate)
- Pollution prevention methods
- Maintaining permit exemption status
- Record keeping requirements

- Odor and dust regulations
- General Construction Permits (GCP) -2 revisions

The time spent with each business ranged from 15 minutes to two months. Miscellaneous questions concerned MACT and other regulatory applicability, lead-based paints, airborne contaminants associated with tailing piles, and biomass fuel emissions. Responses included site visits, telephone, letter, email, and fax correspondence. Complaints were recorded and sent on to Enforcement. On-line discussions were held with the national SBO/SBAP group about a variety of topics, including amnesty and regulatory relief for small businesses, area source exemptions, printing operation emission factors, permit assistance liability, and fee reduction for small businesses.

Hazardous Waste Technical Assistance Program

The Hazardous Waste Technical Assistance Program (HWTAP) was created in 1998 as a small business outreach program of the Hazardous Waste Bureau (HWB).

The HWTAP is provided as a service to small businesses and industrial facilities that may be subject to federal and state hazardous waste laws and regulations. Any small business can qualify for this free service, including Conditionally Exempt Small Quantity Generators, Small Quantity Generators of hazardous wastes, recyclers of E-wastes, Used Oil Handlers, and Universal Waste Handlers. At the HWB's discretion or by invitation of the facility, an Environmental Specialist from the HWB conducts a Compliance Assistance Visit (CAV) to provide: a) on-site operational evaluations and administrative support, b) regulatory guidance, c) waste management/recycling options, d) pollution prevention and waste minimization alternatives, e) assistance in determining generator status and state fee determinations, and f) self-audit checklists. Facilities found to have any conditions out of compliance are given a reasonable time period in which to make corrections. The facility signs the Consultation Report agreeing to correct any deficiencies detected and is made aware that if the deficiencies are not corrected within the allotted time period that the NMED reserves the right to exercise any appropriate and necessary enforcement options.

In FY03, the program conducted 93 CAVs and in FY04 the program performed 88 CAVs. Out of 181 CAVs, there were only two instances where escalated enforcement became necessary. While the HWB does not officially track the generators' progress, staffs have noted significant waste minimization, pollution prevention, waste management, and recycling improvements by many of these generators, as well as complete elimination of hazardous waste streams through substitutions of non-hazardous alternatives. The monetary savings involved would probably total in the tens of thousands of dollars saved in not having to dispose of hazardous wastes or having to dispose of much less than before. Although a rare occurrence, if, during a site visit, there were ever to be found to exist, a condition which is a severe potential or imminent threat to public health or the environment, the Inspector would then be required to conduct a regular Compliance Evaluation Inspection.

The New Mexico Environment Department continues to improve its efforts of compliance assistance throughout the agency. The Pollution Prevention Program is currently working to integrate Pollution Prevention throughout the agency by seeking out ways to foster and assist businesses in our state. Some incentives may be adopted to encourage businesses to come in to compliance and encourage continuous environmental improvement.

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

Information Sources Included in Review:

The review encompassed two data sources: the national RCRAInfo data system and information located in the state inspection and enforcement facility files. For the review period FY 2004, NMED conducted 76 inspections at 69 facilities and issued 24 enforcement actions to 21 facilities.

The inspection list was generated by selecting the fifth facility from an alphabetical listing of NMED's FY 04 inspections for a total of 15 facilities. The enforcement list consisted of the 4 facilities that received formal enforcement and 7 facilities that received Warning Letters. The files were centrally located at the NMED's Hazardous Waste Bureau offices in Santa Fe, New Mexico. NMED pulled all files in advance of the on-site file review.

The Regional staff reviewed 27 RCRA inspections (15 from the inspections only list and 12 from the enforcement/inspections list). One enforcement file had 2 inspection dates that were linked to enforcement actions and were reviewed.

The 11 enforcement facilities had a total of 16 enforcement actions because NMED issued one facility 3 separate initial formal enforcement actions with penalties and 2 other facilities were issued both initial and final orders in FY 2004. Three facilities were on both the inspection and enforcement lists. If an enforcement action was issued in FY 2004 for an inspection conducted in a prior year, the inspection report was also reviewed.

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

Findings:

NMED committed to conduct 16 inspections in FY 2004 at treatment, storage and disposal facilities (TSDF). The State conducted 14 Compliance Evaluation Inspections, one comprehensive groundwater monitoring Evaluation and two sampling inspections at TSDFs. Therefore, NMED met its commitment.

Under RCRA, all TSDFs must be inspected every 2 years. There is a program goal to inspect all large quantity generators (LQGs) once every 5 years (20% each year). In FY 2004, NMED inspected 80% of its operating TSDFs and 31% of its LQGs. NMED inspected 60% of its LQGs for the 5 year period 2000-2004 (see data metric). The Department also inspected 59% of its Small Quantity Generators over the same 5 year period (see data metric). NMED met its grant commitment for inspections in FY 2004.

Citation of information reviewed for this criterion:

RCRA State Projected Core Program Compliance Monitoring Activities – FY 2004 and the national RCRAInfo data system.

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

Findings:

NMED's Standard Operating Procedures for inspections requires inspectors to take photographs of potential violations and other items as needed to support the inspection report. It also requires inspectors to note in the report if the inspection was in response to a citizen's complaint. Of the inspection reports reviewed, several did not include photographs which may have helped improve the quality of the documentation for applicable violations. (Consolidate Constructors, Roses Southwestern Paper, Sandia National Lab, Southwestern Indian Polytechnic Inst). In addition, NMED RCRA inspectors were not mentioning a citizen's complaint in the report if they did not find any violations pertaining to the complaint. NMED indicated that complaint resolution information is tracked in a separate database. With the exception of photographic documentation in some files and the instances where inspectors failed to identify citizen's complaints, the file review noted that in general, files adequately documented the inspection reports and that the inspection reports documented inspection findings, including the accurate identification of violations.

NMED developed carbonless copies of the RCRA inspection report. The report includes a synopsis of waste streams generated by waste code, descriptions of process and the location of the waste. It also includes a list of potential violations discovered during the inspection and requires that the regulatory citation be listed. A description of the facility and the results of the inspection are also required and included. At the end of the inspection, the report is signed by the facility representatives and a copy is left at the facility. The use of multiple copies enables the State inspector to leave a copy of the inspection report documenting the findings and provides the facility with timely notification of potential violations. The RCRA inspection checklists are used as guidance by the inspectors at the small facilities and are filled out at the permitted facilities.

The total number of inspections conducted in FY 2004 was 76. EPA reviewed 21 facility inspection reports from a random selection of the total 76 inspections plus another 6 earlier inspection reports that also had an enforcement action in FY 04. It was noted on 6 inspection reports that no violations were discovered. NMED provided documentation on one facility that denied the State access. That inspection noted that the facility is a Conditionally Exempt Small Quantity Generator and revealed one minor violation.

Twenty-seven (includes 21 FY 04 reports and 6 earlier FY reports) NMED State inspection reports for 23 facilities (3 facilities were on both the inspection and enforcement lists) were reviewed.

Citation of information reviewed for this criterion:

New Mexico Standard Operating Procedures for RCRA Inspections

Recommendations if corrective action needed:

EPA discussed citizen complaints and the lack of photographs with NMED's RCRA Program Manager during the review. The Program Manager has directed inspectors to include a note in the report flagging citizen's complaints and to document potential violations with photographs, whenever possible.

