

Oregon Final SRF Report September 25, 2007

OREGON

STATE REVIEW FRAMEWORK

FINAL REPORT

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

LANE REGIONAL AIR POLLUTION AUTHORITY

September 2007

EXECUTIVE SUMMARY

Introduction

The Environmental Protection Agency's (EPA) Office of Enforcement and Compliance Assurance (OECA) and the Environmental Council of States (ECOS) have jointly developed a method to assess state performance in the enforcement and compliance monitoring program. This report reflects the review of Oregon's program conducted by EPA Region 10. The SRF assessment provides a consistent process for EPA regions to use in overseeing the core inspection and enforcement programs for Clean Air Act (CAA) (Stationary Source Program), Resource Conservation and Recovery Act (RCRA) Subtitle C (Hazardous Waste) and Clean Water Act (CWA) National Pollution Elimination Discharge Program (NPDES). The review consists of 12 elements which compare state compliance monitoring and enforcement work activity, as well as the associated reporting to the respective national systems, with applicable EPA national policies and guidance.

OECA recently issued a Guide to Writing SRF Reports (Interim Final April 12, 2007), in part to facilitate their review and comment on draft reports. The Region 10 review teams have strived to follow the SRF guidelines, including preparing this draft report in accordance with the April 2007 guidelines. The Region 10 review teams also wish to acknowledge and thank the ODEQ and LRAPA staff and managers for their support and cooperation during this process.

Scope of Review

Federal Fiscal Year 2005 (October 1, 2004 – September 30, 2005)

RCRA: Oregon Department of Environmental Quality (ODEQ) RCRA Subtitle C Hazardous Waste Program

CWA NPDES: ODEQ CWA NPDES point source program.

CAA: ODEQ and Lane Regional Air Pollution Authority (LRAPA) CAA Stationary Source Programs

A concurrent Compliance Monitoring Strategy (CMS) review of ODEQ and LRAPA CAA compliance monitoring programs was conducted in response to OECA's expectation that each EPA

region conduct at least one in-depth CMS evaluation each year. Region 10 gathered information for CMS evaluation purposes concurrent with the SRF and the results of the CMS evaluation are included in CAA the discussion of relevant compliance monitoring SRF data and file metrics.

Agency Structure

With the exception of one local air pollution control agency, the three (3) covered programs are implemented by ODEQ. A copy of ODEQ's organizational chart is attached. The agency is comprised of headquarter media program offices (e.g., air, water, land quality) responsible for

program development and management. Most of ODEQ's programs are delivered through regional and field offices. The policy-making body is the Environmental Quality Commission which adopts regulations proposed by the Department.

ODEQ implementation of the compliance assurance program is carried out by regional offices (Northwest, Western and Eastern) and the Office of Compliance and Enforcement (OCE) located in the Portland headquarters office. The regional offices conduct complaint response, provide compliance/technical assistance, plan and conduct inspections, document inspections, determine violations, classify violations and determine the appropriate enforcement response. Requests for formal enforcement (orders, agreements, and penalty assessments) are made by the Regional Administrators to OCE. Informal enforcement (e.g., warning letters) is managed by the regions.

OCE has on-board attorneys who do not report to the Attorney General's Office (AG) but do consult the AG's office on legal issues. With support from the regional office inspectors, the Environmental Law Specialists in OCE develop cases, calculate penalties, issue orders, and negotiate or litigate the matter to resolution. The OCE also ensures payment of penalties. Responsibility for ensuring compliance with the action rests with the respective regional office.

The Air Quality Division Administrator, the Water Quality Division Administrator, the Land Quality Administrator, the Administrator of the Office of Compliance and Enforcement, and each of the three Regional Office Administrators report to the ODEQ Director. The Eastern Regional Office is headquartered in Bend with field offices in The Dalles, Hermiston, Pendleton, and Baker City. The Western Regional Office is headquartered in Salem with field offices in Eugene, Coos Bay, Roseburg, Grants Pass, and Medford. The Northwest Regional Office is located in Portland, with field offices in Warrenton and Gresham.

Media program managers located in each regional office, who report to the respective Regional Administrators, generally oversee permitting and compliance for their respective programs. The media program compliance managers in each region do not report to a single media program manager but operate in a matrix-managed environment to collaborate in implementing elements of the compliance assurance program, other than formal enforcement. One mechanism Oregon uses to coordinate media-specific implementation across the regional offices is media-specific Program Management Team (PMT) meetings and communications.

The Lane County Regional Air Pollution Authority runs the clean air act programs, including the stationary source permitting/compliance program for Lane County which is located in Western Oregon's Willamette Valley. This agency is independent from ODEQ and is not overseen by ODEQ, but is included in periodic CAA PMT discussions to promote consistency and collaboration.

Through a Memorandum of Agreement (MOA) with ODEQ and EPA, the Oregon Department of Agriculture is responsible for managing Animal Feeding Operation (AFO) programs; ODEQ maintains permitting authority over AFOs. These programs were not reviewed as part of the SRF.

Program Overview

ODEQ's rules governing the procedures for enforcement response, including civil penalty assessments and orders, are codified in Division 12 of Oregon Administrative Rules. The Division 12 rules are applicable to the programs subject to this SRF review and include general and media specific violation classification guides (minor to major) and matrices for calculation of civil penalties. The rules and guidelines specifically identify economic benefit as one element to be addressed in penalty action. Division 12 specifies ODEQ may use EPA's BEN computer model to calculate economic benefit of non compliance and must use it upon request of a respondent. In June 2005, the Director issued an internal Management Directive on the Penalty Factor for Economic Benefit which outlines the kinds of information and factors to be considered. ODEQ staff also shared a recent (July 2007) OCE memo which provides additional information about calculation of economic benefit.

The Division 12 rules have undergone some revisions between FY 05 and now. ODEQ has developed a statewide Enforcement Guidance for Field Staff. Upon discovery of a violation, ODEQ generally issues a Warning Letter or Pre-enforcement Notice, in part to get violations identified and corrected as quickly as possible. The Pre-enforcement Notice notifies a violator a civil penalty will likely be issued. A Mutual Agreement and Order (MAO) is a legally binding enforcement document that sets out the settlement terms. It may or may not include a civil penalty. If a penalty is included, the MAO will contain an "exhibit" attachment which describes and classifies the violation, and the formula used to derive the gravity component (in accordance with the State's civil penalty policy). Economic benefit is then added. Contested cases are heard by administrative law judges available through the Oregon Central Hearings Panel.

The majority of ODEQ's formal enforcement is accomplished through administrative actions (as contrasted to judicial actions). The agency uses a formal process for each action, preparing for potential adjudication (i.e., contested case hearing) in all matters pursued, either for relatively straightforward violations with small penalties or complex matters with potentially larger penalties.

ODEQ maintains an Enforcement Database to track formal enforcement actions and milestones to pursuing and completing them. It contains information such as source identification information, violation class and penalties, enforcement status, supplemental environmental projects (SEPs) schedules and accounting information. ODEQ previously tracked Notices of Noncompliance (NONs) in a database, but ceased tracking those beginning in FY 06 when the agency began using either warning letters or pre-enforcement notices for informal enforcement. LRAPA follows the ODEQ Enforcement Guidance for Field Staff in implementing its compliance Program.

Data management approaches for populating national systems

RCRA: ODEQ uses, and was using in FY 05, a translator to convert required data elements from the state data system to RCRAInfo. Some data that does not automatically translate is entered directly into RCRAInfo by ODEQ.

CWA: Historically, EPA Region 10 entered all of Oregon's required data into PCS based on information received from the State. In August 2004, EPA stopped entering this data. ODEQ currently uses three information systems to manage implementation of the NPDES program: Water Quality Source Information System (WQSIG), Discharge Monitoring System (DMS) and the enforcement database. ODEQ is working to upload certain information elements to PCS by April 2008. For purposes of the FY 05 SRF data metrics, very little information was available from PCS.

CAA: Prior to November 2004, ODEQ was entering data directly into the AFS system (in addition to populating the State's system. In November 2004 ODEQ began using the universal interface (UI) to report the minimum data requirements (MDRs) from the state's data management system to AFS. In FY 05 and currently, LRAPA enters data directly into AFS.

Process for Review

Anticipation of the SRF is reflected in Oregon's July 1, 2006-June 30, 2008 PPA (which was negotiated in spring 2006). Additional details and overall schedule were communicated to the ODEQ Director on September 7, 2006. The respective EPA-State media programs worked out the details for review of data and files. EPA and ODEQ each have a single point of contact for general communication as well as media specific contacts. A management level check-in occurred in January 2007. Once each media program completed the file reviews, draft data and file review metric findings were shared with state media program counterparts to seek feedback on accuracy or completeness as well as to begin the process of developing understanding on the scope of key recommendations to be included in the draft report.

The consolidated draft report was provided to ODEQ and LRAPA on August 2nd for review and comment. State comments were transmitted on September 4, 2007. While we have incorporated changes in light of comments received, the key findings and areas for follow-up have not substantially changed from the draft report.

The individual media sections of the report provide a chronology of the key dates for each program. Key dates for major elements of the process include:

Data Metrics shared:	September-November 2006
On-site reviews conducted:	November 2006 – March 2007
Data and file review findings shared:	January – May 2007
Key issues, findings discussed:	March –July 2007

State Compliance Assurance Program Priorities and Accomplishments

Through the performance partnership agreement (PPA), ODEQ identifies its strategic priorities as well as core program activities and outputs, including the compliance assurance aspects of the programs. Federal Fiscal Year 2005 was primarily covered by the July 1, 2004 – June 20, 2006 PPA, which was completed in June 2004. That PPA identified the following ODEQ strategic directions:

Protect Water, Protect Human Health and Environment from Toxics, Deliver Excellence and Involve Oregonians in Solving Environmental Problems. Within the enforcement section of the PPA, ODEQ identified planned work related to Division 12 (enforcement rules) revisions and implementation.

Summary of Findings

EPA has identified a number of positive performance aspects which include:

- well documented enforcement program procedures and guidelines
- policies and procedures call for economic benefit in penalty actions.
- programs generally meet or exceed expectations for inspection frequency
- programs generally complete inspection reports in a timely manner
- programs generally issue timely informal enforcement actions
- CAA and RCRA data in national systems is mostly complete and accurate
- approach for targeting RCRA Large Quantity Generator inspections to share with others
- CAA (ODEQ) use of High Priority Violator (HPV) determination worksheet

The most significant concerns highlighted in the draft report related to the following topics.

Cross-program: Penalty calculations and documentation (Elements 7 & 8)

- inconsistent documentation to support penalty settlement decisions
- inconsistent documentation to support economic benefit decisions
- incorrect economic benefit determinations

Discussion: In some cases where files indicated either insufficient information or no economic benefit accrued, EPA believes there was sufficient information to indicate that economic benefit might have accrued and that further analysis would have been warranted. In other cases, there was no information upon which to evaluate the appropriateness of the conclusion of de minimis or no economic benefit. In some files, there was insufficient documentation to explain basis for final agreed upon settlement amounts. The follow-up actions include: (1) Region 10's experienced enforcement staff are available to engage in dialogue about factors to consider in calculating economic benefit and ways to obtain the information, (2) ODEQ's continued implementation of the 2005 Director's policy on economic benefit and (3) ODEQ analysis of 2007 penalties to identify cases that did and did not include economic benefit. The state is encouraged to ensure files contain sufficient documentation, especially with respect to economic benefit considerations.

NPDES Data and the National System (Elements 4, 6, 10, 11, 12)

- concern there may not be clear understanding and communication by everyone involved of the path forward to ensure all required Oregon data will be in the national system over the long term.

Discussion: EPA was unable to make a determination of the adequacy of Oregon's program with respect to many of the elements of the NPDES program because of the lack of data in the PCS

national system, including performance related to Significant Non-compliers (SNC). EPA and ODEQ have a project to make progress toward getting Oregon data into the system. It is important that both agencies have a clear understanding of the short-term and long-term expectations and how they will be met. ODEQ staff have identified concerns about the resources to meet these expectations. The follow-up action includes a 3-part commitment from ODEQ:

By April 2008, ODEQ will:

- (1) develop and share with EPA a data management plan and staff training plan
- (2) initiate review of permits for majors to identify SNCs and begin to reconcile differences
- (3) propose to EPA a plan for how to handle cases in which a source is identified in SNC but no formal enforcement is planned

NPDES: Use of MAO for certain types of permit violations (Element 5)

Discussion: Region 10 identified potential concerns regarding the use of MAO in circumstances where the MAO appears to create different limits than the permit and without opportunity for public input or where the MAO appears to operate in lieu of a permit. EPA understands the state now has authority to incorporate compliance schedules into permits which may alleviate the need for MAOs in these situations. The follow up action calls for ODEQ to consult with the State Attorney General's office and provide to EPA by March 31, 2008, a description of how MAOs are used in permitting and enforcement, including discussion of any legal issues associated with the practices.

CAA: Compliance Monitoring Strategy Universe of "SM 80" sources (Element 1)

- Need to ensure common understanding of how universe is to be determined

The national compliance monitoring strategy (CMS) focuses on major sources and the largest non-major sources ("SM80" sources). ODEQ recently informed us of a reduced number of these non-major sources, which reduces their compliance monitoring frequency. The agencies have agreed to subsequent discussions to ensure common understanding and agreement about the criteria for defining this universe.

CAA: ODEQ and LRAPA Full Compliance Evaluation (FCE) documentation (Element 2)

- Lack of sufficient documentation to ensure all elements of a Full Compliance Evaluation (FCE) were conducted for FCEs reported to the system

Discussion: The national Compliance Monitoring Strategy (CMS) sets out expectation for completion of partial (PCE) and full compliance evaluations for stationary sources. In the files reviewed, it appears that many evaluations reviews reported as FCEs were not comprehensive review of all required elements (e.g., source test results, periodic monitoring reports, etc.). In addition to the steps already taken with respect to additional training, ODEQ and LRAPA will develop additional procedures and provide FCE reports for 3-month period to EPA for review.

CAA: Timely response to address High Priority Violators (HPVs) Element 6)

- ODEQ exceeds timely response about 80% of the time, compared with national average of about 58%.

Discussion: In this element, ODEQ did not meet the timeliness expectation for initiating formal enforcement within 270 days; about 83% of the reviewed cases took longer than the timeframe, compared to the national average of about 58% actions exceeding the timeframe. ODEQ has agreed to evaluate the CAA case referral and initiation process to identify steps that might be taken to improve the timeliness of actions.

MEDIA SPECIFIC CHAPTERS

The rest of the report consists of the three media specific chapters which provide additional details about the each review and the findings, conclusions and recommendations. Where there are follow up actions to be tracked as part of the SRF tracker, those milestones have been identified in the final report. A summary list of all these milestones is attached.

ODEQ & LRAPA ORGANIZATION CHARTS

See separate electronic file: ODEQorgchart for SRF draft report.pdf
Copy attached to printed copies of report

See separate electronic file: LRAPAorg.doc
Copy attached to printed copies of report

HAZARDOUS WASTE PROGRAM REVIEW

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A. BACKGROUND INFORMATION

Structure

The ODEQ Hazardous Waste Program is organized within the Land Quality Division and includes inspectors and technical assistance staff in Regional Offices around the state and the Hazardous Waste and Tanks program management section in ODEQ headquarters. The Hazardous Waste Program refers violators to the ODEQ Compliance and Enforcement Office for formal enforcement actions. The Program funded approximately 40 FTE in 2005, including 9 inspectors, 5 technical assistance specialists and 3 enforcement caseworkers.

Authorities

Oregon DEQ is authorized to implement the bulk of the federal Hazardous Waste regulations. The most recent authorization update was June 26, 2006. (Federal Register: Volume 71, Number 122, pages 36216-36220.) There were no issues raised about state authorities in this review.

Source Universe

Oregon's regulated universe of hazardous waste handlers included 3 Treatment, Storage and Disposal (TSD) facilities, 180 Large Quantity Generators (LQG), and 411 Small Quantity Generators (SQG). Region 10 and ODEQ agreed on the content of the regulated universe and there were no data discrepancies to be reconciled. Hazardous waste generators may change status from month to month as their production and waste management processes change, however, this was not a factor in the review.

Corrections

There were no major corrections to national data systems undertaken by the state that significantly (e.g., >5%) changed any Framework metrics after the timeframe specified by national policy or guidance.

B. REVIEW PROCESS

Key Dates

The Oregon Review was based on data pulled for Federal Fiscal Year 2005, starting October 1, 2004. The data was pulled from the national database on October 31, 2006.

The Director of the Region 10 Office of Compliance and Enforcement sent a letter to the Director of the Oregon Department of Environmental Quality on September 7, 2006, to start the program

review. The RCRA Compliance Unit Manager sent a letter to the ODEQ Office of Compliance and Enforcement Administrator on November 8, 2006, to convey the draft data metrics and the file selection protocol with a draft list of files to be reviewed. Region 10 RCRA staff conducted the file reviews on December 5-7, 2006, in Portland and Salem, Oregon. The review team provided draft file and data findings to the ODEQ hazardous waste and enforcement program managers for verification and to obtain additional programmatic information on February 1, 2007. ODEQ responded to the draft findings on March 2, 2007.

