U.S. EPA REGION 9

STATE ENFORCEMENT PROGRAM REVIEW OF STATE OF NEVADA DIVISION OF ENVIRONMENTAL PROTECTION

Federal Fiscal Year 2006

AUGUST 26, 2008

REVISED FINAL REPORT

EXECUTIVE SUMMARY

In accordance with the guidelines of the State Program Review Framework, EPA Region 9 conducted reviews of the State of Nevada Division of Environmental Protection's Air Stationary Source, Water NPDES, and RCRA Subtitle C programs during 2007, examining performance during Fiscal Year 2006.

A draft report of the findings of the review was provided to NDEP on September 28, 2007. NDEP submitted comments to the draft report on November 1, 2007. NDEP's comments are included as an attachment to this final report. EPA has considered NDEP's comments, and made revisions to the report as appropriate

Information sources included in the review are described in detail in the program-specific portions of this report. Sources included EPA national databases, inspection and enforcement files, program grants, and work plans.

Detailed descriptions of findings and specific recommendations for each program are also included in the program-specific portions of this report. Recommendations are briefly summarized below.

Inspection Implementation

CAA: The CMS Plan for NDEP specifies that all Title V major sources will undergo a Full Compliance Evaluation (FCE) every 2 years. During Fiscal Years 2005-2006, NDEP's Full Compliance Evaluations (FCEs) fell short of the l00% inspection commitment. NDEP should strive to evaluate l00% of major sources. Inspection reports were exceptionally thorough and well supported.

CWA: We commend NDEP's Bureau of Water Pollution Control for meeting or exceeding its commitments for major and minor discharger inspections, and for implementing a very ambitious program for inspection of facilities subject to stormwater permits which far exceeded the national inspection goal of l0% of the universe per year. The Bureau should prepare reports for all stormwater inspections (particularly noncompliant facilities), improve the quality and consistency of inspection reports as noted herein, and develop procedures for and begin conducting MS4 stormwater inspections (Multiple Separate Storm Sewer System).

RCRA: NDEP is to be commended for conducting inspections of l00% of its TSD facilities annually, and l00% of its LQGs and SQGs in a 5-year period. NDEP needs to improve the consistency, content and detail in inspection reports and inspection checklists.

Enforcement

CAA: EPA was pleased to support NDEP's excellent investigative work in the Reid Gardner case, and believes that the settlement is a fine example of how the state-federal partnership can

benefit the public. With regard to penalties, we recommend that NDEP analyze their penalty process and take steps, such as additional inspections, to evaluate the compliance status of facilities after enforcement actions, in order to ensure that their assessment of penalties is having the appropriate deterrent effect.

CWA: Enforcement case files should include copies of all enforcement actions (including NONCs), documentation of BWPC's review of discharger plans in response to orders, and documentation of return to compliance. BWPC should also adequately document the basis for penalty calculations, especially economic benefit, and should ensure the results of "show cause" and penalty panel meetings are described in the case files. BWPC should escalate cases to enforcement action, especially for significant violations, non-responsive or recalcitrant violators, or when violations are not quickly resolved. BWPC should complete revisions to its *Enforcement Policy* to establish standard procedures for penalties and appropriate use of supplemental environmental projects. NDEP should cap the amount of penalty that can be offset by SEPs.

RCRA: While both Region 9 and NDEP base their Significant Noncomplier (SNC) designations on the same criteria, NDEP's rate of SNC designation is below the national average and that of EPA Region 9. NDEP and EPA should compare our findings of SNC status to determine consistency in application of these criteria. It was not possible to fully assess appropriateness of penalty calculations, due to unavailable penalty records. EPA recommended in the draft report that NDEP should rescind its policy of destroying RCRA penalty calculation records; NDEP has replied that its RCRA program will begin implementation of NDEP's penalty policy, when official, which requires penalty assessment documentation to be saved as confidential. EPA also recommended that NDEP adjust its penalty matrix for inflation, and review its policy of providing automatic penalty reductions for generators; NDEP responded that both issues have been addressed. In addition, NDEP should ensure economic benefit is routinely considered in penalty calculations.

Data Integrity

CAA: A review of AFS for 158 actions shows 90.5% of those actions entered more than 60 days after occurrence, exceeding the national average of 57.6%. The average entry time was 255 days. NDEP should improve timeliness of AFS data entry.

CWA: The data NDEP has entered into ICIS-NPDES was entered in a timely manner and is complete and accurate. BWPC should begin entering enforcement actions and informal notices of noncompliance into ICIS-NPDES (while the data NDEP is currently entering into ICIS-NPDES provides a nearly complete picture of Nevada's record of compliance, inclusion of enforcement actions in ICIS-NPDES would complete the picture). When EPA's ICIS-NPDES Policy Statement is finalized, BWPC should prepare a transition plan for populating the system with the requisite data elements (RIDE), including stormwater inspections.

RCRA: In general, NDEP entered data into RCRAInfo in a timely and comprehensive manner. Because NDEP identified no Significant Noncompliers (SNCs) among 872 conducted inspections, EPA recommends NDEP and EPA routinely compare respective SNC determinations to determine consistency in application of this criteria.

SUMMARY OF REPORT RECOMMENDATIONS BY PROGRAM

Air Program

- NDEP should increase coverage of Full Compliance Evaluations at major sources, consistent with CMS Plan commitments.
- NDEP should review all Title V certifications annually.
- NDEP should strive to complete inspection reports within 30 days.
- We recommend that NDEP analyze their penalty process and take steps, such as additional inspections, to evaluate the compliance status of facilities after enforcement actions, in order to ensure that their assessment of penalties is having the appropriate deterrent effect.
- NDEP should run periodic AFS reports to ensure internal spreadsheets and AFS data are better matched.
- NDEP should change the plant compliance status flag manually at the same time new or updated HPV actions are entered into AFS.
- NDEP should strive to improve timeliness of data entry, and should run periodic AFS reports to ensure internal NDEP data is consistent with AFS data. NDEP should take care to flag HPV compliance status. Suggestions are provided to ensure more complete recording of Minimum Data Requirements.

Water Program

- NDEP should develop procedures for and begin conducting compliance inspections of its MS4 stormwater permittees.
- NDEP should consistently complete the NPDES Compliance Inspection form or State equivalent for all discharger inspections. All inspection findings should be thoroughly documented, and monitoring results included where applicable. NDEP should also prepare written inspection reports for all stormwater inspections, and especially noncompliant facilities. We recommend NDEP develop & use an inspection checklist form for stormwater inspections to consistently and adequately document inspections. Reports on follow-up inspections should detail return to compliance or continuing violation.
- Copies of all enforcement actions and NONCs should be included in case files, and dischargers' plans and actions submitted in response to enforcement actions should be documented, as well as enforcement compliance status and return to compliance.
- EPA is concerned with the apparent lack of formal enforcement action in the stormwater program. NDEP should consider escalating more stormwater cases to formal enforcement (particularly where violations are significant or not quickly resolved).
- NDEP has not adequately documented the basis for its penalty calculations, particularly economic benefit. NDEP should request specific information from violators related to avoided cost of compliance, and should ensure the results of the show cause and penalty panel meetings are documented. Penalty calculation worksheets should be retained in each case file.

- NDEP's practice of allowing l00% of penalties to be redirected to environmental projects is inconsistent with EPA's penalty policy. NDEP should complete the revisions to its Enforcement Policy, addressing use of Supplemental Environmental Projects. In addition, we recommend NDEP's revised Enforcement Policy establish procedures for referral of penalty cases to the Attorney General.
- NDEP is not yet entering data into ICIS-NPDES on enforcement actions or stormwater inspections. This should be done as soon as possible. BWCP should also develop & implement procedures for entering significant single event violations into ICIS-NPDES.

Waste Program:

- NDEP should work to improve the consistency, content and detail in inspection reports. If checklists are used, they should provide a more quantitative depiction of potential violations.
- NDEP's rate of Significant Noncomplier designation is below the national average, and that of EPA Region 9. It may be useful for NDEP and Region 9 to routinely compare their respective SNC designation decisions to determine agency perspectives and consistency in application of criteria.
- It was not possible to assess the completeness of penalty determinations due to the absence of records on calculation of penalty amounts. However, where calculation records were available, economic benefit was not addressed. NDEP has agreed to commence retention of penalty calculation records to provide a complete record of penalty decisions, has adjusted its policy of providing automatic penalty reductions for generators, and its penalty matrix to reflect inflation. In addition, NDEP should ensure economic benefit is included in all penalty calculations.

Nevada Division of Environmental Protection (NDEP)

Air Enforcement Program State Review Framework

Final Report – August 19, 2008

Conducted by the

U.S. Environmental Protection Agency

Air Enforcement Office

Region IX

75 Hawthorne Street

San Francisco, CA 94105

EXECUTIVE SUMMARY

Nevada Department of Environmental Protection (NDEP) is responsible for regulating stationary sources of air pollution in Nevada, outside of Clark and Washoe Counties. Jurisdiction over stationary sources of air pollution in Clark and Washoe Counties lies with the Clark and Washoe County air pollution control agencies, respectively, except for "plants which generate electricity by using steam produced by the burning of fossil fuel… in a boiler…" (Nevada Revised Statutes, Chapter 445B.500.5 and 6). Those latter facilities are regulated by NDEP. NDEP has no oversight role with regard to the Clark and Washoe County air programs, but they review SIP submittals, conduct regular meetings and participate in joint workgroups.

Inspection Implementation (Elements 1, 2 & 3)

CAA — During Fiscal Years 2005-06, NDEP inspected 27 of 29 major sources, but conducted only 22 Full Compliance Evaluations (FCE) at the 29 sources (75.9% coverage, below the national average of 82.7%). Consistent with their CMS Plan commitments (all majors every two years), NDEP should improve their FCE coverage of major sources.

CAA -- NDEP's inspection reports were exceptionally thorough. In addition to a narrative describing the facility and a description of the records reviewed by the inspector, the inspection reports listed each of the emission units and all of the applicable requirements and noted whether they were observed to be operating and in compliance.

Enforcement Activity (Elements 4, 5, 6, 7 & 8)

CAA — During FY-06 NDEP assessed $486,180 in penalties pursuant to 79 NOAV's. However, during the settlement process the actual penalties assessed were reduced to $227,800. We recommend that NDEP analyze their penalty process and take steps, such as additional inspections, to evaluate the compliance status of facilities after enforcement actions, in order to ensure that their assessment of penalties is having the appropriate deterrent effect.

CAA -- EPA was pleased to support NDEP's excellent investigative work in the Reid Gardner case, and believes that the settlement is a fine example of how the state-federal partnership can benefit the public. We encourage NDEP to continue join with EPA in pursuing major cases of air pollution, to provide an incentive for companies to agree to appropriate settlement terms.

Data Integrity (Elements 10, 11 & 12)

CAA — A review of AFS for 158 CMS actions (tests, certifications, FCE's) with dates of entry shows that 90.5% of those actions were entered more than 60 days after occurrence, exceeding the national average of 57.6%. The average entry time was 255 days. NDEP should improve the timeliness of AFS data entry.

***NDEP Comments** – NDEP's comments (letter of November 1, 2007) on the draft report are*

attached. This final report also cites several specific NDEP comments.

BACKGROUND

Nevada Division of Environmental Protection (NDEP)

The state of Nevada is 109,825 square miles and has a population of 2,495,529 (US Census 2006 estimate). Within the state, a portion of Clark County is designated nonattainment for PM10, carbon monoxide and ozone (8-hr), and a portion of Washoe County is designated nonattainment for PM10 and carbon monoxide. The balance of the state is designated attainment for all criteria pollutants.

The Nevada Division of Environmental Protection (NDEP) is one of eight divisions which comprise the Department of Conservation and Natural Resources. NDEP includes nine functional bureaus, two of which implement the air quality program. The Bureau of Air Quality Planning includes air monitoring, planning and related functions. The Bureau of Air Pollution Control includes air permitting, compliance and related functions. Compliance and enforcement functions are in the Compliance and Enforcement Branch (1 supervisor, 4 scientists, and 2 engineers); AFS reporting is done by the Office Services group (1 supervisor and 3 administrative assistants). The Compliance and Enforcement Branch meets weekly to discuss decisions and get staff input on how to proceed with enforcement actions.

Legal support for NDEP's air enforcement program is provided by a Senior Deputy Attorney General assigned to the program by the Nevada Department of Justice.

Under state law, NDEP works closely with the Nevada State Environmental Commission (SEC). The SEC is an eleven-member oversight board that acts on regulations proposed by NDEP to further define existing state law and/or new laws enacted by the Nevada Legislature. The SEC also hears and decides contested cases through appeals of final decisions made by NDEP, such as compliance with permit requirements and related enforcement actions. The SEC also considers variance requests and ratifies air enforcement settlement agreements. NDEP also may refer cases to state court through the Nevada Department of Justice, although no cases were referred during the time period of EPA review.

NDEP is responsible for regulating stationary sources of air pollution in Nevada, excluding Clark and Washoe Counties. Jurisdiction over stationary sources of air pollution in Clark and Washoe Counties lies with the Clark and Washoe County air pollution control agencies, respectively, except for "plants which generate electricity by using steam produced by the burning of fossil fuel… in a boiler…" (Nevada Revised Statutes, Chapter 445B.500.5 and 6). Those facilities are regulated by NDEP. NDEP has no oversight role with regard to the Clark and Washoe County air programs, but they review SIP submittals, conduct regular meetings and participate in joint workgroups.

Mining is the predominant industry in the area under NDEP's jurisdiction. Air quality concerns include fugitive dust and mercury. In addition to the mines, compliance program resources are primarily focused on minor and area sources (e.g. portable engines, agriculture, construction, and gasoline dispensing facilities).

SRF FILE REVIEW

On-Site Review Dates: 6/19/07 and 6/20/07, at the NDEP offices

Program Evaluated: Clean Air Act, Federal Fiscal Year 2006

Information Sources Included in the Review:

– NDEP inspection and enforcement files
– management and staff interviews
– EPA databases, primarily AFS and SRF
– NDEP web page, spreadsheets and other internal documents

Inspection Files Reviewed:

1) Caithness Dixie Valley (32001N0756)	FCE 05/17/05
2) Cyanco Company (32013N0886)	FCE 02/10/06
3) Nevada Cement (32019N0387)	FCE 11/22/04
4) Quebecor World Nevada (32019N1437)	FCE 11/22/04
5) Sierra Pacific Power (32013N0457)	FCE 03/20/06
6) SMI Joist Nevada (32001N0811)	FCE 03/24/05
7) US Air Force – Nellis (32023N1233)	FCE 02/22/05
8) US Army – Hawthorne (32021N0863)	FCE 03/20/06
9) Valley Joist (32019N0815)	FCE 07/07/06
10) Nevada Power Sunrise (32003N0804)	FCE 11/25/03 [1]
11) Nevada Power Clark Station (32003N0819)	FCE 10/23/03
12) Nevada Power Reid Gardner (32003N0897)	FCE 11/24/03

"Enforcement" Files Reviewed[2]:

1) Barrick Goldstrike (32011N0739)	Consent Decree reported 11/08/05
2) Newmont Gold (32011N0793)	Consent Decree reported 11/11/05

[1] Plants 10, 11 and 12 had overdue FCEs and were chosen to confirm coverage and reporting.

[2] The only three "enforcement files" that fit the SRF selection criteria did not exist, as they were not actually enforcement cases, but files of source tests. They had been incorrectly coded in AFS: JK codes (consent decrees) that should have been entered as JT (unobserved source test). NDEP did not conclude any HPV enforcement cases during FY06.

3) US Army – Hawthorne (32021N0863) Consent Decree reported 12/07/05

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SRF ELEMENTS

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

NDEP's FY 06 AFS facility universe was:

29 Operating Majors
5 SM 80%
26 Other Synthetic Minors (31 after later revisions)
1 minor MACT source

NDEP's CMS targets in AFS were:

a) 2 yrs for all majors
b) 5 yrs for all SM's

According to the data we found entered into AFS, NDEP did not complete their FCE's for major sources. We found two operating majors without an FCE ever reported to AFS (Barrick Goldstrike (32023N2189) and City of Elko (32007N1340)). We found 10 operating majors whose last FCE's were older than 2 years. After our data review, we learned that some of these plants had actually received inspections, but the FCE's had not been reported. We worked with NDEP staff to ensure that those FCE's were entered in AFS.

We noted that NDEP's internal data showed some differences from AFS (names, addresses, dates, class sizes, etc.) and included some sources not known to AFS (apparent majors and synthetic minors), but once we discussed these with NDEP's staff, we were able to resolve most of the differences. We recommend that NDEP run periodic AFS reports to ensure that its internal spreadsheets and the AFS data are better matched. To that end, we plan to schedule training and share some of our report formats with them.

Inspectors take training courses from the California Air Resources Board, including visible emissions certification, as well as OSHA and mining safety courses. Inspections are almost always unannounced. Due to staffing constraints, NDEP inspectors only observe some source tests, and sometimes combine test observations with inspections.

Metric 1a. Major source FCE coverage in last two years (both CMS and AFS majors)

Our initial review of the SRF data indicated that NDEP conducted at least one FCE at 19 of their 29 major sources during the two-year (FY05-06) period. Their CMS and CAA major universes are identical.

After the corrective update in the weeks following our onsite visit, the corrected AFS major coverage rate rose to 22 out of 29 (75.9%, still below the national average of 82.7%). It should be noted that NDEP did conduct on-site inspections at 27 of the 29 sources. Consistent with their CMS Plan commitments (all majors every two years), NDEP should improve their FCE coverage of major sources.[3]

Metric 1b. Coverage of 80% Synthetic Minors (SM-80) in last five years

Initially, the SRF data showed NDEP completed an FCE at 4 of 5 (80%) of the SM-80s over the 5 year period. However, once the missing updates were loaded, coverage rose to 5 of 5 (100%) of the SM-80s, above the 86.1% national average.

Metric 1c. Synthetic minor source FCE and reported PCE coverage in last five years (both CMS and AFS SM's)

Initially, the SRF data showed NDEP completed FCE/PCE coverage at 23 (88.4%) of 26 SMs over 5 years. After changes and updates were made, the corrected coverage rate fell to 21 of 31 (67.7%). The CMS and CAA universes are now identical. NDEP is reviewing the SM files to capture any missing inspections for this universe.

Metric 1d. Minor source FCE and reported PCE coverage (both CMS and AFS SM's)

Minor source FCE/PCE coverage is not required to be reported to AFS, except for sources subject to NSPS/MACT/NESHAP. One MACT minor source is identified in AFS and does not have an FCE reported.

Metric 1e. Investigations at CAA stationary sources

[3] It is important to note that Nevada state agencies, including NDEP's air permitting and compliance programs, are having difficulty attracting and retaining quality scientists, engineers and other professional staff. This is due to competition from Washoe County (in nearby Reno), which offers higher salaries, and from private companies offering well-paying positions in the currently booming mining industry. Consequently, the Bureaus of Air Pollution Control and Air Quality Planning are operating under severely short-staffed conditions (17 vacancies out of 71 staff positions). Many of the deficiencies noted in this report are directly related to this problem.