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

Findings:

The carbonless inspection reports were completed timely. A copy of the report listing the potential violations was signed by the facility representatives and given to the facility prior to the inspectors leaving the site. NMED meets the 30 day timeframe, under its own Standard Operating Procedures, for notification to the facility and identification of violations. By providing copies of the inspection report with detailed descriptions of potential violations to the facility at the time of the inspection, NMED determined that facilities are often able to correct potential violations much sooner than waiting for a formal Notice of Violation from NMED.

Citation of information reviewed for this criterion:

New Mexico Standard Operating Procedures for RCRA Inspections.

Section 2: Review of State Enforcement Activity.

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

Findings:

From the inspection reports reviewed for 2004, no SNCs were discovered. However, in regards to SNC violators discovered, NMED is aggressive in issuing formal enforcement actions with substantial penalties. NMED settled enforcement actions for a total of \$466,898 in penalties. The reporting indicator (data metric 4.d.) shows that NMED has a relatively high percentage of actions receiving a SNC listing, 75% versus the national average of 55.5%.

At the time of this file review, NMED could not locate a 1998 inspection report with violations that received a Final Order in FY 2004. The violations cited were identified as SNC in RCRAInfo.

From its review, EPA would have classified 2 facilities as SNC facilities rather than Secondary Violators (SV) (Southwestern Indian Polytechnic Institute and Xynatech, Inc.). This represents 7 percent of the inspections reviewed. One facility is in compliance and the other is out of compliance.

Citation of information reviewed for this criterion:

The Hazardous Waste Civil Enforcement Response Policy, dated March 15, 1996, and the addendum dated April 18, 2003; The Hazardous Waste Civil Enforcement Response Policy, dated December 2003; NMED RCRA Penalty Guidance

Recommendations if corrective action needed:

For the non-compliant facility that EPA would have classified as SNC rather than SV, NMED should consider escalating the violations and issuing an Order with penalties. In addition, NMED plans to update its RCRA Penalty Policy during 2006. NMED plans to discuss application of the SNC designation with the Region after it updates its penalty policy.

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

Findings:

Four out of the six NMED formal enforcement actions reviewed included requirements to bring the facility into compliance within a specified time frame. The other two enforcement actions included requirements to bring the facility into compliance, but did not specify a timeframe.

Citation of information reviewed for this criterion:

The Hazardous Waste Civil Enforcement Response Policy, dated March 15, 1996, and the addendum dated April 18, 2002; The Hazardous Waste Civil Enforcement Response Policy, dated December 2003,

Recommendations if corrective actions needed:

This was discussed with the Program Manager who has directed Hazardous Waste Bureau enforcement officers to include a specific compliance timeframe for all formal enforcement actions.

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

Findings:

Twenty enforcement actions were reviewed. Fourteen informal enforcement actions were issued for SVs; 11 were timely and 3 were untimely. Six formal enforcement actions were issued for SNCs; all were appropriate as defined under the Hazardous Waste Civil Enforcement Response Policy, but none were timely. For SNC violators, the Policy's timely and appropriate criteria call for issuing an initial formal enforcement action (e.g., complaint) within 240 days or a final formal enforcement action (e.g., compliance agreement) within 360 days.

The six formal enforcement actions reviewed were against large federal facilities and addressed multiple complex regulatory issues. According to the NMED managers

interviewed, these enforcement actions consumed considerable staff time and resources due to the magnitude and complexity of the regulatory issues involved.

Citation of information reviewed for this criterion:

The Hazardous Waste Civil Enforcement Response Policy, dated March 15, 1996, and the addendum dated April 18, 2002; The Hazardous Waste Civil Enforcement Response Policy, dated December 2003

Recommendations if corrective actions needed:

NMED is evaluating options for more timely enforcement against SNCs. The Region and NMED are discussing options, including EPA's option to take enforcement, on a case by case basis during the monthly conference calls.

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

Findings:

The NMED RCRA Penalty Guidance requires that penalty calculations include gravity and economic benefit components. It also requires the proper documentation of penalty calculations. Penalties calculated using that Guidance would be consistent with the EPA Hazardous Waste Civil Enforcement Response Policy. All six formal enforcement actions, that were issued in FY 04, included penalties. In each instance, NMED documented application of its penalty guidance that covers economic benefit and gravity components.

Citation of information reviewed for this criterion:

The NMED HWA, Section 74-4-1 (C)(1); the Hazardous Waste Civil Enforcement Response Policy, dated March 15, 1996, and the addendum dated April 18, 2002; the Hazardous Waste Civil Enforcement Response Policy, dated December 2003 and the RCRA Civil Penalty Policy, dated June 2003; NMED RCRA Penalty Guidance

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

Findings:

The six final penalty files reviewed included documentation of economic benefit and gravity components for final penalties. Documentation indicated compliance with NMED's penalty guidance and that final penalties were ultimately collected. The data metric (8.b) indicates that 25% (2 of 8) of NMED formal enforcement actions included penalties. NMED issues separate penalty and compliance actions. Both penalty and compliance actions are considered formal enforcement actions. Typically, the compliance action precedes the penalty action. At the time of the review, NMED was at various stages of assessing and settling penalty actions for the remaining 6 cases.

Citation of information reviewed for this criterion:

The NMED HWA, Section 74-4-19(C) (1); the Hazardous Waste Civil Enforcement Response Policy, dated March 15, 1996, and the addendum dated April 18, 2002; the Hazardous Waste Civil Enforcement Response Policy, dated December 2003 and the RCRA Civil Penalty Policy, dated June 2003; NMED RCRA Penalty Guidance

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

Findings:

NMED's FY 2004 grant contained a numerical commitment for total inspections (56). It references the Hazardous Waste Enforcement Memorandum of Understanding (MOU) (8/26/94) which addresses timely and appropriate enforcement. NMED's RCRA authorization Memorandum of Agreement (MOA) covers the statutory requirement to inspect all TSDs every 2 years and the requirement for timely and appropriate enforcement. Both the grant and the MOA cover the timeliness, accuracy and completeness of minimum data requirements. For the 2004 review period, Region 6 determined that NMED met its enforcement commitments.

Citation of information reviewed for this criterion:

Enforcement MOU between NMED and EPA, NMED 2004 RCRA grant, Program Authorization MOA

Section 4: Review of Database Integrity.

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

Findings:

A review of the RCRAInfo data requirements indicated that the Minimum Data Requirements are entered into RCRAInfo in a timely manner.

Citation of information reviewed for this criterion:

RCRAInfo Data System

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

Findings:

A review of the RCRAInfo data requirements indicated that the majority of the Minimum Data Requirements entered into RCRAInfo are accurate. A few data discrepancies were identified to NMED during the review.

The data metrics show 20 pre-FY2002 secondary violations (SVs) not returned to compliance. Four are EPA lead actions; one has returned to compliance and the list of the 15 remaining NMED lead actions were sent to the State for status review.

Citation of information reviewed for this criterion:

RCRAInfo Data System

Recommendations if corrective action needed:

NMED will correct the data discrepancies identified by October 1, 2006:

Danlar Collision – 1/20/04 CEI – 120-NOV regulation citations are incorrect in RCRAInfo

Giant Refining Co Ciniza's 120-NOV issue date 2/26/04 should be 4/5/04.