Review Process

The file review team, Mike Slater and Kevin Schanilec, met with the Northwest Region hazardous waste program staff and reviewed 13 inspection and compliance files on December 5, 2006. The team met with the Office of Compliance and Enforcement at ODEQ headquarters on December 6, 2006. They reviewed 9 formal enforcement cases and 6 informal action files. On December 7, 2006, they met with the Western Region hazardous waste program staff and reviewed 5 inspection and compliance files. The file review did not include the Eastern Region because it had a smaller share of the inspection work, had already been reviewed for 2002, and saved the review team travel money. There was some overlap between the program and enforcement files such that the total number of Oregon handlers reviewed was 18. The team reviewed all the material in the files, including follow-up information about the return to compliance and enforcement actions that occurred after September 30, 2005, the end of the fiscal year in review. The ODEQ staff and managers provided anecdotal information about the compliance and enforcement program and answered questions as they came up in the files to improve the team's understanding of cases.

C. FILE SELECTION PROCESS

Universe

The total number of inspection and enforcement handlers in the compliance review universe for 2005 was 242 handlers, comprised of 219 inspections and 36 formal enforcement actions, less the 13 handlers that were counted in both inspection and enforcement categories. The universe included 3 Treatment Storage Disposal Facility (TSDF) inspections (100% of the regulated universe), 38 of the 177 Large Quantity Generators (LQG) that were not TSDF, and 39 of the 411 Small Quantity Generators (SQG). There were 139 inspections at other conditionally exempt and non-regulated handlers and 23 handlers that were in the universe because they had enforcement actions in fiscal year 2005 as a result of prior inspections.

Selection

The review team decided to review 18 files, near the minimum number of files for this universe size, based on several factors, including, the Oregon data metrics were mostly above the national average for 2005, Region 10 had recently completed a comprehensive compliance program review of state programs for fiscal years 2000 through 2002, and ODEQ had just begun implementing recommendations from the prior review in fiscal year 2005.

The review team selected files from each category in the universe (above) roughly in the same

proportion as the inspection count although weighted slightly toward the larger, fully regulated handlers. (For example, we reviewed one TSDf file, even though the 3 TSDf out of the universe of 242 is not proportionally equal to 1 out of 18. The team did not seek a statistically significant result but the review findings were consistent with the 2000-2002 review that was based on the review of 49 files.

The files for review were selected randomly within the universe categories that were established to ensure coverage of the TSDf and LQG universes as well as ensuring at least 2 formal enforcement actions that resulted from prior year inspections were included. The file selection protocol and a draft list of handlers selected was sent to ODEQ one month before the file review visits and ODEQ agreed to provide all the files requested.

File Maintenance

ODEQ regional offices maintained inspection files that included copies of informal enforcement actions, such as warning letters and pre-enforcement notices sent to violators. Inspectors also filed copies of enforcement documents that they had received from the Office of Compliance and Enforcement. There was some overlapping information between regional office files and headquarters enforcement files that did not create a problem. We found the files organized and complete in almost all cases and thanked ODEQ for their efforts to assemble the files for the review team.

D. ELEMENT-BY-ELEMENT DESCRIPTION

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

Discussion and Analysis

1.a. Inspection coverage for operating Treatment, Storage and Disposal Facilities 100%
Oregon met the goal for inspecting each of the three operating facilities at least once in the two years ending September 30, 2005. Oregon conducted multiple inspections at the large, complex TSD facilities with a total of 13 inspections entered into RCRAInfo over the two year period for which data was pulled.

1.b. Annual inspection coverage for Large Quantity Generators 23%

Oregon exceeded the 20% goal for the LQG universe by inspecting 41 of the 180 generators resulting in a 23% inspection rate during fiscal year 2005.

1.c. Five year inspection coverage of Large Quantity Generators 67% - 85%
Oregon had inspected 121 of the 180 generators in RCRAInfo with LQG status when this data was pulled in September 2006. Oregon's 67% coverage rate exceeded the national average of 43%. Although the national guidance includes a goal of inspecting 100% of LQGs within 5 years, the

Framework Metrics report identifies the LQG status at the end of the period rather than the beginning and recently added LQGs are improperly included in the denominator of this measure. In Oregon, 35 of the 59 LQGs not inspected were added after October 1, 2000, and are not counted in the five years ending September 30, 2005, for this review. There were also 2 LQGs inspected by Region 10 under the Performance Partnership Agreement work plan instead of by ODEQ. The adjusted inspection coverage for ODEQ was actually 85% (121 of 143).

1.d. Five year inspection coverage for small quantity generators 25%

This is an informational measure and Oregon's 25% coverage rate exceeded the national average of 8.9%. Oregon had inspected 104 of the 411 handlers with small quantity status at the time this data was pulled in September 2006.

1.e. Five year inspection coverage at handlers others than those listed above.

This is an informational metric that shows Oregon had inspected 624 other handlers in the five years ended September 30, 2005. The Framework will be modified in the future to calculate percentages of other handlers inspected for a more meaningful informational measure.

In addition, Oregon conducted compliance assistance visits (CAV) at 489 handlers that did not get counted in this compliance inspection measure but increased the state's coverage of the hazardous waste handler universe. The Oregon Toxics Use and Waste Reduction Assistance Program that conducted these visits may be evaluated under measure 13 for recognition or other credit.

1.R. Percent of planned inspections completed. Regions can track yearly commitments, or multi-year plans. Reserved for inspection plan targets negotiated between the Region and state 100%

ODEQ completed 100% of the planned inspections in the 2005 Performance Partnership Agreement work plan.

Findings

The Hazardous Waste Program met or exceeded all of the data metrics for completing the universe of planned inspections. ODEQ used a "best practice" for identifying LQG inspections. The program analyzed RCRAInfo data for handlers in LQG status in 2005 that had not been inspected in the prior five years. They screened out handlers that entered LQG status less than five years prior and targeted those handlers that were LQGs over the past five years and had not been inspected during that time. Oregon ODEQ also screened out one-time generators of cleanup waste that were not likely to be generating large quantities in planning inspections for 2005.

Region 10 and ODEQ share one concern that we plan to address in a future review. ODEQ conducted compliance assistance visits at 489 handlers in 2005 that did not get counted under this program review element because they did not fit the compliance evaluation criteria. ODEQ has established a means of tracking the compliance improvement outcomes of these visits using Toxic Use and Waste Reduction Assistance Program Scorecards. Region 10 supports Oregon's development of measures for the assistance program and encourages the hazardous waste program to

pursue Element 13 recognition in the future.

Recommendations

There are no recommendations for Element 1.

Citation of Information Reviewed

The Element 1 review was based on data pulled by EPA Office of Compliance for Federal Fiscal Year 2005, starting October 1, 2004. The data was pulled from the OTIS national database on October 31, 2006. ODEQ reviewed the data and made no changes to Element 1.

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

Discussion and Analysis

2.a. Percentage of inspection reports that are adequately documented in the files. 89%

We reviewed 18 files and found 16 were adequately documented. ODEQ inspectors were very thorough in most cases, using checklists, extensive inspection narratives and annotated photo logs to document their inspections.

The USDOE NETL Albany report included an incomplete checklist and a vague narrative that didn't specify exact locations of observations (for example, "...several satellite accumulation areas. The containers were not labeled.") The Hoffman Instruments inspection report did not include photos of the container that was the subject of the violation. The report noted that the violation was fixed the same day so before and after photos would have completed the report and the compliance verification.

In addition, two of the reports we counted as complete could have been better if there were more details in the personnel interviews and photographs to support the violations that were found. The Fed Ex West and Crystal Lite reports lacked specifics about who said what about alleged violations and photos were missing or not adequately linked to the narrative to show what citation they supported.

Findings

ODEQ Hazardous Waste Program inspectors were very thorough in conducting compliance inspections and almost all reports were well documented.

Recommendations

No recommendations for element 2.

Citation of Information Reviewed

Region 10 reviewed 18 inspection files in two of the state's three regional offices.

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

Discussion and Analysis

3.a. Percentage of compliance monitoring and inspection reports in which potential violations are identified in the file within a given time frame established by the Region and state. 100%

ODEQ has a state goal of completing inspection reports and sending a warning letter or pre-enforcement notice within 15 days of an inspection. The EPA expectation for timeliness in the Enforcement Response Policy is 150 days for issuing an informal enforcement action. Oregon ODEQ completed all 18 inspection reports within 150 days of the inspection date. The average time was 20 days and the range was 1 to 70 days.

Findings

The ODEQ Hazardous Waste Program was consistently timely in the completion of inspection reports in 2005.

Recommendations

None for Element 3.

Citation of Information Reviewed

Region 10 reviewed 18 inspection files in two of the state's three regional offices.

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

Discussion and Analysis

4.a. Significant Non-Complier (SNC) identification rate 2.3%

ODEQ designated 5 SNC violators of the 219 handlers inspected in 2005. This was 72% of the national rate of 3.2%, which was above the 50% threshold for the Framework's level of concern.

4.b. Timely SNC determinations 100%

The Framework Metrics report is not able to automatically calculate this measure until the fiscal year 2007 state review cycle. However, we pulled custom reports that showed Oregon met the framework goal of identifying SNC violators within 150 days of their inspections. For the 5 SNC designations Oregon made in 2005, 100% were made within 77 days.

4.c. No activity indicator - new SNC determinations NA

The "no activity indicator" is not applicable to Oregon for 2005, since Oregon identified 5 new SNC violators. The national total of new SNC designations in RCRAInfo was 566. (Oregon was 0.9% of national total SNC designations.)

4.d. SNC reporting indicator (enforcement actions receiving SNC designation) 6%

Oregon data showed 2 of the 36 formal enforcement actions in 2005 were for designated SNC violators. The national average was 54%. Oregon's level was 11% of the national average for this review benchmark and will need to be further evaluated through file review of enforcement cases that were not at SNC violators. Additional information is in metric 6, below.

The Enforcement Response Policy requires that all SNC violators be addressed with formal enforcement actions but not that states take formal actions only at SNC violators. Oregon ODEQ has enforcement regulations that direct formal enforcement responses for handlers with "class I violations" which are not limited to the RCRA Enforcement Response Policy SNC criteria.

4.e. Percentage of SNC and secondary violator determinations that are reported in a timely manner 100%

All 16 of the files that included violations had violator determinations reported within the 150 days allowed in the RCRA Enforcement Response Policy. The average time to complete warning letters and pre-enforcement notices was 27 days with a range from 7 to 70 days.

4.f. Percentage of SNC determinations that are accurately reported 94%

We found 15 of the 16 files that included violations accurately reported the SNC classification: 14 were secondary violators and 1 was designated SNC. We did not find any paperwork showing how classifications were made for secondary violators but the state regional office did document the SNC designation in its referral to the state enforcement office and the SNY data was entered into RCRAInfo.

There was one violator out of the 16 in the file review that met the SNC criteria but was not designated SNC and defaulted to secondary violator status. There was no information in the file that indicated an evaluation of the SNC criteria had been done for this enforcement action. There were two additional cases that met some of the SNC criteria and should have been evaluated, since they were on the margin and referred to the state enforcement office for formal enforcement actions.

The Southern Oregon Marine violations involved all three of the SNC classification criteria. First, the facility failed to make hazardous waste determinations on multiple drums of pesticide waste and failed to label as hazardous waste multiple drums of MEK and paint waste. The RCRA ERP examples include this situation as one that would generally cause either an actual exposure or a substantial likelihood of exposure to hazardous waste and would (generally) warrant the violator being classified a SNC. Second, the violations found in 2005 were repeat violations of those found in 2000, which resulted in an order and penalty in April 2001, generally considered a chronic violator. Third, the violator was storing hazardous waste without a permit which is an example of a substantial deviation from the RCRA statutory requirements as described in the RCRA ERP. Finally, in marginal situations, the ERP directs EPA and states to consider any steps the violator has taken to expeditiously come into compliance and to mitigate any risks. The information in the file indicated that the violator did not return to compliance and settle with ODEQ until October 30, 2006, 490 days after the inspection. Weighing the combined weight of all these criteria caused us to

find that this violator should have been designated a SNC within 150 days of the inspection.

The Park Place Wood Products case met some SNC criteria and should have been evaluated in detail. The ODEQ found failure to make hazardous waste determinations, label containers as hazardous waste and keep containers closed which created a likelihood of exposure to hazardous waste under the SNC criteria. The file also included information that the violations repeated those found in 2002 for which ODEQ issued a warning letter, which met the SNC chronic criterion. However, the amount of waste involved was less than 250 pounds so the overall weight of the criteria may not have been enough to justify SNC designation. However, there was no file information that showed how ODEQ evaluated the SNC criteria and came to a conclusion about the classification of this violator that may have been a SNC.

The violations found at the Galvanizers Company in April 2004 for which a final enforcement order was issued in January 2005 met some SNC criteria and should have been evaluated. The facility was alleged to be storing hazardous waste in a tank that did not meet the RCRA requirements for tanks which called into question the ability of the tank to prevent the likelihood of a release of, and exposure to, hazardous waste as described in the SNC criteria. There were violations found that were repeated from an earlier inspection in 1999 and may not have been properly addressed which indicated chronic violations. However, there was information that the company had taken steps to address prior violations and that although they disagreed with the ODEQ violations they were taking steps to return to compliance which may have counterbalanced the weight of violations in making the SNC determination. We found no information in the file to indicate that ODEQ evaluated the violations with the SNC criteria to make an appropriate classification of the violator in this case.

Findings

ODEQ met or exceeded the Framework expectations for making timely determinations of violations and in making determinations of Significant Non-Compliance in those cases where they identified SNC violators.

ODEQ data was below the national average for SNC identification rate (2.3% vs. 3.2%). ODEQ was also below the national average for percentage of formal enforcement actions directed at SNCs (6% vs. 54%.) We found the lower than national rates were the result of two factors. One, ODEQ conducted formal enforcement actions at many secondary violators which were not SNC, but nonetheless were considered important violations to ODEQ. The second factor was that some violators that met the SNC criteria were not designated. Of the 16 enforcement files reviewed, we found one violator that met the all of the SNC criteria and two that met some of the SNC criteria but were not designated SNC violators.

Recommendations

The ODEQ hazardous waste program should continue to improve the rate of SNC designations in cases where they make a referral to the enforcement program for a formal enforcement action. Region 10 and Oregon program managers will include a review of referrals in quarterly management

meetings to discuss the application of the RCRA ERP SNC criteria during 2008 and 2009. They will jointly review the Framework data measures at the end of 2009 to determine if those discussions affected the SNC identification and enforcement rates.

SRF milestones: by 9/30/09 Region 10 and ODEQ will determine if periodic SNC discussions affected SNC identification and enforcement rates

Citation of Information Reviewed

Region 10 evaluated the violation and enforcement data from the 219 inspections and 36 enforcement actions in the data base for 2005 and reviewed 16 enforcement files in two of the state's three regional offices and the Office of Compliance and Enforcement. Region 10 reviewed the Oregon DEQ hazardous waste enforcement guidance and determined that it appropriately incorporated the timeliness and SNC designation criteria of the EPA Hazardous Waste Civil Enforcement Response Policy.

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

Discussion and Analysis

5.a. Percentage of formal state enforcement actions that contain an appropriate 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 78%

We reviewed 9 files that included formal enforcement actions. There were 7 of 9 actions where the violators had returned to compliance with the required actions listed in the pre-enforcement notice and thus it was not necessary for ODEQ to include injunctive relief or other complying actions in the formal enforcement actions. There were 2 cases in which violations had not returned to compliance and the formal action did not include an appropriate compliance schedule of required actions.

In the Southern Oregon Marine case, the complying actions were listed in the pre-enforcement notice and required to be completed within thirty days of the July 14, 2005, notice date. The case was referred to the state enforcement office on August 23, 2005, without any information in the file that the violations had been corrected. The formal Notice of Violation with Penalty was issued on March 21, 2006, and did not include any form of injunctive relief, complying actions, or compliance schedule even though the violator had not yet shown they returned to compliance.

Similarly, in the Galvanizers case, the complying actions were included in the pre-enforcement notice on May 3, 2004, but not in the Notice of Violation with Penalty on November 22, 2004. Two of the violations found were still not returned to compliance when the Mutual Agreement and Order was issued on July 26, 2005, and no injunctive relief or compliance schedule for correcting the hazardous waste tank certification violations was included in the MAO. There was no evidence in the file that the violations were corrected and no formal requirement with which to hold the violators accountable.

5.b. Percentage of actions or responses other than formal enforcement that return source to compliance 93%

Informal enforcement actions were successful in returning 13 of 14 violators to compliance. We exclude the two cases noted above that were not returned to compliance under formal enforcement orders. Of the 14 informal actions, only the Town and Country Cleaners' violations remain outstanding since the warning letter was sent on December 1, 2004. File information indicated that was because the operator went out of business and hasn't been located. A follow-up visit to the property concluded that all hazardous wastes had been removed from the property so return to compliance data should be entered in RCRAInfo and the case closed.