None of the 44 state and local jurisdictions in Region 9 have agreed in their CMS plan to report investigations to EPA, citing confidentiality, security, and burden concerns. No investigations were reported by NDEP.

Metric 1f. Title V self-certification reviews completed

There were 29 reported certifications in FY06 entered prior to our SRF data pull, but 8 of those were duplicate entries. So the number of certifications reviewed was 21 of the 26 plants SRF was expecting to see covered (80.7%). This is below the national average of 83.1%.

NDEP should review all Title V certifications annually, and we recommend they use AFS reports to do monthly quality assurance, so duplicates are found and corrected more quickly.

Metric 1g. Number of Sources with Unknown Compliance Status

NDEP had 5 plants in unknown compliance status at the time of the SRF pull. All were major sources. We eventually determined these were all due to missing FCEs (from FY06 and prior years) which had been done but not reported in AFS. The data has now been updated.

Recommendations:

We recommend that NDEP run periodic AFS reports to ensure that its internal spreadsheets and the AFS data are better matched. To that end, we plan to schedule training and share some of our report formats with them.

Consistent with their CMS Plan commitments (all majors every two years), NDEP should improve their FCE coverage of major sources.

NDEP should review all Title V certifications annually.

NDEP Comment (11-01-07): "Although NDEP has not kept up with data entry in AFS, NDEP's inspection coverage of major sources (86%) exceeds the national average."

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

NDEP inspection files were well organized. Each facility file contained inspection reports, Title V compliance certifications, monitoring reports, correspondence, malfunction/deviation notifications, and enforcement records. Contents were filed chronologically.

The inspection reports were exceptionally thorough. In addition to a narrative describing the facility and a description of the records reviewed by the inspector, the inspection reports listed each of the emission units and all of the applicable requirements and noted whether they were

observed to be operating and in compliance. The reports were signed by the inspector and a supervisor.

None of the inspection reports we reviewed identified violations.

***Recommendations*:**

None.

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

Five of the inspection reports we reviewed were completed more than 30 days after the inspections, in one case, nearly a year after the inspection occurred.

Facility	Inspection date	Report date
Cyanco Company	9/12/06	12/28/06
Valley Joist	6/7/06	8/7/06
Nellis AFB	6/12/06	5/21/07
Nevada Cement	9/7/06	5/2/07
Quebecor World	9/7/06	4/25/07

EPA recognizes that NDEP's Compliance and Enforcement Branch is understaffed; however, we believe that inspection reports should usually be completed within 30 days, so that the inspector's observations are recorded when they are still fresh in memory, and management review and appropriate follow-up can occur in a timely manner.

***Recommendation*:**

NDEP should improve the timeliness of their inspection reporting.

NDEP Comment (11-01-07): "NDEP notes that the completion of inspection reports for some Title V sources was/is delayed beyond 30 days so that the results of NDEP's review of monitoring records (obtained or requested during the on-site inspection) can be incorporated, which results in more comprehensive reports."

4) The degree to which significant violations and supporting information are accurately identified and reported to EPA national databases in a timely manner.

NDEP issued 79 Notices of Alleged Violations (NOAV) in FY06; none were reported as HPV's. However, our review of their enforcement spreadsheets indicated that two violations should have been reported as HPV's. NDEP agreed and they have been added to AFS.

Metric 4a. High priority violation discovery rate, per FCE coverage

After the updates, out of a universe of 15 FCE's NDEP reported two HPVs to AFS in FY06, a rate of 13.3%, exceeding the 9.7% national average.

Metric 4b. High priority violation discovery rate, per major source universe

Out of a universe of 29 operating majors, NDEP's two HPV's (6.9%), exceeded the 4.7% national average.

Metric 4c. No activity indicator (HPV)

NDEP had no items with "no activity" to be described for this element.

Metric 4d. HPV reporting indicator

All four of the qualifying formal enforcement actions (two HPV actions initiated prior to FY06 and two initiated during FY06) were at facilities that, after the database was updated, have been reported in AFS as having HPV's. This 100% rate exceeds the national average of 78.4%.

Recommendations:

None.

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

In response to an observed violation, NDEP may issue warnings, non-penalty administrative orders, or Notices of Alleged Violation (NOAV). Notices of Alleged Violation are always accompanied by a compliance order.

Injunctive relief is not a common feature of state or local enforcement settlements, because in most cases the facility has been brought into compliance before the settlement is negotiated. The majority of violations are transitory or easily correctable, such as fugitive dust episodes, open burning, failure to submit a required report, and operating without a permit.

Although the three enforcement files we intended to review were not actually enforcement actions, we did observe several prior enforcement actions in facility files containing inspection reports. For these enforcement actions, the facilities had come into compliance by the time the settlement process began.

***Recommendations*:**

None.

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

Under state law, only the State Environmental Commission has the authority to order administrative penalties in air cases, so settlements and penalties are developed by NDEP and approved by the SEC on a case by case basis. It should be noted that since the SEC normally meets quarterly, this can sometimes add significant time to resolution of enforcement actions.

NDEP also may refer cases to state court through the Nevada Department of Justice, although this rarely happens. If an alleged violator remains recalcitrant after a NOAV or penalty is unsuccessfully appealed to the SEC, NDEP sometimes refer cases to the Nevada Attorney General for judicial resolution, although they did not do so in FY06.

Because there were only two HPV's initiated during FY06 it is not possible to assess timeliness with confidence; however, none of NDEP's FY06 HPVs took longer than 270 days to address, so 100% were timely. This is better than the national average of 50%.

Based on management and staff interviews, current NDEP management is supportive of formal enforcement actions. During FY-06 NDEP assessed $486,180 in penalties pursuant to 79 NOAV's. However, during the settlement process, the actual penalties assessed were reduced to $227,800.

It should be noted that, although it is not credited to NDEP in AFS, NDEP's most significant recent air enforcement case was recently settled. Nevada Power Company agreed to a settlement with NDEP, EPA and the U.S. Department of Justice to resolve thousands of opacity SIP violations at its Reid Gardner coal-fired electric generating plant located 50 miles northeast of Las Vegas. In July 2005, after a year-long investigation, NDEP issued a number of violation notices to Nevada Power. During settlement negotiations, NDEP and Nevada Power requested EPA's participation to assist with negotiations. The Consent Decree was entered on June 14, 2007.

As part of the settlement, Nevada Power agreed to spend over $90 million on pollution controls to reduce particulate emissions at the plant by more than 300 tons per year, and NOx emissions by as much as 1000 tons per year. The state of Nevada received 70 percent, or $770,000, of the $1.11 million civil penalty, which reflects the state's level of effort, having conducted all of the investigative work in this case. The federal government received 30 percent, or $340,000.

EPA was pleased to support NDEP's excellent investigative work in the Reid Gardner case, and believes that the settlement is a fine example of how the state-federal partnership can benefit the public. We encourage NDEP to continue join with EPA in pursuing major cases of air pollution, to provide an incentive for companies to agree to appropriate settlement terms.

Metric 6a. Timely action to address HPV sources

Per the AFS 659 report, none of NDEP-BAPC's FY06 HPVs took longer than 270 days to address, so 100% were timely. This is better than the national average of 50%.

Metric 6b. Timely action taken to address individual HPV pathways

All four of the FY06 HPV pathways were addressed in a timely manner.

Metric 6c. No activity indicator (AFS universe)

Once the corrections and updates were reviewed, NDEP had no items with "no activity" to be described for this element. The three items the SRF had originally identified were JK codes (consent decrees) that should have been entered as JT (unobserved source test); the tests were passed.

Recommendations:

None.

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

For non-emission violations NDEP uses an "Administrative Penalty Table," published on the NDEP web page, to calculate assessed penalties. For emission violations they use an "Administrative Fine Calculation Worksheet" listing a variety of factors used to potentially mitigate penalties from the statutory maximum of $10,000 per day per violation. The mitigation factors are based on the BEN model, and include:

1) gravity component
    a) potential for harm
        i) volume of release
        ii) toxicity of release
        iii) environmental/public health risk
    b) extent of deviation
2) economic benefit
3) degree of cooperation, before and after discovery
4) supplemental environmental projects
5) ability to pay
6) history of non-compliance

Although the three enforcement files we intended to review were not actually enforcement

actions, we did observe several prior enforcement actions in facility files containing inspection reports. For these earlier enforcement actions, we did find a penalty calculation worksheet showing how the penalty was derived from either the "Administrative Penalty Table" (for non-emission violations) or the "Administrative Fine Calculation Worksheet."

***Recommendations*:**

None.

8) The degree to which final enforcement actions collect appropriate economic benefit and gravity penalties in accordance with applicable penalty policies.

Under state law (NRS 445B.640), only the State Environmental Commission, not NDEP, has the authority to levy administrative penalties for major (emission) air violations. This is true only for air quality regulations. However, the SEC doesn't have the staff resources to issue penalty orders and negotiate settlements, and pursuant to a long-standing agreement NDEP compliance and enforcement staff determine the appropriate penalties and negotiate settlements. NDEP presents the settlements at a Commission meeting for approval.

NDEP's penalties are calculated in accordance with a penalty structure based on the BEN model. As explained to EPA, their penalty process is as follows: penalty amounts ("potential penalties") are calculated using their penalty matrix or administrative penalty table, as appropriate for each violation. These penalty amounts are not included in the issued Notices of Violation, but are verbally communicated and used as starting points for negotiating settlements. The negotiated settlements are than ratified by the State Environmental Commission (SEC), since under state law NDEP lacks authority to assess penalties for air violations.

In reviewing NDEP's internal enforcement data for FY06, we found that they calculated $486,180 in penalties pursuant to 79 NOAV's, including 17 penalties that exceeded $5,000, and one for $168,000. However, during the settlement process, the actual penalties assessed were reduced to $227,800. This decrease was primarily the result of two cases. In the first case, Western States Gypsum, $186,850 in potential penalties was reduced first to $70,000 and then to zero (at the direction of the SEC the negotiated $70,000 penalty was eliminated in favor of a SEP). In the other case, FNF Construction, the potential penalty of $106,800 was reduced to an assessed penalty of $35,460.

We believe that penalties calculated in accordance with an agency's appropriate penalty policy should generally be mitigated only when a violator provides new information that would have affected the initial penalty calculation. Such a process provides consistency and assurance of a level playing field for regulated industry.

In the case of Western States Gypsum, as no penalty was collected, it is clear that the settlement process failed to recover economic benefit and gravity. This case included, among other things,

violations for failing to install two required baghouses; consequently EPA believes that a significant penalty would have been appropriate. It should be noted that EPA will continue to review state and local enforcement settlements resolving federally enforceable violations and may pursue federal enforcement in cases where penalties do not adequately recover economic benefit and/or gravity.

We believe that appropriate penalties serve as a deterrent to future violations and promote a level economic playing field among states and localities, and are therefore an important part of an effective enforcement program. We recommend that NDEP analyze their penalty process and take steps, such as additional inspections, to evaluate the compliance status of facilities after enforcement actions, in order to ensure that their assessment of penalties is having the appropriate deterrent effect.

Under state law, collected penalties are transferred to the school district in the county where the violation occurred.

Metric 8a . No activity indicator - penalties

NDEP had no items with "no activity" to be described for this element.

Metric 8b. Penalties normally included with formal HPV enforcement actions

According to NDEP internal data (AFS does not track collected penalties), the two new HPVs in FY06 were settled for a total of $10,600 - and one of them (Barrick Goldstrike) also included an additional $140,000 SEP for installation of mercury controls. This 100% penalty rate exceeds the 76.7% national average for this element.

***Recommendations*:**

We recommend that NDEP analyze their penalty process and take steps, such as additional inspections, to evaluate the compliance status of facilities after enforcement actions, in order to ensure that their assessment of penalties is having the appropriate deterrent effect.

9) The degree to which enforcement commitments in PPA/PPG/categorical grants (written agreements to deliver a product/project at a specified time), if they exist, are met and any products or projects are completed.

EPA Region 9 has no Performance Partnership Agreements or State Enforcement Agreements with its state and local agencies. The Regional Administrator, Deputy and Division Directors hold annual meetings with the environmental commissioners and directors of Region 9's state agencies to share priorities and strategies and to explore opportunities for partnership. One component of this partnership is the Compliance Monitoring Strategy (CMS) Plan that provides an agency's commitments for conducting FCE's (including inspections, Title V certification and

source test reviews), identifying HPV's, and reporting such activities to AFS.

NDEP submitted an adequate CMS Plan for FY 2006 – FY2011 on October 31, 2005. They committed to target majors on a 2-year cycle and synthetic minors on a 5-year cycle.

In their CMS plan, NDEP also committed to reporting FCE's only when they have reviewed all necessary reports and records, including Title V certifications, excess emission reports and other documents, physically visited the facility and reviewed facility records and operating logs, assessed control devices and reviewed stack tests. Our file review indicated that NDEP had performed all of these elements for their reported FCE's.

The District successfully met their CMS commitments, except as otherwise outlined in this report.

***Recommendations*:**

None.

10) The degree to which the Minimum Data Requirements are timely.

The national standard for AFS data timeliness is 60 days, per the 2005 "Information Collection Request" (ICR) approved by OMB on June 5, 2005. This standard has also been incorporated into EPA's AFS Business Rules and CMS plan documents.

A review of AFS for 158 CMS actions (tests, certifications, FCE's) with dates of entry shows that 90.5% of those actions were entered more than 60 days after occurrence, exceeding the national average of 57.6%. The average entry time was 255 days. NDEP should strive to improve the timeliness of AFS data entry.

It should be noted that NDEP's AFS staff lead was promoted during this time. In order to improve the timeliness of AFS data entry a new permanent AFS staff person is recommended.

Metric 10a. Timely entry of HPV data

Neither of the two FY06 HPVs were entered within 60 days of Day 0.

***Recommendations*:**

CAA — NDEP should improve the timeliness of AFS data entry.

See attached NDEP comment letter (11-01-07) for response.

11) The degree to which the Minimum Data Requirements (MDR's) are accurate.

Metric 11a. Number of HPVs/Number of non-compliant sources

Of the three sources with HPV flags, one (Nevada Power Reid Gardner) was listed as non-compliant during the year. This 33% rate is lower than the national average (99.0%) for this measure. NDEP should change the plant compliance status flag manually at the same time as new or updated HPV actions are entered.

Metric 11b(1). Stack test results at federally-reportable sources (% without pass/fail results)

The SRF data showed none of the 62 reported source tests were lacking valid pass/fail results.

Metric 11b(2). Stack test results at federally-reportable sources (number of failures)

AFS shows NDEP had no failed source tests in FY06.

Recommendations:

NDEP should change the plant compliance status flag manually at the same time as new or updated HPV actions are entered.

NDEP Comment (11-01-07): "NDEP does not agree that the other two sources warrant HPV status."

12) The degree to which the Minimum Data Requirements (MDR's) are complete.

Metric 12a. Title V universe is accurate

SRF showed there were 30 AFS majors, and all 30 had the "V" air program code. However, during our visit we learned that Newmont Gold (32011N0404) was a duplicate of another plant and had to be merged into another existing major. We assisted, and there are now 29 Title V majors in this universe.

Metric 12b. State agrees with source count

NDEP agreed with the corrected source count (29 majors, five 80% SM's, 26 other SM's and 1 NESHAP minor).

Metrics 12c through 12i.

As noted above, we found data completeness issues with NDEP's FCE counts, source universe counts, and HPV determinations. Based on our file reviews and our review of NDEP's internal

data system, we found no further data completeness issues in the reported data with regard to subprograms, historical non-compliance, formal actions and assessed penalties.

Metric 12j. Number of major sources missing CMS targets

There were no major sources missing CMS targets.

***Recommendations*:**

In order to improve AFS data completeness and accuracy, we recommend that NDEP add a field to their internal Excel spreadsheets identifying violations as HPVs. In order to help NDEP more easily transcribe their data to AFS, they should also add columns for air programs and pollutants along with a field identifying HPV type codes, as well as a field to capture the discovery date & method.

NDEP Comment (11-01-07): "NDEP continues to focus its resources on inspections, investigations, and maintaining and developing its internal tracking system rather than maintaining AFS on a regular basis. Because AFS represents a redundant but less comprehensive system, requires specialized training, and is difficult to access and query, maintaining AFS is not a priority for the NDEP."

STATE REVIEW FRAMEWORK REPORT

STATE OF NEVADA DIVISION OF ENVIRONMENTAL PROTECTION BUREAU OF WATER POLLUTION CONTROL

CLEAN WATER ACT COMPLIANCE AND ENFORCEMENT PROGRAM

January 31, 2008

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX - PACIFIC SOUTHWEST REGION
Clean Water Act Compliance Office
75 Hawthorne Street
San Francisco, CA 94105

EPA'S STATE REVIEW FRAMEWORK (SRF) REPORT
STATE OF NEVADA DIVISION OF ENVIRONMENTAL PROTECTION
BUREAU OF WATER POLLUTION CONTROL

Media Program Evaluated: Clean Water Act (CWA) NPDES Compliance and Enforcement Activities
Review Period: Fiscal Year 2006
Inspections: July 1, 2005 – June 30, 2006;
Enforcement and Data Management: Oct. 1, 2005 – Sept. 30, 2006)
Regional Contact: Ken Greenberg, CWA Compliance Office (WTR-7) 415-972-3577
State Contact: Jonathan C. Palm, Bureau of Water Pollution Control 775-687-9433

1.0 Executive Summary

The following is a summation of the findings from EPA's review of the Nevada Division of Environmental Protection, Bureau of Water Pollution Control (BWPC) NPDES compliance and enforcement program, including strengths, best practices and areas of concern along with recommendations.

1.1 Executive Summary - Inspections

BWPC is responsible for inspecting 100% of NPDES major dischargers and 20% of minor dischargers annually as set forth in EPA's National Program Managers Guidance for the NPDES Compliance and Enforcement Program and in the 1992 and 1994 agreements between NDEP and EPA Region 9 ("Agency Agreement on Compliance and Enforcement", 1992 and "Memorandum of Understanding for NPDES Compliance and Permitting Activities", 1994). In FY 2006, the BWPC met its commitments by inspecting each of the 11 non-stormwater major dischargers at least once (20 inspections, 100% coverage) and by conducting 24 inspections at 18 different minor dischargers (24% coverage). BWPC's inspection coverage for majors exceeded the national average of 63 percent. BWPC prepared inspection reports for each of its major and minor inspections. Some of these reports provide thorough descriptions of inspection procedures and findings, however, others fail to adequately describe the inspection scope or findings. Some of the major and minor files included documentation of steps taken by the dischargers to address deficiencies noted in the inspection reports, while other files lacked documentation of follow-up actions.

BWPC implements an ambitious program for inspection of the approximately 2,800 enrollees subject to the State's general stormwater permits for industrial facilities, mines

and construction sites. In FY 2006, the Bureau conducted about 1,280 inspections at over 1,100 separate facilities subject to the general stormwater permits, meeting its Clean Water Act grant commitment for stormwater inspection coverage (10% quarterly). Nevada's stormwater inspection coverage far exceeds the national goal of 10% annual inspection coverage proposed in EPA's Draft Compliance Monitoring Strategy. The Bureau conducts follow-up inspections at violating facilities, sometimes returning for several inspections until the facility returns to compliance. The Bureau does not prepare inspection reports for any of its stormwater inspections. Instead, brief inspection summaries are logged in the Bureau's stormwater inspection database. The stormwater database is easy to use by the inspectors and provides an easily accessible record of the Bureau's inspection activities.