Sandia National Lab – 5/24/04 CEI has 3 violations not entered into RCRAInfo.

NMED will verify the compliance status of the 15 SVs not returned to compliance and either make appropriate data corrections or determine appropriate action for each case by October 1, 2006.

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:

NMED met the Minimum Data Requirements for completeness in RCRAInfo.

Citation of information reviewed for this criterion:

RCRAInfo Data System

Section 5: Optional

13. Evaluation of other projects.

(See Pollution Prevention/Green Zia Environmental Excellence Program report)

NMED conducted 34 compliance assistance visits (CAV) as well as 98 RCRA inspections. The New Mexico legislature has made CAVs a priority inspection for the State.

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Clean Air Act Stationary Source Enforcement Program Report

Information Sources Included in Review:

The review included data from the AIRS/AFS database; NMED's databases AIRS Junior and TEMPO; and State enforcement and inspection files. NMED enters data into a State data base which in turn is uploaded into AIRS. In 2004 NMED transitioned its State database from AIRS Junior to TEMPO. For the review period, FY2004, NMED conducted 142 inspections. NMED took 72 enforcement actions. The combination of these facility files constituted the universe for file review purposes. For this universe size, the Framework file selection guidelines recommend selecting between 15 and 30 files for review. Seventeen files (10 inspection and 7 enforcement) were selected for review. The inspection files included full compliance evaluations (FCEs) and partial compliance evaluations (PCEs); with or without enforcement action; non-high-priority violators; high priority violators (HPV)s, majors; and 80% synthetic minor (SM-80) sources. The review of each file included a review of the inspection report(s), enforcement case time lines, notice of violations, consent orders, and penalty calculations assessed and collected. All files are maintained at a central location at the NMED offices in Santa Fe, New Mexico.

Section 1: Review of State Inspection Implementation

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

Findings:

Inspections at Major sources: The Compliance Monitoring Strategy (CMS) specifies the frequency for conducting FCEs at major sources to be once every two years. For the purposes of this review, the AFS universe of major sources was 198 sources. NMED believes anecdotally that there were actually fewer majors. According to AFS, in FY 2003-2004 the State completed FCEs at 69.7%; according to the State's database, TEMPO, NMED completed 75.5% of the universe of CAA major source planned inspections for the same time period, and is almost identical to the national average of 75.7%. NMED explained that the discrepancy between TEMPO and AIRS was the result of difficulties in uploading data from AIRS Junior into AIRS/AFS. This problem is one of the reasons NMED elected to convert to TEMPO. According to NMED the numbers for 2004 inspections are correct. While NMED inspection coverage approximates the national average, it falls short of the national goal of 100%. NMED recognizes that it did not cover 100% of the AIRS/AFS majors universe and attributes this shortfall primarily to data issues (e.g, AIRS Junior/AFS uploading difficulties) and changes in facilities status (e.g., facility not in operation).

Inspections at Synthetic Minor (80 percent of major source level) – (SM80s): The universe of SM80s includes those sources with an EPA or State classification in AFS for synthetic minors with a CMS Source Code for SM80s. The CMS requires that FCEs

must be conducted at each SM80 once every five years. However, this CMS had only been in effect for three years as of FY 2004, so the data are from FY2002-2004. NMED completed FCEs during the three-year period FY 2002-FY2004 at 70.2% (94/134) of SM80s which was higher than the national average of 69.2%.

NMED noted that some facilities have been classified in AFS as either a major source or as an SM80 due to the type of permit issued to the facility. For efficiency purposes, NMED issues several types of General Construction Permits to address groups of sources that have similar operations, processes and emissions and are thus subject to similar requirements. These permits allow controlled emissions of up to 95 tons per hour which would classify them as 80% synthetic minor. However, the actual potential to emit at the majority of these facilities would qualify them as either synthetic or true minors. The State has undertaken a project to evaluate and determine the actual classification for each General Construction Permit that has been issued. This will create a much more accurate universe of SM 80's and will reduce the burden on the state for conducting surveillance activities in accordance with the CMS. The project will be completed before the end of fiscal year 2006.

Inspections at Synthetic Minor sources: States are not required by the CMS to conduct a specific number of FCEs at synthetic minors, and the PPGA does not specify a percentage. During FY2002-2004 NMED completed PCEs for 72.7% of the universe of synthetic minors. By comparison, the national average is 66.7%.

Title V Annual Compliance Certifications received and reviewed: According to AFS, NMED reviewed 90% of Title V Annual Compliance Certifications received in FY2004. This compares favorably to the national average of 73.5% of Title V certifications reviewed. According to the State database, Tempo, the State reviewed 89.5% of Title V Annual Compliance Certifications. According to NMED (policy/procedure), it reviewed 100% of the annual compliance certifications received during 2004 and attributes the 10% shortfall to AIRS Junior/AFS data uploading problems and human error. For the review period, AFS does not reflect that NMED reported compliance results. NMED stated that compliance results were coded into AIRS Junior and believes that those results did not make it into AFS due to uploading difficulties.

Sources with Unknown Compliance Status: The AFS database converts compliance status to unknown based upon the FCE frequency negotiated with NMED. This is considered to be a more precise measure of whether commitments are being met as the conversion is made based on the state's negotiated inspection/enforcement timeline. As of August 13, 2005, the number of sources in New Mexico with unknown compliance status was 89. NMED attributes this to a combination of factors including AIRS Junior uploading difficulties, inappropriate source classifications, and inspection scheduling issues (e.g., inspector vacancy). From subsequent discussions with NMED, there are only 6 of those 89 facilities that still show an unknown compliance status. All 6 have been scheduled for inspection by September, 30 2006.

Citation of information reviewed for this criterion:

AIRS, Tempo, CMS, Overview of NMED's FY2002 CMS Plan

Recommendations where corrective action needed:

NMED has completed the conversion to TEMPO. Side by side data comparisons indicate good correlation between TEMPO and AIRS/AFS. In addition, NMED has revised its majors universe (163) in TEMPO and AFS. NMED should verify the universe of SM80s and EPA supports NMED's efforts to determine the actual classification of each General Construction Permittee based upon its potential to emit. Regarding Title V compliance certification, NMED has adopted procedures to ensure that each certification is assigned, reviewed and the results reported in TEMPO. This is verified by the Program Manager. EPA recommends that NMED monitor the facilities with unknown compliance status to verify the effectiveness of the TEMPO conversion and cleaning up the majors universe in accurately reflecting inspection coverage in AIRS/AFS. NMED plans to inspect the remaining 6 of 89 facilities with unknown compliance status by September 30, 2006.

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

Findings:

All of the inspection reports reviewed contained well-documented inspection findings, including the accurate identification of violations. The reports include a review of Title V self-certifications, semi-annual monitoring and periodic monitoring reports, and other reports required by the permit. The reports also include an assessment of control devices, process operating conditions, EPA Method 9 Visible emission observation as needed, a review of facility records and operating logs, process parameters and equipment performance parameters as well as stack test results. However, none of the inspection reports reviewed contained an enforcement history. For Title V inspections the inspector uses an electronic version of the Title V permit to ensure that the inspection is comprehensive. Based upon the file review, NMED's designated FCEs met the definition for Full Compliance Evaluations outlined in the CMS Policy.