Findings

ODEQ returned a high percentage of violators to compliance quickly through the use of prompt warning letters and pre-enforcement notices which included directions to fix violations. In a few cases, uncooperative violators did not promptly return to compliance and ODEQ Notices of Violation with Penalty did not include enforceable compliance schedules to obtain injunctive relief.

Recommendations

The ODEQ Office of Compliance and Enforcement should verify with the hazardous waste program whether violators have returned to compliance before issuing formal enforcement actions in NOV with Penalty orders. If violators are not in full compliance, then the Penalty orders must include compliance schedules and stipulations for injunctive relief. At the end of 2008, ODEQ will review all NOV with Penalty orders and report the number that included injunctive relief.

SRF milestone(s): By 9/30/09 ODEQ will report to Region 10 the number of NOV's with penalty orders that included injunctive relief

Citation of Information Reviewed

Region 10 reviewed 16 enforcement files in two of the state's three regional offices and the Office of Compliance and Enforcement, which included 9 formal enforcement actions with Notices of Violation and Penalty orders.

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

Discussion and Analysis

6.a. Timely action taken to address SNC violators 60%

The Framework Metrics report is not able to automatically calculate this measure until the fiscal year 2007 state review cycle. However, we pulled custom reports that showed the time elapsed between inspection and formal enforcement action at the 5 SNC violators in 2005. Our data showed that Oregon did not meet the Enforcement Response Policy guideline of 80% SNC violators

addressed within 360 days of inspection. Three actions were completed in less than 360 days and two were still pending as of October 30, 2006. Therefore, if it was calculated for the framework, Oregon's timely SNC rate would have been 60% for 2005.

6.b. No activity indicator - formal actions NA

This indicator is not applicable to Oregon as they completed formal enforcement actions at 36 violators in 2005. The national total reported from the data pulled by OECA for the 2005 Framework Metrics report was 1,422. (Oregon was 2.5% of national total.)

6.c. Percentage of enforcement actions taken in a timely manner 75%

ODEQ met the timeliness guidelines of the RCRA ERP in 12 of the 16 enforcement actions we reviewed, close to the 80% goal set in the ERP which recognized there are case-specific circumstances which will inevitably delay some actions. All informal warning letters and pre-enforcement notices were sent to violators within the 150 day target. The 4 untimely initial formal actions were an average 45 days beyond the 240 day goal, with a range of 20 to 75 days. Information in the files indicated that the delays were caused by enforcement specialists' caseloads, additional time to obtain and calculate economic benefit estimates and some delays in obtaining sampling results from laboratories. In 3 of the 4 cases, the final enforcement order was also delayed beyond the 360 day goal set in the ERP.

6.d. Percentage of addressing actions that are appropriate to the violations 100%

All 16 of the enforcement files we reviewed included appropriate enforcement actions. One of the files was designated SNC and had a formal enforcement action with penalty. In addition, we reviewed one case file that included violations that met the SNC criteria and should have been designated SNC and the two case files that we found were on the SNC margin, i.e., they met some SNC criteria but the weighting was debatable (see metric 4.f. above) and all three received appropriate formal enforcement actions with penalties, even without the SNC designations. The rest of the formal and informal actions appropriately returned the violations to compliance and included penalties based on Oregon's Division 12 enforcement criteria when applicable.

Findings

Oregon ODEQ was slightly below the Framework goals set for timely enforcement actions and one of the measures we calculated in advance of the national standard being available. All of the enforcement actions were appropriate to the violations, that is, formal enforcement actions with penalties were taken in response to cases of Significant Non-compliance, even in those cases in which the SNC designations was not made.

Recommendations

Review SNC case status during Performance Partnership Grant quarterly management meetings to keep cases moving forward within the RCRA ERP guidelines.

SRF milestone(s): SNC case status discussed as part of quarterly PPG meetings

Citation of Information Reviewed

Region 10 reviewed 16 enforcement files in two of the state's three regional offices and the Office of Compliance and Enforcement, which included 9 formal enforcement actions with Notices of Violation and Penalty orders.

Element 7. Degree to which a state includes both gravity and economic benefit calculations for all penalties using the BEN model or a similar state model (where in use and consistent with national policy.) {Note to reader: Region 10 recognizes this element and element 8c below do relate to similar information – degree to which initial and final penalties conform to expectations and degree to which files adequately document penalty decision-making}

Discussion and Analysis

7.a. Percentage of formal enforcement actions that include calculation for gravity and economic benefit consistent with applicable policies 78%

ODEQ calculated the gravity components of all 9 of the penalties we reviewed consistent with their Division 12 regulations and applicable policies. For 7 of 9 penalties, an appropriate estimate of the economic benefit was performed and documented. We agreed with the state's assumptions and conclusions which either confirmed that an economic benefit was realized and included in the penalty (one case and \$1,250 from improper waste disposal) or determined that the benefit was a *de minimis* amount or that there was not enough information to make a calculation (six cases.) ODEQ gave us a copy of the June 2005 Internal Management Directive on the Penalty Factor for Economic Benefit which supports their commitment to level the playing field by recovering any economic advantage gained by violating environmental laws.

We found two cases that lacked calculations of the economic benefits that appeared to accrue to the violators. The Sherwin Williams violations involved the improper treatment and disposal of acetone and other wastes. We did not find an evaluation of the amount of products purchased that would have enabled ODEQ to approximate the amount of waste that avoided regulation and the cost of handling it properly. In the Galvanizers Company files, we did not find an estimate of the cost of hiring a professional engineer to appropriately certify the hazardous waste tank, which was the amount the company was saving by not complying. In addition, if the tank was unworthy of certification, then the violator was obtaining an even greater economic advantage by not having to pay for a tank upgrade or replacement.

Findings

Oregon ODEQ included appropriate penalties for the gravity of violations using the applicable state Division 12 regulations.

Oregon ODEQ included appropriate economic benefit calculations in 7 of the 9 enforcement cases we reviewed. One of the 9 penalties included an economic benefit component.

Recommendations

The same recommendation and SRF milestones have been incorporated into all 3 media chapters.

As a result of discussions between ODEQ and EPA on some specific examples, it was agreed it would be beneficial for EPA to provide additional information about what to consider in estimating economic benefit and ways to obtain the information. Experienced Region 10 enforcement staff will be available to participate in such discussions for any or all of the 3 programs.

ODEQ should implement the 2005 Director's policy on economic benefit in penalties that was released near the end of this SRF review period. ODEQ should analyze the economic benefit in penalties issued in 2007 and prepare a report to share and discuss with EPA that provides information about cases where economic benefit did and did not accrue and the basis for the conclusion. The state should ensure files provide sufficient documentation to support penalty decision making, especially with respect to consideration of economic benefit.

SRF milestone: By February 1, 2008, ODEQ will provide to Region 10 an analysis of economic benefit in penalties for fiscal year 2007. The respective agency Enforcement Office Directors (and appropriate staff) should discuss the findings and any appropriate follow-up actions.

Citation of Information Reviewed

Region 10 reviewed 9 formal enforcement actions with Notices of Violation and Penalty orders.

Element 8. The degree to which penalties in final enforcement actions include economic benefit and gravity in accordance with applicable penalty policies. {Note to reader: Region 10 recognizes this 8c of element and element 7 above relate to similar information – degree to which initial and final penalties conform to expectations and degree to which files adequately document penalty decision-making}

Discussion and Analysis

8.a. No activity indicator - penalties NA
This indicator is not applicable to Oregon as they assessed \$108,481 in final penalties in 14 cases for fiscal year 2005. The national total reported was \$15,260,648. (Oregon was 0.7% of national amount assessed.)

8.b.1. Penalties normally included with formal enforcement actions: percent of formal enforcement actions that carry any penalty NA
We've pulled metric 8.b. in two ways because of variability in how states enter formal actions data in RCRAInfo. Most states enter both initial (200 series) and final (300 series) actions, however, some only enter initial actions, and for those states the first version of the metric must be used. For

Oregon, the best measure of how often enforcement actions have a penalty associated is 8.b.2.

8.b.2. Penalties normally included with formal enforcement actions: percent of **final** formal enforcement actions that carry any penalty 88%

Oregon was above the national average when the calculation was narrowed to only final formal enforcement actions. There were 15 penalty cases out of 17 final actions (88%) and the national average was 77%.

This RCRAInfo total excluded one of the enforcement files we reviewed. The Park Place Wood Company settled its case by returning to compliance and paying the penalty in response to the initial enforcement action (state enforcement code 214.) Thus no final enforcement action data (code 314) was entered in RCRAInfo and the \$1800 penalty was not counted toward this measure. There may be other cases settled the same way that were not counted here.

8.c. Percentage of final enforcement actions that appropriately document penalties to be collected 78%

All nine of the formal enforcement files we reviewed included appropriate documentation of the final penalty. Oregon ODEQ included a thorough explanation of the Division 12 penalty calculation with every Notice of Violation with Penalty. The files also included information about violators who used the opportunity to discuss proposed penalties with Oregon ODEQ or to have a hearing before an administrative judge before settling on a final action. The files documented how those settlement discussions affected the final penalty assessed.

As noted in metric number 7 above, there were two cases that did not include adequate evaluations of the economic benefit component of the penalty and consequently there was no documentation of that in those final enforcement actions.

8.d. Percentage of final enforcement actions resulting in penalties collected 89% - 100%

There were copies of payments collected in the 8 of the 9 files we reviewed. The Crystal Lite Manufacturing Company file included information that no payment had been received as of May 2, 2006, and that Oregon ODEQ would proceed to file a lien to recover the \$3000 civil penalty. Following the file review, Oregon ODEQ received documentation from the Oregon Department of Revenue that the lien was satisfied and the penalty collected on November 3, 2006.

Findings

Oregon's data included \$108,481 in penalties assessed for 14 cases in federal fiscal year 2005. Final formal enforcement actions included penalties in 88% of cases, above the national average of 77%.

All of the 9 enforcement files we reviewed included appropriate documentation of the final penalty and all of the cases we reviewed documented that penalties were collected.

Recommendations

In addition to the recommendations in Metric 7, ODEQ should institute a data process to enter penalties collected on initial Notices of Violation and Penalty as final penalty actions in order to get proper credit for all penalties under this State Review Framework data metrics. Region 10 will verify by November 2007 that such data has been entered for federal fiscal year 2007.

SRF milestone(s):

By November 30, 2007, Region 10 will review RCRAInfo to confirm appropriate 2007 penalty data has been entered.

Citation of Information Reviewed

Region 10 reviewed data for 17 formal enforcement actions and 9 files with Notices of Violation and Penalty orders.

Element 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.

Discussion and Analysis

9.a. State agreements (the PPA and PPG work plan in Oregon) are met and any products or projects are completed Met

ODEQ completed all of the compliance work in the 2005 work plan with Region 10. Details on the core program inspections were included in data metrics 1 and 11, which show the annual universe coverage goals were met. In addition to the core program work, the work plan included the goal of pursuing inspections based on high priority citizen complaints. Region 10 and ODEQ agreed that a complaint that resulted in a formal enforcement action would be counted as the equivalent of an LQG inspection in our annual work load accomplishments. As a result, Oregon inspected, found violations and sent warning letters to 25 handlers, which constituted about 11% of their total inspection workload. This resulted in 5 formal enforcement actions in response to citizen complaints and \$34,438 in penalties assessed. Final orders were issued and penalties collected in 2 of these 5 cases.

On other PPG work plan goals, Oregon completed projects to address the findings of the 2004 compliance program review, including internal directives for economic benefit, multiple penalties and supplemental environmental projects. They developed a measurement strategy for showing the compliance and environmental outcomes of Toxics Use and Waste Reduction Assistance program technical assistance visits. They completed 489 assistance visits in addition to the core compliance inspections. They evaluated violators for SNC designation and addressed all SNC violators with formal enforcement actions.

Findings

ODEQ completed the compliance and enforcement work in the 2005 Performance Partnership Grant work plan.

Recommendations

No recommendations for Element 9.

Citation of Information Reviewed

Region 10 reviewed the PPG work plan and the ODEQ grant progress report for 2005.

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

Discussion and Analysis

10.a. Integrity of SNC data (timely entry) 11% - 0%

Oregon missed by one this Framework benchmark for entering all SNC determinations in RCRAInfo less than 60 days after the SNY evaluation date. From August 9, 2005 to August 9, 2006, when OECA tracked this measure nationally, Oregon entered 1 of 9 SNC determinations more than 60 days after the SNY evaluation date, based on recorded updates from RCRA Info to OTIS online. Though missing the benchmark goal, Oregon was better than the national average for late entries of 38%.

The one late entry we found was discovered by ODEQ to be a duplicate entry in RCRA Info for the Specialized Pavement Marking facility. Oregon fixed the data and subsequently met this benchmark.

10.b. Percent of inspections, enforcement actions, or other compliance related activities, for which there is a nationally required data element, that are entered into RCRAInfo in a timely manner 78%

We found data discrepancies of information that did not appear to be timely entered (i.e., had not been entered in RCRAInfo yet) in 4 of 18 files we reviewed.

In the Southern Oregon Marine file, we found the final order dated 10/30/2006 which does not appear in the RCRAInfo data pulled 01/08/2007. Also, some of the violations had returned to compliance but there were no actual compliance dates in RCRAInfo.

We found a warning letter in the USDOE NETL Albany file for 3 class 2 violations dated 10/06/2005. The RCRAInfo data pulled on 11/08/2006 had no linked violations for the 09/21/2005 inspection.

A final order was sent to Crystal Lite Manufacturing on 04/21/2006 that did not appear on the RCRAInfo report pulled 11/08/2006. We also found SNN data entered with a date 05/05/2006 which corresponded to the time that a request for a lien was made to recover the \$3000 penalty. We did not find an explanation for the removal from SNC status in the file.

The Town and Country Cleaners data in RCRAInfo shows that the violations have not returned to

compliance as of 11/08/2006. We found information in the file that the generator had closed its business and a site visit verified that wastes had been removed and the only violation remaining was the failure to pay all outstanding fees to Oregon ODEQ. The enforcement case has been dropped since the operator left the state.

Findings

ODEQ had one late entry due to a data error out of the 9 SNC determinations through 8/9/2006 that was corrected as a result of this review.

ODEQ data was timely in 78% of the 18 inspection and enforcement files that we reviewed. All four discrepancies noted in the preliminary file review results were researched and corrected by ODEQ as a result of this review.

Recommendations

No recommendations for Element 10.

Citation of Information Reviewed

Region 10 reviewed 18 inspection and enforcement files in two of the state's three regional offices and the Office of Compliance and Enforcement, which included 9 formal enforcement actions with Notices of Violation and Penalty orders.

Element 11. Degree to which the minimum data requirements (nationally required data elements for the RCRA program) are accurate.

Discussion and Analysis

11.a.1. Integrity of SNC data (correct entry of SNC and determination date) Met (0)

Oregon met this framework indicator for closeness of SNC determination date and final enforcement action date. Oregon entered no SNC determinations **on the same date** as enforcement actions and there were 37 nationally.

11.a.2. Oregon also met this measure of the closeness as none of Oregon's SNC determination dates were **within one week of the formal enforcement date**. There were 16 reported nationally.

11.b. Longstanding secondary violations not "returned to compliance" nor designated as SNC violators Met (0)

Oregon had no handlers for which violations were open for more than three years without data for "return to compliance" or SNC entered. There were 2,109 handlers nationally that did not meet this data quality measure.

The Enforcement Response Policy states that a facility designated as a secondary violator should be redesignated as SNC if the violator does not return to compliance within 240 days. The Framework Metrics pull only violators that have exceeded three years without resolution to allow a

significant margin for error.

11.c. Accuracy of data reporting (vis-à-vis file review information) 72%

We found data discrepancies between the files and RCRAInfo in 5 of 18 cases.

The University of Oregon department order showed the \$3600 penalty was calculated for the violation of failure to make hazardous waste determinations. The RCRAInfo data showed the penalty information linked to a violation for train all employees that were not included in the final order.

The Southern Oregon Marine final penalty and actual compliance data was missing as noted above.

The Park Place Wood Products indicated the penalty had been paid in response to the initial Notice of Violation and Penalty so no final order was needed. Final penalty data and penalty collected data was missing from RCRAInfo.

The USDOE NETL Albany violations were missing from RCRAInfo as noted above.

The Crystal Lite final order was missing from RCRAInfo as noted above.

Findings

ODEQ met the two measures for integrity of SNC data. Also, the data in RCRA Info was consistent with the file information in 72% of the 18 files we reviewed. ODEQ researched and corrected the data discrepancies identified in the preliminary review findings.

Recommendations

No recommendations for Element 11.

Citation of Information Reviewed

Region 10 reviewed 18 inspection and enforcement files in two of the state's three regional offices and the Office of Compliance and Enforcement, which included 9 formal enforcement actions.

Element 12. Degree to which the minimum data requirements are complete, unless otherwise negotiated by the region and state or prescribed by a national initiative. (All data pulled from EPA's RCRAInfo database by Headquarters in August 2006.)