The Bureau has issued 9 Municipal Separate Storm Sewer System (MS4) permits covering the major metropolitan areas in the State. In FY 2006, the BWPC joined EPA in its inspection of the Clark County MS4, but has not yet led their own inspection of any of the MS4 permittees.

All stormwater inspections should include a complete report, and should detail whether the facility has achieved compliance or if violations exist. BWPC should also develop procedures for annual evaluations of its MS4 permittees.

Inspections Recommendations

- BWPC should prepare reports for all stormwater inspections, especially at noncompliant facilities. EPA recommends that the Bureau use an inspection checklist form that, when completed, could serve as the inspection report.
- BWPC should ensure that its inspection reports describe the scope of the inspection, fully document inspection observations and findings, that violations are accurately described, and that monitoring results, where applicable, are included in the report.
- BWPC should ensure that deficiencies noted in inspection reports are adequately addressed by the dischargers and documented in the Bureau's case files.
- BWPC should develop procedures for and begin conducting compliance evaluation inspections of its major (Phase I) MS4 stormwater permittees.

1.2 Executive Summary - Enforcement

None of Nevada's major facilities were found to be in significant noncompliance (SNC) during FY 2006. This compares to a national average of 19 percent of major permittees in SNC in FY 2006.

During FY 2006, the Bureau issued 8 Findings of Violations and Order (FOV/Order) and completed 3 penalty actions. Also during FY 2006, BWPC inspectors issued 112 Notices of Noncompliance (NONCs or "tickets") to facilities subject to the general stormwater

permits. EPA reviewed the files for three facilities that each received a single NONC and one facility that received two NONCs. Only two of the five NONCs were included in the case files.

In the penalty actions reviewed by EPA, the BWPC generally followed its penalty procedures, set forth in their Enforcement Manual (August 1997), with two exceptions: 1) some case files lacked documentation of the economic benefit component of the penalty calculation; and 2) case settlements were not filed in State Court. In each of the penalty cases reviewed by EPA, except the case against the bankrupt Crystal Cascades, the State mitigated the entire penalty amount in exchange for implementation of environmental projects. In accordance with the State's penalty policy and BWPC practices, the amount directed to projects was equivalent to 1.5 times the calculated penalty. The Bureau's penalty settlements contrast with EPA's penalty policy, which dictates a cap on the amount of penalty that can be mitigated in exchange for an environmental project.

EPA is concerned with the lack of enforcement action against general stormwater facilities. During FY06, BWPC inspectors observed violations at approximately 300 of their stormwater inspections. While the Bureau issued 112 NONCs against these violating facilities, it took an enforcement action in only one case, against the Union Pacific Railroad. During the review, EPA examined the files for 10 facilities subject to the general stormwater permits. Three of these files included inspection summaries that documented significant violations which, in EPA's view, warranted an enforcement response (order and/or penalty).

Nevada DEP is revising its Enforcement Policy to clarify and standardize penalty and supplemental environmental project procedures for all of NDEP's enforcement programs.

Enforcement Recommendations

- Copies of all enforcement actions, including NONCs, should be included in the case files.
- BWPC should request the specific information from violators related to avoided costs of compliance (capital investment, one-time nondepreciable expenditures and avoided operating and maintenance expenses).
- BWPC should adequately document the basis for its penalty calculations, especially economic benefit, and should ensure that the results of the show cause and penalty panel meetings are documented in the case files.
- Enforcement case files should include documentation of the Bureau's review of discharger plans and reports submitted in response to orders as well as documentation of post-enforcement compliance status and return to compliance.
- BWPC should escalate cases to enforcement actions, especially for significant violations, when the facility is non-responsive or recalcitrant, or when violations are not quickly resolved.

- BWPC should complete the revisions to its *Enforcement Policy* to establish standard procedures for penalties and supplemental environmental projects.

1.3 Executive Summary - Data Management

The Bureau is responsible for entering information about its NPDES permitting, compliance and enforcement program in EPA's national database (ICIS-NPDES). The State is successfully coding major permits and entering major facility Discharge Monitoring Report (DMR) data in ICIS-NPDES. The State is also entering data on its major and minor facility inspections. The BWPC is developing a new database that will be used for batch entry of data into ICIS-NPDES; an EPA grant is supporting this effort.

The data that NDEP has entered in ICIS-NPDES was entered in a timely manner and is complete and accurate. The Bureau is not entering data about its enforcement actions or its stormwater inspections in ICIS-NPDES.

Data Management Recommendations

- The BWPC should begin entering enforcement actions and informal notices of noncompliance into ICIS-NPDES.
- When EPA's ICIS-NPDES Policy Statement is finalized, BWPC should prepare a transition plan for population of ICIS-NPDES with the Requisite ICIS-NPDES Data Elements (RIDE), including stormwater inspections.

2.0 Introduction

The State Review Framework is a program management tool to consistently assess state core Clean Water Act, Clean Air Act and Resource Conservation and Recovery Act enforcement and compliance assurance programs that was designed collaboratively by EPA, the Environmental Council of the States (ECOS) and State representatives. This review report addresses the Clean Water Act, National Pollutant Discharge Elimination System (NPDES) compliance and enforcement program implemented by the Nevada Division of Environmental Protection (NDEP), Bureau of Water Pollution Control.

The Framework is intended to enable EPA and states to jointly assess the effectiveness of their programs, improve management practices and ensure fair and consistent enforcement and compliance across all regions and states.

The State review takes into consideration National and State data on inspections, compliance rates and enforcement, review of State inspection and case files, State commitments made in annual agreements and discussions with senior management at the state and regional levels. The review examines 12 standardized elements covering the core areas of inspections and compliance monitoring (elements 1 – 4), civil enforcement (elements 5 – 8), implementation of annual commitments (element 9) and data management (elements 10 – 12).

Issues identified in the review are highlighted in the report findings and accompanied by recommendations for collaboratively addressing these issues. EPA and Nevada DEP will use our semi-annual management meetings to check progress on the recommendations contained in this report.

2.1 Background

The Nevada Division of Environmental Protection (NDEP) was authorized to conduct a state permit program under the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) in September 1975. Since then, the NDEP and EPA entered into a supplemental Agency Agreement on Compliance and Enforcement (1992) and a Memorandum of Understanding (MOU) for NPDES Compliance and Permitting Activities (1994). Additional guidance for the NPDES compliance and enforcement program is established annually in EPA's National Program Managers' Guidance. These agreements and guidance establish policies and procedures for NPDES inspection, compliance, enforcement, and permitting activities in the State of Nevada in accordance with the CWA.

The review focused on the NPDES compliance and enforcement activities as carried out by the Technical Services and Enforcement Branches in NDEP's Bureau of Water

Pollution Control (BWPC). These Branches are responsible for NPDES inspections, compliance reviews and enforcement.

The inventory of facilities subject to NPDES regulation by the BWPC includes 14 major NPDES facilities (including 3 municipal stormwater programs), 76 minor NPDES permittees and about 2,800 facilities subject to the general NPDES permits for stormwater discharges from mines, industrial sites and construction operations.

The on-site portion of the review was completed on August 1 and 2, 2007 and included interviews with BWPC staff and managers and examination of 22 facility files. The selected files represented each type of NPDES discharger (major, minor, stormwater and unpermitted discharges or spills) and included a sampling of the inspection, compliance review and enforcement work done by the BWPC. The review was primarily limited to the Bureau's activities in fiscal year 2006, but included examination of some enforcement cases taken in 2007 based on work initiated in 2006.

2.2 Organization Structure

The NDEP's Bureau of Water Pollution Control (BWPC) consists of five branches: Permits, Technical Services, Enforcement, Groundwater Protection, and Clerical. For purposes of this review, only the Technical Services and Enforcement Branches are described below:

- **Technical Services Branch**: Responsible for conducting inspections, as follows: NPDES major and minor facilities; NPDES stormwater sites (construction, industrial, mines, small MS4s); groundwater; permitted remediation projects; and responding to complaints. The branch is also responsible for ensuring that stormwater sites have filed a Notice of Intent and for conducting plans and specifications reviews for proposed facilities. This branch has nine inspectors, one supervisor, and one administrative assistant.

- **Enforcement Branch**: Responsible for NPDES DMR review and compliance and enforcement activities related to NPDES and other facilities. Also, responsible for data entry into ICIS-NPDES, the following items: NPDES DMRs and NPDES major and minor permits and inspections. This branch has four staff and one supervisor.

2.3 Source Universe

The BWPC's NPDES universe is summarized below (see Attachments 1 through 3 for detailed lists of the majors universe, major and minor inspections, and formal enforcement actions).

Facility Type	Permits	Inspections (7/1/2005-6/3//2006)
Majors	14 (includes 3 MS4s)	20
Minors	76	24

General Storm Water Permits	Active Facilities (as of 6/30/06)	Inspections (7/1/2005-6/30/2006)
Construction	2,341	499
Industrial	375	531
Mining	63	13
Small MS4s	6	0

Enforcement (10/1/2005-9/30/2006)	Majors	Minors	Stormwater	Spills/Other
FOV/Order	2	0	1	4
Penalty Actions	1	0	1	1
Administrative Order on Consent (AOC)	0	1 amendment	0	1 amendment

2.4 Review and File Selection Process

Listed below is a chronology of key dates in the review process:

- Review Period: Fiscal Year 2006: (Inspections: July 1, 2005 – June 30, 2006; Enforcement and Data Management: October 1, 2005 – September 30, 2006)
- Start date for review, i.e., initial state notification: May 4, 2007
- Dates of on-site interviews and file reviews: August 1 – 2, 2007

2.5 Review Process and Rationale

EPA staff visited the NDEP's Bureau of Water Pollution Control (BWPC) office, Carson City, Nevada, during the period August 1 – 2, 2007 to review files and interview staff. Review participants are listed below:

EPA Water Division	NDEP BWPC
Ken Greenberg, Manager, CWA Compliance	Jonathan C. Palm, Bureau Chief

Office	
Jenée Gavette, Environmental Protection Specialist	Cliff Lawson, Supervisor, Technical Services Branch
	Valerie King, Supervisor, Enforcement Branch
	Dave McNeil, Enforcement Branch
	Diana Silsby, Enforcement Branch

Prior to the site visit, and in preparing this report, EPA reviewed and evaluated the following documents:

Program Agreements, Guidance and Correspondence

- *FY 2006 National Program Managers' Guidance*, EPA Office of Enforcement and Compliance Assurance, October 2005.
- *National Enforcement Management System (EMS)*, EPA, 1989.
- *MOU for NPDES Compliance and Permitting Activities* (NDEP and EPA R9), September, 1994.
- *Agency Agreement on Compliance & Enforcement* (NDEP & EPA R9), September 18, 1992.
- NDEP Clean Water Act section 106 Grant Workplan (7/1/05-6/30/07)
- NDEP Letter re: Nevada's Commitment Associated with PCS Responsibilities (5/13/04) & associated meeting notes
- NDEP Letter re: Nevada Comments on *Draft Document Guidance on NPDES Wet Weather and CAFO Inspection Reporting Changes*

Data/Information Sources

- NDEP Bureau of Water Pollution Control quarterly reports:
  - 7/1/06 – 9/30/06
  - 4/1/06 – 6/30/06
  - 1/1/06 – 3/31/06
  - 10/1/05 – 21/31/05
  - 7/1/05 – 9/30/05
- Copies of NDEP Enforcement Actions (10/1/05 – 9/30/06)
- Copies of NDEP Inspection Reports (7/1/05 – 6/30/06)
- OTIS SRF Reports (ICIS) for Nevada (7/1/05-9/30/06)
- EPA R9 generated ICIS reports for Nevada (7/1/05-9/30/06)
- NDEP BWPC Enforcement Manual (8/5/97)
- NDEP BWPC memorandum re: Policy for Referring Cases to the Enforcement Branch (12/2/05)
- NDEP files

Background Information

- CWA State Review Framework Metrics
- EPA/State Review Framework Fact Sheet (6/05)
- Overview Enforcement and Compliance Assurance State Review Framework (6/05)
- Use of Data Metrics During State Review Framework Reviews (12/21/05)
- Clean Water Act/NPDES Program Guide and File Review Metrics (6/24/05)

- SRF Implementation Guidance presentation (4/06)
- Guide to Writing SRF Reports (Interim Final) (4/12/07)

From this review, EPA identified the universe of NDEP facilities and actions that should be considered during the review period. File selection was based on the *"range of files based on size of universe"* criteria, as set forth in EPA's SRF Implementation Guidance, April 2006. Specifically, the guidance suggests reviewing between 15 and 30 files, that the files represent different categories of dischargers and include inspections and enforcement actions. The selected files included all of the enforcement actions taken by the BWPC in FY 2006 and several inspections. The files reviewed at NDEP's office are listed below:

Facilities	**Permit No.**	**Facility Type**	**Inspection Date**	**Enforcement**
Clark County	NV0021261	Major (municipal)	11/28/05	FOV/Order 4/26/06
Henderson	NV0022098	Major (municipal)	12/4/05	Penalty Panel 3/30/06
City of Sparks, Truckee Meadows WRD	NV0020150	Major (municipal)	5/31/06	FOV/Order 6/9/06
Pioneer Americas	NV0020923	Major (industrial)	6/13/06	
Metallic Ventures, Esmeralda Mine	NV0023345	Major (industrial)	5/16/06	
Reno, Sparks, Washoe County	NVS000001	Major (municipal storm water)		
Caesars Palace	NV0023191	Minor (industrial)	6/14/06	
Incline Village GID	N/A	Spills & Others		FOV/Order 6/21/06
Newmont-Lone Tree (aka Santa Fe Pacific Gold)	NV0021962	Spills & Others		AOC Amendment 8/26/06
Romarco Minerals	N/A	Spills & Others		FOV/Order 8/31/06
Conners Drilling	N/A	Spills & Others		FOV/Order 8/31/06
Insituform	N/A	Spills & Others		FOV/Order 6/21/06
Crystal Cascades	TNEV2004317	Spills & Others		Penalty Panel 10/21/05; Penalty 3/29/06
Jerritt Canyon	NVR30000	GenSW-Mining	6/6/06	
South Operations Area	NVR30000	GenSW-Mining	6/14/06	
North Operations Area	NVR30000	GenSW-Mining	6/15/06	
NDOT 3241 Deer Run	NVR10000	GenSW-Construction	8/23/06	
Commerce Village	NVR10000	GenSW-Construction	multiple	
Mesa Verde	NVR10000	GenSW-Construction	5/2/2006	
Lake Meade Comm. Park	NVR10000	GenSW-Construction	multiple	
Ryland Homes Parcel E	NVR10000	GenSW-Construction	multiple	

Paramount-Nevada Asphalt	NV050000	GenSW-Industrial	3/8/06	
Elko Airport	NV050000	GenSW-Industrial	6/7/06	

3.0 Review Elements

During the site visit, EPA reviewed 22 files made available by the BWPC at their office in Carson City, Nevada. The files were well-maintained and organized by BWPC staff. Confidential information related to penalty calculations was maintained separately in a secure location and provided to the EPA reviewers on request. The following information, which describes the findings of EPA's data and file reviews and staff interviews, is organized by review element and with the standard review metrics highlighted in each section.

3.1 Element 1 - Inspection Coverage

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

Majors and Minors (Data Metric A)

During FY 2006, BWPC conducted 20 inspections of the NPDES majors, visiting each major at least once except for the 3 major municipal storm water permittees which were not inspected in FY 2006. Nevada's inspection coverage of NPDES majors meets the expectation established in EPA's National Program Managers' Guidance and the 1992 and 1994 agreements between EPA and Nevada DEP, each of which call for 100% annual coverage of non-stormwater majors. Nevada's coverage of major facilities exceeds the national average coverage rate of 63%. BWPC conducted 24 inspections at 18 of its 76 minor permittees (24 percent coverage), exceeding its commitment of 20 percent per year found in the 1992 and 1994 agreements.

NPDES General Permits (Data Metric B)

During the year, BWPC conducted about 1,280 inspections at over 1,100 different facilities subject to the general Stormwater permits for mines, industrial sites and construction activity. Approximately 2,800 facilities in Nevada were covered by the general stormwater permits during FY 2006. The BWPC met or exceeded its Clean Water Act grant commitment for stormwater inspection coverage (10% quarterly) in each quarter. Nevada's stormwater inspection coverage far exceeds the national goal of 10% annual inspection coverage proposed in EPA's Draft Compliance Monitoring Strategy. The Bureau conducts follow-up inspections at violating facilities, sometimes returning for several inspections until the facility returns to compliance. In the cases reviewed by EPA, the Bureau failed to take enforcement actions against stormwater permittees despite the continuation of violations through a number of follow-up inspections.

Recommendations

- BWPC should develop procedures for and begin conducting annual evaluations of its Municipal Separate Storm Sewer System (MS4) permittees.
- See recommendations under elements 5 and 6 regarding enforcement for cases where violations are not quickly resolved.

3.2 Element 2 - Identification of Violations

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

Major and Minor Facilities

EPA reviewed BWPC's inspection reports for five major and one minor facilities. All inspection reports reviewed by EPA documented the results of the facility's Discharge Monitoring Reports (DMRs) review. Some of the reports were very thorough in documenting the scope of the inspection and included EPA's NPDES Compliance Inspection Form. The thorough inspection reports included descriptions of what was observed during the inspection, photos, identification of deficiencies and potential violations, and requested that the discharger respond to the findings. Inspection reports prepared by certain BWPC inspectors, however, lacked sufficient detail to determine the scope of the inspection, did not include EPA's NPDES Compliance Inspection Form and omitted results of effluent sampling conducted during the inspections.

Recommendations

- BWPC should ensure that it consistently completes the NPDES Compliance Inspection form or State equivalent. (Inclusion of the checklist form is a good way to document the scope of an inspection.)
- BWPC should ensure that all inspection findings are adequately and thoroughly documented in the report and that monitoring results are included.

Storm Water General Permit Facilities

BWPC's Technical Services Branch Supervisor described the standard procedures for inspection of stormwater general permit facilities. The inspectors are not required to use a form or checklist during the inspection and do not prepare inspection reports. Instead, the inspector records inspection findings in a field notebook and records the inspection date and a brief summary of inspection findings in the State's stormwater database. Each inspection recorded in the database is assigned a ranking by the inspector based on the magnitude of violations observed. Violations may be ranked as none, minor, NONC (violations that warrant issuance of a Notice of Noncompliance) or major (violations that warrant referral to the Enforcement Branch for enforcement response). .

The Stormwater database is easy to use by the inspectors and provides an easily accessible record of the Bureau's inspection activities.

Printouts from the storm water database were included in the 10 facility files reviewed by EPA. Database entries in five of the facility files indicated that the inspectors observed either minor violations or no violations. More significant violations were observed at the remaining five facilities where, according to the database entries, the inspectors ranked the violations as either NONC or major violations (Mesa Verde, Lake Meade, Ryland Homes, Commerce Village and Paramount Asphalt). All but one of the facilities that had an NONC or major violation was visited again by BWPC inspectors for follow-up inspections. (The Mesa Verde site did not have a follow-up inspection in the file because the site changed ownership and a new file was opened.) However, given the brevity of the database summaries and lack of inspection reports, the EPA reviewers could not always determine if the violating facilities returned to compliance.

The BWPC inspectors quickly returned to facilities if an initial inspection revealed violations, often returning for additional follow-up inspections until violations are resolved. One violating facility was visited 6 times in the month following the initial inspection. There were no written inspection reports for any of the 10 facilities reviewed. Inspection documentation in the stormwater database lacks sufficient detail to understand the scope of these inspections or to adequately support enforcement action for the violations.

Recommendations

- BWPC should develop a inspection checklist for use in the field to ensure consistency and adequate documentation of findings for all stormwater inspections.
- BWPC should prepare written inspection reports for all stormwater inspections, especially at those facilities where violations are observed, and ensure that all findings are adequately documented.
- Inspection reports on follow-up inspections should detail whether the facility has returned to compliance or if violations remain.

3.3 Element 3 - Timely Completion of Inspection Reports

Degree to which inspection reports are completed in a timely manner.

BWPC's commitment for major and minor facilities inspection report completion is within 90 days of the inspection per its September 1994 MOU. BWPC met this commitment for of its reports on inspections of major and minor facilities. The Bureau, however, did not complete inspection reports for its stormwater inspections and, therefore did not meet the timeliness commitment for these inspections.

Recommendations

- The Bureau should complete timely reports on its stormwater inspections.

3.4 Element 4 - Identification of Significant Non-Compliance

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

BWPC's commitments related to this element, per its September 1994 MOU, are to (1) review approximately 140 DMRs with priority given to major NPDES permittees, and (2) prepare the QNCR in accordance with EPA's guidance on reporting SNC and action taken or proposed to correct the problem including compliance schedule. BWPC successfully met its commitments for DMR review and QNCR preparation.

- Data Review Metric A examines entry of Single Event Violations at Majors and Minors in ICIS-NPDES. "Single-event violations" are violations other than effluent limit violations. Examples of single –event violations include spills or violation of narrative permit conditions such as Stormwater management requirements. BWPC does not enter single-event violations into ICIS-NPDES. However, BWPC enters violations observed during stormwater inspections into its storm water database (see element 2 above).
- Data Review Metric B, Major Facilities in SNC; Percent Majors in SNC: BWPC had no facilities in SNC compared to the national average of 19 percent.

Recommendations

- The BWPC should develop and implement procedures for entering significant single-event violations in ICIS-NPDES.

3.5 Element 5 - Injuctive Compliance Deadlines

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

Enforcement Procedures

The BWPC's enforcement process is described in its *Enforcement Manual* (revised August 5, 1997) and in its December 2, 2005 memorandum re: *Policy for Referring Cases to the Enforcement Branch*.

The *Enforcement Manual* describes procedures for issuing enforcement actions including Finding of Violation and Order (FOV/Order) and civil penalty actions. The procedure for adoption of a civil penalty allows for a "show cause meeting" between the violator and NDEP. Based on the outcome of the show-cause meeting, NDEP staff may refer the case to a Penalty Panel made up of four NDEP Bureau Chiefs and the case enforcement officer. If the Penalty Panel determines that a penalty is appropriate, the BWPC notifies the violator in writing of the decision. According to the Manual, the defendant should be

given an opportunity to settle the case, with the settlement being lodged in State Court, or, in the absence of a settlement, NDEP may take the case to State Court. NDEP does not have administrative penalty authority. Informal actions available to NDEP include the Notice of Noncompliance (NONC), also referred to by BWPC staff as a "ticket" or "notice". The NONC, which can be issued in the field by NDEP inspectors, is most commonly used for stormwater violations.

The December 2, 2005 memorandum re: *Policy for Referring Cases to the Enforcement Branch* sets forth a "Three-Strikes-You're-Out" approach for cases that are not an immediate threat to human health or the environment: (1) request in writing specific compliance actions by a specific date; (2) if required compliance actions are not completed, one or two more letters should be written with new deadlines, with an enforcement warning; (3) if required compliance actions are not completed by the extended deadline, the case should be referred to the Enforcement Branch.

Evaluation of element 5 is focused on BWPC's use of informal actions and enforcement actions that establish schedules for remedial actions and returning facilities to compliance. In BWPC's case, these actions include the formal FOV/Order and the informal NONC. Penalty actions are considered under review elements 7 and 8.

Findings Regarding Formal Enforcement Actions

File Review Metric A: Percentage of formal state enforcement actions that contain a compliance schedule of required actions or activities designed to return the source to compliance. This can be in the form of injunctive relief or other complying actions.

During the review period (Oct. 2005 to Sept. 2006), NDEP issued eight FOV/Orders and amended two Administrative Order on Consent (AOC). Some of the FOV/Orders were followed by civil penalty actions (see elements 7 and 8). EPA reviewed the files for six of the FOV/Orders (Insituform, Truckee Meadows, Incline Village, Clark County (2), Romarco) and the amendment of the Newmont-Lone Tree AOC. EPA also reviewed the September 2005 FOV/Order against the City of Henderson, an enforcement action that preceded BWPC's FY06 penalty action against Henderson.

EPA's file review of BWPC's FOV/Orders indicated they established appropriate requirements and included necessary elements, including citation of violations and required actions with due dates. The reviewed FOV/Orders required submittal of reports on the violations including the cause, corrective actions or mitigation plans, and the amount of economic benefit realized by the discharger from the violation. (See commentary under Element 7 regarding economic benefit calculations.)

Of the seven FOV/Order files reviewed, four (Romarco, Incline GID, Crystal Cascades, Henderson) lacked adequate documentation of BWPC's evaluation of the dischargers' submittals or whether the discharger returned to compliance.

Four of the reviewed facilities had "show-cause meetings" during the review period. The files included correspondence from the discharger in advance of the show cause meeting, but none of the files included documentation of what transpired during the show cause meetings.

Recommendations Regarding Formal Enforcement Actions

- BWPC should ensure that enforcement case files include documentation of its review of the discharger's submittals and the discharger's compliance status including whether or not the discharger returns to compliance.
- BWPC should ensure that the results of the show-cause meetings are documented in the enforcement case files.

Findings Regarding Informal Actions

Metric B: Percentage of informal actions or responses that return source to compliance.

As BWPC's storm water compliance program relies primarily on NONCs rather than enforcement actions, EPA's review of the adequacy of BWPC's informal actions focused on the storm water facilities flagged in the Bureau's database as having NONC-level violations. During the review period, BWPC inspected 1,002 facilities subject to its general stormwater permits (construction, industrial, mining). Bureau inspectors recorded NONC-level violations in the stormwater database for 164 of these inspections (including repeat NONC findings at follow-up inspections). In response to these findings, the Bureau issued 112 Notices of Noncompliance. BWPC took enforcement action against only one stormwater permittee (Union Pacific) during the review period.

BWPC's stormwater database indicated it issued written NONCs to five of the 10 facilities reviewed by EPA: Mesa Verde, Lake Meade, Ryland Home, Commerce Village, and Paramount Asphalt. Lake Meade received two NONCs. While BWPC's storm water database noted each of the six NONCs, EPA found copies of only two of the NONCs in the facility files (Ryland Homes and one of the Mesa Verde NONCs). BWPC conducted one or more follow-up inspections at each of the facilities that were flagged as NONC from previous inspections.

The inspection summaries in the BWPC storm water database indicate extensive and serious violations at each of the facilities flagged in the database as having NONC-level violations. The Mesa Verde NONC cited 10 violations and required compliance within 10 days. However, the file had no record of follow-up. During the closeout meeting, BWPC explained that Mesa Verde was sold to another company and is now in compliance. Nevertheless, this should have been documented in the file. In two cases (Lake Mead and Ryland Homes), violations continued for several months. At the Commerce Village site, the Bureau conducted 6 inspections in February and March 2006,

but the database indicated, despite improvements, NONC-level violations remained during the last inspection. Despite the magnitude and duration of these violations, BWPC did not escalate enforcement to a FOV/Order or penalty action in any of the reviewed cases. Given the brevity of the inspection summaries and absence of the written NONCs, the EPA reviewers were not able to determine if the dischargers complied with the compliance schedules established in the NONCs.

Some of the case files lacked documentation of the facilities compliance status and efforts to return to compliance**.** The Bureau issued an NONC to Ryland Homes citing six violations. While database entries for follow-up inspections noted improvements, these improvements did not correspond to the violations cited in the NONC. The last inspection at Ryland on July 31, 2007 was summarized in the database as "NONE, project built out", but there is no evidence that all of the NONC violations had been corrected before build-out. For Commerce Village, it is not evident that the facility returned to compliance. For the last follow-up inspection, the inspector noted that most requirements of the NONC had been addressed but that three items remained unresolved. For Lake Meade, at the last follow-up inspection, the inspector noted that many deficiencies had been corrected, but two items remained uncorrected. The inspector left a written notice in the trailer during this final follow-up inspection. Given the above information, it cannot be determined if these three facilities returned to compliance and whether the informal enforcement steps (NONCs and follow-up inspections) taken by BWPC were completely effective.

Recommendations Regarding Informal Actions

- BWPC should ensure that copies of all NONCs are included in the files.
- BWPC should ensure that follow-up compliance status and return to compliance is adequately documented for each violation cited in the NONC.
- BWPC should escalate cases to enforcement actions, especially for significant violations, when the facility is non-responsive or recalcitrant, or when violations are not quickly resolved. This recommendation is particularly relevant for the stormwater program where the Bureau relies primarily on informal actions to address noncompliance.

3.6 Element 6 - Timely and Appropriate Enforcement

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

File Review Findings

During the review period, BWPC had no major facilities in significant noncompliance (SNC) on the Quarterly Noncompliance Report (QNCR). During the review period, NDEP issued several enforcement actions for violations which had not been listed on the QNCR. In the cases reviewed by EPA where NDEP issued an FOV/Order, the

enforcement action appeared to be issued in a timely manner and appropriate for the violations being addressed. (A number of these cases were further escalated to a Penalty Panel. These penalty actions are addressed under Elements 7 and 8.) As described under Element 5, the Bureau elected to address most stormwater violations with informal responses. Based on our file review, EPA considers some of the stormwater violations discovered by BWPC inspection to warrant enforcement actions. (see findings in Element 5, above). In these cases, the Bureau failed to take appropriate enforcement action for significant stormwater violations.

Recommendations

- None related to enforcement response for effluent limit SNCs (no such SNCs in FY06).
- BWPC should escalate cases to enforcement actions, especially for significant violations, when the facility is non-responsive or recalcitrant, or when violations are not quickly resolved. This recommendation is particularly valid for the stormwater program where the Bureau relies primarily on informal actions to address noncompliance.

3.7 Element 7 - Calculation of Penalties

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

Penalty Procedures

During FY06, BWPC completed penalty actions against the City of Henderson (sewage spill), Crystal Cascades (spill) and Union Pacific Railroad (stormwater). EPA reviewed the penalty case files for the Henderson and Crystal Cascades cases. EPA also reviewed the files for FY07 penalty actions against Incline Village (spill) and Clark County (spills), cases that were initiated as FOV/Orders in FY06.

The BWPC's penalty procedures are described in its *Enforcement Manual* (revised August 5, 1997). The BWPC initiates formal enforcement action with the issuance of a FOV/Order. A "show-cause meeting" is then held at which time BWPC may elect to refer the case to its penalty panel. The penalty panel (made up of four NDEP Bureau Chiefs and the case enforcement officer) renders a decision on the penalty amount and directs staff to proceed with a penalty demand letter (the Notice of Penalties letter).

File Review Findings

In each of the penalty action cases reviewed by EPA, BWPC reached settlements which were memorialized in letters between NDEP and the discharger. The Bureau did not follow its standard operating procedures which call for penalty cases to be referred to the

State Attorney General's Office (AG) for prosecution or filing of case settlements in State Court.

BWPC has procedures for calculating gravity and economic benefit for penalty settlements and a worksheet for calculation of the civil penalty. In each of the penalty cases reviewed by EPA, BWPC required the violator to submit its estimate of the economic benefit realized from the violation, but did not specifically request costs for each component of economic benefit: delayed capital investment needed to achieve compliance, nondepreciable expenditures needed to achieve compliance and the avoided operating and maintenance expenses (all factors in BWPC's penalty policy).

In three of the cases reviewed by EPA (Clark County, Henderson, Crystal Cascades), BWPC used the penalty calculation worksheet. In each of these cases, Bureau staff properly calculated gravity amounts in accordance with the State policy. The Henderson case file included an economic benefit figure, however, the basis for the amount is not adequately documented. The worksheets for Clark County and Crystal Cascades, accidental spill cases, showed a $0 economic benefit. In these cases, a conclusion of zero economic benefit may be a fair decision, but the files lacked documentation of the basis for these determinations. The Incline Village case file did not include a penalty calculation worksheet.

Recommendations

- BWPC should complete its update of the *Enforcement Manual* to establish procedures for referral of penalty cases to the AG for lodging in State court.
- BWPC should request specific information from violators related to avoided costs of compliance (capital investment, one-time nondepreciable expenditures and avoided operating and maintenance expenses).
- BWPC should adequately document the basis for its penalty calculations, especially economic benefit. Penalty calculation worksheets should be included in each case file.

3.8 Element 8 - Implementation of the State Penalty Policy

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

Penalty Settlement Procedures

The purpose of Element 8 is to evaluate any differences between calculated penalty amounts and final penalty settlements. For this part of the review, EPA again examined the case files for the Henderson, Crystal Cascades, Incline Village and Clark County penalty cases.

In each of these cases, in accordance with its penalty policy, BWPC issued Notice of Penalty letters to the dischargers. In these letters, BWPC indicated that the penalties could be settled with cash payments or by completing an environmental project valued at 1.5 times the established penalty amount. Projects proposed by the dischargers are subject to review and approval by the BWPC Bureau Chief.

File Review Findings

The cases against Henderson, Clark County and Incline Village were resolved with payments to various projects valued at 1.5 times the penalty amount established by the penalty panel. There was no penalty payment in these cases. Crystal Cascades filed bankruptcy before a settlement was reached and BWPC filed a claim with the bankruptcy court for cash payment of the full penalty amount.

NDEP Penalty Actions			
Case	**Violations**	**Penalty Demand**	**Settlement**
Henderson	2 spills	$62,370	$93,555 project, $0 penalty
Clark County	3 spills	$47,000	$70,500 project, $0 penalty
Incline Village	spill	$20,000	$30,000 project, $0 penalty
Crystal Cascade	spill	$17,000	Claim filed with Bankruptcy Court.

BWPC's settlements for projects alone (no penalty) are contrasted with EPA's penalty policy that dictates a minimum penalty payment equivalent to at least the value of economic benefit plus 10 percent of gravity, or 25 percent of gravity, whichever is greater. NDEP staff noted that they are in the process of working with the State AG's Office to modify portions of the Division's Enforcement Policy related to criteria and procedures for penalties and supplemental environmental projects. Among the planned modifications is the establishment of a standard agreement to be entered into by the discharger for implementation of environmental projects.

Recommendation

- NDEP should address significant violations with penalties appropriate for the nature of the violations, taking into account the gravity of the violations, economic benefit enjoyed by the discharger and other factors as specified in NDEP's statutory authorities. To ensure payment of an appropriate penalty, NDEP should establish a cap on the amount of penalty mitigated with environmental projects.
- Penalty settlements should be filed in State Court.

3.9 Element 9 - Negotiated Enforcement Commitments

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

A summary of commitments in the Clean Water Act Section 106 grant workplan for NDEP and the status of each commitment is provided below. The only aspect of the NPDES program which NDEP chose to support with CWA 106 grant funds during the review period was a portion of the BWPC's stormwater program. Beginning in FY08, NDEP will not use 106 funds to support its NPDES program. The FY06 106 grant commitments and status follow:

- Commitment: Conduct inspections at 10 percent of general stormwater permitted facilities per quarter

Status: BWPC met this commitment in two quarters and fell short in two quarters (see Element 1).

- Commitment: Quarterly reporting to EPA on inspection and enforcement activities.

Status: all reports were submitted timely and complete.

EPA's National Program Managers Guidance and the 1992 and 1994 agreements between EPA and Nevada DEP establish expectations for inspections of major and minor permittees and for timely enforcement response against SNC facilities. The State is meeting its responsibilities for inspection coverage of major and minor facilities (see Element 1 above). The National Program Managers Guidance (NPM Guidance) also establishes expectations for timely and appropriate enforcement response against discharger violations and incorporates by reference, EPA's 1989 *National Enforcement Management System (EMS)*. As described under Elements 5, 6, 7 and 8, NDEP failed to take enforcement actions for significant stormwater violations discovered by its inspectors and did not collect penalties in a number of its penalty actions.

Recommendations

- BWPC should prepare written inspection reports for all stormwater inspections.
- See recommendations under Elements 5, 6, 7 and 8 regarding appropriate enforcement responses.

3.10 Element 10 - Timely Reporting of Minimum Data Requirements

The degree to which the minimum data requirements are timely.

The focus of this element is on timely entry of Discharge Monitoring Report data (DMRs), inspections and enforcement actions into EPA's national database, ICIS-NPDES. EPA policy establishes minimum data requirements and standards for timeliness of data entry. BWPC enters DMRs for major facilities and major/minor inspections into ICIS-NPDES on a timely basis and prepares the QNCR as required. BWPC is successfully implementing their DMR nonreceipt tracking system. BWPC does

not enter its enforcement actions into ICIS-NPDES as required by EPA's database policy, and does not enter its stormwater inspections in ICIS-NPDES.

EPA is developing a Policy Statement which will establish minimum data requirements, referred to as the Requisite ICIS-NPDES Data Elements (RIDE), for the new ICIS-NPDES national database. EPA expects the Policy Statement will reiterate long-standing data management expectations and establish new standards related to the new database and areas of new emphasis, such as the stormwater program. When EPA's ICIS-NPDES Policy Statement is finalized, EPA will work with BWPC on their transition plan for population of ICIS-NPDES with the RIDE data elements.

Recommendation

- The BWPC should begin entering enforcement actions and informal notices of noncompliance into ICIS-NPDES.
- When EPA's ICIS-NPDES Policy Statement is finalized, BWPC should prepare a transition plan for population of ICIS-NPDES with the Requisite ICIS-NPDES Data Elements (RIDE), including stormwater inspections.

3.11 Element 11 - Accuracy of Minimum Data Requirements

Degree to which the minimum data requirements are accurate.

Metric A (data review)

This metric measures if enforcement actions are linked to violations in ICIS-NPDES. BWPC does not enter enforcement actions; therefore, there is no linkage.

Metric B (file review)

This metric measures the accuracy of data reporting for inspection reports and enforcement into ICIS-NPDES. BWPC has entered all inspection data for its major and minor facilities into ICIS-NPDES. NDEP inspection data in ICIS-NPDES accurately matches inspection records found in the NDEP facility files and quarterly reports. BWPC does not enter general stormwater permitted facility inspections into ICIS-NPDES. BWPC, however, tracks these inspections in their stormwater database. BWPC does not enter enforcement actions in ICIS-NPDES.

Recommendations

- The BWPC should begin entering enforcement actions and informal notices of noncompliance into ICIS-NPDES.
- When EPA's ICIS-NPDES Policy Statement is finalized, BWPC should prepare a transition plan for population of ICIS-NPDES with the Requisite ICIS-NPDES Data Elements (RIDE), including stormwater inspections.

3.12 Element 12 - Completeness of Minimum Data Requirements

The Degree to which the Minimum Data Requirements are complete.

Metric A

- Active facility universe: NPDES major individual permits: 14 (data in ICIS-NPDES is complete and correct)
- Active facility universe: NPDES minor individual permits: 76 (data in ICIS-NPDES is complete and correct)
- Active facility universe: NPDES general permits: BWPC has three general stormwater permits (construction, industrial, mining). While these permits are coded in ICIS-NPDES, the database does not include an inventory of the permit enrollees.

Metric B

- Majors - Correctly Coded Limits: The OTIS SRF report shows two permits with incorrectly coded limits. This discrepancy occurred during migration of data from PCS to ICIS-NPDES and has since been corrected.
- Majors - DMR Entry Rate: The OTIS SRF report shows 100 percent entered. This is correct and exceeds the national average of 92 percent and the national goal of $\geq$ 95 percent.
- Majors - Manual SNC Override Rate: BWPC does not make manual overides.

Metric C

- Minors - Correctly Coded Limits: BWPC does not enter minor NPDES permit limits into ICIS-NPDES. EPA policy does not require coding of minor permit limits at this time, however, this will likely be required when EPA completes its new ICIS-NPDES Policy Statement.
- Minors - DMR Entry Rate: BWPC does not enter minor NPDES permit limits into ICIS-NPDES, therefore this metric is not applicable.

Metric D

- Compliance Monitoring: Facilities Inspected (Coverage): BWPC enters all major and minor facility inspections into ICIS-NPDES. This data is complete and accurate.
- Compliance Monitoring: Number of Inspections: BWPC entered all of its major (20) and minor (24) facility inspections into ICIS-NPDES. This data is complete and accurate

Metric F

- NOV - Number of Facilities: BWPC does not enter NOVs into ICIS-NPDES
- NOV - Number of NOVS: BWPC does not enter NOVs into ICIS-NPDES

Metrics G, H, I, J, K

- Entry of formal actions, penalties, major facilities with compliance schedules, major facilities with permit schedules: BWPC does not enter these types of actions into ICIS-NPDES.

Recommendations

- NDEP should develop a plan for coding of minor permittee limits in ICIS-NPDES.
- The BWPC should begin entering enforcement actions and informal notices of noncompliance into ICIS-NPDES.
- When EPA's ICIS-NPDES Policy Statement is finalized, BWPC should prepare a transition plan for population of ICIS-NPDES with the Requisite ICIS-NPDES Data Elements (RIDE), including stormwater inspections.

ATTACHMENTS

Attachment 1 - ICIS-NPDES Universe List of Major Facilities and Lists for Inspections of Major and Minor Facilities

Attachment 2 - Enforcement Actions Issued During the Review Period

Attachment 3 - Enforcement Actions Issued Outside the Review Period, but reviewed

Attachment 1

Refresh Date: 7/27/2007

Begin Date: 07/01/2005

End Date: 06/30/2006

ICIS-NPDES

Region(s): 09

State: NV

Count of Total # Inspections at NPDES Majors and Minors in the State of Nevada

NV FY2006 Inspections
Region: 09

State: NV

Comp Monitoring Activity ID	NPDES ID	Facility Name	Actual End Date	Comp Mon Cat Code	Compliance Monitoring Type Desc	Curr. Major Minor Status	Agency Type Desc	State, Fed or Joint Insp?	Joint Lead Flag	Priority Desc	Program Code	Permit Type Code	Permit Status Code	Pretreat Prog Req'd Ind Code	Primary Permit SIC Code
400922137	NV0000060	TIMET FACILITY/BMI COMPLEX	6/13/2006	COM	Evaluation	Major	State	S			CWAOTHR	NPD	ADC		3339
400922137	NV0000060	TIMET FACILITY/BMI COMPLEX	6/13/2006	COM	Evaluation	Major	State	S			CWAOTHR	NPD	EXP		3339
400922170	NV0000078	KERR-MCGEE FAC-BMI COMPLEX	6/13/2006	COM	Evaluation	Major	State	S			CWAOTHR	NPD	EXP		2819
400922195	NV0020061	FALLON WWTP	5/23/2006	COM	Evaluation	Major	State	S			CWAOTHR	NPD	EFF		4952
400922195	NV0020061	FALLON WWTP	5/23/2006	COM	Evaluation	Major	State	S			CWAOTHR	NPD	EXP		4952
400922244	NV0020133	LAS VEGAS WWTP	11/14/2005	COM	Evaluation	Major	State	S			CWAOTHR	NPD	ADC	Y	4952

400922244	NV0020133	LAS VEGAS WWTP	11/14/2005	COM	Evaluation	Major	State	S			CWAOTHR	NPD	EFF	Y	4952
400922290	NV0020150	TRUCKEE MEADOWS WWRF	6/1/2006	COM	Evaluation	Major	State	S			CWAOTHR	NPD	EFF	Y	4952
400922290	NV0020150	TRUCKEE MEADOWS WWRF	6/1/2006	COM	Evaluation	Major	State	S			CWAOTHR	NPD	EXP	Y	4952
400922327	NV0020168	STEAD WRF	4/5/2006	COM	Evaluation	Major	State	S			CWAOTHR	NPD	ADC	Y	4952
400922327	NV0020168	STEAD WRF	4/5/2006	COM	Evaluation	Major	State	S			CWAOTHR	NPD	EXP	Y	4952
400922422	NV0020923	PIONEER AMERICAS-BMI COMPLEX	6/13/2006	COM	Evaluation	Major	State	S			CWAOTHR	NPD	ADC		2812
400922422	NV0020923	PIONEER AMERICAS-BMI COMPLEX	6/13/2006	COM	Evaluation	Major	State	S			CWAOTHR	NPD	EXP		2812
400922459	NV0021261	CLARK COUNTY WRD	11/28/2005	COM	Evaluation	Major	State	S			CWAOTHR	NPD	ADC	Y	4952
400922459	NV0021261	CLARK COUNTY WRD	11/28/2005	COM	Evaluation	Major	State	S			CWAOTHR	NPD	EFF	Y	4952
400922479	NV0021563	LAUGHLIN WRF	12/12/2005	COM	Evaluation	Major	State	S			CWAOTHR	NPD	EFF		4952
400922479	NV0021563	LAUGHLIN WRF	12/12/2005	COM	Evaluation	Major	State	S			CWAOTHR	NPD	EXP		4952
400922500	NV0021911	CLARK COUNTY RFD STORMWATER	9/23/2005	COM	Evaluation	Major	Other - EPA	E		Wet Weather - Storm water - MS4	CWASTMM	NPD	EFF		9511
400922501	NV0021911	CLARK COUNTY RFD STORMWATER	9/22/2005	COM	Evaluation	Major	Other - EPA	E		Wet Weather - Storm water - MS4	CWASTMM	NPD	EFF		9511
400922502	NV0021911	CLARK COUNTY RFD STORMWATER	9/21/2005	COM	Evaluation	Major	Other - EPA	E		Wet Weather - Storm water - MS4	CWASTMM	NPD	EFF		9511

400922503	NV0021911	CLARK COUNTY RFD STORMWATER	9/20/2005	COM	Evaluation	Major	Other - EPA	E		Wet Weather - Storm water - MS4	CWASTMM	NPD	EFF		9511
400922504	NV0021911	CLARK COUNTY RFD STORMWATER	9/19/2005	COM	Evaluation	Major	Other - EPA	E		Wet Weather - Storm water - MS4	CWASTMM	NPD	EFF		9511
400922512	NV0022098	CITY OF HENDERSON	12/4/2005	COM	Evaluation	Major	State	S			CWAOTHR	NPD	ADC	Y	4952
400922512	NV0022098	CITY OF HENDERSON	12/4/2005	COM	Evaluation	Major	State	S			CWAOTHR	NPD	EFF	Y	4952
600016157	NV0021911	CLARK COUNTY RFD STORMWATER	2/17/2006	COM	Evaluation	Major	U.S. EPA			Wet Weather - Storm water - MS4	CWASTMC	NPD	EFF		9511
600016168	NV0021911	CLARK COUNTY RFD STORMWATER	2/18/2006	COM	Evaluation	Major	U.S. EPA			Wet Weather - Storm water - MS4	CWASTMC	NPD	EFF		9511
600016172	NV0021911	CLARK COUNTY RFD STORMWATER	2/19/2006	COM	Evaluation	Major	U.S. EPA			Wet Weather - Storm water - MS4	CWASTMC	NPD	EFF		9511
600018957	NV0020150	TRUCKEE MEADOWS WWRF	9/22/2005	COM	Evaluation	Major	EPA Contractor	E			CWAPRTRT	NPD	EFF	Y	4952
600018957	NV0020150	TRUCKEE MEADOWS WWRF	9/22/2005	COM	Evaluation	Major	EPA Contractor	E			CWAPRTRT	NPD	EXP	Y	4952
600026417	NV0023345	ESMERALDA PROJECT GOLD MINE	5/16/2006	COM	Evaluation	Major	State	S			CWAOTHR	NPD	EFF		1041
							Major	**30**							

Comp Monitoring Activity ID	NPDES ID	Facility Name	Actual End Date	Comp Mon Cat Code	Compliance Monitoring Type Desc	Curr. Major Minor Status	Agency Type Desc	State, Fed or Joint Insp?	Joint Lead Flag	Priority Desc	Program Code	Permit Type Code	Permit Status Code	Pretreat Prog Req'd Ind Code	Primary Permit SIC Code
400922387	NV0020869	TMWA-HIGHLAND WWTP	5/12/2006	COM	Evaluation	Minor	State	S			CWAOTHR	NPD	ADC		4941
400922387	NV0020869	TMWA-HIGHLAND WWTP	5/12/2006	COM	Evaluation	Minor	State	S			CWAOTHR	NPD	EFF		4941
400922391	NV0020877	HUNTER CREEK WWTP	5/12/2006	COM	Evaluation	Minor	State	S			CWAOTHR	NPD	ADC		4941
400922391	NV0020877	HUNTER CREEK WWTP	5/12/2006	COM	Evaluation	Minor	State	S			CWAOTHR	NPD	EFF		4941
400922429	NV0021067	CAL NEVA VIRGINIAN HOTEL & CASINO	6/22/2006	COM	Evaluation	Minor	State	S			CWAOTHR	NPD	ADC		7011
400922429	NV0021067	CAL NEVA VIRGINIAN HOTEL & CASINO	6/22/2006	COM	Evaluation	Minor	State	S			CWAOTHR	NPD	EFF		7011
400922435	NV0021121	HILTON GARAGE DEWATERING	5/12/2006	COM	Evaluation	Minor	State	S			CWAOTHR	NPD	ADC		7011
400922495	NV0021750	HILTON GARAGE DEWATERING	12/12/2005	COM	Evaluation	Minor	State	S			CWAOTHR	NPD	ADC		7011
400922530	NV0022195	VALLEY HOSPITAL BASEMENT	12/13/2005	COM	Evaluation	Minor	State	S			CWAOTHR	NPD	EFF		8069
400922559	NV0022985	ALADDIN HOTEL AND CASINO	6/12/2006	COM	Evaluation	Minor	State	S			CWAOTHR	NPD	ADC		7011
400922559	NV0022985	ALADDIN HOTEL AND CASINO	6/12/2006	COM	Evaluation	Minor	State	S			CWAOTHR	NPD	EFF		7011
400922570	NV0023060	KERR-MCGEE CHEMICAL, LLC	6/13/2006	COM	Evaluation	Minor	State	S			CWAOTHR	NPD	ADC		4952
400922570	NV0023060	KERR-MCGEE CHEMICAL, LLC	6/13/2006	COM	Evaluation	Minor	State	S			CWAOTHR	NPD	EFF		4952
400922573	NV0023086	UNION 76 SERV STATION #5558	12/13/2005	COM	Evaluation	Minor	State	S			CWAOTHR	NPD	EFF		5541

400922576	NV0023094	UNION 76 SERV STATION #4616	12/12/2005	COM	Evaluation	Minor	State	S			CWAOTHR	NPD	EFF		5541
400922579	NV0023132	CITY OF RENO POLICE STATION	1/27/2006	COM	Evaluation	Minor	State	S			CWAOTHR	NPD	ADC		9221
400922579	NV0023132	CITY OF RENO POLICE STATION	1/27/2006	COM	Evaluation	Minor	State	S			CWAOTHR	NPD	EFF		9221
400922581	NV0023159	REGIONAL JUSTICE CENTER	12/12/2005	COM	Evaluation	Minor	State	S			CWAOTHR	NPD	ADC		4953
400922581	NV0023159	REGIONAL JUSTICE CENTER	12/12/2005	COM	Evaluation	Minor	State	S			CWAOTHR	NPD	EFF		4953
400922583	NV0023167	LANDER COUNTY	7/25/2005	COM	Evaluation	Minor	State	S			CWAOTHR	NPD	ADC		4952
400922586	NV0023191	CEASARS PALACE HOTEL & CASINO	6/14/2006	COM	Evaluation	Minor	State	S			CWAOTHR	NPD	ADC		7011
400922600	NV0023353	FORMER CHEVRON STATION 9-7753	12/12/2005	COM	Evaluation	Minor	State	S			CWAOTHR	NPD	EFF		5541
400922601	NV0023361	CHEVRON TEXACO PRODUCTS CO	12/13/2005	COM	Evaluation	Minor	State	S			CWAOTHR	NPD	EFF		5541
400922602	NV0023396	7-ELEVEN INC, STORE #20826	12/12/2005	COM	Evaluation	Minor	State	S			CWAOTHR	NPD	EFF		5411
600023000	NVU000068	CARSON CITY	9/20/2005	COM	Evaluation	Minor	U.S. EPA	E			CWAPRTRT	APR	EXP	Y	4952
							Minor	**25**							

Attachment 2

BWPC
Formal Enforcement Actions Issued During the Review Period
10/1/2005 - 9/30/2006

Facility and Type		**FOV/Orders** (Finding of Alleged Violation & Orders)	**Penalty Action**	**AOCs** (Administrative Order of Consent)	Reviewed
NPDES Majors					
Clark County (Muni)	NV0021261	✓			✓
Henderson (Muni)	NV0022098		✓		✓
Truckee Meadows WRD (Muni)	NV0020150	✓			✓
NPDES Minors					
Newmont-Lone Tree Mine (Ind)	NV0021962			✓ (amendment)	✓
Spills and Others					
Incline Village GID		✓			✓
Nevada Wood Preserving				✓ (amendment)	
Romarco Minerals		✓			✓
Conners Drilling		✓			
Insituform		✓			✓
Crystal Cascades			✓		✓
Stormwater					
Union Pacific Railroad		✓	✓		
TOTALS		**7**	**3**	**2**	**8**

Attachment 3

BWPC
Formal Enforcement Actions Issued Outside the Review Period, but Reviewed

Facility and Type		FOV/Orders **(Finding of Alleged Violation & Orders)**	Penalty Action	Reviewed
Henderson (Muni)	**NV0022098**	✓		✓
Incline Village	**NV0021261**		✓	✓
Clark County	NV0021261		✓	✓
TOTALS		1	2	3

STATE REVIEW FRAMEWORK REPORT

STATE OF NEVADA DIVISION OF ENVIRONMENTAL PROTECTION

RESOURCE CONSERVATION AND RECOVERY ACT PROGRAM

FINAL REPORT
August 26, 2008

Conducted by the
U.S. Environmental Protection Agency
Waste Division
Region IX

Date: August 26, 2008

Program Evaluated: Resource Conservation and Recovery Act (RCRA)

Information Sources Included in the Review: See below.

EPA Evaluator: Clint Seiter **Phone**: 415-972-33298

State Contact: Evan Chambers **Phone**: 775-687-9473

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).

Identification and Evaluation Information

RCRA Source Universe Information	Number of Sources in Universe
Universe of TSDs (FY06)	6 RCRAInfo (6 OTIS)
Universe of LQGs (FY06)	87 Nevada Evaluation Schedule* (103 OTIS)
Universe of SQGs (FY06)	515 Nevada Evaluation Schedule* (482 OTIS)
Total Number of Sources	608
Number of inspection files for review	30

*The Nevada Evaluation Schedule is an in-house NDEP database.

Data Metrics

Metric a	Inspection coverage - Treatment, Storage and Disposal Facilities.	100%
Metric b	Annual Inspection coverage - Large Quantity Generators.	91%
Metric c	Five-year inspection coverage - Large Quantity Generators.	100%
Metric d	Inspection coverage - Small Quantity Generators (5 FYs)	100%

Metric e	Inspections at all other active sites	526

File Review Metric

Metric r	% of Planned Inspections Completed	100%

Findings (including successful performance and areas for improvement):

- **Inspection coverage of Treatment, Storage and Disposal (TSD) facilities** –

Annual inspection coverage of large quantity generators (LQG) – OTIS shows a universe of 103 LQGs, whereas per RCRAInfo and the NDEP Evaluation Schedule databases there are 87 LQGs. The discrepancy is accounted for when eliminating designated remediation/one-time clean-up locations and deactivated generators.

The national measure guidance calls for 20% annual coverage for LQGs. The inspection coverage of LQGs during NDEP's FY06 comes to 91% (79 LQG inspections out of a universe of 87 LQG facilities).

Five-year inspection coverage of LQGs –The 85.1% calculation of percentage of LQGs inspected by NDEP over a five year period is artificially low for the reasons cited above. Revised calculations yield a metric of 100% LQGs inspected by NDEP in a five-year period.

Five-year inspection coverage of small quantity generators (SQG) - The OTIS data metric of 80.9% for inspections of the SQG universe inspected over five years includes facilities that have very recently joined the SQG universe but have not been inspected yet this current fiscal year. When these are discounted, the metric is 100% inspected SQGs over a five year period.

Nevada Commitments

Per the NDEP RCRA Grant Workplan:

- All TSDs will be inspected at least annually. The two high-risk Subpart CC facilities (US Ecology and Safety-Kleen) will be inspected quarterly. A review of the RCRA database reveals that quarterly inspections of these two facilities did take place during FY06;
- All LQGs will be inspected annually;
- SQGs will be inspected on a two-year cycle;
- CESQGs and complaints will be inspected and/or investigated as needed.

NDEP has essentially met their own more stringent commitments for FY06 (91% LQGs inspected vs. the 100% commitment), and surpasses the national average in its completion of the universe of planned inspections.

Citation of information reviewed for this criterion: NDEP Evaluation Schedule, RCRAInfo and OTIS databases.

Recommendations if corrective action is needed:

No recommendations.

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

Identification and Evaluation Information

RCRA Source Universe Information	Number of Sources in Universe
TSD Inspections	7
LQG Inspections	79
SQG Inspections	232
Total Number of Inspections	318
Number of inspection files for review	30

The file selection protocol in this review supports qualitative conclusions for the data described in the Framework metrics and does not support statistical inferences or quantitative comparisons.

File Review Metric

Metric a	Percentage of inspection reports that are adequately documented in files.	63%

Findings (including successful performance and areas for improvement):

NDEP does not provide an inspected facility with a copy of the inspection report. After an inspection is completed, if violations are noted, a letter goes to the facility listing the violations noted and instructing the facility to submit documentation of its return to compliance. In those

cases meriting a formal enforcement response, a show cause letter is sent to the facility, citing the violations and requesting that the facility meet with NDEP representatives to discuss a penalty response and return to compliance schedule. Inspection reports are available to the public for review upon request.

The reports the reviewer reviewed ranged in quality substantially. Some reports were detailed and comprehensive, with documentation of violations noted. Other reports were essentially typed field notes or checklists, without documentation (e.g. photos or copies of records). Reports fell into roughly the following categories:

- **No inspection report:** In two instances there were no inspection reports of any kind on file.

- **Checklists only:** In five instances, there were checklists only. The checklists did have a narrative portion providing the inspector with an opportunity to elaborate. These reports were sometimes inconclusive. For example, one checklist indicated that there were open and unlabeled containers without specifying the quantity of containers involved, or the percentage of containers in violation as opposed to the total number of containers. In another instance, the checklist noted that weekly inspection records (a requirement in Nevada) were missing, without specifying whether there were no records at all or partial records. No photos or copies of records accompanied any of these checklists, nor was there a description of the facility, or a background and enforcement history.

- **Typed field notes:** In four instances, the reports appeared to be typed field notes: a brief listing of potential violations noted and nothing else (e.g., no facility description, enforcement history, process description, facility layout, inspection narrative, photos, etc.).

- **Full report:** In 19 instances there were reports that followed a more traditional format (introduction, facility description, a narrative describing the actual inspection, a list of potential violations, photos, etc.).

As a reviewer, it's difficult to make a determination of "the percentage of inspection reports that are adequately documented in files", given that NDEP does not include copies of the reports to the facilities with letters describing potential violations. The criterion the reviewer decided to use was whether or not the "report" provided a reader unfamiliar with the facility or the actual inspection sufficient information to understand the case. The reviewer felt that the reports that followed "the traditional format" as described above met this criterion, and that the other reports (i.e., the checklists and typed field notes) did not.

NDEP asserts that inspection reports are crafted based on the facility generator status, size of the facility, complexity of the facility operations, and potential violations discovered. The report for a Conditionally Exempt Small Quantity Generator (CESQG) auto repair shop will never contain

the quantity of information found in the report for Large Quantity Generators (LQGs) such as universities, manufacturing operations, or gold mines.

Even in instances where the facility inspected is a CESQG or SQG, or where the inspection does not involve complex issues, if violations are noted the reports should be clear and comprehensive enough for an outside party to understand. The reviewer did not feel that this was the case regarding reports that did not go beyond typed field notes or simple checklists that had no written comments.

Citation of information reviewed for this criterion: File review.

Recommendations if corrective action is needed:

- If checklists are going to be used, they should provide a more quantitative depiction of potential violations: e.g., not just that there were unlabeled drums, but *how many* drums were unlabeled, or not that there were inadequate inspection logs, but how inadequate were these logs. The inspectors should also be encouraged to make use of the narrative portions of the checklists in order to provide more information about the facility and the inspection (or attach a narrative to the checklist);

- Reports should be written so that a person unfamiliar with the specific inspection and with the facility in general would be able to clearly understand what transpired during the inspection just by reading the report. This could include a facility description and enforcement history and a more detailed narrative of the actual inspection than just typed field notes. For inspections where potential violations were noted, this would include such documentation as photos or copies of records.

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

Identification and Evaluation Information

RCRA Source Universe Information	Number of Sources in Universe
TSD Inspections	7
LQG Inspections	79
SQG Inspections	260
Total Number of Inspections	346

Number of inspection files for review	30

File Review Metric

Metric a	Percentage of Inspection Reports with findings documented within a given time frame established by Region and state.	100%

Findings (including successful performance and areas for improvement):

All of the inspection reports reviewed were completed within the 45-day allowed time frame.

Citation of information reviewed for this criterion: File review.

Recommendations if corrective action is needed:

No recommendations.

Section 2: Review of State Enforcement Activity

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

Data Metrics

Metric a	SNC identification rate at sites with evaluations	0%
Metric b	SNC determinations (SNY date) completed within 150 days of "Day Zero"	0*
Metric c	No activity indicator - # of SNCs (FY06)	0*
Metric d	% formal actions with prior SNC.	23%

*These statistics are for the *federal* fiscal year 2006, which is from 10/01/2005-09/30/2006. During *NDEP's* fiscal year 2006 (07/01/2005-06/30/2006), there were two SNC determinations.

Findings (including successful performance and areas for improvement):

During the FY06 (10/01/2005-09/30/06), NDEP conducted 872 CEI inspections (414 "S" inspections and 458 "B" inspections) on a total of 855 facilities. If NDEP conformed to the national average (3.2% of CEI inspections resulting in SNCs), then there would have been 28 SNC identifications in Nevada for FY06.

In Nevada, not all facilities undergoing a formal enforcement action with penalties merit a SNC designation. NDEP has set up the following checklist to determine whether or not a facility merits a SNC designation:

1 Has a FOAV (Finding Of Alleged Violation), and;
2 Is a chronic or recalcitrant violator, or;
3 Deviates substantially from the terms of a permit, order, agreement or from RCRA statutory or regulatory requirements, or;
4 Caused actual exposure or a substantial likelihood of exposure to hazardous waste or hazardous waste constituents.

These criteria fall within the guidelines of the 2003 Enforcement Response Policy.

If a facility receives a Formal Enforcement Action, the Lead Inspector proposes a SNC designation (yes or no) using the criteria described above.
The proposed SNC designation is then reviewed by the Supervisor. The Supervisor will agree or disagree with the proposed designation.
The Bureau Chief in consultation with the Supervisor reviews the SNC designation. The Bureau Chief will agree or disagree with the proposed SNC designation. The Bureau Chief must approve all SNY designations.

States have the authority to define and apply SNC criteria for facilities within their borders, which makes using the number of SNCs during a given time frame an unreliable yardstick when measuring one state's performance against another's. Nevada's percentage of SNCs (0%) falls below national average (3.2%).

Citation of information reviewed for this criterion: Data from RCRAInfo/OTIS and file review.

Recommendations if corrective action is needed:

While both Region 9 and NDEP base their SNC designations on the same criteria, NDEP rate of SNC designation is below the national average and that of Region 9. It might be useful for Region 9 and NDEP RCRA enforcement staff to compare their SNC designation decisions on a routine basis. This would provide each agency's staff with the perspective of the other agency in making the SNC designation.

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

File Review Metrics

Metric a	State enforcement actions that contain a compliance schedule of required actions or activities designed to return the source to compliance. This can be in the form of injunctive relief or other complying actions.	24 (5 cases reviewed had no violations)
Metric b	Percentage of formal or informal enforcement responses that return sources to compliance.	100%

Findings (including successful performance and areas for improvement):

NDEP inspectors identify potential violations during the inspection and document the violations in their inspection reports (whether the reports are checklists, typed field notes, or traditional reports). As described above, if the violations noted only merit an informal response, a "Verbal Warning" or "Warning" letter goes out to the facility (without the report) citing the violation(s) and requesting that the facility submit documentation of its return to compliance.

In those cases where the violations are serious enough to merit a formal enforcement response, the Settlement Agreement will include a schedule for return to compliance. In some instances, the facility has already demonstrated its return to compliance prior to the issuance of the Settlement Agreement and so, of course, the Settlement Agreement would not contain a return to compliance schedule.

Of the 30 files reviewed, five inspections noted no violations. The 16 informal actions all included "Verbal Warning" letters requesting the facilities' return to compliance within a given time frame. In all cases, the facilities had returned to compliance (per facility documentation sent to NDEP). The nine formal actions all had Settlement Agreements. In one case, the facility had returned to compliance prior to the issuance of a Settlement Agreement, so there was no return to compliance schedule in the agreement. The other eight Settlement Agreements had return to compliance provisions.

Citation of information reviewed for this criterion: File review.

Recommendations if corrective action is needed: No recommendations.

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

Identification and Evaluation Information

Data Metric

Metric a	SNCs addressed within 360 days	0
Metric b	No activity indicator-formal actions	13 formal actions for FY06

File Review Metric

Metric c	Percentage of timely enforcement actions	96%
Metric d	Percentage of appropriate enforcement actions.	100%

Findings (including successful performance and areas for improvement):

According to RCRAInfo, 100% of the formal enforcement actions taken by NDEP during FY06 were done within 360 days of the inspection date. Also according to RCRAInfo, NDEP settled thirteen formal enforcement cases for a total of $57,975 in penalties.

NDEP returned to compliance 89% of the facilities that had informal actions against them within 240 days of the date of inspection. The average time-frame for an informal action was 115 days.

NDEP returned to compliance 100% of the facilities that had formal actions against them within 360 days of the date of inspection. The average time-frame for a formal action was 189 days.

Citation of information reviewed for this criterion: Data from RCRAInfo/OTIS and file review.

Recommendations if corrective action is needed:

No recommendations

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

Identification and Evaluation Information

RCRA Source Universe Information	Number of Enforcement Actions
State formal enforcement actions (FY06)	13 RCRAInfo
State informal enforcement actions (FY06)	89 RCRAInfo
Total number of enforcement actions (FY06)	102 RCRAInfo
Number of enforcement files for review	30

File Review Metric

Metric a	Percentage of formal enforcement actions that include calculation for gravity and economic benefit.	0% for economic benefit

Findings (including successful performance and areas for improvement):

Like EPA, NDEP's penalty policy is based upon a 9-cell matrix system with "deviation from the requirements" as one axis and "potential for harm" as the other. However, EPA's and NDEP's penalty policies are substantially different in a number of ways, including the following:

- Unlike EPA, NDEP's matrix does not have a range of values within each cell, just one set value;
- NDEP retains the right to pursue multi-day penalties and cites this right in the cover letters of its Formal Enforcement Actions. However, in practice, unlike EPA, NDEP rarely exercises this right;
- NDEP's penalty values have not been adjusted for inflation since its inception (1998), although, with the exception of its Major/Major value, all its values still fall within the range of EPA's values in equivalent penalty cells;
- After a penalty is calculated, it is discounted by 50% for all LQGs and by 65% for all SQGs (TSDs pay the full 100% of the calculated penalty).

Because of these differences, standard NDEP calculated penalties are substantially lower than EPA's.

NDEP also has an in-house policy of destroying all records of the actual penalty calculations, both from the files and from the enforcement officer's computer drive once the formal enforcement action is completed. This often had the result of making it nearly impossible during the review of determining how penalties were calculated in the files reviewed. However, because some files erroneously

(by NDEP's policy) still had the original penalty calculation sheets, the reviewer was in some instances able to reconstruct how the penalties were calculated.

Although NDEP's penalty policy does have provisions for calculating economic benefit, this was not done in any of the cases that still had their penalty worksheets intact (four out of nine cases reviewed).

Citation of information reviewed for this criterion: File review.

Recommendations if corrective action is needed:

- NDEP's in-house policy of destroying penalty calculations should be reviewed. It is reasonable for both the respondent facilities and the oversight agency to be able to review the logic of a specific penalty assessment. As a point of comparison Region 9 provides respondents with a detailed penalty assessment with count specific penalty calculations.
-

  Per NDEP, the agency has since implemented a program of saving penalty assessments as confidential documents.

I

- It is recommended that NDEP adjusts it penalty matrix to reflect the increase of inflation since the last adjustment to the matrix.

  NDEP has addressed this issue.

8. Degree to which final enforcement actions (settlements or judicial results) collect appropriate (i.e., litigation risk, ability to pay, SEPs, injunctive relief) economic benefit and gravity portions of a penalty.

Identification and Evaluation Information

RCRA Source Universe Information	Number of Enforcement Actions
State formal enforcement actions (FY06)	13 RCRAInfo
State informal enforcement actions (FY06)	89 RCRAInfo
Total number of enforcement actions (FY06)	102 RCRAInfo
Number of enforcement files for review	30

Data Metrics

Metric a	No activity indicator – actions	Penalties were levied against 13 facilities
Metric b	% of formal enforcement actions that carry any penalty in FY06	100%
	% of final formal enforcement actions that carry any penalty in last FY	100%

File Review Metric

Metric c	Percentage of final enforcement settlements incorporating penalties that account for economic benefit.	0%
Metric d	Number of final penalties collected	13

Findings (including successful performance and areas for improvement):

All nine of the formal actions reviewed had penalties associated with them. As described above, the NDEP in-house policy of destroying penalty calculations after the Settlement Agreement has been finalized made a file review on penalty actions difficult. However, there were still penalty calculations sheets in four files under review that gave some indication how the penalties were derived. Of these four cases, economic benefit played no part in the penalty calculations.

As described above, NDEP's penalty policy differs from EPA's in several substantial ways. The upshot is that the penalties that NDEP calculates using its policy are substantially lower than those calculated by EPA for similar cases.

Citation of information reviewed for this criterion: Data from RCRAInfo/OTIS and file review.

Recommendations if corrective action is needed:

- It's recommended that NDEP routinely consider economic benefit when calculating penalties for non compliance. BEN training is available to provide staff with a tool for making the economic benefit calculations.

- As mentioned above, it is recommended that NDEP rescind its in-house policy of destroying penalty calculations after a Settlement Agreement has been reached. As noted above, NDEP now saves these penalty assessments as confidential documents.

- It is recommended that NDEP review its policy of providing automatic penalty reductions for generators (50% reduction for LQGs and 65% reduction for SQGs) . Perhaps there could be certain eligibility criteria for the penalty discounts.

  NDEP has addressed this issue.

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

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

Identification and Evaluation Information

RCRA Source Universe Information	Number of Agreements
Performance Partnership Agreements	
Performance Partnership Grants	
PPA/PPGs	
Categorical Grants (SEAs)	
Other applicable agreements (enforcement agreements, etc)	3011 Grant and work plan
Total number of agreements	
Number of agreements reviewed	1

File Review Metric

Metric a	State agreements (PPA/PPG/SEA, etc.) contain enforcement and compliance commitments that are met.	100%

Findings (including successful performance and areas for improvement):

Per the NDEP RCRA Grant Workplan:
- All TSDs will be inspected at least annually. The two high-risk Subpart CC facilities (US Ecology and Safety-Kleen) will be inspected quarterly;
- All LQGs will be inspected annually;
- SQGs will be inspected on a two-year cycle;
- CESQGs and complaints will be inspected and/or investigated as needed.

NDEP has essentially met these commitments for FY06 (91% LQG inspected vs. the 100% commitment).

The work plan associated with the 3011 Grant also includes the following commitments:

- 5 TSD inspections;
- 18 LQG inspections;
- 50 sub-LQG inspections;
- CEI reports will be prepared within 45 calendar days of the inspections.

For the review period in question (FY06) these commitments were met.

Citation of information reviewed for this criterion: Data from RCRAInfo/OTIS and 3011 grant.

Recommendations if corrective action is needed: No recommendations.

Section 4: Review of Database Integrity

10. Degree to which the minimum data requirements are timely.

Identification and Evaluation Information

RCRA Source Universe Information	Number of Sources in Universe
TSD Inspections	7
LQG Inspections	79 (Nevada Evaluation Schedule)
SQG Inspections	260 (Nevada Evaluation Schedule)
Total Number of Inspections	346
Number of inspection files for review	30

File Review Metric

Metric a	% of SNCs that are entered to RCRAInfo more than 60 days after the determination.	0%

Findings (including successful performance and areas for improvement):

NDEP enters information regarding the inspection, inspection report, violations, enforcement actions, and return to compliance information in a timely and consistent manner.

Citation of information reviewed for this criterion: File review.

Recommendations if corrective action is needed: No recommendations.

11. Degree to which the minimum data requirements are accurate.

Identification and Evaluation Information

RCRA Source Universe Information	Number of Sources in Universe
TSD Inspections	7
LQG Inspections	79 (Nevada Evaluation Schedule)
SQG Inspections	260 (Nevada Evaluation Schedule)
Total Number of Inspections	346
Number of inspection files for review	30

Data Metrics

Metric a	# of sites SNC-determined on day of formal action	0
	# of sites SNC-determined within one week of formal action	0
Metric b	# of sites in violation for greater than 3 years	0

Findings (including successful performance and areas for improvement):

Metric a: No sites were identified as SNCs during FY06. As mentioned earlier, there were two SNCs during the previous fiscal year. In both instances, all formal actions were performed on a timely basis.

Metric b: For FY06 NDEP had no sites in violation greater than 3 years.

Citation of information reviewed for this criterion: Data from RCRAInfo/OTIS .

Recommendations if corrective action is needed:

No recommendations.

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

RCRA Source Universe Information	Number of Sources in Universe
Universe of TSDs (FY06)	6 RCRAInfo (6 OTIS)
Universe of LQGs (FY06)	87 Nevada Evaluation Schedule* (103 OTIS)
Universe of SQGs (FY06)	515 Nevada Evaluation Schedule* (489 OTIS)
Total Number of Sources	608
Number of inspection files for review	30

Data Metrics

Metric a Active Facility Universe Counts	# of operating TSDs in RCRAInfo	6 (6 OTIS)
	# of active LQGs in RCRAInfo	87 (Nevada Evaluation Schedule) (101 OTIS)*
	# of active SQGs in RCRAInfo	515 (Nevada Evaluation Schedule) (489 OTIS)
	All other sites in RCRAInfo	2893 RCRAInfo (1424 OTIS)*
Metric b	# of inspections	872 RCRAInfo (458 "B"; 414 "S") (708 OTIS)
	# sites inspected	855 RCRAInfo ((457 "B"; 398 "S") (677 OTIS)
Metric c	# sites with violations	147 RCRAInfo (53 "B"; 94 "S") (153 OTIS)
Metric d	NOV: Number of sites (FY06)	86 RCRAInfo (67 code 110; 19 code 120) (75 OTIS)
	NOV: Number of NOVs (informal enforcement actions) (FY06)	89 RCRAInfo (70 code 110; 19 code 120) (79 OTIS)
Metric e	SNC : # sites with new SNC (FY06)	0 RCRAInfo (0 OTIS)
	SNC: # of sites in SNC (FY06)	2 RCRAInfo (3 OTIS)**
Metric f	Formal Action: Number of sites	13 RCRAInfo (13 OTIS)

	Formal Action: Number taken	13 RCRAInfo (13 OTIS)
Metric g	Assessed penalties complete	$57,975 RCRAInfo ($57,975 OTIS)

Findings (including successful performance and areas for improvement):

*The discrepancy in counts between RCRAInfo and OTIS appears to be because the OTIS number doesn't include contractor inspections (code "B"), while the RCRAInfo number does.

** Two facilities (All Metals Processing and Master Halco) were still SNCs from pre-FY06 determinations. A SNY designation for Gregg Street Plating was entered on 5/11/2005 for a state CEI done on 6/9/2004. The subsequent SNN code was never entered into the RCRAInfo database (this has since been corrected).

Citation of information reviewed for this criterion: RCRAInfo/OTIS databases

Recommendations if corrective action is needed:

See recommendations in Metric #4 above.

Region 9 Comments:

NDEP in general enters inspection and enforcement data into the RCRAInfo database in a timely and comprehensive manner.

ndep
NEVADA DIVISION OF ENVIRONMENTAL PROTECTION
protecting the future for generations

STATE OF NEVADA
Department of Conservation & Natural Resources
DIVISION OF ENVIRONMENTAL PROTECTION

Jim Gibbons, Governor
Allen Biaggi, Director
Leo M. Drozdoff, P.E., Administrator

April 22, 2008

Kathleen Johnson, Director (OPA-1)
Office of Public Affairs
US EPA Region 9
75 Hawthorne Street
San Francisco, CA 94105

Dear Ms. ~~Johnson~~ Kathleen,

Enclosed is Element 13 of the SRF for each of the media programs evaluated by EPA late last summer. The attached documents provide detailed information on many other aspects of our compliance and enforcement programs that we feel represent state specific priorities, have had a significant impact on our resources, or are even more important to ensuring compliance and preventing or minimizing releases to the environment. By including them in the report as Element 13 all of this information is merely appended to the report. None of this information will be rolled up into the national report and it is unclear if any of this information will be used in any way as part of our program evaluation. So we hope that EPA will take the time to review the additional program elements described in the attachments for each program and that this information will also be used in any future discussions or reviews to help provide a more comprehensive picture of our compliance and enforcement programs.

Should you have any questions about the information contained in this submittal, please don't hesitate to contact me, Tom Porta or any of the Bureaus directly.

Sincerely,

Colleen Cripps, Ph.D.
Deputy Administrator

Enclosures

cc: ✓Julie Anderson, Office of Public Affairs, EPA Region 9
Tom Porta, Deputy Administrator, NDEP
Eric Noack, Chief, BWM, NDEP
Mike Elges, Chief, BAQP, NDEP
Greg Remer, Chief, BAPC, NDEP
Jon Palm, Chief, BWPC, NDEP

State Review Framework
Element 13 NPDES

Introduction

The State Review Framework (SRF) attempted to identify the effectiveness of the Nevada Division of Environmental Protection's (NDEP) compliance and enforcement programs for Air, Water and RCRA. The SRF reviewed Nevada's NPDES water program with respect to three general areas: inspections and the manner in which the inspection reports are written and managed; the enforcement process, including collection of penalties; and data entry efforts into a national database. While these elements certainly have their place, they do not tell the whole story of a successful compliance and enforcement program. The SRF ignores compliance rates and the efforts to maintain high rates which in turn reduce the number of violations and enforcement actions. In Nevada's NPDES program, emphasis is placed on compliance, resulting in fewer violations, greater protection of public health and fewer impacts to the environment. This philosophy is implemented by requiring facility design and operation to be managed by qualified persons, inspecting regulated facilities at a rate that exceeds the federal requirement, and utilizing a strong public outreach effort.

Inspections

The tables below show the NPDES inspection data for calendar year 2006 and 2007 for stormwater inspections and major and minor permit inspections.

Description	2006	2007
Total Stormwater Permits	2,778	2,717
Actual Percentage Inspected	46%	33%
Federal - SW % Required	10%	10%

Description	2006	2007
Majors	11	11
Majors Inspected	11	11
Actual Percentage Inspected	100.0%	100.0%
Federal - Majors % Required	100.0%	100.0%

Description	2006	2007
Minors	73	73
Minors Inspected	16	21
Actual Percentage Inspected	21.9%	28.8%
Federal - Minors % Required	20.0%	20.0%

NDEP inspects its permitted facilities at a greater rate than is required by EPA in order to promote and encourage voluntary compliance. This approach has been effective as the compliance rate average is over 90%. These rates are reflected in the Compliance section of this report.

In FY08, 100% of the 106 Federal Assistance Agreement ($909,800) went to our Water Quality Planning program and 0% to the NPDES programs. In previous years approximately 30% of the Federal Assistance Agreement went to the NPDES program for stormwater inspections. This shift in funding was made to address priorities within Water Quality Planning program. The NPDES programs are fee funded and receive no federal assistance of any kind.

Public Outreach

NDEP's efforts associated with public outreach and education have also proven to be effective in achieving and maintaining compliance. An example is the NPDES stormwater program. NDEP provides approximately 32 free stormwater compliance workshops per year to developers, contractors, consultants, engineers and other interested parties. In addition to the structured workshops, NDEP provides on-site and corporate training to approximately 24 businesses per year.

NDEP maintains a strong working relationship with the major dischargers. Besides a formal compliance inspection and follow-up every year, NDEP conducts various meetings and conference calls regarding potential problems and issues before they become violations. Additionally, NDEP meets on a regular basis with the four major dischargers in Las Vegas one of the fastest growing cities in the nation.

NDEP also has developed good communication with the minor dischargers. Formal compliance inspections are conducted once every four or five years and inspectors are always willing to explain permit conditions and discuss changes as they may occur.

One of the most successful out reach programs has been operator training and assistance under the Circuit Rider program. This program has been remarkably effective at preventing waste water permit violations in our rural communities. NDEP has continued to fund this beneficial program after the federal assistance under 104(g) was illuminated in 2006.

These education and out reach efforts have proven to be key factors for achieving and maintaining compliance within our regulated community.

Enforcement

NDEP uses formal enforcement tools and collects associated penalties when necessary. Enforcement actions are taken for, but are not limited to, cases demonstrating culpability, potential or realized harm to the environment and failure to meet compliance schedules. Enforcement numbers are modest in the NPDES program for calendar years 2006 and

2007. The emphasis on compliance and out reach reflects a high voluntary compliance rate in our regulated community.

Description	2006	2007
Compliance Letters	338	436
Informal Enforcement Actions	19	31
Formal Enforcement Actions	12	9
Significant Noncompliers	0	1

Compliance

NDEP strives for compliance by working cooperatively and reasonably with the regulated community as mentioned previously. NDEP ensures that discharges are managed by Nevada certified operators, a measure not required by the Clean Water Act. All facility plans and specifications are required to be submitted by a Nevada licensed professional engineer. In the case of wastewater treatment facilities, NDEP has established a wastewater operator certification program that certifies wastewater operators at various grades of technical expertise and ability. Depending upon the complexity of the wastewater treatment facility, NDEP issues a discharge permit that requires a specific grade operator to be responsible for plant operations. These important programs directly impact Nevada's compliance rate, however they were not evaluated during the SRF process.

The permit compliance rates are as follows based on calendar year 2007:

100% among the 11 major NPDES permittees
92% among the 73 minor NPDES permittees
89% among the 2700+ stormwater permittees

Database Management

NDEP utilizes a state database system in which pertinent compliance and enforcement data are stored and managed. The state's database is the "system of record" and is available for public review. This electronic method is efficient and has allowed for a greater number of inspections to be conducted due to inspectors not being tied up with preparing written reports. Unfortunately the SRF reviewers did not take this into account and we were marked for not having adequate paper files on stormwater inspections.

NDEP is working under an agreement with the EPA Region IX for minimum data elements to be directly input into the federal database. NDEP is also enhancing its state database to allow data to be electronically uploaded to the federal database through the Exchange Network. However, EPA has indicated potential problems may exist with the federal ICIS database system and the ability to communicate through the Exchange Network. Element 10 of the SRF review addresses the state entering data into a federal database and if the data is to the level dictated by EPA. NDEP has invested significant resources into the Exchange Network system in order to meet these database requirements. NDEP will not pull inspection resources to populate the federal database

ICIS as this would have a direct, negative impact on compliance rates and the environment.

Conclusion

Violations and the resultant enforcement actions are only a part of NDEP's compliance strategy. They do not represent the success of the program or determine its adequacy. Significant resources are expended to keep the regulated community in compliance with a significant field presence and with extensive out reach. By reducing illicit discharges and other violations, minimal impacts to public health and the environment have been realized. NDEP finds no compelling reason to change this approach.

State Review Framework
Element 13 RCRA

Introduction

The Nevada Division of Environmental Protection (NDEP) has an obligation to protect human health and the environment and a responsibility to safeguard our limited natural resources particularly waters of the State. One of the key elements in the protection of Nevada's water resources is the RCRA Compliance & Enforcement (C&E) Program. Recognizing the need for proactive water resource protection, NDEP has developed its RCRA C&E program maximizing the prevention of hazardous constituent releases to waters of the State. Nevada cannot afford to implement USEPA's typical RCRA C&E program that relies on reactive enforcement metrics as the measurement of success. This reactive approach is unacceptable to Nevada as it drastically increases the threat to waters of the State.

NDEP's RCRA C&E program's primary goal as a regulatory program is to gain voluntary compliance with applicable regulations throughout the regulated universe. Compliance rates are a measurement of success for the NDEP's RCRA C&E program not the number of enforcement actions or facilities designated as Significant Non-Compliers (SNC). The program has developed a number of strategies to reach its goal of voluntary compliance within the regulated universe. The most important and successful strategy employed by the program is a visible field presence. Saturating the regulated universe with compliance inspections has facilitated voluntary compliance.

An Assistance Agreement of $750,000 per year from the USEPA supports less than 50% of the Nevada's RCRA C&E program. The amount of the Assistance Agreement has remained constant since 2004.

Inspections and Assistance

A typical EPA approved RCRA C&E program attempts to inspect 20% of the generator universe annually and finds a large percentage of those facilities out-of-compliance with some facilities significantly out-of-compliance. In contrast, NDEP's RCRA C&E program has committed to EPA Region IX a goal of annual inspections for Large Quantity Generator (LQG) of hazardous waste. Additionally, NDEP's RCRA C&E program has committed to EPA Region IX a goal of biennial inspections for Small Quantity Generator (SQG) of hazardous waste.

Nevada is fortunate in that the regulated universe is relatively small; approximately 1,900 facilities possess active EPA ID numbers, as compared with heavily industrialized states.

The1,900 facilities with active EPA ID numbers, broken down by Handler status, are as follows:

- 6 Treatment, Storage, and Disposal Facilities (TSDF)
- 89 Large Quantity Generators (LQG)
- 500 (est.) Small Quantity Generators (SQG)
- 1,200 (est.) Conditionally Exempt Small Quantity Generators (CESQG)
- 100 (est.) other facilities, primarily "Used Oil" regulated activities

All TSDFs are inspected four (4) times annually by the BWM as required by Nevada Revised Statutes. The federal requirement calls for one inspection annually.

The inspection universe of LQG facilities is established on July 1 of each state fiscal year (SFY). During SYF 2006, 91% (81/89) of the identified LQG facilities were inspected. During SYF 2007, 92% (82/89) of the identified LQG facilities were inspected. The federal goal is 20%, or 18 facility inspections, annually.

The RCRA C&E program established the goal to inspect all Small Quantity Generator (SQGs) facilities on a biennial cycle. During SFY 2006-2007 biennium, 95% (489/517) of identified SGQ facilities were inspected. The federal goal is 10%, or 52 facility inspections, annually.

To expand our coverage in the two largest urban counties, the RCRA C&E program has also entered into contracts with the Southern Nevada Health District in Clark County and Washoe County District Health Department to conduct inspections at Conditionally Exempt Small Quantity Generators (CESQG) and some SQG facilities. Each county agency completes approximately 300 inspections annually from a regulated universe of approximately 500 in Clark and 400 in Washoe County. Approximately half of the CESQG universe in Nevada is inspected annually. There is no federal inspection goal for CESQGs.

In an effort to efficiently inspect these minimally regulated facilities, the RCRA C&E program, in conjunction with the Office of Information Management, is developing an electronic inspection checklist for staff on tablet PCs. Inspection reports are crafted based on the facility generator status, size of the facility and complexity of the facility operations and the alleged violations discovered. Since the report for a CESQG will never contain the quantity of information found in the report for an LQG, the electronic checklist, currently under development, seems ideally suited for CESQG inspections. The RCRA C&E program expects to realize an increase in the number of inspections as the electronic checklist decreases staff time and effort spent completing inspection reports and enforcement letters.

Hazardous waste statutes and regulations are complicated and public finds them difficult to understand. Many small businesses lack environmental compliance staff and have a poor understanding of the statutes and regulations. In an effort to maximize compliance, the RCRA C&E program has had a contract with the Nevada Small Business Development Center, Business Environmental Program (BEP) for almost 20 years to

provide education and outreach to the regulated community. The amount of the current contract is $150,000 per year.

In a free and confidential setting, the BEP provides the public and regulated community information and answers to hazardous waste management questions. The BEP also provides one-on-one free and confidential counseling on environmental management and waste minimization over the phone and through on-site visits. Additionally, BEP produces a newsletter covering environmental compliance issues and develops fact sheets on key regulatory issues and case studies.

During calendar SYF 2007, the BEP responded to 565 requests for assistance through the compliance assistance hotline, trained 392 individuals in compliance assistance seminars, completed 43 on-site consultations, distributed the "BEP Reporter" newsletter to a targeted mailing list of 4,000 facilities, and maintained a compliance assistance website which received more than 70,000 hits. The number of contacts with the public and regulated community was enormous when compared to the size of Nevada's regulated universe.

Results from BEP's 2006 effectiveness survey include:

- 100% of the respondents found the information BEP provide was helpful for their operation
- 89% had improved operations or processes
- 98% indicated BEP helped them maintain or improve compliance with hazardous waste regulations
- 70% passed information onto other businesses or referred businesses to BEP
- 45% indicated a reduction in generated waste as a result of BEP information
- Respondents reported reducing hazardous waste generation by 248,607 pounds during the previous year with a cost savings of $486,900 as a result of assistance received from BEP

Environmental Results Program

The NDEP received grant funding from USEPA for an "Environmental Results Program" for dry cleaners. The program measures improvements in compliance and provides quantifiable estimates of emissions that were prevented by dry cleaners using perchloroethylene. Baseline measures were developed in the first year of the project for Washoe County and will be developed in year two for Clark County. Educational materials, including a detailed compliance manual for dry cleaners, and free training are provided to the participating dry cleaners. A Self-Certification was developed for dry cleaning businesses to conduct internal compliance audits. Post-certification inspections of drycleaners will occur during year three. Baseline and post-certification measures of compliance rate and environmental performance will be compiled. A framework for continuing to assess and measure dry cleaner environmental performance after the grant period ends will be established. The NDEP is working with the BEP and local agencies to implement the program. The concept of the "Environmental Results Program" is to include the dry cleaners in the regulatory process as a proactive participant. The

participation will lead to facility "buy in" to the regulatory process. The "Environmental Results Program" is expected to increase compliance rates in dry cleaning industry and allow the RCRA C&E program to direct its resources to other industries within the regulated community.

Compliance and Enforcement

Compliance

The data metrics chosen for the State Review Framework (SRF) by the USEPA's Office of Enforcement and Compliance Assurance (OECA) only address Inspections, Enforcement Activity, and Data Integrity. Noticeably absent from the data metrics is any mention of Compliance. As stated earlier, NDEP's RCRA C&E program primary goal as a regulatory agency is to gain voluntary compliance with applicable regulations thereby protecting human health and the environment, particularly preventing releases to waters of the State.

The RCRA C&E program calculates compliance rates and reports the results to EPA Region IX quarterly. Compliance rates are calculated for the previous quarter using the following data criteria: facilities in compliance at the time of inspection, and facilities that corrected alleged violations within 90 days of the inspection are considered to be in compliance. The number of facilities in compliance divided by the total number of inspections for that quarter yields the compliance rate. The compliance rate for SFY2006 was 98% and SFY2007 was 96%. The RCRA C&E program is extremely proud of our high compliance rates and look to these rates of compliance as a measure of program success.

The SRF neglects to consider this measure of achievement.

Enforcement

The RCRA C&E program credits the high rates of compliance to the intense inspection schedule and a successful enforcement program. A successful enforcement program relies on a broad array of tools to achieve voluntary compliance not the single solution approach for every compliance issue. It is the policy of the RCRA C&E program that, whenever possible, enforcement should be progressive, generally selecting the least aggressive enforcement tool necessary to achieve compliance. While a certain degree of flexibility and discretion are permitted, procedures are in place to ensure, to the extent possible, that enforcement of the state and federal hazardous waste statutes and regulations is applied consistently within the RCRA C&E program. The selection of an appropriate enforcement action is based upon the worst alleged violation present and the facility's previous compliance history.

Enforcement Actions taken by the Nevada RCRA C&E Program is listed below.

	SFY2006	SFY2007
Informal Enforcement Actions	144	84
Formal Enforcement Actions	11	11
SNC designations	2	3

EPA Region IX reported zero (0) SNCs in the SRF for Nevada's RCRA C&E program. This discrepancy is explained by the fact that the Region IX report used the Federal Fiscal Year instead of the State Fiscal Year and, by chance, the five (5) SNC designations in SFY2006 and SFY2007 fell outside the 12-month period of the 2006 Federal Fiscal Year. Nevada does not dispute the number of SNCs reported by Region IX; however, Nevada believed that an explanation of the data value was warranted as Nevada has averaged 2 to 3 SNCs per year.

EPA Region IX has stated that all Formal Enforcement Actions, some Informal Enforcement Actions, and even some facilities without alleged RCRA violations require SNC designation. Nevada fundamentally disagrees with EPA's position that facilities receiving an Informal Enforcement Action and facilities without alleged RCRA violations are candidates for SNC designation by Nevada's RCRA C&E program. It is important to note that Nevada's program has issued Formal Enforcement Actions for relatively minor alleged violations in order to meet with facilities in Formal Show Cause Conferences. The Formal Show Cause Conference provides an early opportunity for compliance before minor alleged violations become larger compliance issues and potential threats to human health and the environment. Under Nevada's program procedures, final SNC designations are made by RCRA C&E program management on a case-by-case basis using specific information about the actual facility, processes, generated wastes, and alleged RCRA violations observed during an inspection. USEPA's position arbitrarily removes an effective enforcement tool from our program and eliminates another compliance opportunity.

It is critical for the SRF to report that the Nevada RCRA C&E program continues to follow the guidelines contained in the Hazardous Waste Civil Enforcement Response Policy (ERP) document dated December 2003. Moreover, Nevada's RCRA C&E program SNC designation procedure also falls within the guidelines of the 2003 ERP.

The Nevada RCRA C&E program acknowledges that the number of SNC designated facilities (0.2%) is significantly below the national average (3.2%). Nevada maintains that this validates the effectiveness of our RCRA C&E program, intense field presence through inspections and compliance assistance activities. Nevada's RCRA C&E program strives to have zero tolerance for SNCs.

It appears that the goal of the federal program has shifted away from compliance to an arbitrary statistic of national average of SNC designations. For Nevada to comply with this new approach, Nevada would need to conduct less frequent inspections (20% of LQGs annually instead of 100%) and eliminate compliance assistance in its entirety. This course of action would certainly increase the number of facilities that are out-of-compliance and increase the number of facilities designated as SNCs; however; this

reactive approach to environmental protection is unacceptable to Nevada. The reactive approach is undesirable as it drastically increases the threat to waters of the State. Nevada prefers the proactive, preventive approach to environmental protection by complete coverage of the regulated universe through field presence and compliance assistance.