Citation of information reviewed for this criterion:

NMED Case files, HPV policy, CMS

Recommendations if corrective action needed:

EPA provided a model inspection report that includes all information required to be included in the inspection report per the CMS. NMED has developed and implemented a new template for inspection reports that includes all necessary elements including enforcement history. On December 5, 2005, NMED provided additional training to its inspectors on the use of the template to ensure all the required information is included in the inspection report.

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

Findings:

NMED has a policy to complete inspection reports within 30 days of the inspection. The file review indicated that for FCEs conducted in FY 2004, all the inspection reports were completed in a timely manner.

The timely identification of violations equates to timely HPV determinations and flagging HPVs in AIRS/AFS. In the inspection files and enforcement files reviewed, NMED did not designate any violations as HPVs. HPV designations would have been appropriate behind all 7 enforcement actions reviewed.

Citation of information reviewed for this criterion:

NMED Case Files, CMS, NMED regulations, NMED Enforcement Response Policy.

Recommendations where corrective action is needed:

See recommendations under Element 4.

Section 2: Review of State Enforcement Activity.

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

Findings:

NMED has a regular monthly HPV conference call with EPA and reports significant violations at this time if they have not done so previously. These calls are on-going and provide a mechanism for reporting on HPVs newly identified. NMED and EPA talk frequently and share information on cases outside of the HPV monthly call as well.

The vehicle for the timely and accurate reporting of HPVs to EPA is the AIRS database. For FY 2004, NMED did not identify any HPVs in AIRS or through the regular HPV conference calls. At the time of the evaluation, NMED procedures called for HPV determinations and data entry to be made independently by the individual inspector. However, during the review two cases (2 out of the 17 files reviewed) were noted where NMED did not identify the facility as an HPV when it had failed to submit a Title V permit application and/or submit an annual compliance certification. Of the seven (7) enforcement files reviewed, 0% of the violations that should have been identified as HPVs were identified as such in AIRS

Citation of information reviewed for this criterion:

HPV Policy.

The City of Albuquerque Air Quality Division Enforcement Program Framework Review 2004 Executive Summary

Overview:

The Enforcement Program Framework is a collaborative effort by States and EPA to achieve greater consistency and results from environmental compliance. It applies the same 13 review elements across the Clean Air Act (CAA) stationary source, the Resource Conservation and Recovery Act (RCRA) hazardous waste and the Clean Water Act NPDES enforcement programs. . Region 6 applauds the City of Albuquerque Air Quality Division's leadership in being among the first to participate in a Framework Review and appreciates the level of cooperation and support the Air Quality Division has demonstrated throughout the Review process.

The City of Albuquerque was authorized to administer the CAA program in 1985. Its success in administering this program is due in large part to strong leadership through a dedicated and experienced management team and staff. This Framework Review describes the Division's success in terms of performance goals. It highlights strengths such as the use of the Post Inspection Notifications to help expedite compliance and reduce instances of repeat violations. Where there were concerns, it describes the path forward. A brief summary follows:

Inspections – Review Elements 1-3:

Overall, these review elements were met. Inspection coverage of major sources exceeds the national average, but does not achieve the program goal of 100% coverage.

Enforcement – Review Elements 4-8:

The review indicated that these elements were met. It appears that a potential significant violation of a source's Title V certification requirements was not identified by the Division. At the Division's request, EPA will provide HPV training during FY2006.

Enforcement Commitments – Review Element 9:

There were no commitments applicable to this element.

Data Integrity – Review Elements 10-12:

All data was timely, accurate and complete.

Other Compliance Assurance Activities – Review Element 13:

The Air Quality Division elected not to participate with this element.

Albuquerque Air Enforcement Program Framework Review 2004

Information Sources Included in review:

The review encompassed two data sources: AFS, AIRs and state database data, and state enforcement files. For the review period, FY2004, The Albuquerque Air Quality Division conducted inspections at 14 facilities. The Division took formal enforcement actions against 3 facilities. The combination of these facility files constituted the universe for file review purposes. Out of these, a total of seven (7) air files were reviewed (4 inspection and 3 enforcement). Each file review included the review of the Compliance Monitoring Report (inspection report), enforcement case time line, notice of violations, consent orders, and penalty calculations. The files were centrally located at the Albuquerque Air Quality Division Offices in Albuquerque, New Mexico.

Section 1: Review of State Inspection Implementation

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

Findings:

The CAA major source universe (12 for the review period) should be inspected (i.e., full compliance evaluations (FCE)) once every two (2) years. The City of Albuquerque completed 87% of the universe of major source planned inspections over two fiscal years FY03 and FY04. This is well above the national average of 75%. While inspection coverage exceeds the national average, it falls short of the national goal of 100%. The Air Quality Division recognizes that according to AFS, it did not cover 100% of the majors universe and attributes this shortfall to personnel issues that have since been addressed.

CAA 80% synthetic minors (SM-80) universe (22) should be inspected once every five (5) years. The City of Albuquerque is also on target for meeting the national goal for the completion of FCEs at SM-80s. Currently the City has completed 77% of SM-80s. The national average is 64%, however, a full five year period has not elapsed since the adoption of the CMS Policy. The City of Albuquerque projects complete SM 80 coverage by the end of 2006 as this will complete the first 5 year cycle under the new CMS policy. Beginning in 2004 the City of Albuquerque projects inspecting SM-80's at a frequency of once every two years, which exceeds the once every five year national goal.

The City of Albuquerque should be reviewing 100% of the annual compliance certifications (ACCs) from Title V facilities. For FY 2004 the City of Albuquerque reviewed six ACCs (100%).

Recommendations if corrective action needed:

NMED needed a procedure to ensure the consistent and timely identification of HPVs. Since the review, NMED has implemented new procedures whereby the inspector conducts a preliminary HPV determination and this determination is reviewed with the Program Manager. HPVs are then entered into TEMPO. Under this procedure, all inspections receive this HPV review.

NMED has requested HPV training. Region 6 and NMED will determine the appropriate training format (e.g., web cast, meeting, etc.) and schedule by September 30, 2006.

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

Findings:

EPA reviewed seven (7) enforcement files. All of the enforcement actions reviewed addressed HPVs. In every instance where a complying action was needed, NMED specified what actions were necessary and the time frame for completing those actions.

NMED has developed a very innovative file system and tracking system for different aspects of inspection and/or enforcement process. By entering the date of day zero, the database automatically determines interim deadlines that must be met within the 270 days required by the HPV Policy. Additionally, NMED tracks the accomplishment of corrective actions in a database. Both of these file systems are reviewed by the program manager to ensure compliance with milestones and schedules.

Citation of information reviewed for this criterion:

NMED Case files, HPV Policy, NMED Enforcement Response Policy

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

Findings:

Under the HPV Policy and NMED's Enforcement Response Policy, a timely action must occur within 270 days of the violation determination date. The Policy also describes an appropriate enforcement action.

Of the seven (7) enforcement actions reviewed, all Notices of Violation were issued in a timely manner. All addressing enforcement actions reviewed occurred within 270 days of day zero. All corrective actions either occurred within 270 days of day zero or the facility was placed on a compliance schedule to come back into compliance. All seven (7) enforcement actions were appropriate.