Discussion and Analysis

12.a.1. Active* facility universe counts accurate, number of **operating** TSDFs in RCRAInfo.
There are 3 known operating TSDFs in Oregon and 900 reported nationally. (Oregon was 0.3% of the national total.)

12.a.2. Number of active LQGs in RCRAInfo.

There are 180 reported active large quantity generators in Oregon and 24,979 nationally (0.7%).

12.a.3. Number of active SOGs in RCRAInfo.

There are 411 reported active small quantity generators in Oregon and 173,649 nationally (0.2%).

12.a.4. All other active handlers in RCRAInfo.

There are 3,520 reported other active handlers in Oregon and 242,661 nationally (1.5%).

12.b.1. Inspection counts complete.

Oregon reported 238 inspections in fiscal year 2005. Oregon conducted a number of other compliance assistance visits that could be presented in Element 13. There were 24,194 inspections reported nationally (1.0%).

12.b.2. Inspection counts complete.

The number of handlers inspected by Oregon in 2005 was 219. Oregon visited a number of other handlers to provide compliance assistance that could be presented in Element 13. There were 17,855 facilities reported nationally (1.2%) .

12.c. Violation counts complete; number of facilities with violations during the reporting period.

Oregon reported 162 facilities with violations during 2005. There were 13,753 reported nationally (1.2%). The non-compliance rate in Oregon was 74% (162/219), while the national rate was 77% (13,753/24,194).

12.d.1. Notice of violation counts complete; facilities with state NOV data in 2005.

Oregon entered informal enforcement actions (warning letters or pre-enforcement notices) for 135 violators in 2005. There were 5,801 facilities reported nationally (2.3%).

12.d.2. Notice of violation counts complete; total state notices issued.

Oregon entered 146 notices of violation (warning letters or pre-enforcement notices) during 2005. There were 7,036 notices reported nationally (2.1%).

12.e.1. SNC counts complete; number of new SNC in fiscal year 2005.

Oregon entered 5 new SNC violators in 2005. There were 566 entered nationally (0.9%).

12.e.2. SNC counts complete; number of facilities in SNC status in 2005.

Oregon had a total of 9 facilities with SNC status at some time during 2005. There were 1,317 reported nationally (0.7%).

12.f.1. Formal action counts complete; facilities with formal actions in 2005.

Oregon entered formal enforcement actions at 36 facilities in RCRAInfo in 2005. There were 1,119 reported nationally (3.2%).

12.f.2. Formal action counts complete; total formal actions taken.

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Oregon entered 48 formal enforcement actions in 2005. There were 1,422 reported nationally (3.4%).

12.g. Assessed penalties complete; total amount of final assessed penalties.

Oregon entered a total of \$108,481 in penalties in fiscal year 2005. There were \$15,260,648 reported nationally (0.7%).

Findings

ODEQ met all the minimum data requirements for RCRA Info compliance and enforcement data. Data discrepancies identified in the preliminary review report have been researched and addressed in Oregon's comments on the preliminary data metrics report.

Recommendations

No recommendations for Element 12.

Citation of Information Reviewed

The review was based on data pulled by EPA Office of Compliance for Federal Fiscal Year 2005, starting October 1, 2004. The data was pulled from the OTIS national database on October 31, 2006. ODEQ reviewed the data and made no comments on Element 12 results.

Element 13. Degree to which additional compliance programs and activities improve compliance.

ODEQ did not prepare an element 13 evaluation for the hazardous waste program.

NPDES PROGRAM REVIEW

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A. BACKGROUND INFORMATION

Structure

Oregon Department of Environmental Quality's (ODEQ) NPDES program is organized within the Water Quality Division and operates through a Headquarters office located in Portland and three regional offices (Northwest - Portland, Western - Eugene, and Eastern – Pendleton) and their affiliated field offices (3 in Northwest, 6 in Western, 4 in Eastern). The regional offices are responsible for issuing individual permits, complaint response, providing compliance/technical assistance, planning and conducting inspections, documenting inspections, determining violations, classifying violations and determining the appropriate enforcement response. They also issue the informal enforcement actions (e.g., notices of noncompliance, letters, and phone calls). Formal enforcement referrals (e.g., orders, agreements, and penalty assessments) are made by the regional administrators to ODEQ's Office of Compliance and Enforcement (OCE) located in Portland.

Authorities

Oregon ODEQ is authorized to implement the majority of the NPDES program. Oregon Department of Agriculture is responsible for administering and managing the compliance and enforcement aspects of the NPDES Animal Feeding Operations (AFO) through separate Memoranda of Agreement with ODEQ and EPA.

Source Universe

In FY05, Oregon had a total of 77 major and 292 minor dischargers. There were a significant number of facilities covered under general permits, including storm water and wet weather facilities, but these were not reviewed for this report.

Corrections

The data metrics were primarily obtained from ODEQ's databases Water Quality Source Information System (WQIS), Enforcement, and Discharge Monitoring System (DMS) which currently do not feed into the PCS or ICIS-NPDES. As a result, we were unable to evaluate a majority of the data metrics.

Data in Permit Compliance System (PCS) – national database

Historically, EPA Region 10 entered all required Oregon data into PCS based on information received from the state. In August 2004, EPA stopped entering this data. ODEQ currently has three systems to manager implementation of its NPDES program, summarized as follows:

Water Quality Source Information System (WQSIG) – stores facility identification and administrative permit information for all Oregon water quality facilities and permits. ODEQ uses this system to track all NPDES permits, permit applications and permit activity, pretreatment information and inspection dates. WQSIG is used to provide permit and facility information to the DMS/DMR system.

Discharge Monitoring System (DMS) – is intended to store information on permit features, scheduled, permit limits, required monitoring and DMR data for individually permitted facilities.

Enforcement data base – this system is used to track Oregon’s civil and criminal enforcement actions and Oregon’s timeliness in pursuing and completing them. It contains information such as enforcement status, source identification information, supplemental environmental projects (SEPs) schedules and accounting information, violations class and penalties

ODEQ is currently uploading all DMS data to PCS and expects to have historical data from July 2004 for NPDES majors uploaded in PCS by April 2008. This includes inspection and enforcement data (obtained from WQSIG and Enforcement), DMRs, and compliance schedules issued through warning letters or pre-enforcement notices. Monies from EPA’s grant is being used to upload Schedule A and B permit requirements/compliance schedules for both majors and minors. No other minor facility information (e.g., DMRs, inspection dates, enforcement) is being uploaded as part of the grant. DMS is the link or clearinghouse between PCS and the WQSIG and Enforcement databases. There are no current plans or funding source identified for the upload of PCS data to ICIS. Sources of funding for future upload of information into PCS and/or ICIS for majors and minors is unclear.

B. REVIEW PROCESS

Key Dates

Review period: FY2005 (October 1, 2004 thru September 30, 2005)

Start date for review: September 7, 2006

Date SRF Metrics sent to State: December 4, 2006

Date(s) when on-site interviews and file reviews were conducted: January 30-February 1, 2007 (Portland) and February 27, 2007 (Pendleton)

Review Process

Number of regional offices and number visited: Headquarters/Office of Compliance and Enforcement, Northwest Region (Portland), Eastern Region (Pendleton)

List of reviewers and contacts for the region and the state:

From EPA: Eva Chun (lead), Robert Grandinetti, Jamie Sikorski

From Oregon: Jim Billings, Annette Liebe, Les Carlough, Jane Hickman

Location and duration of the review: Office of Compliance and Enforcement and Northwest Region (Portland) – 3 days, Eastern (Pendleton) – 1 day

We conducted the file review at ODEQ's Headquarters and Northwest Regional Office located in Portland. Enforcement files are maintained at OCE in Portland, while permit and inspection files are maintained at the separate regional offices. We requested that the permit and inspection files from the Western and Eastern Regional Offices be consolidated and sent to Headquarters. There were no plans to visit the Western or Eastern Regional Offices because of time constraints and limited budget. However, during the site visit to Portland, we discovered that numerous files from the Bend field office (part of the Eastern Regional Office) were either destroyed or severely damaged due to a fire during the winter. We decided to substitute those destroyed files with other Eastern Regional Office files. We also discovered that some Eastern Regional Office permit and inspection files had not been delivered to Portland for EPA's review. As a result, we also decided that a site visit needed to be conducted at the Eastern Regional Office in Pendleton in order to complete the review.

Information was gathered through a variety of means. A list of major and minor facilities, inspections conducted, and formal enforcement actions for FY05 were requested from ODEQ on October 31, 2006, prior to the file review since this information was not available on PCS/ICIS. ODEQ responded to our data request on December 8, 2006. Files were selected and the facility names were sent to ODEQ on January 12, 2007. After the on-site file review, analysis of data and file metrics was conducted by EPA and draft findings were sent to ODEQ for comment on April 24, 2007. ODEQ responded to EPA's draft findings on May 22, 2007.

C. FILE SELECTION PROCESS

Universe

The total number of majors and minors within the NPDES universe was 369 (77 majors and 292 minors). 135 inspections were conducted and 18 formal enforcement actions were issued in FY05. In some cases, more than one inspection or enforcement action were conducted or initiated at the same facility in FY05. This universe did not include the 15 additional NPDES permittees and 140 state-only Water Pollution Control Facilities that were inspected in response to complaints. In addition, inspections of non-discharge permit-holders which may indirectly contribute to pollution of surface waters through failing lagoons, seepage, or direct underground injection were not included.

File Selection

Originally, a total of 26 facilities were selected for the file review, from a range of 15 to 30 as specified in the SRF guidance. These facilities had either inspection and/or formal enforcement activity in FY05. File selection was based on percentage of inspections/enforcement actions in each region. Some facilities were flagged based on complaints or citizen's suits (*e.g.*, City of Astoria and GP Toledo). Most files were selected from the Western Region since they had the most inspection/enforcement activity. An attempt was also made to obtain a representative sample of

municipalities, industrial facilities, and inspectors or enforcement staff. Facilities covered under general permits (*e.g.*, wet weather) were outside the scope of this review. Follow-up phone calls were made with ODEQ staff to clarify findings and fill in the information gaps.

As previously mentioned we changed the file selection when we discovered during our site visit that some files were damaged or missing because of the fire in the Bend office or permit/inspection files were missing. In the end, 23 facility files were reviewed (some included facilities that were inspected more than once in FY05). In total, 17 inspection files (from 15 different facilities) and 9 formal enforcement files (from 8 different facilities) were reviewed.

File Maintenance

Permit, DMR, and inspection files are maintained at regional offices. Formal enforcement files are maintained at OCE in Portland. File organization appeared to vary regionally and individually. In some cases, files were well-organized and separated chronologically into, for example, permit files, inspection files, facility correspondence. In other cases, there appeared to be little organization. The separation of enforcement files from the permit and inspection files made it difficult for ODEQ staff to conduct a full enforcement review of facility violations in addition to the referred violation. Enforcement actions typically were limited to those violations referred by the regional offices and may not have captured all violations at the facility.

D. ELEMENT-BY-ELEMENT DESCRIPTION

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

Discussion and Analysis

1a. Inspection coverage for NPDES Major Facilities 68%

Oregon inspected 52 majors out of a total of 77 majors. This was greater than the national average of 65.7%.

1b. Inspection coverage – NPDES non-majors 28%

Oregon inspected 83 minors out of 292 minors. The national expectation is about 20 % per year (5-year inspection frequency)

1c. Other inspections performed (beyond facilities indicated in 1a and 1b) 155

ODEQ conducted a number of inspections in response to complaints at unpermitted facilities which may discharge directly to surface waters and other inspections of non-discharge permit-holders which may indirectly contribute to pollution of surface waters through failing lagoons, seepage, or direct underground injection. These include 15 additional NPDES permittees and 140 state-only Water Pollution Control Facilities.

1r. Regions can track yearly commitments, or multi-year plans. Reserved for inspection plan

targets negotiated between the Region and state in PPAs and grant agreements. 120%
Oregon ODEQ completed 120% of the planned inspections for FY05 in the 2004-2006 Oregon Performance Partnership Agreement.

Findings for Metric 1

Oregon committed to inspect all major sources each year and reserved the right to substitute minor facility inspections in place of major facility inspections at a 2:1 ratio. A total of 52 majors and 83 minors inspections were conducted in FY05. This calculates to the equivalent of 93 majors or 120% of their target. ODEQ has met and exceeded its commitment.

Recommendations for Metric 1

No recommendations for Metric 1.

Citation of Information Reviewed

The Metric 1 review was based on data pulled by ODEQ's Water Quality Division for FY05, starting October 1, 2004. The data was pulled from ODEQ's Water Quality Source Information System (WQSIS).

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

Discussion and Analysis

2a. Percentage of inspection reports that are adequately documented in the files 35%

We reviewed 17 inspection reports (15 facilities, of which 3 facilities had 2 inspections within FY05; however, of these 3 facilities, we were unable to locate one inspection report for Glendale STP but found the inspection reports for Winston Green WWTF and Heppner STP). Six out of 17 inspection reports or 35% were adequately documented, with a narrative report, analytical results (if a CSI), 3560 form, peer review, and signature.

Findings for Metric 2

Typically, the inspection reports of major facilities had adequate documentation (5 out of 7 majors reviewed or 71%). Narratives were generally very brief. Nine of the 17 inspection reports did not document any violations at the facilities which may be the result of or related to the brevity of the narratives. None of the 17 reports had photo logs. Some inspectors, but not all, used checklists.

Recommendations for Metric 2

ODEQ should provide training to all inspectors on proper documentation to ensure that all required paperwork is included in the inspection report. ODEQ is encouraged to refer to the new EPA NPDES guidance manual under development. ODEQ is currently working with EPA to hold an NPDES inspector training for its inspectors in FY08. ODEQ should monitor future inspection reports to ensure recurring reporting problems have been corrected and share the results of findings with EPA.

SRF milestone(s): ODEQ training for NPDES inspectors conducted by 9/30/08; share results of monitoring inspection report improvements within 6 months after the training.

Citation of Information Reviewed

Region 10 reviewed 17 inspection reports (from 15 facilities) in two of the state's three regional offices.

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

Discussion and Analysis

3a. Percentage of Inspection Reports which identify potential violations in the file within a given time frame established by the Region and state 64%

EPA's Enforcement Management System's Compliance Inspection Strategy (1985) states that reports will be distributed within 30 or 40 days for non-sampling or sampling inspections, respectively. Excluding three inspection reports that did not have an inspection and/or the report date (Glendale, Winston-Green STP [2 inspection reports in FY05]), the average time taken for the remaining 14 inspection reports to be written was 33 days and the range was 0 to 212 days. However, excluding the one report that took 212 days to be written (and the writer apologized for the lateness in his follow-up to the facility), the average time for an inspection report to be written was 19 days. Nine of 14 inspection reports (64 percent) (with dates) were written within the 30- or 40-day timeframe. In a number of instances, it does not appear that all violations were identified in follow-up letters to the facilities.

The Georgia Pacific Toledo Pulp inspection report dated 8/3/05 for an inspection conducted on 8/2/05 found discrepancies in DMR reporting and documented the discrepancies. A warning letter was sent on 8/29/05 requesting GP Toledo to review DMRs and report any discrepancies. However, the warning letter did not comment on 10 separate non-compliance events that GP Toledo had reported to ODEQ in FY05.

The Albany STP inspection report dated 10/27/04 noted that effluent flow was not measured as required under the permit. However, this was not mentioned in the follow-up letter dated 3/21/05.

The City of Newport received a pre-enforcement notice (PEN) on 8/25/05 for its failure to conduct an industrial pre-treatment survey that was due 12/02. This violation was noted in a 12/04 inspection report and was followed with a 7/1/05 Notice of Noncompliance, an informal action. When ODEQ discovered in the 8/9/05 inspection that the industrial audit had not been performed, it issued the PEN, with pending civil penalty (a formal action), on 8/25/05.

The Teledyne Wah Chung inspection report dated 11/1/05 for an inspection conducted on 3/29/05 noted a cooling tower water overflow on the day of the inspection, but this was not mentioned in a warning letter dated 10/27/05.

The City of Glendale inspection report (inspection date unknown, but documented as 5/11/05 in a PEN) did not document violations that were later described in a 9/9/05 PEN. Specifically, it stated that during the 5/11/05 inspection, lab ware was found to be dirty and broken and calibration was not done for more than a year. However, the inspection report did not document this, although DMR violations were documented.

The Roseburg Landfill inspection report dated 6/8/05 for an inspection conducted on 3/31/05 noted that flow measurement was not taken at the same location as effluent samples. Such a discrepancy may result in error calculating mass loading. A letter sent to Roseburg dated 6/9/05 did not raise this as an issue.

Findings for Metric 3

ODEQ typically completed inspection reports in a timely manner (excluding those inspection reports with no dates). There is no statewide guidance on time frames for completing and distributing inspection reports if the facility is not destined for formal enforcement. In general, decisions on when to provide compliance notices and information, like the inspection report, are at the discretion of the regional water quality program permit manager and inspector depending on the circumstances.