Conclusion

The obligation to protect human health and the environment and a responsibility to safeguard our limited natural resources, particularly waters of the State, is not taken lightly by NDEP. NDEP developed its RCRA C&E program to maximize prevention of hazardous constituent releases. The key elements of the program are inspection saturation, aggressive compliance assistance, program innovation, and enforcement flexibility. NDEP's RCRA C&E program measures success through compliance not in the number of enforcement actions or facilities designated as Significant Non-Compliers. Nevada cannot afford to implement USEPA's typical RCRA C&E program that relies on reactive enforcement metrics as the measurement of success. Nevada's RCRA C&E program, as configured, effectively and efficiently protects human health and the environment and safeguards waters of the State.

NDEP Air Program – SRF Element 13
EPA State Review Framework

SUMMARY

The Nevada Division of Environmental Protection (NDEP) finds that the most effective way to protect the environment throughout Nevada is to simply prevent or minimize releases to the environment. This is accomplished by ensuring compliance with Clean Air Act and state regulatory programs. Effective education and outreach to the regulated community and maintaining an active, visible field presence are two aspects of a successful compliance and enforcement strategy that fulfill these goals. However, these are not addressed in the SRF or EPA report and warrant further discussion as provided below.

In addition to focusing more time and effort on preventing violations of the law, during the review period the NDEP also developed and implemented two state-specific programs that address state-specific priorities and result in significant, measurable environmental benefit. The first is the Nevada Mercury Control Program, a regulatory program designed to minimize mercury emissions from the precious metal mining industry by requiring the installation of case-by-case maximum achievable control technology (MACT). The second is the Nye County Fugitive Dust Ordinance. This ordinance was developed by NDEP and Nye County Planning in cooperation with EPA Region 9, to minimize fugitive dust and ensure compliance with the National Ambient Air Quality Standard (NAAQS) for coarse particulate matter.

The NDEP relies on an aggressive inspection schedule and regular communication with regulated facilities to help ensure compliance. This ongoing program focuses on annual inspections of major facilities, timely responses to excess emissions notifications and permit deviation reports, and close attention to emissions compliance tests. The most significant investigations and enforcement actions undertaken by the NDEP in the last three years were initiated because of the NDEP's diligence in pursuing the underlying causes of excess emissions notifications and/or permit deviation reports.

Several major multi-year investigations and compliance actions were also conducted during the review period. They include an investigation of the Nevada Power Company - Reid Gardner Generating Station, the Yukon-Nevada Gold Corporation (formerly Queenstake) Jerritt Canyon Mine, and Cyanco.

Finally, NDEP strongly urges EPA to address the limitations of the AFS database and the burden it imposes on state and local agencies. AFS duplicates many items tracked in the NDEP's internal database, but is not as comprehensive, requires specialized training for data entry and reporting, and is limited in utility. In fact, NDEP is unable to retrieve needed information and so must rely solely on its own data system for compliance and enforcement purposes. EPA, itself, in its October 9, 2007, AFS Business Case Interview Guide, has recognized that AFS is "archaic, cumbersome, and costly to maintain." The NDEP believes it is unreasonable to for the state to reduce its field presence in order to maintain a data management system that is of no value to Nevada

Inspections and Assistance

The NDEP finds that the most effective means of ensuring compliance is to maintain its presence in the field and through broad communication with regulated facilities. This is accomplished through annual inspections of major facilities, timely review of excess emissions notifications and permit deviation reports, and close attention to emissions compliance tests. The NDEP targets major (Title V/PSD) sources for annual inspections and synthetic minor (SM) sources for inspections every three years. This inspection schedule is much more aggressive than the commitment made by the NDEP under its CMS Plan, which only requires inspections of major sources and synthetic minor sources every two and five years, respectively. Inspectors review excess emissions notifications and permit deviation reports upon receipt, and respond as necessary. This is a continuous, ongoing process. For example, the NDEP does not wait until it receives a major source's Annual Compliance Certification to investigate reported excess emissions or undertake actions against permit deviations.

The NDEP air program currently regulates 674 facilities:

- 30 Major sources (29 in FY06)
- 33 Synthetic Minor Sources (31 in FY06)
- 611 Minor (Class 2 and Class 3) Sources

In each of the calendar years 2005 and 2006, NDEP inspected 23 of the 29 major sources (79.3%). Over the two-year period, 27 of the 29 sources (93%) were inspected at least once. One of the two facilities not inspected in 2005-2006 was the Nevada Power Company-Reid Gardner Generating Station, which was already the subject of an intensive ongoing investigation. The other was inspected in the 2005 fiscal year, but not in the calendar year. The NDEP has inspected 27 of the 29 SM sources (93%) within the last three years, and has inspected 22 of the 29 SM sources (76%) at least twice in the last five years. These inspection rates are well above the commitments made by the NDEP under its CMS Plan, and exceed the national averages of 82.7% for major sources and 86.1% for SM sources quoted by EPA. The NDEP's achievements relative to facility inspections, timely review of and response to excess emissions notifications, permit deviation reports, and major investigations or settlements are not reflected in the SRF metrics or EPA report.

In addition to maintaining a strong field presence, the air program at NDEP conducts significant education and outreach efforts. As new federal requirements or state programs are adopted as state rules, the agency typically holds several meetings with the affected regulated community and their associations, consultants and attorneys, to ensure they are aware of the changes being proposed, how they will be affected, the timelines for implementation and NDEP's expectations. These meetings are in addition to the public workshops and 30-day public comment periods required for the adoption of any new regulation. Regular meetings are also held with major industry groups, such as mining, electrical power generation and general contractors. These meetings are designed to ensure they are aware of program changes or issues as they arise and to provide an opportunity for dialog between the agency and the regulated community. The air program also provides specific training on issues that the regulated community may be having difficulty with, i.e. "Minimizing Fugitive Dust," "Permitting for Small Sources" and "What to Expect During an Inspection." These activities have significantly reduced the need for enforcement by ensuring that the regulated community knows in advance what is expected of them, they know who to talk to if they have any questions about the requirements, and they know that issues can be addressed before they become major problems.

Complaints

The NDEP thoroughly investigates all of the complaints that it receives. Nevada is the fastest-growing state in the nation, and the encroachment of residential communities on industrial areas has become a major issue. In 2007 and 2008, complaints regarding fugitive dust and odors increased dramatically. From July 2007 through March 2008, the NDEP responded to over 385 complaints, of which approximately 64% were odor complaints directed at three different facilities. Although this total includes many repeat complainants, all incidents were tracked and investigated. The NDEP has devoted considerable resources (20% of the Air Quality Compliance and Enforcement staff) to investigating and seeking resolution to these complaints. It should be noted that all complaints are eventually resolved. In addition to these investigations, the NDEP responds to requests for technical assistance from local governments and other planning and land use entities. The NDEP works with these entities regarding the applicability of local zoning ordinances and special use permits as potential tools to address fugitive dust and odor issues. Regardless, odor and dust complaints will continue to demand appreciable resources to effectively manage these issues. Complaint investigation and resolution were not considered in the SRF or EPA report.

Grant Funding and State Priorities

For FY05, FY06 and FY07, the NDEP received approximately $793,000 each year in EPA air quality grant funding, representing only 33% of the NDEP's programmatic expenditures for air quality. For FY08/09, EPA grant funding provides only ~14% of the NDEP's air quality budget. Because EPA provides so little of the funding required to implement the air quality program and due to cost of living increases the funding provided declines in value each year, NDEP must focus the vast majority of its resources on state priorities. As federal funding continues to become a smaller percentage of the programmatic budget, and as federal mandates continue to increase, the NDEP can no longer continue to provide more services to address EPA objectives without additional federal funding. NDEP has been forced to closely evaluate the activities conducted by the agency and develop our own set of priorities.

Due to the uniqueness of our state, particularly the area over which NDEP has jurisdiction (i.e. the area is currently in attainment with all of the NAAQS., there are no large urban centers where air toxics must be addressed, mercury emitted by the mining industry is not federally regulated, etc.), our priorities often don't match those of EPA. In the past, NDEP has worked closely with the Region to establish state specific priorities that the Region could support. We hope we will be able to continue to address those priorities. However, we are concerned that the SRF, as it is currently structured, and because it relies on AFS, will only make it more difficult to address state-specific priorities since few of the state priorities or activities can be captured in the existing metrics. Reliance on existing federal databases especially those widely recognized as archaic, cumbersome, burdensome and of so little utility, to evaluate the effectiveness of an individual state's compliance and enforcement program, will result in a misleading, incomplete and ultimately incorrect description of the state's overall program.

State-Only Programs

During the reporting period, the NDEP implemented two major air quality programs that have, and will continue to result in significant, measurable environmental benefit. The

development of these programs required substantial additional resources from the air program (resources paid for through fees), but were determined to be critical state and, in the case of the Nevada Mercury Control Program, regional priorities. Implementation of the two programs has required significant resources from the Compliance and Enforcement Branch yet were not considered in the SRF or the EPA report.

A. Nevada Mercury Control Program

The Nevada Mercury Control Program (NMCP) is a regulatory program designed to minimize mercury emissions from the precious metal mining industry through the determination and installation of maximum achievable control technology (NvMACT). Mercury emissions from the precious metal mining industry were identified as a large mercury source in the United States through the 1998 Toxics Release Inventory. These emissions are currently unregulated by EPA.

NDEP and EPA began working with the four companies with the largest emissions to reduce those emissions through a voluntary program in 2000. However in 2004, NDEP decided that a regulatory program was needed to require mercury emissions controls on all thermal processes operated within the mining sector and establish consistent and enforceable recordkeeping, reporting, testing and operational parameters. Throughout 2005, the NDEP began meeting with the mining industry, environmental groups, regulatory agencies from other states, and EPA to develop the NMCP. The regulatory program was adopted by the Nevada State Environmental Commission in March 2006 and the regulations became effective two months later after approval by the State Legislative Commission.

The NMCP requires annual emissions testing of thermal processing units with the potential to emit mercury, reliance on a special permit application to guide the regulated community on providing information for determining the maximum achievable control technology for each applicable processes (NvMACT), and a permit that includes the appropriate installation and operation of the required control technology. The NDEP conducted numerous meetings with environmental groups and the mining industry to gather their input and help ensure that the programmatic requirements were understood.

The NMCP is the first program of its kind in the nation. Regular monthly meetings with the regulated community continue to be held to help ensure that the program's testing, permit applications, and NvMACT evaluation processes are being conducted in accordance with the regulatory provisions.

Implementation of the NMCP has demanded considerable resources (30% of the Compliance and Enforcement staff) to develop procedures for the mercury emissions testing requirements, oversee the testing, and evaluate the results. Many of the thermal units regulated by the NMCP represent processes and ore chemistry that are unique to the gold mining industry, and many processes vary from mine to mine. Over half of the applicable thermal units had not previously been source tested for any pollutant nor are they required to be under any existing federal requirements. In response to requests from EPA and NGOs, the initial testing in 2006 utilized the Ontario Hydro Method of testing in an attempt to better identify the species of mercury emitted from these thermal units. In 2007, testing was based on EPA Method 29 to determine total mercury emissions from over 120 thermal units at 15 mines.

The emissions testing required by the NMCP has provided much of the basis for the ongoing investigation undertaken by the NDEP against Yukon-Nevada Gold's (formerly Queenstake's) Jerritt Canyon regarding the mercury emission controls on its roasters.

B. Nye County Fugitive Dust Ordinance

The population of Nevada has increased by ~50% in the last five years, making it the fastest growing state in the nation. In some rural areas the population has doubled during that same period. Rapid development and the desert climate combine to make fugitive dust a major air quality issue.

In 2003, the NDEP and EPA recognized that fugitive dust from residential/commercial development and construction activities in the Nye County town of Pahrump posed a threat to the town's compliance with National Ambient Air Quality Standard (NAAQS) for coarse particulate matter. The NDEP implemented special provisions for dust control for air quality surface area disturbance (SAD) permits issued in Pahrump, and initiated public outreach in Pahrump to alert the regulated community and residents to the issue. That same year, Nye County began to develop fugitive dust regulations through cooperation with the NDEP and EPA.

Public outreach and workshops conducted in 2003 through early 2005 resulted in promulgation of the Nye County Fugitive Dust Ordinance. The Ordinance was implemented on a provisional (non-enforcement) basis in June 2005 to allow the community to become familiar with the dust control regulations. That same month, the NDEP hired and trained a local compliance inspector dedicated to enforcing the Ordinance.

The Ordinance was formally implemented in June 2006. The NDEP Compliance and Enforcement Branch supervised the activities of the local, Nye County-NDEP inspector and reviewed the technical merits of potential violations. The NDEP is an ex-officio (non-voting) member of the Pahrump Compliance Review Committee (CRC), which considers all appeals to violations issued by the local inspector and reviews the penalties assessed by him. The two voting members of the CRC are Nye County officials. The supervisor of the Compliance and Enforcement Branch, or his alternate, serve as a representative of the NDEP to help guide the inspector and voting members of the CRC on the technical basis of the violations and the principles of compliance and enforcement regarding appeals. In eight separate cases, the violations and penalties recommended by the CRC were upheld by a hearing officer (the last step in the county's administrative process). From 2006 through mid-2007, supervising the local inspector and assisting Nye County in implementing this program required 5 to 8% of the Compliance and Enforcement staff.

The NDEP supervised the inspector and guided county officials until December 2007, when the program was fully delegated to the county for implementation.

As described above, the implementation of these two programs has required significant resource contributions from the Compliance and Enforcement Branch yet were not considered in the SRF or the EPA report.

<u>Major Investigations</u>

The NDEP conducted several major compliance investigations in 2004 through 2007. Two of these investigations were prompted by NDEP's continuous review of excess emissions notifications or permit deviation reports. The other resulted from evidence gathered through the detailed review of a series of annual emissions compliance tests.

The investigation of the Nevada Power Company - Reid Gardner Generating Station in 2004 -2005 (FY05/06) was prompted by heat input exceedances reported by the company in early August 2004. This investigation required the equivalent of 2 to 3 full-time employees (~30% of the existing Compliance and Enforcement staff) until its conclusion in December 2005. The NDEP issued 44 Notices of Alleged Violations (NOAVs) to Nevada Power in December 2004, only three to four months after starting the investigation. Many of these violations qualified as HPVs. In May 2005, the NDEP invited EPA to review its preliminary findings regarding non-compliance related to continuous emissions monitoring (COMS and CEMS) and enlisted EPA's assistance in arriving at a settlement with Nevada Power. In July 2005, the NDEP issued 10 additional NOAVs to Nevada Power for opacity exceedances, failure to report opacity and SO2 exceedances, and other CEM reporting violations. EPA and the U.S. DOJ participated in settlement negotiations that culminated in a Consent Decree entered on June 14, 2007. That settlement totaled $89 million dollars and included the installation of new control technology, supplemental environmental projects, and $1.1 million in monetary penalties.

The NDEP's investigation of excess emissions at the Yukon-Nevada Gold Corporation (formerly Queenstake) Jerritt Canyon Mine recently resulted in enforcement actions taken for failure to properly operate mercury emission controls, and failure to address the requirements of an Order issued in 2007. In 2007, this investigation required up to 15% of the Compliance and Enforcement staff. In August 2004 and December 2005, the NDEP held enforcement conferences with Queenstake to discuss its reporting of excess emissions, the underlying causes of the excess emissions and other permit deviations. These conferences focused on the maintenance of the ore dryer's baghouse and excess emissions caused by upsets in the ore roaster processing systems. In 2006, the NDEP required Queenstake to resubmit its Annual Compliance Certification for 2005. The annual October 2006 inspection confirmed evidence from the 2005 inspection, and findings by Nevada MSHA from a June 2006 inspection, that (i) leaks or holes in the ore crushing and grinding systems were generating excess (fugitive) emissions, and that (ii) Queenstake had not been properly reporting them. In December 2006, the NDEP issued five NOAVs to Queenstake with orders to repair and maintain these processing systems. Annual emissions testing required by the NMCP in 2006 and 2007 provided much of the basis for the recent enforcement actions undertaken by the NDEP regarding the roasters' mercury emission controls. This facility is currently under a stop order until the company demonstrates to the NDEP that it can operate the roasters' emissions controls in a manner to minimize emissions of mercury. Continued, extensive involvement by NDEP with this facility will be necessary into the foreseeable future.

In February 2006, based upon a detailed review of annual emission compliance tests conducted in 2000 through 2005, the NDEP discovered that (i) the "flow factor" used by Cyanco to calculate exhaust flows from its two processing plants was providing inconsistent results, and (ii) that the hourly emissions rates of NOx and PM_{10} were very near the permitted emission limits. Because the extremely high temperature (~1800 F) of exhaust from the plants' thermal oxidizers precludes direct flow measurement, Cyanco had been required to derive – based on the results of annual emissions compliance tests – a flow factor based on operational parameters. The NDEP conducted a year-long investigation into problems with the "flow factor," addressing

it through several conferences and detailed communications in 2006. In early 2007, the NDEP ordered Cyanco to undertake quarterly flow tests to demonstrate compliance with its permitted NOx emission rates until such time that a more reliable flow factor could be developed or a satisfactory, indirect flow measurement method could be implemented.

It should be noted that these are only three examples of many sources that NDEP has worked with over the review period. Because these investigations were ongoing and spanned more than one year, they were not considered in the SRF or the EPA report. The current structure of the SRF does not allow for long term, complex investigations to be incorporated into the reported matrices. These types of investigations should be considered and included because they can be a major component of any state or local agency's enforcement program and serve as a valuable deterrent

Other Observations

As noted in NDEP's comments regarding the draft SRF Report, maintaining AFS as a tracking and reporting tool places an unreasonable burden on NDEP's air program. AFS duplicates many items tracked in NDEP's internal database, but is not as comprehensive, requires specialized training for data entry and reporting, and is limited in utility. Even EPA recognizes the special burden represented by AFS. As stated by EPA in its October 9, 2007, AFS Business Case Interview Guide: "*it is widely accepted in EPA and states that the technology behind AFS is archaic, cumbersome, and costly to maintain ... these limitations are also responsible for higher reporting burdens on state, local, and tribal partners providing air compliance data to EPA.*"

The NDEP urges EPA to address the limitations of the AFS database and the burden it imposes on state and local agencies. The NDEP also believes that EPA should appropriately consider the limitations that EPA itself has identified and consider them when determining the data sources to be used in future SRF evaluations. It is unreasonable to expect that NDEP should diminish its field presence in order to maintain an "archaic, cumbersome" system and should not be down graded because of the systems shortcomings. The NDEP has by necessity focused its resources on maintaining its field presence and active compliance evaluations, rather than maintaining AFS.

Summary

Through the first 12 elements of the SRF, EPA has evaluated only a small part of the Air Compliance and Enforcement program. Therefore, EPA's report alone cannot provide a complete picture of the work being done or its effectiveness. By working directly with the regulated community through active field presence and by providing education and outreach we have increased our rate of compliance with the Clean Air Act and state regulatory programs. In addition, in order to adequately protect public health and the environment in Nevada, the NDEP must continue to address state specific priorities and issues as they arise.