Citation of information reviewed for this criterion:

NMED Case files (spreadsheets and timelines attached to case file), HPV Policy, NMED Enforcement Response Policy.

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

Findings:

Under NMED's Air Penalty Policy, penalty calculations must include economic benefit and gravity component. This is consistent with the national HPV Policy.

Of the seven (7) enforcement files reviewed, none included an assessment for economic benefit. All 7 files indicated that the economic benefit was zero. The review of the files did not reveal any instance where it appeared that an economic benefit would have been appropriate for the violations cited. All penalties included appropriately documented gravity components.

Citation of information reviewed for this criterion:

NMED Case files (spreadsheets and timelines attached to case file), HPV Policy, NMED Penalty Policy

Recommendations if corrective action is needed:

The Region recommends and NMED now includes a justification in its penalty calculations for instances when the economic benefit is determined to be zero.

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

Findings:

The case files included a copy of the facility's check to settle all penalties. Further, the payment of penalties was tracked in the spreadsheet attached to the case file. All final penalties were properly documented in the files including justifications for differences between proposed and final penalties. All included gravity components (economic benefit was determined to be zero in the proposed penalties).

Citation of information reviewed for this criterion:

Case Files, HPV policy, NMED Penalty Policy

Section 3: Review of Other Enforcement Agreements

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

Findings:

Provisions relevant to this element are found in the EPA Region 6 FY 2004 Air Program Priorities document which describes activities covered by the NMED CAA grant. Those provisions are as follow:

- Submit AFS data – covers minimum data requirements
- Timely and appropriate enforcement actions
- Submit the annual inspection targeting strategy

In the approved Annual Inspection Strategy (compliance monitoring strategy), NMED committed to perform 256 FCEs for major sources and SM-80s for FY 2004 and FY 2005. In addition, the Strategy reflected that 2004 was the final year of a 3 year commitment period (2002-2004) in which NMED committed to inspect all SM 80s.

In the FY 2004 end of year report to NMED, Region 6 indicated that NMED met its grant commitments.

Citation of information reviewed for this criterion:

EPA Region 6 FY 2004 Air Program Priorities document,

Section 4: Review of Database Integrity.

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

Findings:

The review of the AFS/AIRs data requirements indicated that NMED does not enter all 26 of the Minimum Data Requirements. Stack test results (pass/fail); the results for Title V compliance certifications; and violating compliance status were not in all cases reflected in AFS. NMED indicated that those data were entered into AIRS Junior, but did not get uploaded into AFS. The remainder of the minimum data requirements were entered into AFS in a timely manner.

Citation of information reviewed for this criterion:

AFS, CMS

Recommendations if corrective action is needed:

See recommendations for Element 12

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

Findings:

The review of the AFS/AIRS data requirements indicated that the Minimum Data Requirements had discrepancies with the Tempo data system utilized by NMED. For example, NMED completed 75.5% of the universe of CAA major source planned inspections over the last two fiscal years according to Tempo, but AFS/AIRS showed only 69.7%. NMED attributes the data discrepancies to problems with uploading data from AIRS Junior to AFS.

There were data upload issues that contributed to deficiencies in AFS, notwithstanding these deficiencies, the file reviews indicated the data that was in AFS was accurate.

Citation of information reviewed for this criterion:

AFS/AIRS

Recommendations if corrective action needed:

See recommendations for Element 12

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

Findings:

The review of the AFS/AIRS data requirements indicated that not all of the Minimum Data Requirements are reflected in AFS/AIRS. Stack test results data, Title V compliance certification review results data and compliance status data were missing. NMED indicated that these data were entered into AIRS Junior, but did not get uploaded into AFS.

Citation of information reviewed for this criterion:

AFS/AIRS

Recommendations if corrective action is needed:

NMED has completed the conversion to TEMPO. This should improve data quality. Comparison between TEMPO and AFS indicates good correlation.

Section 5: Optional

13. Evaluation of other projects.

(See Pollution Prevention, Green Zia Environmental Excellence and Technical Assistance Programs report)

Enforcement – Review Elements 4-8:

NMED CAA enforcement actions met the “timely” and “appropriate” criteria for enforcement actions. The Air Quality Bureau has automated enforcement tracking to ensure that actions are timely and that facilities comply expeditiously. Region 6 is recommending that the Air Quality Bureau’s approach to managing its enforcement process be highlighted as a best practice at the national level.

RCRA enforcement actions met the “appropriate” criteria, however, they did not meet the applicable timeliness standards. Those RCRA enforcement actions involved large federal facilities and addressed multiple complex regulatory issues. NMED is evaluating options for more timely enforcement in such instances. The Region and NMED plan to discuss those options including the option of EPA taking the enforcement action as needed.

Both the CAA and RCRA enforcement programs need to insure that significant violations are properly identified in the national databases in a timely fashion.

Enforcement Commitments – Review Element 9:

NMED met this review element

Data Integrity – Review Elements 10-12:

RCRA data met the review elements.

Not all of the minimum CAA enforcement data requirements were being met for the 2004 review period. Generally, data entry was timely, however, there were some missing data. There were also some discrepancies between the State and national databases with respect to inspection coverage. As stated earlier, the Air Quality Bureau’s conversion to the TEMPO system should address these concerns.

Other Compliance Assurance Activities – Review Element 13:

The Green Zia Environmental Excellence Program is a performance-based program that serves as a self-assessment tool for any organization, regardless of size or sector. For the review period, FY 2004, Green Zia participants saved approximately \$213,500.00, reduced over 200,000 lbs. of hazardous waste and diverted and recycled approximately 31,772 tons of material from the landfill. NMED is to be commended for the Green Zia and related programs which measure success in terms of such meaningful environmental outcomes.

Citation of information reviewed for this criterion:

AIRS, CMS Policy

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

Findings:

The file review, which covered FY 2004 and included some FY 2003 material as context, revealed that the files contained thoroughly documented inspection findings, including the accurate identification of violations. The reports include a review of Title V self-certifications, semi-annual monitoring and periodic monitoring reports, and other reports required by the permit. The reports also include an assessment of control devices, process operating conditions, EPA Method 9 Visible emission observation as needed, a review of facility records and operating logs, process parameters and equipment performance parameters. However, 100% of the reports reviewed did not contain an enforcement history. This deficiency has been corrected as evidenced in the FY05 inspection reports, which all contained enforcement histories.

Citation of information reviewed for this criterion:

City of Albuquerque Compliance Monitoring Strategy Summary, CMS policy

Recommendations if corrective action needed:

The City of Albuquerque now requires each inspection report to include an enforcement history.

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

Findings:

The file review indicated that for FCEs conducted in FY 2004, all of the inspection reports were completed within a timely manner. Inspection reports were completed within the EPA suggested timeframe of 45 days. The City of Albuquerque's Compliance Monitoring Strategy Summary (CMSS) requires the inspector to complete the inspection report and have a copy provided to the source within ten (10) days of the inspection of the source. Albuquerque's CMSS requires inspectors to notify the person or source of a potential non-compliance via a Post Inspection Notification (PIN) within five days of the discovery of an apparent violation. City of Albuquerque officials indicated that this process results in a more expeditious return to compliance and fewer repeat offenders.