EPA's review also revealed that follow-up with facilities on inspections and compliance was inconsistent. In many cases, follow-up letters did not contain a complete compliance evaluation of the files, but were strictly based on findings made during inspections. In some instances, violations noted in inspection reports were not mentioned in follow-up letters (although these letters were often accompanied by the inspection report).

Within the regional offices, inspectors are very familiar with their NPDES facilities as they typically inspect the same facilities every year. Manual file reviews (mainly of DMRs) are conducted monthly. Thus, inspectors can catch violations in a timely manner. ODEQ's inspection strategy is annual inspections of majors and inspection of minors at least every three years. Minors have been found to be in need of more compliance assistance. During inspections, inspectors will compare the facility's DMR to analytical data provided from the laboratory to ensure the data is correctly used and interpreted. Inspections typically involve a facility tour of the treatment system and outfalls, review of files and sampling of effluent. While inspector familiarity with specific facilities has benefits, we encourage ODEQ to consider some cross-inspection work to periodically bring another perspective to the inspection.

Recommendation for Metric 3

As part of inspector training recommended in metric 2, include discussion of appropriate follow-up action after an inspection is conducted, whether it is a letter with the inspection report, warning letters, pre-enforcement notices, etc. ODEQ should set expectations for a consistent follow-up approach, including the establishment of timeframes for follow-up and development of standard operating procedures. One option for inspectors is to provide E-90 reports to facilities along with

the follow-up letter and inspection report to alert the facility of all relevant violations. These E-90 reports will be available once upload into PCS is complete. NPDES inspector training is planned for FY08.

SRF milestone(s): ODEQ training for NPDES inspectors conducted by 9/30/08.

Citation of Information Reviewed

Region 10 reviewed 17 inspection files (from 15 facilities) in two of the state's three regional offices.

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

Discussion and Analysis

4a. Single-event violations reported to national system 0%

ODEQ reported noncompliance events including Single Event Violations (SEVs) for majors from inspections, DMR reviews, complaints, compliance schedules, orders, etc. through the quarterly Watch List; however, these were not reported to the national system (PCS/ICIS). ODEQ reported SEVs but did not categorize by SEV codes from inspections/other events (excluding DMR reviews and compliance schedules). ODEQ is currently uploading data to PCS and should have permit, compliance and enforcement data for NPDES majors back to July 2004 in PCS by April 2008.

4b. Frequency of SNC 0%

We were unable to determine this metric without PCS/ICIS data

4c. Wet weather SNC placeholder NA

Wet weather SNCs have not been developed and were not analyzed in this review.

4d. Percentage of SNC determinations that are accurately reported 0%

It was not possible to review this metric without the related PCS data. However, of the files reviewed, one SNC violation was identified that was not addressed as such. The City of Newport received a pre-enforcement notice (PEN) on 8/25/05 for its failure to conduct an industrial pre-treatment survey that was due 12/02. This violation was first noted in a 12/04 inspection report and was followed with a 7/1/05 Notice of Noncompliance, an informal action. When ODEQ discovered in the 8/9/05 inspection that the industrial audit had not been performed, it issued the PEN, with pending civil penalty (a formal action), on 8/25/05.

Findings for Metric 4

In August 2004, EPA stopped entering all required Oregon data to PCS based on information received from the state. The following provides additional information about the matter of data in PCS subsequent to FY 05. In an October 27, 2006 letter from David Hindin (EPA-HQ) to Lauri

Aunan (ODEQ), it was clarified that ODEQ would implement an interim measure whereby monthly SNC status for majors would be manually determined by regional inspectors until upload of DMR data to PCS is complete. Partly in response to early findings from the file reviews, in March 2007, ODEQ began supplying inspectors with DMS DMR Evaluation Reports that compare permit limits and required monitoring. This report identifies missing monitoring, limit exceedances, and provides SNC limit calculations for 40% exceedance of conventional and 20% of toxic pollutants. After verifying noncompliance claims by this report, inspectors must manually report SNC to ODEQ headquarters for monthly EPA reporting. ODEQ states that it is dedicated to providing historical (back to July 2004) and on-going compliance and enforcement data for NPDES majors in PCS by April 2008. Through the Oregon DMS-PCS/ICIS Data Readiness Project (EA-96035901), ODEQ has met the project milestones including upload of Group A DMR data to PCS before June 11, 2007. In addition, ODEQ is preparing to gather and enter SEV and other WENDB data, including inspection dates and compliance schedules for NPDES majors directly to PCS.

ODEQ staff expressed concern about need to identify funds to continue upload/entry of data for majors and to add upload/entry for non-majors, including wet weather sources, after January 2008. There are no current plans for uploading PCS data to ICIS.

Recommendations for Metric 4 (and all other data related metrics)

Once upload into PCS is complete in April 2008 and bugs fixed, all major permits should be reviewed for compliance (*e.g.*, SNC status) and compared to the manual reporting system. Any discrepancies should be reconciled and the appropriate enforcement actions taken. ODEQ needs to ensure that all WENDB data is entered into PCS/ICIS, this includes inspection and enforcement information. ODEQ plans to include classes about SNC and SEV reporting in the FY08 NPDES inspector training. EPA recommends that all appropriate ODEQ staff and data personnel (including regional inspectors and enforcement staff) attend this training.

ODEQ also needs to develop a plan to ensure all data from the state databases (WQSI, Enforcement, and DMS) are transferred to PCS and ultimately to ICIS-NPDES, including how the work will be funded. It is EPA's understanding development of such a plan has been discussed in the past (but not been developed) so it EPA recommends the agencies get a clear understanding on this point.

SRF milestone(s):

- By April 2008, ODEQ should develop and share with EPA a data management and staff training plan
- By April 2008, ODEQ should initiate review of permits for majors to identify SNCs and begin to reconcile discrepancies
- By April 2008, ODEQ should identify and propose to EPA a plan for how it plans to handle cases in which a source is identified as SNC, but no formal enforcement is planned.

Citation of Information Reviewed

Files and discussions about PCS project

5a. Percentage of formal state enforcement actions that contain an appropriate 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 88 %

Eight facility files were reviewed that included 9 formal enforcement actions. The City of Pendleton had two formal enforcement actions within FY05, a Civil Penalty and Mutual Agreement and Order (MAO). Seven out of 9 formal enforcement actions (including the City of Yachats penalty action) or 78 percent contained a compliance schedule of required actions or activities designed to return the source to compliance for the specific violation addressed. Four of the 7 were MAOs without penalties. Typically, penalty settlements are finalized in an MAO that may include requirements to complete a Supplemental Environmental Project (SEP).

In some cases, while the MAO returned facilities back to compliance with the certain parameter that was cited in the MAO, some continued to violate different terms of their permit that were not addressed in the enforcement action.

In one unusual case, Pacific Surimi Joint Venture LLC was originally covered under a general permit for its seafood processing waste, primarily surimi. When the general permit was reissued, ODEQ decided not cover the two surimi processing facilities that were previously covered under the general permit but instead issued each a Stipulated Consent Order (SCO) to meet certain effluent limits while the individual permit was being developed. The SCO, issued on 6/14/99, contained specific penalties for violations. Before the individual permit was finally issued on 4/11/06, Pacific Surimi had received Notices of Noncompliance (NONs) on 7/27/0 and 8/7/01 and Penalty Demand Notices on 6/14/02, 7/25/02, and 2/9/04, and an MAO on 4/15/05. The facility now appears to be compliant with its new permit.

Three of the five civil penalties were for CSO/SSO violations. For the City of Yachats, a \$7,200 penalty was issued on 8/25/05 for a raw sewage overflow that entered surface waters from November 7-17, 2004. This was paid and Yachats returned to compliance. The City of Astoria was issued an action on 6/28/05 which settled on 8/22/06 for \$4,260 with a \$17,040 SEP for the failure to construct CSO control facilities on a timely basis. Although the penalty was paid, the SEP fell through and Astoria has since committed new violations. ODEQ and Astoria are now negotiating a new settlement that incorporates the cost of the SEP and the new violations. The City of Pendleton was issued an action on 2/11/05 which

was settled on 3/2/06 for \$660 for an SSO that occurred on 8/27/04 with a SEP worth \$49,918 to control sheet flow from streets. However, SSOs on 5/25/04 and 5/28/04 were not addressed in the enforcement action which was issued after these violations had occurred, nor was an additional SSO that occurred on 9/15/05. The files also indicate that Pendleton has been unable to meet their interim chlorine limits as stipulated under their MAO.

For the City of Enterprise, an MAO was issued on September 2005 with interim limits for BOD and TSS. However, the facility only violated the original permit limit once for BOD. It is unclear why an MAO was issued when the facility appeared to be able to meet its permit limits.

The City of Echo was issued an MAO to conduct a Mixing Zone Study, yet a review of the DMRs indicates that the facility is discharging during months when the permit prohibits it from discharging (November 1 through April 30 of each year).

Note: the SRF guidelines for metric 5 have been confusing to both EPA and the state and should be clarified during the SRF project evaluation.

b. Percentage of actions or responses other than formal enforcement that return source to compliance 100%

53 informal enforcement actions were taken in FY05. It is unknown how many returned to compliance. However, of the two informal enforcement actions reviewed, both returned to compliance. The City of Baker received a Warning Letter for its failure to conduct three priority pollutant scans within 6 months of the effective date of the permit. The City returned to compliance after the Warning Letter was received. The City of Yachats was found to be inaccurately sampling for ammonia and for failing to submit a report identifying flow location by 9/11/03. They were given until 9/1/04 to submit the report to ODEQ. The City returned to compliance after the enforcement action.

Findings for Metric 5

Enforcement actions generally brought the facility back to compliance with the violation addressed. However, there were cases in which other violations could have been addressed by the same enforcement action, but were not included in the settlement. This may be because the regional office did not refer all of the violations to OCE. According to ODEQ, OCE will generally only pursue those violations that have been referred. If a comprehensive file review was not conducted, a number of violations may be missed and therefore not addressed and corrected through the enforcement action. EPA typically identifies all violations that occurred in the 5 years preceding the violation(s) under review to take into consideration as the case is developed. The 5-year period corresponds with the federal statute of limitations. In their comments on the draft, ODEQ raised some questions and concerns about this recommendation; initial discussions between the agencies have occurred.

Five out of the 9 formal enforcement actions included an MAO which provided interim effluent limits until the facility could come into compliance with the actual permit limits or required a mixing zone study. In one case, it appeared that an MAO was issued with interim effluent limits after only a single violation for that parameter.

According to ODEQ's Enforcement Guidance, there are generally three types of MAOs. (1) MAOs related to permit compliance schedules. These are typically used when a permitted source has aging or degraded facilities such that the source has difficulty complying with parts of the permit. This MAO generally settles past violations without penalty, creates interim limitations for the problem parameters, and establishes a compliance schedule to study and upgrade the facilities. (2) MAOs that provide the source authorization to operate under certain requirements and limitations until a permit is issued. These MAOs are typically used when a source either does not have a permit, or has a permit which is being modified with conditions with which the source can not comply. This MAO may or may not include a penalty, depending on the circumstances. (3) MAO that settles a civil penalty and/or Department or Compliance Order. This MAO is issued following an informal discussion with the Respondent. This MAO settles a contested civil penalty/order, and the respondent waives its right to a contested case hearing.

ODEQ stated that MAOs were frequently used with older municipalities that needed time to update their infrastructure. As the municipalities update their infrastructure, ODEQ says that the use of MAOs has decreased over the years and that they are moving towards putting these requirements into Schedule C of the permit

EPA has concerns regarding the use of MAOs as described in (1) and (2) above. In the first, the MAO appears to create different limits than the permit and without opportunity for public input. In the second, the MAO appears to operate in lieu of a permit. EPA understands the state now has authority to incorporate compliance schedules into permits which may alleviate the need for MAOs in these situations.

Recommendation for Metric 5

EPA recommends ODEQ consult with the AG and consider conducting more detailed file reviews when pursuing enforcement actions in part to appropriately consider the history of non-compliance and to ensure economic benefit considerations are representative of the situation. DEQ is asked to provide to EPA by February 27, 2008 (letter to Kimberly Ogle and Eva Chun) its position with respect to this issue. Use of E-90 reports (when they are available from PCS) that list all DMR violations may help more comprehensively identify DMR violations.

With respect to the relationship of MAOs to permits, EPA recommends ODEQ consult with the AG's office and provide to EPA (letter to Kimberly Ogle and Eva Chun) by March 31,

2008 a description of how MAOs are used in the permitting and enforcement process, including results of discussions with the AG's office regarding any legal issues.

SRF milestone(s):

By February 27, 2008, ODEQ describes to EPA its position with respect to conducting comprehensive file reviews when developing enforcement actions.

By March 31, 2008, ODEQ provides a description to EPA about how MAOs are used in the permitting and enforcement process, including any associated legal issues.

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

Discussion and Analysis

6a. Timely action taken to address SNC violators 0%

We will be able to analyze this data metric when Oregon's DMS download to PCS is complete in April 2008. Until then, SNC status is manually calculated and cannot be easily analyzed and for purposes of data metrics, were not part of the review.

6b. No activity indicator - (actions) NA

This indicator is not applicable to Oregon as they initiated formal enforcement actions against 18 violators in FY05.

6c. Percentage of SNCs addressed appropriately 0%

It was not possible to review this metric without the related PCS data. However, as noted in metric 4d, the file review identified a SNC violation that was not appropriately addressed. The City of Newport failed to conduct an industrial pre-treatment survey required by their permit and due on December 2002. This violation was noted in a 12/04 inspection report and was followed with a 7/1/05 Notice of Noncompliance, an informal action. When ODEQ discovered in the 8/9/05 inspection that the industrial audit had not been performed, it issued the PEN, with pending civil penalty (a formal action), on 8/25/05. EPA's September 21, 1995 memo on SNCs states that SNC violations should be pursued with a formal enforcement action in a timely and appropriate manner.

Findings for Metric 6

See discussion for Metric 4. It is unclear whether DMS tracks all annual reports or WET testing as required under the permit.

Recommendation for Metric 6

See Metric 4 (relates to PCS data)

Citation of Information Reviewed

Region 10 reviewed 26 inspection and enforcement files (from 23 facilities) in two of the state's three regional offices.

7. Degree to which a state includes both gravity and economic benefit calculations for all penalties using the BEN model or a similar state model (where in use and consistent with national policy.) {Note to reader: Region 10 recognizes this element and element 8c below do relate to similar information – degree to which initial and final penalties conform to expectations and degree to which files adequately document penalty decision-making}

Discussion and Analysis

7a. Percentage of formal enforcement actions that include calculation for gravity and economic benefit consistent with applicable policies 25%

Of the nine formal enforcement actions, four did not include penalties but were MAOs only. This leaves five enforcement actions reviewed with penalties. Pacific Surimi Joint Venture LLC violations occurred when a Stipulated Consent Order was in effect that stipulated penalties for violations. Thus, Pacific Surimi was also excluded in this metric.

Although all four of the remaining penalty documents contained a statement concerning economic benefit, three stated that the facility “did not receive an economic benefit” or that the economic benefit was “de minimis” or there was “insufficient information upon which to base a finding”, with no additional supporting information.

Findings for Metric 7

Based on the information presented in the files, EPA has determined there is sufficient reason to believe economic benefit may have accrued and that further analysis would have been warranted in three cases where economic benefit was not calculated. In these cases, violations were the failure to construct CSO control facilities on a timely basis and two SSOs that reached surface waters. For the CSO case, the file states that there was “insufficient information” to estimate an economic benefit. ODEQ said they did not have a good way to estimate the economic benefit. In such situations, EPA may ask the facility before or during settlement negotiations what the costs are for constructing the CSO control facilities. The penalty would then be adjusted to reflect economic benefit associated with those figures. In the SSO cases, SSOs were reported, but economic benefit was considered “de minimis” or that the facility “did not receive an economic benefit” without any explanation. If the economic benefit was de minimis, EPA would explain in its penalty justification why the costs were nominal and that economic benefit would be zero (or less than \$2500) (*e.g.*, controls were implemented immediately after the violation and therefore economic costs are de minimis). Whether or not economic benefit is assessed or found to be minimal, it should be considered and explained in every case.

ODEQ expressed concerns that such documentation may expose their cases to litigative risks because most of their enforcement files are not FOIA-exempt. Region 10 staff use their best judgment in estimating economic benefit and may share such information in settlement conferences. If the respondent is able to provide documents that support a different estimate, then the economic benefit can be changed.

Recommendations:

The same recommendation and SRF milestones have been incorporated into all 3 media chapters.

As a result of discussions between ODEQ and EPA on some specific examples, it was agreed it would be beneficial for EPA to provide additional information about what to consider in estimating economic benefit and ways to obtain the information. Experienced Region 10 enforcement staff will be available to participate in such discussions for any or all of the 3 programs.

ODEQ should implement the 2005 Director's policy on economic benefit in penalties that was released near the end of this SRF review period. ODEQ should analyze the economic benefit in penalties issued in 2007 and prepare a report to share and discuss with EPA that provides information about cases where economic benefit did and did not accrue and the basis for the conclusion. The state should ensure files provide sufficient documentation to support penalty decision making, especially with respect to consideration of economic benefit.

SRF milestone: By February 1, 2008, ODEQ will provide to Region 10 an analysis of economic benefit in penalties for fiscal year 2007. The respective agency Enforcement Office Directors (and appropriate staff) should discuss the findings and any appropriate follow-up actions.

Citation of Information Reviewed

Region 10 reviewed 9 formal enforcement files (from 8 facilities) in two of the state's three regional offices.

8. The 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. {Note to reader: Region 10 recognizes this 8c of this element and element 7 above relate to similar information – degree to which initial and final penalties conform to expectations and degree to which files adequately document penalty decision-making}

Discussion and Analysis

8a. No activity indicator - penalties NA

This indicator is not applicable to Oregon as they assessed \$110,906 in final (closed) penalties in 25 cases for FY05. These cases were not necessarily issued in FY05, but closed in FY05.

8.b.1. Penalties normally included with formal enforcement actions: percent of formal enforcement actions that carry any penalty 72%

Enforcement data was available through Oregon's Enforcement database. 18 formal enforcement actions were issued in FY05. 13 of the 18 or 72% were issued penalties totaling \$53,368.

8.b.2. Penalties normally included with formal enforcement actions: percent of **closed** formal enforcement actions that carry any penalty 68%

25 formal enforcement actions were closed in FY05. 17 of the 25 or 68% were issued penalties totaling \$110,906. Not all the enforcement actions closed in FY05 were issued in FY05.

8c. Percentage of final enforcement actions that appropriately document penalties to be collected 25%

Not all final enforcement actions included penalties. Of the nine formal enforcement files we reviewed, four did not include penalties but were solely MAOs. Of the five remaining (penalty) enforcement actions in the file review, all contained documentation of the penalty to be collected. ODEQ's policy provides for reduction of penalties up to 80% if the facility proposed to conduct a Supplemental Environmental Project (SEP). As noted in Metric 7, three of the actions did not document any economic benefit.

8d. Percentage of final enforcement actions resulting in penalties collected 100%

Of the nine formal enforcement files reviewed, only three were penalty actions that were finalized (closed) in FY05. All three files documented that penalties were collected. According to ODEQ's enforcement database, 25 cases were closed in FY05. Six of these enforcement cases were MAOs that did not include penalties. Of the remaining 19, 17 enforcement actions resulted in penalties being paid and collected by the end of FY05. ODEQ's enforcement database collects information about when a final penalty has been paid by a facility.

Findings for Metric 8

All five penalty enforcement actions contained documentation of the penalty to be collected. This information is also available through ODEQ's enforcement database which follows all formal enforcement actions from issuance to finalization.

Recommendations for Metric 8

See Metric 7

SRF milestone(s):

See Metric 7

Citation of Information Reviewed

Region 10 reviewed 9 formal enforcement files (from 8 facilities) in two of the state's three regional offices.

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.

Discussion and Analysis

9a. State agreements (the PPA and PPG work plan in Oregon) contain enforcement and compliance commitments that are met. Not Met

Oregon ODEQ was able to complete a number of its commitments in the 2004-2006 PPA. Commitments ODEQ were unable to meet were renegotiated or carried over to the 2006-2008 PPA including: (1) Component 5.11 of the current PPA commits ODEQ to developing a system to ensure appropriate controls for CSO events; (2) Component 6.5 of the current PPA commits ODEQ to participate in EPA collaborative planning and enforcement initiatives, including revisions of the NPDES MOA and Compliance Assurance Principles Agreement, as needed; and (3) Component 7.1 of the current PPA commits ODEQ to develop a data system that has an interface capability with EPA's ICIS-NPDES.

Findings for Metric 9

ODEQ was able to meet most of their 2004-2006 PPA commitments. Those commitments that they were unable to meet were carried over to the 2006-2008 PPA. ODEQ and EPA need to work collaboratively to ensure that PPA commitments are met or appropriate PPA adjustments made through semi-annual meetings that include both key program and enforcement staff.

Recommendations for Metric 9

None

Citation of Information Reviewed

Region 10 reviewed the PPA for 2004-2006 and 2006-2008

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

Discussion and Analysis

10a. Regions should evaluate what is maintained in PCS by the State and ensure that all minimum data elements are properly tracked and entered according to accepted schedules 0%

See discussion for Metric 4.

Findings and Recommendations for Metric 10.

See discussion for Metric 4

Citation of Information Reviewed

None.

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

Discussion and Analysis

11a. Actions are linked to violations they address 0%
See discussion for Metric 4.

11r. Accuracy of WENDB data elements. 0%
See discussion for Metric 4.

Findings and Recommendations for Metric 11.

See discussion for Metric 4.

Citation of Information Reviewed

None.

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

Discussion and Analysis

12a. Active Facility Universe Counts Accurate for all NPDES permit types.

There are 77 majors and 292 minor facilities within Oregon. Wet weather facilities (e.g., construction storm water, industrial storm water, CAFOs) were excluded from this review.

12b. Majors permit limits and DMR entry complete.

EPA completed data entry of all major permit limits for Oregon before ceasing data entry for the state in August 2004. ODEQ is expected update and upload major NPDES permit limits, DMRs, inspection dates, compliance schedules and enforcement actions into PCS by April 2008.

12c. Non-majors permit limits and DMR entry.

There are currently no plans for ODEQ to enter minor DMR data into PCS. However, note that once PCS data converts to ICIS, minor DMR entry by ODEQ will be required. ODEQ states that this work is contingent on funding.

12d. Inspection counts complete.

A total of 135 inspections (52 majors and 83 minors) were conducted at 130 different facilities in FY05.

12e. Percent of violations linked to activity that identified the violation.

NA. This metric has not been developed.

12f. Notice of Violation Counts Complete.

Oregon issued 53 Notices of Noncompliance (NON) to 45 different facilities. While NONs were once tracked in Oregon's NON database, Oregon ceased tracking NONs beginning FY06. Informal enforcement actions (now known in Oregon as Warning Letters or Pre-Enforcement Notices; NONs are no longer used) are now tracked manually.

12g. Quality of violation data at non-major facilities (that regularly submit DMRs).

Unknown since Oregon's current goal is to upload major facility data into PCS by April 2008.

12h. Formal Action Counts Complete.

Oregon does not have this data entered into PCS. However, according to Oregon's Enforcement database, 18 formal enforcement actions were issued at 17 different facilities.

12i. Assessed penalties complete *** (Data are not currently required from states)

25 formal enforcement actions were closed in FY05. 17 of the 25 or 68% were issued penalties totaling \$110,906. These cases were not necessarily issued in FY05, but closed in FY05. Of the 18 formal enforcement actions issued in FY05, 13 were issued with penalties (72%) totaling \$53,368.

12j. Facilities with compliance schedule violations.

This data metric cannot be assessed due to the lack of Oregon data in PCS.

12k. Facilities with permit schedule violations.

This data metric cannot be assessed due to the lack of Oregon data in PCS. As stated in 12b above, EPA entered all major permit schedules and limits into PCS before returning this obligation back to ODEQ in August 2004.

Findings for Metric 12

ODEQ is in the midst of uploading its DMS data into PCS. They also state that they are preparing to gather and enter SEVs and other WENDB noncompliance data of NPDES majors directly to PCS. However, ODEQ expressed concern about availability of continued funding for ODEQ to continue upload and enter compliance and enforcement data of NPDES majors and to add data entry for of non-majors.

Recommendations for Metric 12.

As part of Metric 4 recommendations, EPA recommends ODEQ track permit requirements, inspection and enforcement actions in preparation for when EPA HQ develops its guidance and requires the data entry of all WENDB/RIDE elements into ICIS-NPDES.

SRF milestone(s):

See metric 4

Citation of Information Reviewed

Review was based on data pulled by ODEQ's Water Quality Division for Federal Fiscal Year

Oregon Final SRF Report September 25, 2007

2005, starting October 1, 2004. The data was pulled from ODEQ's Water Quality Source Information System (WQSI), Notice of Non-compliance Database (NON), and Centralized Compliance Database (CCD).

13. Degree to which additional compliance programs and activities improve compliance.

ODEQ did not prepare an element 13 evaluation for this review.

CLEAN AIR ACT PROGRAM REVIEW

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A. BACKGROUND INFORMATION

Scope of Review

The Oregon Department of Environmental Quality (ODEQ) and Lane Regional Air Pollution Authority (LRAPA) review was designed to address requirements of the State Review Framework and EPA’s Compliance Monitoring Strategy (CMS).

The time periods covered by the data elements varied by element. The universe of Full Compliance Evaluations (FCEs) performed covered federal fiscal years 04 & 05; therefore the file review covered this timeframe. This time frame also corresponds to the FY04 & 05 CMS planning cycle.

The time period for CAA SM80s covered federal fiscal years, 02, 03, 04, & 05. The data pull used during the review was based on data in AFS as of October 6, 2006.

Structure

The Oregon Department of Environmental Quality Air Quality Program is organized within the Air Quality Division and includes inspectors, technical assistance, and permit writers located in three Regional Offices and numerous community based local offices. The Regional Offices refers air violations to the ODEQ Compliance and Enforcement Office for formal enforcement actions. The Air Quality Program funded a total of 45.11 FTE for enforcement in 2005, including 5.59 FTE for environmental law specialists in the Office of Compliance and Enforcement.

The Lane Regional Air Pollution Authority is located in Springfield, Oregon and is a local air enforcement agency with jurisdiction within Lane County, Oregon. The agency is comprised of a Board of Directors, a Director, and technical and support staff. The compliance assurance function falls within the Operations program. The Board of Directors appoints the Director of the agency, who has overall authority to appoint and direct the LRAPA staff. The Director makes policy recommendations to the board and is responsible for implementing board decisions. The Director has the decision making authority, and is responsible for all air enforcement actions.

The LRAPA Board of Directors is a nine-member board which meets monthly to establish policy and adopt regulations. Board members are appointed by their respective city councils and the Lane County Board of Commissioners. Membership includes three representatives from the city of Eugene, one each from Lane County and the city of Springfield, one from either the city of Cottage Grove or city of Oakridge, and one at-large representative appointed by the board.

The agency also has a Citizens Advisory Committee who advises the board and staff on a variety of air quality issues, rules, and policies. The committee is comprised of local interested citizens representing specific areas of interest, including agriculture, community planning, fire suppression, industry, public health, and the general public.

In 2005, the LRAPA staff consisted of 18 professional and technical employees who performed permitting, enforcement, planning, clerical, and financial, enterprise, and public information and outreach programs.

Authorities

ODEQ operates under federal and state laws and State Implementation Plan (SIP) approved by the EPA, the Oregon legislature, and the Oregon Environmental Quality Commission (ODEQ's rule-making and adjudicative body). Under this authority, the agency maintains compliance with environmental laws. ODEQ's enforcement rules are delineated in Oregon Administrative Rules Chapter 340, Division 12 – Enforcement Procedure and Civil Penalties (referred to as Division 12). EPA SIP and program approval staff have evaluated ODEQ's enforcement authorities and found them adequate to meet the Clean Air Act program approval requirements (CAA).

LRAPA was established under Oregon Statute 449 (now 468.A) and approved by the Oregon Sanitary Authority (now the Environmental Quality Commission), effective January 1, 1968, to exercise the functions vested by statute within the boundaries of Lane County. LRAPA's air enforcement rules are delineated in Title 15 – Enforcement Procedures and Civil Penalties (referred to as Title 15). EPA SIP and program approval staff have evaluated LRAPA's enforcement authorities and found them adequate to meet the CAA program approval requirements.

Source Universe

Note: The universe of sources in the data metric represents both agencies: ODEQ and LRAPA. Since ODEQ's and LRAPA enforcement procedures and penalties are very similar, it was decided with the State and LRAPA to not evaluate their source universe separately. However, any major difference between the performances of the two agencies will be highlighted in the review section of this report.

Based on the data metric for FY05, ODEQ's and LRAPA's universe of CAA major sources totaled 143. (ODEQ = 123 & LRAPA = 20). The total number of Compliance Monitoring Strategy (CMS) majors was 140. (OCEQ = 121 & LRAPA = 19). ODEQ and LRAPA conducted Full Compliance Evaluations (FCEs) at 137 of their CAA major sources and 133 FCEs at their CMS majors jointly. The total number of (CAA) Synthetic Minor 80% Sources (SM80) was 52.

Corrections

Based on EPA's data review comments, ODEQ revisited the universe of CAA SM80s in the national data base. Their review determined that the correct number of SM80s in the data base should have been 31. Based on their revised number, their percent of FCE completions at CAA SM80 sources

would increase from 42.3% to 71% resulting in a greater than 5% change. The state determined that the 19 sources (permits) were misclassified and did not meet the definition of a SM80. Region 10 and ODEQ need to discuss this matter to determine why they were misclassified and to ensure common understanding between the agencies for identifying this universe of sources.

B. REVIEW PROCESS

Key Dates

The Director of Region 10's Office of Compliance and Enforcement sent a letter to the Director of ODEQ on September 7, 2006, to start the program review. The draft data metrics were sent electronically sent to ODEQ's staff contact and LRAPA's Operations Manager on October 20, 2006. Other than the correction noted above, no data discrepancies were identified by ODEQ or LRAPA. A proposed list of files to be reviewed was provided to ODEQ & LRAPA on November 6, 2006. The file review for ODEQ was conducted on November 27-30, 2006 and on April 3, 2007. LRAPA's file review was conducted on November 29, 2006. Draft data and file review findings were provided to ODEQ and LRAPA contacts on May 21 & 31, 2007. ODEQ responded with written comment to the draft findings on June 28, 2007. LRAPA did not provide any written comments.

Review Process

The file review team, John Keenan, Paul Koprowski, and Rindy Ramos, met with ODEQ's headquarters Office of Compliance and Enforcement (OCE) on November 27, 2006, to discuss the file review process and ODEQ's enforcement procedures. Because ODEQ's regional offices refer cases which require formal enforcement actions to OCE for action, the headquarter files were reviewed for any active formal actions against the sources selected according to the file review selection protocol.

On November 28, 2006, the file review team met with staff in the Northwest Regional Offices' Portland office where they reviewed two formal enforcement actions and two informal enforcement actions. On November 28, 2006, files for three formal enforcement actions and one informal action, were reviewed by Paul Koprowski and Rindy Ramos in the Salem office. On November 29, 2006, the review team reviewed files for one formal action, one informal action and one file that did not contain any enforcement action at LRAPA. On November 30, 2006, the review team reviewed one file which contained a formal enforcement action and three files which did not at ODEQ's Western Regional Office. Due to an accidental fire at ODEQ's Eastern Regional Office, the file review was not conducted until April 3, 2007. Paul Koprowski reviewed files which contained four enforcement actions and two files which did not on April 3, 2007.

Regional managers were also interviewed at each of ODEQ's three regional offices and at LRAPA's office.

The total number of files reviewed (ODEQ (18) plus LRAPA (4)) was 22. All of the regional managers and staff were very helpful during the review process and took the time and effort to answer any questions.

C. FILE SELECTION PROCESS

Universe

ODEQ and LRAPA combined, conducted 133 CMS Major Full Compliance Evaluations during FY04 & 05. During that time period, there were a total of 37 enforcement activities. Twenty of the enforcement activities were informal actions and 17 were formal enforcement activities.

Selection

It was decided to review 22 files with an emphasis on those sources for which an FCE had been conducted: and, for which either a formal or informal activity had occurred during FY04 & 05. This approach was taken to improve the quality of the CMS review. Six files containing a FCE, but no type of enforcement action, were randomly selected per the selection protocol. An effort was also made to review an equal amount of files in each region. The selection list was provided to ODEQ and LRAPA three weeks before the review took place.

File Maintenance

ODEQ regional offices maintained inspection files that included copies of informal enforcement actions, such as warning letters and pre-enforcement notices sent to violators. Inspectors filed copies of enforcement documents that they had received from the Office of Compliance and Enforcement. There was some overlapping between regional office files and headquarters enforcement files that did not create a problem. The files were found to be organized and complete in almost all cases.

D. ELEMENT-BY-ELEMENT DESCRIPTION

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

Please note: Unless otherwise stated, Oregon refers to both ODEQ and LRAPA.

Discussion and Analysis

A1. CAA Major Full Compliance Evaluation (FCE) Coverage (FY 04 & 05) 95.8%

Oregon conducted FCEs at 95.8% of their CAA major sources (137 of 143). This rate was slightly less than the 100% goal but greater than the national average of 75.7%. The state and LRAPA conducted multiple FCEs at some of their major sources over the two year period.

Please note: The metric lists a universe of 144 sources but in actuality there was only 143. One of the sources listed was a tribal source and therefore was the responsibility of EPA. Of the 6 sources

for which a FCE was not performed, 3 reverted to unknown compliance status. See discussion in metric I.G. below.

Status of remaining 3 sources: A FCE was conducted on 7/12/05 for Northwest Pipeline Corporation (AFS# 4100502729), a FCE was conducted on 10/15/05 for Hermiston Power Partnership (AFS# 4105900118) and a FCE was conducted on 8/1/06 for Klamath Energy, LLC (AFS# 4103500032).