Of the four (4) inspection files reviewed, one file indicated a significant violation of the source's Title V certification requirements. Based upon EPA's preliminary analysis, this violation should have been identified as an HPV per the HPV Policy.

Citation of information reviewed for this criterion:

CMSS policy, City of Albuquerque Compliance Monitoring Strategy Summary

Recommendations if corrective action is needed:

See recommendations under element 4.

Section 2: Review of State Enforcement Activity

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

Findings:

The vehicle for the timely and accurate reporting of HPVs to EPA is the AIRS/AFS database. In addition, the City of Albuquerque has monthly conference calls with EPA on the first Wednesday of every month. These calls are on-going and provide a timely and accurate mechanism for reporting on new significant violations identified. Compliance inspectors are required to enter facility specific compliance data in the national air compliance data base (AIRS/AFS) within 30 days of the inspection.

For FY 2004, the City of Albuquerque stated that it discovered no HPVs, hence there were no HPVs reported in AIRS/AFS for 2004. However, of the four inspection files reviewed, one file indicated a significant violation of the source's Title V compliance certification requirements. Based upon EPA's preliminary analysis, this violation should be identified as an HPV per the HPV Policy.

Citation of information reviewed for this criterion:

HPV policy, City of Albuquerque QAPP

Recommendations if corrective action is needed:

The City of Albuquerque requested HPV training to more adequately identify those facilities that are HPVs. EPA will schedule this training with the Air Quality Division.

The Facility identified as being a HPV has since returned to compliance.

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

Findings:

EPA reviewed four enforcement files. In every instance where a complying action was needed, the City of Albuquerque specified what actions were necessary and the time frame for completing those actions. New Mexico Statute 74-2-12 requires issuance of a compliance order after the violation becomes known to the City's Air Quality Division describing, with reasonable specificity, the nature of the violation and requiring compliance immediately or within a specified time period.

Citation of information reviewed for this criterion:

HPV policy, New Mexico Statute 74-2-12

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

Findings:

The file review indicated that all Notices of Violation (NOV) were issued in a timely and appropriate manner. All were issued within 270 days of the HPV determination. The review also indicated that the issuance of the PIN within five working days of violation discovery helped improve the timeliness and quality of NOV's. When a PIN is issued to a person or source, the inspector includes a date on the PIN by which information is to be submitted to the City's Air Quality Division addressing the non-compliance issues cited in the PIN. The inspector uses this information in preparing the draft NOV. The draft NOV is then forwarded to the compliance officer within ten days of completion of the inspection report. City officials believe that these efficiencies have resulted in very few repeat offenders.

Citation of information reviewed for this criterion:

HPV policy, interviews with Israel Tavaréz, Engineering Manager, Air Quality Division, Billy Gallegos, Enforcement Supervisor, Matt Stebleton, Compliance Supervisor, Chris Albrecht, Manager Stationary Source Programs

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

Findings:

The City of Albuquerque Stationary Source Penalty Policy prescribes a four step process to be used in the calculation of civil penalties, which includes the calculation of a gravity component and an economic benefit component.. In the file review, file documentation of assessed penalty calculations included the gravity component, but not the economic benefit component. The file review did not reveal any instance where it appeared that an economic benefit component would have been appropriate for the violations cited. The penalties appeared to be consistent with the City's Penalty Policy and the HPV Policy. The files reviewed did not document affirmative determinations that economic benefit was insignificant or inappropriate. City of Albuquerque officials indicated that in practice, the economic benefit component is not being included because situations have not occurred where the City of Albuquerque has had to utilize the BEN model. Additionally, City of Albuquerque officials have concerns with the utility of the BEN model.

Citation of information reviewed for this criterion:

HPV policy, EPA penalty policy, City of Albuquerque Stationary Source Penalty Policy

Recommendations if corrective action is needed:

The City should adopt a methodology, consistent with the City of Albuquerque Stationary

Source Penalty Policy and the national HPV Policy, for considering, incorporating and documenting economic benefit in penalty calculations. EPA recommends that this include documenting situations where the economic benefit portion of the penalty is considered insignificant or nonexistent. During the exit interview, Air Quality Division staff agreed to include a statement in the file to document instances where economic benefit was considered to be insignificant or nonexistent.

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

Findings:

The file review (3 final penalties) indicated that penalties were collected for all files reviewed. Documentation as to adjustments between proposed and final penalty figures was clear and included copies of checks. However, the calculation of penalty amounts collected did not include the economic benefit component, due to lack of situations where economic benefit appeared to be appropriate.

Citation of information reviewed for this criterion:

HPV policy, City of Albuquerque Stationary Source Penalty Policy

Recommendations if corrective action is needed:

See recommendations under element 7 above.

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

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

Findings:

Enforcement commitments in the Performance Partnership Grant Agreements with the City of Albuquerque are reviewed at the end of the year. The FY 2004 EOY review, indicated that the City of Albuquerque met their commitments.

Citation of information reviewed for this criterion:

PPG

Section 4: Review of Database Integrity

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

Findings:

The review of the AFS/AIRS data requirements indicated that the Minimum Data Requirements are entered into AFS/AIRS in a timely manner. The Compliance Officer's role and responsibility is to enter facility specific compliance data directly in the national air compliance database.

Citation of information reviewed for this criterion:

AFS/AIRS, City of Albuquerque Standard Operation Procedures

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

The review of the AFS/AIRS data requirements indicated that the Minimum Data Requirements entered into AFS/AIRS are accurate.

Citation of information reviewed for this criterion:

AFS/AIRS

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

The review of the AFS/AIRS data requirements indicated that the Minimum Data Requirements entered into AFS/AIRS are complete.

Citation of information reviewed for this criterion:

AFS/AIRS

Section 5: Optimal Review Element 13:

The City of Albuquerque chose not to participate with Element 13.

Report (Findings)

Date: *July 17, 2006*

Program Evaluated: CWA NPDES

Information Sources Included in the Review

EPA Evaluator:	Art Horowitz	Phone:	202-564-2612
	Rick Duffy		202-564-5014
	David Drelich		202-564-2949
	Peter Bahor		202-564-7029
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The review team conducted the on-site review of the Region 6 direct implementation on December 12 and 13, 2005 in the Region 6 offices in Dallas, Texas. This review is based on FY 2004 data, which was the most complete data available at the time of the review. The team had a call with the Regional water program managers before the visit in order to discuss the data metrics. The on-site portion of the review focused on the file review.

There were fewer than 300 files in the universe of inspection and enforcement files, which means that the review team needed to review between 15 and 30 files. The team selected and reviewed a total of 21 files. The selection process is carefully described in a separate document. Essentially, the team selected a variety of major and non-major sources; wet weather (storm water and CAFOs), and municipality sources; and expedited settlements, which is a tool the Region uses extensively. In selecting the files the team adhered to the principles of representativeness and randomness.

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

Findings:

Based on the data from the data review metrics:

45.5% of major sources were inspected in 2004, below the national average of 67.8%.

20.4% of minors were inspected, which is consistent with the national average of 22.9%.

11.5% of sources without NPDES permits were inspected, which is twice the national average of 5.6%.

The data and conversations with the Region 6 water compliance staff indicate that the Region and State have concentrated their inspection regime on non-major sources, many of which do not have-NPDES permits such as storm water and CAFOS, which are prevalent in the state of New Mexico. This is consistent with OECA national priorities.

Based on the data in the Permitting for Environmental Results (PER):

There are 34 major sources in New Mexico.

Region 6 ensures that all major facilities are inspected by the Region or state at least once every other year. In FY 2004, 46% of the major sources were inspected (20% by NM and 26% by Region 6). According to NETS, 43% of the major sources were inspected in FY 2004 (17% by NM and 26% by Region 6). These data are similar and generally support the inspection coverage of inspecting all major sources at least once every other year and is consistent with the data from the data review metrics.

The PER indicates that in FY 2003, Region 6 began wet weather initiatives in New Mexico, which meant directing resources from major facilities to minor facilities. The Region began to focus on CAFOs, stormwater dischargers, and increased enforcement addressing unpermitted dischargers. This is consistent with the data metrics, which indicate that the Region's emphasis on non-major facilities.

The PER also indicates that Region 6 coordinates its inspection efforts with the New Mexico Environment Department's Surface Water Bureau. This is consistent with the review of files, in which a number of inspections were conducted by New Mexico, which is addressed in other elements.

In the FY 2004 MOA, the Region committed to conduct 10 major sources inspection in New Mexico. At the end of the year, the Region had conducted 14 inspections of major facilities and 13 minor facility inspections.

The direct implementation of inspection coverage of the NPDES program in New Mexico by Region 6 appears to be well managed and consistent with the Region's goals of concentrating on wet weather sources. 100% of major facilities are not inspected each year, but they are inspected every other year. As a trade off for major facility inspections, the Region has inspection coverage of non-major facilities. The inspection reports and files appear to be complete and there is coordination and cooperation with the New Mexico Environment Department.

There does not appear to be a dedicated filing system for unpermitted facility files. Files for unpermitted facilities (e.g., storm water facilities) are not filed in the regions central filing system since they lack a permit number. Files for these inspections and enforcement actions with the relevant materials were prepared for the on-site review. The review team appreciates the effort by the Region to

ensure that there were appropriate files, which helped to facilitate the review. It would be useful for the Region to take measures for maintaining these files in a central filing system.

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

Recommendations: The Region should ensure properly managed files by managing the files for unpermitted sources in the regions central filing system.

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

Findings:

21 files were reviewed (a description of the file selection process is attached). There are 7 inspection only files (3 majors and 4 minors), and 14 enforcement files that contained both inspection information and enforcement actions (1 major and 13 minor).

Overall, 86% (18 of 21) files contained adequate inspection documentation. Violations were generally well documented in the inspection reports. One file did not contain an inspection report. Some of the reports had omissions such as the date of the inspection written on the report.

Aside from the exceptions noted above, the inspection files were complete and well organized. The inspections are documented using an inspection checklist that is consistent with the 3560-3 Report recommended by the OECA water program. The inspections conducted by the NM DEQ also use this form to document their inspections. Based on the information in the state inspections reports it appears that the state inspectors are doing a credible job of inspecting facilities and reporting the findings to Region 6.

Most of the inspection only files identified new violations. A number of the inspection files contained inspection reports from previous years where violations were identified and warning letters or enforcement actions were taken. Issues of appropriate response will be discussed later in this report.

13 of the 14 enforcement files were complete. The one incomplete enforcement file (Española), did not contain the inspection report.

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

Recommendations: The problem of incomplete files is not major, but should still be addressed. The Region does have a process for reviewing and verifying inspection reports. This process should be also be used to ensure the completeness of the files, especially ensuring that the inspection date is clearly on the report so that the time lines can be calculated.

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

Findings:

The Region 6 water enforcement program standard for identifying violations after an inspection is 30 days.

76% (16 of 21) of the files reviewed identified violations within the 30 days time line.

6 of the 7 inspection files were completed in a timely manner. The file that was not timely was considered so because it did not have an inspection date on the inspection checklist (Tom Visser).

12 of 14 inspections in the enforcement files were completed in a timely manner. However, in one instance, an inspection was reported to the database well before the completion of the inspection report. It is not clear that this indicates a problem; however, it may be an indication that inspection reports may not in all cases be completed in a timely fashion. It should be noted that it is important to have the inspection reports completed properly and in a timely manner so subsequent enforcement actions are not compromised.

While the inspection reports were generally timely, it is not clear that violations were always accurately identified. This was not a problem for the enforcement files, but it appeared that the inspection only files did show evidence of violations that should be acted on. In one file, the facility (City of Santa Fe) was cited for non-receipt of final toxicity evaluation and an unpermitted discharge. A letter was sent to the city manager, but there is no follow up nor SNC determination indicated in the file. Also, a 309a order had been issued in 2003. The inspection report for another source (San Juan Coal) specified that there were violations for O & M, flow, self monitoring, and reporting, yet there was no indication that this source was in SNC. It appears that both of these examples required enforcement follow-up and it is not clear from the files that this had taken place.

The Region 6 water inspection reports generally complete, although there are a few lapses in the files such as a lack of inspection reports and inaccurate dating on the reports. In these reports violations are clearly identified. What is not clear is that a determination is made that these violations are or are not SNC and that follow-up enforcement actions are contemplated. Some of the inspections are follow-ups, which show that the Region continues to monitor certain sources closely.

Another issue that affects timeliness of the inspection reports is how the inspection reports from New Mexico are received by the Region. The inspection reports can take several weeks to get to the desk of the enforcement staff when posted through the Regions mail room and routed through the file room. To expedite the Regions review of state inspection reports, New Mexico will be

asked to send a separate hard copy to be sent in advance of the copy that is sent through the regional system. The result of the delay to receive documents by the enforcement officers can possibly delay enforcement decisions.

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

Recommendations if corrective action is needed:

The first recommendation is that violations found through inspections need to be identified sooner and a determination made if they should be considered SNC. Where these violations constitute repeat patterns of violations, there needs to be an escalated enforcement response. There should be documentation in the files.

The second recommendation is that there needs to be an expedited process for the Region to get inspection reports from the NM DEQ inspectors. This could be either to have the Region's file room to have a process for identifying these reports and forwarding them quickly to the water enforcement branch, or formalizing the process of the NM DEQ sending copies simultaneously to the water enforcement branch.

The Region should ensure that inspection reports are actually completed in a timely manner and not just reported timely to the database.

Section 2: Review of State Enforcement Activity

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

Findings:

100% of the 14 enforcement files reviewed accurately reported the violations. 12 of the sources were not in SNC. They are mostly storm water cases and without a wet weather SNC definition are not considered SNC at this time.

43% (3 of 7) of inspection files reviewed accurately identified violations and made accurate determinations. Violations are identified in the other files, as noted above in Element 3. Some of these might be SNC, but there is no indication in the files that a determination, one way or another, has been made. Several files show that the facilities had long histories of violations and had only received a number of warning letters or varying degrees of escalation. The violations in 4 of the cases appear to be SNC, but are not identified as such. One of the enforcement files (City of Espanola) documents a formal action, but there is no documentation in the file that this was determined to be an SNC based on the results of the inspection. However, the OTIS facility report indicates that this

facility is usually in SNC based on DMR reporting.

53 single event violations, all of which are minor violations, are listed in PCS. This is positive in that these violations are being recorded in the database. However, it appears that some of these violations may actually be SNC.