A2. CMS Major Full Compliance Evaluation (FCE) Coverage (FY 04 & 05) 95.0%

Oregon conducted FCE's at 95.0% of their CMS major sources (133 of 140). This is 5% less than the 100% goal. The national average was 78.3%. Both ODEQ and LRAPA conducted multiple FCEs at some of their major sources over the two year period.

B. CAA Synthetic Minor 80% sources (SM80) FCE Coverage (FY 02, 03, 04 & 05) – 71.0%

The AFS data run showed that Oregon conducted FCEs at 42.3% of their SM80 sources (22 of 52) which is significantly less than the goal of $\geq 80\%$ and the national average of 77.2%. However, ODEQ reviewed this number and determined that numerous SM80s were wrongly classified in AFS. ODEQ believes the accurate number is 31 SM80s. After the adjustment was made, the percentage of completion increased from 42.3% to 71.0%. This is still of a concern since the data entered into OTIS as of the end of FY06, shows a completion rate for the CMS period FY02, 03, 04, 05, & 06 to be only 64.7%. The goal during the period was 100% and the national average was 86.1%.

C1. CAA Synthetic Minor FCE and reported PCE Coverage (FY 02, 03, 04 & 05) 46.2%

This is an informational metric that shows Oregon had inspected 46.2% of their CAA synthetic minors. See discussion in B1 above.

C2. CMS Synthetic Minor FCE and reported PCE Coverage (FY 02, 03, 04, & 05) – 50.0%

This is an informational metric that shows Oregon had inspected 50.0% of their CMS synthetic minors. See discussion in 1B above.

D. CAA Minor FCE and Reported PCE Coverage (FY 02, 03, 04, 05) 2.7%

This is an informational metric that shows Oregon had inspected 2.7% of their CAA minor sources. Betty: this might need more work. The metric describes work that Oregon conducts for their Air Contaminant Discharge Permit program. All of the work (information) for this program is not required to be reported to EPA therefore the information is incomplete. Oregon maintains a commitment to inspect its ACDP sources on a schedule dependent on the type of permit. General permits are inspected every five years, Simple permits every four years, Standard permits every three years, and Basic permits are inspected at the time of their renewal. Actual inspection information is contained in the State's database.

E. CAA Stationary Source Investigations (FY 02, 03, 04, & 05) 0

This is an informational metric that shows Oregon did not initiate any investigations in FY 02-05.

F. Review of Self-Certifications completed (FY05) – 50.7%

Oregon reviewed 50.7% of the Title V certifications received in FY 05 (72 of 142). This is below the national average of 79.2% and the goal of 100%. In FY 05, Oregon was only reviewing T-V certifications when an FCE was conducted. EPA and the state have discussed this matter. In FY 06, the state started reviewing the certifications annually.

G. Number of Sources with Unknown Compliance Status - current as of 10/12/6 3

This is a review indicator. Three (3) of Oregon's CMS flagged source converted to unknown compliance status in FY 05. The three were: Shore Terminals LLC (not in operation until 7/18/06), Oregon Sandblasting & Coating, Inc. (not in operations until 9/20/06), and Northwest Pipeline Corporation (scheduled for 2007 inspection).

Current Status: Shore Terminals LLC is in compliance with the Title V permit. Oregon Sandblasting & Coating, Inc. complied with their Title V permit during 2005 and 2006 and is no longer a Title V source. They were issued a state only Air Contaminant Discharge Permit in January 2007. Northwest Pipeline's annual T-V certification was review on 5/18/06. No deviations were reported and they are scheduled to be inspected in 2007.

R. Percent of Planned FCEs/Negotiated PCEs completed – Reserved for inspection plan targets negotiated between EPA and the state

For the CMS planning cycle 02-03, Oregon committed to conducting FCEs at 100% of their CMS major sources and 40% of their CAA SM 80 sources (20% per year). For CMS planning cycle 04-05, they committed to conducting FCEs at 100% of their CMS major sources and 40% of their CAA SM 80 sources (20% per year). See 1A2 and 1B above for completion percentages.

Recommendation

ODEQ should analyze why they are not meeting their commitment and develop a system to quarterly track the progress of meeting this CMS commitment. Region 10 and ODEQ should discuss why SM 80s were misclassified to ensure common understanding between the agencies for identifying this universe of sources.

SRF Milestone(s):

By March 30, 2008, ODEQ, LRAPA, and EPA will discuss and reach agreement on how SM 80 universe is to be defined; CMS plans (and AFS flags) will be updated accordingly.

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

Discussion and Analysis

A. Percentage of inspection reports that are adequately documented in the files 72.7%

Of the 22 files reviewed, 16 contained adequate documentation to evaluate inspection findings, including an accurate description of what was observed. The Georgia Pacific – Toledo file is an example of a well documented inspection and FCE evaluation. The “DEQ INSPECTION REPORT v1” used by the Western Regional office is an example of a good inspection report form. One suggestion to improve the form is to add a space to indicate whether or not the inspection is being conducted to support a PCE or a FCE.

At times it was difficult to determine if all elements of a FCE had been addressed. EPA’s April 25, 2001, Compliance Monitoring Strategy lists seven elements that should be evaluated in conducting a FCE. They are:

- A review of all required reports, and to the extent necessary, the underlying records. This includes all monitored data reported to the regulatory agency (e.g., CEM and continuous parameter monitoring reports, malfunction reports, excess emission reports). It also includes a review of Title V self-certifications, semi-annual monitoring and periodic monitoring reports, and any other reports required by the permit.
- An assessment of control device and process operating conditions as appropriate. An on-site visit to make this assessment may not be necessary based upon factors such as the availability of continuous emission and periodic monitoring data, compliance certifications, and deviation reports.
 - A visible emission observation as needed.
 - A review of facility records and operating logs.
 - An assessment of process parameters such as feed rates, raw material composition, and process rates.
 - An assessment of control equipment performance parameters (e.g., water flow rates, pressure drop, temperature, and electrostatic precipitator power levels).
 - A stack test where there is no other means for determining compliance with the emission limits.

Five of the 22 files did not contain adequate documentation according to EPA’s policy. Part of one file had been destroyed by an accidental fire.

The inadequate five files were: 1) Monaco Coach Corp. - LRAPA; 2) Trus Joist - LRAPA; 3) Weyerhaeuser Containerboard - LRAPA; 4) American Pine Products (SM80 – Eastern Regional office; and 5) Eastman Kodak – Western Regional office. The one file partly destroyed by a fire was Aqua Glass West, Inc.

Of the 22 files reviewed, 10 contained some type of informal enforcement action followed by a

formal enforcement action (NON, Assessment of Civil Penalty, then issuance of a MAO). Five were handled informally through issuance of NONs only and one had documentation for a formal action only (MAO). Of these violations, 4 were HPVs. It appeared that the State followed their enforcement process in evaluating violations and making HPV determinations.

Findings

Based on the file review, it is EPA's opinion that adequate FCEs were not performed for the 5 sources listed above. In all cases, the results for evaluating all applicable permit requirements were not documented and EPA was not able to, in most cases, determine what supporting documents i.e. stack test results, excess emission reports, were evaluated.

Training

ODEQ and LRAPA personnel attend WESTAR, Western States Enforcement Training, and CARB training when resources permit. Staff also complete technical on-line training when available. In addition, both agencies have some form of "new" employee in-house training. LRAPA recently has started a procedure whereby the T-V permit writer accompanies the inspector on plant inspections. The goal is to give the T-V permit writer a better understanding of the facility and its processes. ODEQ also conducts yearly air quality forums. Both agencies stated that assistance in the form of financial aid, and more training opportunities, would help them in meeting their goals.

Recommendation

The issue of what constitutes a FCE was discussed with ODEQ and LRAPA during the review. To reinforce ODEQ understanding of what constitutes a FCE, Paul Koprowski of EPA's Oregon Operations office gave a presentation to ODEQ staff on April 19, 2007.

LRAPA requested, and EPA conducted, an inspection report evaluation external to the State Review Framework. LRAPA provided Paul Koprowski with 5 additional inspection reports to evaluate to assist the Agency in conducting and preparing more thorough inspection reports. Paul reviewed the reports and provided comments to LRAPA on February 1, 2007.

EPA recommends that ODEQ and LRAPA both develop a FCE checklist containing all the FCE elements which should be evaluated in conducting a comprehensive full compliance evaluation. EPA will provide to LRAPA and ODEQ a copy of the state of Idaho's checklist to use as a model. EPA also recommends that ODEQ and LRAPA send to Region 10 copies of their FCEs for a three month period of time for their critique.

SRF Milestone(s):

ODEQ: By January 15, 2008, ODEQ will develop and submit to EPA a procedure to ensure that FCEs are fully conducted and documented. ODEQ shall also submit, for EPA's critique, its inspection reports for the period April 2008 through June 2008 by September 1, 2008.

LRAPA: By January 15, 2008, LRAPA will develop and submit to EPA a FCE checklist containing the FCE elements delineated in EPA's CMS policy. By March 30, 2008, LRAPA will develop and submit to EPA procedures to ensure FCEs are fully conducted and documented. By September 1, 2008, LRAPA shall submit for EPA's critique, inspection reports for any FCE inspections conducted between April 2008 and June 2008.

References

File review results and EPA's April 25, 2001, Clean Air Act Compliance Monitoring Strategy

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

Discussion and Analysis

A. Percentage of Compliance Monitoring Reports Which Identify Potential Violations in the File Within a Given Time Frame Established by the Region and State, Within 90 days
68.2%

Findings

The ODEQ reviewed only 72 of the 142 Title V certifications received in FY05. In FY05, the state was reviewing Title V certifications only in the year in which an FCE/PCE was conducted. The state was informed in 2006 that they needed to review the annual certifications in the year they are received.

Timely

During the file review, it was difficult to determine when a FCE had been completed. The files did not specifically contain a FCE completion date. Because this metric requires that the time between when a FCE is completed and entered into AFS be quantified, EPA assumed the FCE completion date to be the date of the on-site inspection. To determine if a FCE/PCE was entered timely into AFS, the date of when the FCE/PCE was conducted (the FCE completion date entered in AFS), and the date the activity was entered into AFS was used. This approach could potentially over estimate the number of days between the two activities because in some cases follow up information (preceding the inspection) might have been needed to complete the FCE. The difference between these dates ranged from 2 days to 225 days with an average of 69 days. (This includes ODEQ & LRAPA). ODEQ has one data manager located in their headquarters office. This manager receives AFS reportables from the various regions. This process causes a slight delay in data entry.

LRAPA has direct data input capabilities and they do not have to wait for data inputs from any other office. This enables the agency to enter inspection results into AFS in a timely manner

During FY04 & 05, the expected time between when an FCE is completed, and the date it should be entered into AFS, was 90 days. In July 2005, it decreased to 60 day. During FY04 & FY05, ODEQ was upgrading their computer system so it was common for them to wait until the end of the fiscal

year to update AFS. In addition, the majority of inspections are conducted beginning in the third quarter of the federal fiscal year. Their system upgrade has since been complete and they now enter data through the UI (universal interface) monthly.

Recommendation

To meet the 60 day Minimum Data Requirement (MDR), EPA recommends that ODEQ review its data entry procedures and develop new ones if needed. In addition, ODEQ and LRAPA should include the FCE date in the improved FCE documentation to be developed under Element 2 above.

SRF Milestone(s):

ODEQ: By June 30, 2008, ODEQ will review its data entry procedures and inform EPA if new ones are needed. If so, by January 1, 2009, ODEQ will develop and implement new ones

LRAPA: By January 15, 2008, LRAPA will review, update, and implement new ones if necessary. LRAPA shall provide its review to EPA.

References

Files review results and EPA's MDRs.

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.

Discussion and Analysis:

A. High Priority Violation Discovery Rate – Per Major FCE Coverage (FY 05) 4.7%

This is a review indicator. The Oregon HPV rate was 4.7% (3 HPVs per 64 FCEs conducted). The threshold for level of concern is a discovery rate $<1/2$ the national average. The national average rate was 10.2% therefore $1/2$ of the national average is 5.1%.

B. High Priority Violation Discovery Rate – Per Major Source (FY 05) 1.9%

This is a review indicator. The Oregon HPV rate was 1.9% (3 HPVs per 156 major sources). The threshold for level of concern is a discovery rate $>1/2$ the national average. The national average rate was 4.6% therefore $1/2$ of the national average is 2.3%.

C. No activity indicator – Number of New HPV in FY 05 3

This is a review indicator. ODEQ identified 3 new HPVs in FY 05 and LRAPA did not identify any.

D. Percent Actions With Prior HPV – HPV Reporting Indicator 88.9%

Data for ODEQ showed 88.9% of the formal enforcement actions in 2005 were completed for designated HPVs. The threshold for level of concern is 39.4% ($>1/2$ the national average of 78.8%).

ODEQ's level was above the national average indicating that the majority of their formal actions are taken against HPVs.

LRAPA did not take a formal enforcement action against a HPV source in 2005.

Findings

EPA's file review did not discover any HPV violations that were not already discovered by ODEQ or LRAPA. ODEQ's low discovery rate has been of a concern for Region 10 since early 2006. To address this concern, the Region has been doing a cursory review each month of ODEQ's enforcement actions. ODEQ maintains a list of *all* active enforcement actions. The region has been reviewing this list on a monthly basis and has not discovered any actions improperly classified. See the discussion in element 3 regarding timely data entry.

It is ODEQ's policy that once a potential violation is discovered; the inspector is required to fill out a "HPV Applicability Worksheet". The worksheets reviewed during the file review were accurate and complete.

Even though ODEQ is below ½ the national average, EPA does not believe this is a concern.

Recommendation

Because LRAPA did not discover any HPVs in FY 04 or 05, and their overall enforcement numbers have declined since 2003, EPA recommends that they take a closer look at their enforcement actions against major sources for HPV applicability. EPA will be providing LRAPA with a copy of ODEQ's "HPV Applicability Worksheet" for their reference.

SRF Milestone(s)

LRAPA: By February 15, 2008, LRAPA will develop, implement and submit to EPA a HPV applicability worksheet and use the worksheet in reviewing violations for HPV applicability and subsequent enforcement action

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.

Discussion and Analysis

A. Percentage of Formal State Enforcement Actions That Contain a Compliance Schedule of Required Actions or Activities Designated to Return the Source to Compliance. This can be in the Form of Injunctive Relief or Other Complying Actions 90%.

Of the 10 files reviewed containing formal enforcement actions, 4 sources that required injunctive relief had already returned to compliance prior to issuance of the formal action. All four of them required some form of corrective action. Another five sources required some form of injunctive relief and were issued a compliance schedule. One other source required corrective action but was not placed on a compliance schedule.

Six of the remaining 12 files reviewed (22 total – 10 formal actions = 12), contained informal enforcement actions. One of the sources had not returned to compliance (a formal action used issued 7/24/06 which is outside of the FY04 & 05 review period). Four which required corrective action had returned to compliance without a formal action. And for one, the review team was unable to determine the compliance status - Armstrong World Industries. Documentation on the compliance status for this source was lacking.

ODEQ's regional offices utilize the statewide Enforcement Guidance for Field Staff. The first step in the enforcement process is to issue a notice of noncompliance (after 2005 either a Warning Letter or Pre-enforcement Notice) to try to correct the violations quickly as possible. However, corrective or complying actions contained in notices of noncompliance are not legally binding. If compliance is not obtained through the notice of noncompliance, ODEQ issues a formal enforcement action that incorporates required corrective actions and initiates a legal process to make the corrective action legally binding. In some cases, several multiple notices of noncompliance are sent for accumulating violations before the formal enforcement action is completed and issued.

For example, 5 notices of noncompliance were issued for Ash Grove Cement (a HPV source) before a Mutual Agreement and Order was issued. As the case progressed, additional violations were uncovered that warranted a NON.

LRAPA uses basically the same process as ODEQ i.e. issuance of notices of noncompliance outlining the required corrective action prior to taking a formal action.

Findings

The majority of Oregon's enforcement actions require some type of corrective action and or injunctive relief designed to return sources to compliance.

Recommendation

None.

References

File review results, conversation with ODEQ managers, and ODEQ's Enforcement Guidance for Field Staff.

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

Please Note: LRAPA did not have any HPVs during FY05: therefore, the following reflects on ODEQ only.

Discussion and Analysis

A. Percent HPVs Unaddressed for >270 days (Addressed date in FY 05) (ODEQ only)

83.3%

This is a review indicator. The framework metrics indicates that 83.3% (5 of 6 flagged HPV sources in FY 05) went unaddressed for longer than 270 days which exceeds EPA's timely and appropriate enforcement policy. The national average was 57.9%.

The six sources in this metric were: Georgia Pacific Consumer Products LP (409 days); Georgia Pacific Toledo (383 days); Cascade General, Inc. (316 days); Ash Grove Cement (175, 561, 574, & 632 days – Note: 1 addressing action addressed 4 separate violations); CO-GEN LLC (354 days); and CCO-GEN II (207 days).

B. Percent HPV Pathways Exceed 270 Days (FY 05) (ODEQ only) 58.8%

This is a review indicator and looks at each individual HPV entry from the AFS "653" report. Of the 17 HPV entries, 10 were for HPVs which exceeded 270 days. This percent 58.8, (10/17) is below the national average of 64.5%.

C. No Activity Indicator – Number of Actions (FY05) (ODEQ only) 10

This is a review indicator. The state took 10 enforcement actions in FY05.

Timely Enforcement Action

As the data indicates, 5 of the 6 HPV sources addressed in FY 05, took longer than 270 days to be addressed. The 270 days covers the period between day zero and the date the violation is resolved (e.g., returned to compliance) or addressed (the agency has taken formal enforcement action).

Appropriate Enforcement Action

Files for five of the six HPV sources addressed in FY05, were reviewed during the file review. The file for Cascade General, Inc. was not reviewed. The reviewed indicated that ODEQ took appropriate enforcement action against the 5 HPV sources. This is not surprising since ODEQ and EPA were having quarterly HPV calls during FY05. Potential violations and the appropriate enforcement action would be discussed and agreed upon between ODEQ and Region 10.

D. Percentage of HPVs Addressed or Resolved Appropriately 100%

See paragraph above.

During FY 04 & 05, quarterly HPV calls between ODEQ, LRAPA and Region 10 were conducted. They were very efficient and productive. Currently, ODEQ provides Region 10 on a monthly basis, a list of HPV violators with a description /update of ODEQ's progress in addressing the violation.

Findings

Based on the file review, ODEQ took appropriate enforcement action against HPV sources but is not meeting the timeliness requirement in the EPA guidance. ODEQ's percentage of HPV addressing actions taking longer than 270 days, is well above the national average (83.3% vs. 57.9%). EPA recognizes that the addressing action for Ash Grove Cement was very complex and covered four

separate HPV violations resulting in a lengthy enforcement process. However, four additional HPV addressing actions also took longer than 270 days.

Recommendation

EPA recommends that ODEQ review its enforcement referral and initiation process to determine why they are having difficulty in meeting EPA's HPV Policy and share the results with Region 10.

SRF Milestone(s):

ODEQ: By December 15, 2007, ODEQ will conduct and complete a review of its referral and case initiation process to identify any source(s) of delay in its initiation/referral of formal enforcement actions. A summary of the findings shall be also be submitted to EPA by this date. The purpose of this review is to identify any steps to be taken to improve timeliness of HPV addressing actions.

7. Degree to which a state includes both gravity and economic benefit calculations for all penalties appropriately using the BEN model or a similar state model (where in use and consistent with national policy.) {Note to reader: Region 10 recognizes this element and element 8c below do relate to similar information – degree to which initial and final penalties conform to expectations and degree to which files adequately document penalty decision-making}

Discussion and Analysis

Percentage of Formal Enforcement Actions That Include Calculations for Gravity 100%

ODEQ:

Nine of the nine files reviewed containing a formal enforcement, all included gravity and two of the nine included economic benefit. Two cases included SEPs.

Percentage of Formal Enforcement Actions That Include Calculations for Gravity 100%

LRAPA:

Of the one formal enforcement file reviewed, the action included gravity. The action did not include economic benefit and EPA is in agreement with their assessment.

ODEQ and LRAPA calculated the gravity amounts in accordance with their enforcement policy(s) delineated in their Division 12 and Title 15 rules respectively. There was sufficient documentation to determine that their policy was followed.

Economic Benefit

The file review uncovered a situation in which the penalty assessed for Ash Grove Cement (ODEQ) should have included economic benefit reflecting avoided costs incurred through making improvements to the ID fan and operator training. ODEQ is in agreement with EPA's assessment and believes a change in staff may have had an impact on their economic benefit assessment.

A penalty for gravity was assessed against Fort James Operating Company (see MAO No. AQ/V-NWR-4-177 dated July 7, 2005) in the amount of \$3,800. (Note that this amount has not been entered into AFS). Economic benefit was not assessed despite the fact they were a HPV source and had to invest in significant capital projects necessary to bring the company into compliance. Even though ODEQ elected to invoke their enforcement discretion, economic benefit should have been calculated and factored into their decision.

EPA agrees that economic benefit should not have been assessed for Boise White Paper, LLC, Country Coach Inc., Georgia Pacific West, and Weyerhaeuser (Albany).

Some files contained insufficient documentation to determine the rationale for assessing or not assessing, economic benefit. There was insufficient documentation in the file(s) to determine whether or not economic benefit would have been appropriate for Roseburg Forest Products, and CO-GEN LLC.

Supplemental Environmental Projects: The Ashgrove and Georgia Pacific (Toledo) cases included SEPs. While EPA did not conduct an in-depth evaluation, in both cases it appears that tax credits for the projects were not to be allowed. However there was no documentation in the file that verified that the company did or did not take a tax credit for project costs. Additionally, the time value of money wasn't considered for projects, one of which took a long time to complete, therefore deflating the net-present value of the project. Finally, in one case (Ash Grove), it appears there was a dollar for dollar credit allowed for a monitoring project. Reducing the civil penalty by 100% of the project costs is not consistent with EPA's SEP Policy.

Findings

ODEQ should better document why economic benefit is not appropriate when issuing formal enforcement actions. Source files should include any BEN runs generated and a discussion of the decision making process used in reaching any penalties assessed (gravity or economic benefit). If a lower amount is assessed through negotiations with a source than indicated by the BEN run, the amount assessed should be fully documented.

Recommendation

EPA recommends that ODEQ & LRAPA improve their documentation of economic benefit assessment and include all BEN runs and a discussion of their decision making process when they elect not to assess economic benefit. ODEQ should implement the 2005 Director's policy on economic benefit in penalties.

ODEQ

The same recommendation and SRF milestones have been incorporated into all 3 media chapters.

As a result of discussions between ODEQ and EPA on some specific examples, it was agreed it would be beneficial for EPA to provide additional information about what to consider in estimating

economic benefit and ways to obtain the information. Experienced Region 10 enforcement staff will be available to participate in such discussions for any or all of the 3 programs.

ODEQ should implement the 2005 Director's policy on economic benefit in penalties that was released near the end of this SRF review period. ODEQ should analyze the economic benefit in penalties issued in 2007 and prepare a report to share and discuss with EPA that provides information about cases where economic benefit did and did not accrue and the basis for the conclusion. The state should ensure files provide sufficient documentation to support penalty decision making, especially with respect to consideration of economic benefit.

SRF milestone: By February 1, 2008, ODEQ will provide to Region 10 an analysis of economic benefit in penalties for fiscal year 2007. The respective agency Enforcement Office Directors (and appropriate staff) should discuss the findings and any appropriate follow-up actions.

LRAPA:

SRF milestone(s): By November 30, 2007, LRAPA will develop internal guidance that documents and supports economic benefit calculations and applicability determinations during penalty assessment.

References

File review and EPA's Clean Air Act Enforcement Response Policy and ODEQ & LRAPA penalty policies.

8. The degree to which penalties in final enforcement actions include economic benefit and gravity in accordance with applicable penalty policies. . {Note to reader: Region 10 recognizes this 8c of element and element 7 above relate to similar information – degree to which initial and final penalties conform to expectations and degree to which files adequately document penalty decision-making}

Discussion and Analysis

A. No activity indicator – Actions with penalties (FY 05) 5 & 1
This is a review indicator. ODEQ took 5 penalty actions in FY 05 for a total of \$37,718. LRAPA took one penalty action in FY05 for a total of \$1,200.

B. Percent Actions at HPVs with penalty (55.6%)
ODEQ was below the national average for this Framework benchmark. ODEQ took 5 actions with penalties against 9 HPVs (55.6%). This is below the national average of 79.6%.

C. Percent of final enforcement actions that appropriately document penalties to be collected (1

of 4)

25%)

ODEQ

All of ODEQ’s formal enforcement actions that include civil penalties also include an “exhibit” attachment. (Please note that some MAOs do not include a penalty). This attachment lists the description of the violation, the classification of the violation, the magnitude, and a civil penalty formula used in deriving at the final gravity amount. The input factors to the penalty equation are based on their civil penalty policy and are described in the exhibit. Economic benefit is added into the equation.

Four files with civil penalties were included in the file review. Of these four, all included a copy of the MAO with the civil penalty “exhibit”. The MAO for Port of Morrow included economic benefit but lacked any supporting documentation used in arriving at the assessed amount. The MAO for Roseburg Forest Products did not include any economic benefit and there was insufficient documentation in the file for the reviewers to determine whether or not economic benefit was appropriate. The penalty assessed against CO-GEN, LLC, included economic benefit but there was insufficient documentation in the file for the reviewers to determine if the amount was adequate or not. The penalty assessed against CO-GEN II did not include any economic benefit and EPA is in agreement with this decision.

D. Percentage of final enforcement actions resulting in penalties collected (100%)

Penalties for all 5 of the penalty actions in Element 8A, were collected.

Findings - ODEQ

Three of the four review files contained a civil penalty; but, they did not contain sufficient documentation to determine whether or not the amount assessed was appropriate.

Findings – LRAPA

C. Percent of final enforcement actions that appropriately document penalties to be collected (1 of 1) 100%)

In FY05, LRAPA assessed a penalty against Country Coach Inc. The penalty included only gravity. There was documentation sufficient for EPA to determine during the file review that economic benefit was not justified.

D. Percentage of final enforcement actions resulting in penalties collected (100%).

The penalty assessed against Country Coach Inc. was collected.

Recommendation

As noted in metric 7, EPA recommends that ODEQ & LRAPA improve their documentation of economic assessment by including all BEN runs and a discussion of their decision making process

when they elect not to assess economic benefit

SRF Milestone(s):

See Metric 7

References

EPA's Clean Air Act Stationary Source Enforcement Response Policy and ODEQ & LRAPA penalty policies.

General Comment

The reviewers did not calculate penalties for each of the violations according to EPA's civil penalty policy for comparison against ODEQ's and LRAPA's. Historically, when this analysis has been performed, ODEQ's and LRAPA's penalties are significantly lower than EPA's. This is a matter the region and Oregon have discussed in the past.

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.

Discussion and Analysis

ODEQ

The 2004-2006 PPA (Performance Partnership Agreement) between Region 10 and the Oregon Department of Environmental Quality was in effect for the period July 1, 2004 through June 30, 2006. This agreement, along with a separate document called "Compliance Assurance Agreement", contains the state's enforcement commitments. Objective 5 of the PPA is designed to "Maintain an effective compliance assurance program that contributes to prevention and reduction of pollution and protection of public health".

The state committed to having the AFS universal interface (UI) in place by September 2004. The state completed the design of the UI and had it in use for the November 15, 2004 upload for EPA's national data pull. The agreement also included a commitment to periodically meet with EPA to review and discuss compliance and enforcement program trends, and EPA's enforcement priorities. EPA and the state did not meet in SFY 04 but a conference call was held in SFY 05. An additional commitment is for the state and EPA to participate in an annual compliance planning meeting. A compliance planning meeting held in the fall 2004 and another one was held by conference call on December 19, 2006.

Findings - ODEQ

The state did not achieve its commitment to resolve violations at major sources in accordance with EPA's "Timely and Appropriate Enforcement Response Guidance for High Priority Violations." Please see the discussion in Element 6 above. The state reports and tracks HPV violations on a monthly basis, in accordance with EPA's Timely and Appropriate policy. These reports are

submitted monthly to Region 10 and follow up calls are initiated by the region if necessary.

EPA's Stationary Source Compliance Monitoring Strategy is also part of the EPA – State (including LRAPA) Compliance Assurance Agreement. Please see the discussion in Element 1 concerning EPA's evaluation of the state's success in meeting this commitment.

LRAPA

The 2004-2006 PPA between Region 10 and LRAPA was in effect for the period July 1, 2004 through June 30, 2006. This agreement, along with a separate document entitled "Compliance Assurance Agreement", contains LRAPA's enforcement commitments. The document includes, among other commitments, for LRAPA to "conduct compliance verification and enforcement actions for permitted sources; verify compliance or noncompliance, address violations in a timely and appropriate manner, calculate penalties including economic benefits, negotiate settlements, issue enforcement orders, and conduct contested case hearings.

Findings – LRAPA

Please see the discussion in Elements 7 & 8 concerning EPA's evaluation of LRAPA's success in meeting these commitments.

Recommendation

None for metric 9; covered by other metrics

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

Discussions and Analysis:

A. Percent HPVs Entered > 60 Days After Designation, Timely entry (FY 05) – 82%

This is a review indicator. Eighty two percent (82%) of Oregon's HPVs were entered into AFS more than 60 days after designation. The national average was 56.4%.

In FY05, quarterly HPV calls were conducted between the state and the region. During these calls a decision would be made as to whether or not a potential HPV was in fact a HPV. Because the calls were held quarterly, the time between designation and entry was lengthened.

See the discussion in Element 3 for further information.

Recommendation:

None for metric 10; covered by element 3.

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

Discussion and Analysis

A. Number of HPVs/Number of Noncompliance data entry (1FY) 83.3%
Oregon met this framework indicator for comparing the sources with violation to the sources with HPVs. The national goal is $\leq 100\%$. Oregon's percentage was 83.3% with the national average of 97.4%.

B1. Stack Test Results at Federally Reportable Sources - % Without Pass/Fail Results 0%.
Oregon met the national goal of 0%.

B2. Stack Test Results at Federally – Reportable Sources – Number of Failures 1
This is a data quality indicator. Oregon only had one. 100% of failures should be reported to AFS.

Each of ODEQ's three regional offices has a stack test coordinator. Although the review process varies slightly among the regions, all follow the same basic procedure. The reports are first screened for obvious violations or errors. Those are given high priority. According to ODEQ's review policy, all reports are to be reviewed within 180 days. A review report is written and the results are then 'logged' into a tracking system (this varies slightly between regions). The results are then given to the region's data manager to be entered into AFS. Source test protocols are required to be reviewed within 14 days.

LRAPA provided the SRF review team with a source test review flow diagram. The process is similar to ODEQ's. Once the test is received it is routed to the source test coordinator for a technical review. It is then routed to the inspector for comparison with the Title V permit requirements. Should a noncompliance situation exist, the inspector initiates enforcement actions and immediately notifies the permit writer who reviews the information and routes their review results to LRAPA's Operation Manager for further action.

Findings

Oregon data appears to be accurate when compared to information in files reviewed.

EPA does not have any concerns with ODEQ's or LRAPA's source test review procedures.

Recommendation

None.

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

Discussion and Analysis

A1. Title V Universe AFS operating Majors 140
There are 140 major operating sources in AFS

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A2. Title V Universe AFS Operating Majors with Air Program Code = V (Title V) 139

There are 139 major operating sources with Code V in AFS.

B1. Source Count: Majors 140

There are 140 Majors in AFS.

B2. Source Count Synthetic Minors 88

There are 88 synthetic minor listed in AFS. This number was reduced by 19 during ODEQ's data review.

B3. Source Count NESHAP Minors 5

There are 5 synthetic minors listed in AFS.

C1. CAA Subpart Designation: NSPS 60

This is an informational only count. There are 60 NSPS designations in AFS.

C2. CAA Subpart Designation: NESHAP 26

This is an informational only count. There are 26 listed in AFS.

C3. CAA Subpart Designation: MACT 9

This is an informational only count. There are 9 MACT sources listed in AFS.

D1. Compliance Monitoring Sources with FCEs 76

There are 76 listed in AFS.

D2. Compliance Monitoring Number of FCEs 79

There are 79 listed in AFS.

D3. Compliance Monitoring: number of PCEs 58

This is informational only. There are 58 listed in AFS.

E Historical Non-Compliance Counts (number of sources that had violations at any point during the reporting period) 26

There are 26 listed in AFS

F1. NOV: Number issued 4

There were 4 issued.

F2. NOV: Number of Sources 4

There were 4 sources issued NOVs.

G1. HPV: Number of New HPV Pathways 3
There were 3.

G2. HPV: number of New HPV Sources 3
There were 3 new HPV sources.

H1. Formal Action: Number Issued 10
There were 10 actions issued.

H2. Formal Action: Number of Sources 9
There were 9 sources issued actions.

I. Assessed Penalties (complete)
Total penalty amount assessed: \$38,918 (this includes LRAPA also).

Finding: One assessed penalty amount (\$3,800) was missing from AFS (Fort James Operating Company).

J. Major Sources Missing CMS policy applicability
All applicable major sources have CMS flags.

Findings

With one exception noted above (I-assessed penalty information), data in AFS appears to be complete when compared with information from file reviews. ODEQ should update AFS to reflect the penalty amount for Fort James Operating.

Recommendation:

None

13. Degree to which additional compliance programs and activities improve compliance.
Oregon has elected to not address this element.

Additional CMS Information:

Resources

ODEQ & LRAPA: It appears both agencies have sufficient monetary resources and staff to accomplish their goals and mission statements. The majority of their funding is from Title V fees, 105 grants, and the state Legislature. And in LRAPA's case, some funding from local communities.

Targeting

ODEQ & LRAPA do not have in place any stationary source compliance targeting strategies. Both primarily respond to complaints and follow EPA's compliance monitoring strategy.