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

Recommendations if corrective action is needed:

The Region should formalize a process for making an SNC determination for single event violators to ensure that they are properly identified in PCS and so there will be the appropriate enforcement response. There should be escalating enforcement in cases where there are repeat violations and non response to lower level enforcement actions.

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

Findings:

75% (12 of 16) of the formal water enforcement actions taken by the Region in 2004 that were reviewed required actions to return sources to compliance. The Region mainly uses formal enforcement actions, such as penalty orders and compliance orders, to address non-compliance. Five of the enforcement cases reviewed used the expedited settlement policy. One of these settlements contained a letter from the facility certifying that the violations were corrected. (Curb). The other four case files were missing the expedited settlement order (ESO). In several of these cases the Region issued a 309 compliance order as well as the penalty order. According to OECA policy (Suarez, 8/21/03) this is not required and may undercut the usefulness of the penalty order. The Office of Civil Enforcement (OCE) has been discussing this issue with the Region. Two enforcement actions reviewed (Koch and PESCO) contained actions to return the sources to compliance, but the source returned to compliance before the orders were issued. One formal action reviewed (City of Espanola) issued a large penalty and should have required injunctive relief, but did not do so. In another formal action (Ruiduso Downs), the return to compliance schedule is not clear. In several files it was not clear that the sources returned to compliance. The only indication is letters from the facilities (Botulph MF LLC). There was no regional confirmation of the compliance status in the file. The Region does conduct follow-up inspections at a number of sources, which is one method of verifying if it is not utilized at all facilities with enforcement actions. While most of the enforcement cases reviewed have some type of compliance order, it is not clear from the files that all of the enforcement actions are requiring appropriate injunctive relief. Nor is it clear which of these facilities have actually

returned to compliance.

Citation of information reviewed for this criterion: **CWA EMS, Expedited Settlement Policy**

Recommendations if corrective action is needed: The main recommendation is that the Region needs to ensure that there are better procedures and documentation in the files to indicate that the sources return to compliance, especially for the expedited settlement cases.

Another recommendation is that the enforcement actions need to be clear about the injunctive relief.

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

Findings:

Data review metric 6a indicates that in 2004 only one SNC enforcement action was taken in a timely manner.

The file review metric for this element is the percent of SNC that is appropriately addressed. Most of the enforcement actions reviewed (12 of 14) were for storm water violations, which are not SNC since there is still no SNC definition for these sources. One of the enforcement files (City of Espanola) was with a formal action, assessing a penalty of \$157,000.

The expedited settlement cases were conducted in a timely manner.

Most of the enforcement actions in the other cases reviewed took from 9 months to over two years from the date of the inspection to settle. One action (Koch) was settled in 9 months and another case (Phelps Dodge) took 27 months to settle. None of the enforcement actions reviewed exceeded the timeliness time line and they were all settled with an appropriate penalty.

Citation of information reviewed for this criterion: CWA EMS

Recommendations if corrective action is needed: The water program should have a process in place for ensuring that enforcement actions are resolved as soon as possible within the time line.

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

Findings:

The gravity penalties tended to be calculated properly, but there are instances where the documentation in the files is not complete. In some instances there is no calculation of economic benefit.

The expedited settlement cases result in penalties, but three of the files (Curb, Las Cruces, and Veena) do not contain the ESO. Seven enforcement actions, other than the expedited settlements, were reviewed where a penalty was required. All of these actions calculated gravity, but two did not calculate economic benefit. One of the files (PESCO) contained an economic benefit calculation of \$0, when it appears that there is an economic benefit, even if it was de minimis. The Region also needs to improve documentation and receipt of economic benefit.

Citation of information reviewed for this criterion: **CWA Civil Penalty Policy and BEN Model**

Recommendations if corrective action is needed: The Region needs to improve the documentation of the expedited settlement cases. The Region also needs to improve documentation of economic benefit and may require further training on the BEN model.

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

Findings:

Data review metric 8b indicates that in FY 2005, 20.3% of the Region 6 CWA enforcement actions have a penalty, which is slightly below the national average of 24.6%. Total penalties for 2005 were \$312,400. As noted above in Element 5 two cases reviewed returned to compliance before the order was issued and no penalties were assessed. If this is occurring in other cases, this may be a reason the Region is not assessing more penalties. 50% of files (6 of 12) contained documentation that penalties had been collected. The Region indicated that penalties are sent to the EPA finance center in Cincinnati, for collection. If the Region hears nothing back from them, it is assumed the penalties are collected. We called the center to check on one penalty not documented in a file (County Line), and learned that the penalty had been collected.

Citation of information reviewed for this criterion: **CWA Civil Penalty and BEN Model**

Recommendations if corrective action is needed:

Documentation of decisions around penalty assessments and collections should be maintained in the files.

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

9. Enforcement commitments in the PPA/SEA (written agreements to deliver product/project at a specified time), if they exist, are met and any products or projects are complete. *For Regions the MOAs for FY 2004 and the Annual Commitment System since FY 2005.*

Findings:

In 2004 MOA, the Region 6 CWA program committed to conducting 10 inspections at NPDES major facilities in New Mexico. During that year, the Region exceeded this commitment by conducting 14 inspections at major facilities. The Region also conducted 13 inspections at non-major facilities.

Citation of information reviewed for this criterion: **FY 2004 MOA Guidance and the FY 2005 National Program Guidance**

Recommendations if corrective action is needed: None

Section 4: Review of Database Integrity

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

Findings:

During the on-site review, the review team used the OTIS facility reports for each of the sources used in the file reviews. The data in the files were compared with the data in the reports. This included the dates for inspections and the enforcement actions, as well as the types of actions. The data in the OTIS reports corresponds with the data in the files, indicating that data requirements are reported timely into PCS.

Citation of information reviewed for this criterion: **PCS, OTIS, File Reviews**

Recommendations if corrective action is needed: No recommendation.

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

Findings:

The data metrics indicate that three enforcement actions listed in PCS do not have enforcement violation types entered in the system.

Citation of information reviewed for this criterion: **PCS, OTIS, File Reviews**

Recommendations if corrective action is needed:

Region should enter enforcement type for all violations into the data system.

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:

Permit limit entry data is not complete. 90.9% of limits for majors are in PCS. This is above the 85.7% national average, but below the 95% national standard. The FY05 OTIS report shows that permit limit rate is was at 81.8%.

82.5% of limits for Non-majors (i.e., minors) are in PCS, which is well above the 62.7% national average. This is consistent with the Regions emphasis on minor sources, mainly storm water facilities.

The metrics also show a high level of enforcement activity by the Region in the New Mexico (129 facilities inspected, 66 NOVs issued, 101 formal enforcement actions taken, 133 formal enforcement actions completed, and \$312,400 in penalties assessed).

There were 8 facilities with compliance schedule violations, and 8 facilities with permit schedule violations. This indicates that the Region is following up on concluded cases.

Citation of information reviewed for this criterion: **PCS, OTIS**

Recommendations if corrective action is needed:

Region needs to ensure that they meet the national standard of 95% of major sources with permit limits in PCS.

Section 5: Optional

13. Evaluation of compliance assistance, innovative projects, or other areas agreed to be reviewed by State and Region.

Nothing submitted by Region.

Findings (including successful performance and areas for improvement):

Citation of information reviewed for this criterion:

Recommendations if corrective action is needed: