

The Texas Commission on Environmental Quality Enforcement Program Framework Review Executive Summary

Overview:

Region 6 applauds TCEQ's participation in the development of the State Enforcement Program Review Framework and appreciates the level of cooperation and support TCEQ has demonstrated in implementing the Review process.

The Enforcement Program Review Framework is a collaborative effort by States and EPA to achieve greater consistency and results from environmental compliance. Under the Framework, there are 13 review elements, 12 of which apply to inspection, enforcement and data activities common to the Clean Air Act stationary source (CAA), the Resource Conservation and Recovery Act (RCRA) hazardous waste and the Clean Water Act NPDES programs. A thirteenth element is included to describe alternative approaches, compliance assistance, etc. associated with these CAA, RCRA and NPDES compliance programs.

In May 2005, Region 6 hosted a policy level meeting with TCEQ and other State enforcement managers to introduce and discuss the Review Framework. TCEQ also participated in the national Framework training co-hosted by the Environmental Council of States and EPA. In August 2006, the TCEQ and Region 6 Framework Review teams conducted a "dry run" of the Framework process in preparation for the actual review which began in October. On-site file reviews at TCEQ's offices were completed in November 2006.

TCEQ and its predecessor agencies were authorized to administer programs under the CAA, RCRA and NPDES in 1980, 1985 and 1998 respectively. The Agency is organized into several program offices with the CAA, NPDES and RCRA inspection and enforcement functions under the Office of Compliance and Enforcement. TCEQ's success in administering these programs is due in large part to strong leadership through a dedicated and experienced management team and staff. This Framework Review describes the TCEQ's success in terms of performance goals. It highlights achievements and where there are concerns, it describes the actions taken to address those concerns.

In general, the quality and quantity of TCEQ inspection and enforcement activities are strengths. Getting the data that accurately and completely reflect those activities into the national databases in a timely manner has been a concern. TCEQ is to be commended, however, for the significant progress it is making in addressing those data issues.

Inspections – Review Elements 1-3:

The review compares TCEQ's Air, NPDES and RCRA inspection coverage against national program goals as well as negotiated inspection levels. TCEQ met or exceeded its negotiated inspection commitments. In general the negotiated levels were less than the national program goals. The negotiated levels reflect TCEQ's decision to use a risk based approach to inspection targeting and EPA's willingness to provide such flexibility.

The quality of the inspection reports across the three program areas was high and reports were generated in a timely fashion. However, there has been a problem with getting accurate and complete data on TCEQ's inspection activities into the national databases.

Enforcement – Review Elements 4-8:

TCEQ does a good job in identifying significant non-compliance and high priority violations (SNCs and HPVs respectively). The internal process for violation determinations is timely. However, SNCs and HPVs generally have not been getting into the national databases in a timely manner.

TCEQ enforcement actions are of a high quality. Penalty documentation is good. The process that TCEQ uses to get to a final Commission's order in most instances exceeds the time frame prescribed under national EPA policy. Timeliness is a concern for many States and EPA Region 6 for that matter. With TCEQ's reorganization of its Enforcement Division in 2005 and streamlining efforts, there has been a positive trend to more timely actions. For example timely Air enforcement actions have gone from 17% in 2005 to 50% in 2007.

Enforcement Commitments – Review Element 9:

TCEQ met its enforcement related commitments.

Data Integrity – Review Elements 10-12:

There has been a problem with uploading inspection and enforcement data from the Consolidated Compliance and Enforcement Data System (CCEDS) into the national databases. Considerable progress has been made to address these data issues under TCEQ's master plan and more work is needed. For the Air data, Region 6 will identify to TCEQ any remaining data accuracy or completeness issues not addressed in the master plan. TCEQ and the Region will negotiate details of addressing the remaining data issues. The outcome of this discussion will be a set of written guidelines from Region 6 to TCEQ. TCEQ will update its master plan accordingly. These activities are projected to be completed by December 1, 2007.

Texas Commission on Environmental Quality (TCEQ) State Review Framework Report

Clean Air Act (CAA) Stationary Source Enforcement Program

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TCEQ has 16 regional offices divided among 4 geographical areas. The 4 geographic areas can be distinguished by the natures of their regulated communities and the environmental challenges they present. The West Texas Area has a large agri-business base with a growing number of concentrated animal feeding operations. The Border Area has the distinction of sharing air and water sheds with Mexico. TCEQ's North Central Texas Area has the Interstate 35 corridor of large metropolitan areas (e.g., San Antonio-Austin, Dallas-Ft. Worth) and a sizeable agri-business community. The Coastal Texas Area has one third of the US petro-chemical industry.

TCEQ's inspection, enforcement and related data support functions are consolidated for all media under the Office of Compliance and Enforcement.

Information Sources Included in Review:

The review included data from the AIRS/AFS database; Texas Commission on Environmental Quality's (TCEQ) database, the Comprehensive Compliance and Enforcement Data System (CCEDS); and state enforcement and inspection files. According to CCEDS, for the review period FY2005, the TCEQ conducted full compliance evaluations (FCEs) at 1,028 Title V major facilities and 22 synthetic minor facilities. TCEQ took formal enforcement actions against 275 facilities. From this universe, a subset of files was selected for file review purposes as described below:

Enforcement actions in 2005

High Priority Violator (HPV); no classification	Universe 7; reviewed 1 file
HPV SM80% w/penalty	Universe 1; reviewed 1 file
HPV Major w/penalty	Universe 97; reviewed 9 files

Non-HPV; no classification	Universe 105; reviewed 0 files
Non-HPV SM80% w/penalty	Universe 5; reviewed 1 file
Non-HPV Major w/penalty	Universe 60; reviewed 7 files
Total Universe 275; reviewed 19	

Inspections (onsite and offsite) conducted in 2005 with no enforcement action
Universe 1006; reviewed 20

The total number of enforcement and inspection files reviewed was 39.

Files for review were selected randomly, choosing a sample or samples from each category. The review of each file included a review of the inspection report(s) (if applicable), enforcement case time line, notice of violations, consent orders, and penalty amounts. As needed, the review included discussions with relevant TCEQ managers and staff from the Austin office. All files were maintained at a central location at the TCEQ office in Austin, Texas and at the relevant regional TCEQ office. There was no attempt to get a representative sampling of files from each TCEQ region. Files from regional offices were assembled electronically.

TCEQ currently tracks inspection and enforcement data in CCEDS. TCEQ uses a translator to upload data from CCEDS into AFS. In general there were problems with data uploads and as a result, AFS did not accurately reflect TCEQ inspection and enforcement activities. This data, however, was in CCEDS. In January 2006, TCEQ provided a data master plan to Region 6 that addressed issues with data uploads from its CCEDS database into AFS. The issues involved investigation and enforcement records not being extracted from CCEDS for various reasons including coding discrepancies and in some instances missing data. The master plan described the measures to be taken and included a projected schedule for completion in 2007.

TCEQ has made considerable progress and continues its efforts at uploading historic data for 2005. As of this review, however, not all data (i.e., minimum data requirements) are in AFS for 2005. Data based analyses of TCEQ's compliance and enforcement activities contained in this report rely heavily on CCEDS with comparisons to data currently in AFS.

Section 1: Review of State Inspection Implementation

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

Findings:

Inspections at Major sources: The national Compliance Monitoring Strategy (CMS) recommends a minimum inspection frequency for major sources of once every 2 years. The CMS also allows for alternative frequencies considering compliance history, location of facility, potential environmental impact, operational practices, and facility

participation in Agency-sponsored voluntary programs (e.g., Project XL, Performance Track).

In 2005, there were 1310 permitted Title V sources. That year, TCEQ followed an alternative inspection frequency for majors and met its inspection commitments. Additional details follow.

The TCEQ FY 2005 Air Investigation Targeting Strategy (AITS), submitted on December 22, 2004, committed to a combination of on- and off-site FCEs and PCEs at 1,310 major sources with issued Title V permits (100% of the permitted Title V universe). Specifically, the AITS projected Comprehensive Compliance Investigations (CCIs) at 262 (20%) of these facilities. The CCI is equivalent to an FCE. The AITS also projected other on-site evaluations (equate to PCEs) at another 262 (20%) major sources. The remaining 60% were scheduled to receive off-site office permit compliance certification (OPCC) reviews. The OPCC is a Title V permit compliance records review utilizing the Title V annual compliance certification, the permit and other available operating records. Under a verbal agreement between Region 6 and TCEQ in FY2005, the TCEQ entered the Title V ACC reviews as off-site Full Compliance Evaluations. In August 2006, the Region corrected its previous guidance, requesting TCEQ to code the OPCCs as off-site PCEs

For the review period, TCEQ conducted 390 on-site FCEs at major sources, exceeding its FCE projections at major sources by 128. It conducted 148 PCEs and 1032 OPCCs at major sources. In some instances, facilities received OPCCs and an on-site evaluation. In aggregate, TCEQ exceeded its 2005 air inspection commitments.

The data metrics used for this review were pulled in November 2006. Data metric 1.A.2 indicated that Texas conducted FCEs at 1023 out of 1215 major sources (84.2%) for the 2 year period 2004-2005. However, the 1215 indicates the number of major sources at the time of the data pull, not for FY2005. Applying the historic universe, TCEQ conducted FCEs at 1,023 out of 1310 permitted sources (78%) the two year period FY 2004-2005.

Inspections at Synthetic Minor (80 percent of major source level) – (SM-80s): The national CMS recommends that FCEs be conducted at each SM-80 source once every five years at a minimum. As stated above, the CMS also provides flexibility to develop alternative inspection frequencies. TCEQ's AITS projected CCIs (FCEs) at 43 minor sources of interest to EPA, which included both synthetic minors and SM-80s. TCEQ does not maintain a formal synthetic minor universe or SM 80 universe. However, TCEQ regional managers do attempt to track their SM sources and maintain a list. These regional lists indicate there are approximately 119 SM sources. Of these, records indicate TCEQ conducted FCEs at 22 SM sources (18.5%) for the one year period of FY2005.

Title V Annual Compliance Certifications received and reviewed: The Minimum Data Requirements (MDRs) contained in the Information Collection Request (ICR) (approved October 5, 2001) for Title V Annual Compliance Certifications (ACC) include the due and received dates, and whether or not deviations were noted. These data are to

be entered by EPA unless the State agrees to enter the data. For the review period, Region 6 did not enter this data into AFS nor did it negotiate with TCEQ to enter the data. As a result these ACC related data are not in AFS.

Data metric 1.F shows a universe of 102 ACCs due and 102 reviewed, however, the correct universe should be 1310 (i.e., those Title V majors with permits). Note that Texas did not use the 'SR' action type until late spring of 2006, per the verbal agreement with EPA R6 (see Element 11 for details). For the review period, the 2001 ICR also included a provision for States to enter the Title V ACC reviewed date information and results code. TCEQ reviewed ACCs (records indicate that it performed 1,032 OPCCs which encompass the ACC reviews). It entered the reviewed dates and the results codes, but did not code the reviews properly.

Sources with Unknown Compliance Status: The AFS database generates an unknown compliance status for CMS sources when an FCE is not conducted within the required frequency or when the FCE is completed but was not entered into AFS. The data metrics pulled in November 2006 indicated 161 sources with unknown compliance status. The current data metrics indicate zero sources in Texas with an unknown compliance status. TCEQ commented in its Master Plan update of November 15, 2006, that a manual fix was performed on October 15, 2006. This fix included confirming all facilities on the CMS that could be verified by comparing CCEDS, AFS, TCEQ regional records, and the Air Permitting Division's Title V database.

Citation of information reviewed for this criterion:

AIRS, TCEQ's FY2005 CMS Plan, and the FY2005 Workplan, which outlines environmental and programmatic goals for FY2005.

Actions: Major source inspection coverage: TCEQ and Region 6 will negotiate, and collaborate on, major source inspections to maximize coverage under the national CMS and meet the State's inspection mandate to use a risk based approach. Regarding inspection coverage data, TCEQ has made good progress under its data master plan resulting in more complete and accurate inspection data in AFS.

TCEQ has agreed to update and maintain the CMS universe on an annual basis. With respect to ACC data, see elements 11 and 12.

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

Findings:

Twenty inspection reports reviewed. The inspection reports contained an enforcement history and well-documented inspection findings, including the accurate identification of violations. TCEQ utilizes an exceptions based standardized format for all inspection reports. All applicable regulatory requirements are referenced in the inspection type code and relevant investigation protocol (e.g., ANBICCI is a CCEDS code indicating a comprehensive on-site evaluation of all applicable requirements at a facility of interest to

EPA - equivalent to an FCE). The report narrative, however, recites only those requirements for which the inspector is providing information to support enforcement, permitting action or further investigation.

Citation of information reviewed for this criterion:

TCEQ Case files, HPV policy, CMS

Actions:

No action needed for this review element.

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

Findings:

TCEQ is required by its standard operating procedure (SOP) to complete inspection reports within 60 days of the inspection, unless an HPV violation is involved, in which case the SOP requires reports to be completed within 90 days of the inspection. Of the 20 inspection reports reviewed that did not result in enforcement, all were completed in a timely fashion per TCEQ's SOP. Of the 20 inspections reviewed that did result in enforcement, three did not meet the 90 day time frame. These were identified to TCEQ.

Citation of information reviewed for this criterion:

TCEQ Case Files, CMS, TCEQ regulations, Information Collection Request

Actions:

TCEQ regularly reviews its internal timelines to ensure they are appropriate. No procedural changes are deemed necessary at this time.

Section 2: Review of State Enforcement Activity.

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

Findings:

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

The vehicle for the timely and accurate reporting of HPVs to EPA is the AFS database. It is impossible to verify that High Priority Violator (HPV) actions were entered timely as a complete data flush was done and all data was completely reloaded into AFS from CCEDS in July 2006. All of the records would have the data reload date as the date entered, not the actual date entered. Of the 19 enforcement files reviewed, TCEQ

properly identified all HPV violations. Eleven HPVs were identified and all 11 HPVs were in AFS.

Data metrics 4.A and B indicate that TCEQ has an HPV discovery rate (12.8%) exceeding the national rate (10.2%). Metric 4.D shows 100% of TCEQ formal enforcement actions have prior HPV designations. Together, these metrics indicate that TCEQ did a good job in identifying HPVs in AFS.

Citation of information reviewed for this criterion:
HPV Policy.

Actions:

TCEQ requested training on the HPV policy. EPA coordinated HPV training on January 23, and March 15, 2007 which was offered via video conference and WebEx web cast. TCEQ central office and regional offices participated in HPV training. Feedback from TCEQ on the training has been positive. In addition, Alice Cone, TCEQ Air Section Manager presented HPV policy training to Houston Staff on February 27 through 28.

TCEQ suggested the use of a web form or email to EPA with specific HPV questions to obtain interpretation or clarification of the policy in order to clear up vague areas and diverse interpretations by regions. Answer to the questions would be posted on an EPA web page for future reference. TCEQ and the Region are exploring options (e.g., access to existing EPA's national HPV expertise) and the need for enhancements.

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

Findings:

EPA reviewed 19 enforcement files. All actions reviewed cited violations that were correctly identified as HPVs or non-HPVs. Eleven (11) were HPVs. In every instance where a complying action was needed, TCEQ specified what actions were necessary and the time frame for completing those actions.

Citation of information reviewed for this criterion:
TCEQ Case files, HPV Policy

Actions:

No actions needed

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

Findings:

Under the HPV Policy, a timely action must occur within 270 days of the day zero, or the date violations were identified plus 45 days. An appropriate action must either address or resolve the violation (i.e., on a legally-enforceable and expeditious administrative or judicial order, or be the subject of a referral to the attorney general for further action). All state enforcement actions addressing HPVs should also assess civil penalties where applicable.

TCEQ enforcement responses are guided by its Enforcement Initiation Criteria. The response is either the issuance of a Notice of Violation by the Region office for minor violations or the initiation of a formal enforcement process for more serious violations. All HPV violations require formal enforcement action. Early in TCEQ's formal enforcement process, an Enforcement Action Referral (EAR) is generated by the investigator. As part of that referral, the HPV designation is made by investigator and his/her supervisor. The EAR document is screened by the Enforcement Contact and supervisor to determine the appropriate enforcement response. Formal enforcement responses include an Agreed Order (AO); Contested Case Processing, Default Order (Executive Director's petition to the State Hearings Office), referral to the State AG's office, referral to EPA, and criminal action.

Most TCEQ formal enforcement is through the expedited enforcement process in which a proposed AO is sent to the facility for consideration. The facility has 60 days in which to respond. If agreement is reached, the facility signs the proposed AO and, if after satisfying State public notice requirements and it is approved by the Commission, the appropriate TCEQ authority signs and issues the final AO. If agreement is not reached the case proceeds down one of the other formal enforcement tracks.

A review of the data metrics indicated TCEQ had 84.2% HPVs unaddressed for more than 270 days. In AFS, it is the Commission's order effective date that TCEQ enters as the HPV addressing action. From a process management standpoint, however, it has been the mail out of the proposed AO that has been considered by TCEQ and Region 6 as the HPV addressing action. All 11 HPV enforcement actions reviewed were proposed AOs. All 11 proposed AOs were issued within 270 days of day zero. All 11 were ultimately issued as Commission orders and were entered into AFS. Two of those Commission orders were issued within the 270 day time frame.

On September 14, 2005, Region 6 notified TCEQ that EPA had determined that TCEQ's proposed AO (sent to the facility for consideration) satisfied the HPV Policy criteria for an HPV addressing enforcement action.

Upon closer examination, however, EPA now believes that its September 14, 2005, determination was incorrect (i.e., the proposed AO does not satisfy the HPV Policy for an

addressing action). Although the proposed AO cites the violations, includes complying action requirements and includes a penalty, it does not appear to meet the HPV Policy with respect to enforceability. The Commission's order clearly satisfies the HPV Policy with respect to enforceability.

Citation of information reviewed for this criterion:

TCEQ Case files, HPV Policy

Actions:

EPA and TCEQ are exploring options for increasing the percentage of HPV addressing actions taken within 270 days of day zero.

According to TCEQ, during 2004 and 2005, the TCEQ underwent an extensive self-review of its enforcement function. The review resulted in a number of recommended changes which have been implemented. TCEQ's Enforcement Division streamlined the enforcement process (violation discovery to Commission's agenda) from approximately 292 days to 185 days on average for those cases where expedited settlement has been achieved. The data metrics indicate TCEQ timeliness has improved from 17% in 2005 to 50% in 2007.

TCEQ and the EPA are examining other TCEQ enforcement responses (e.g, Executive Director's petition) that might be considered addressing actions under the HPV policy.

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

Findings:

The Penalty Policy of the Texas Commission on Environmental Quality (Penalty Policy) guides TCEQ penalty calculations. The Policy divides violations into two categories: actual/potential harm and documentation/programmatic. It also distinguishes major from minor facilities. A base penalty amount is calculated from a set of matrices that consider the gravity of the violation (e.g., actual release, extent of deviation, etc.). The Policy calls for the calculation of economic benefit. If the calculated economic benefit is equal to or greater than \$15,000, the base amount is multiplied by 50% and that figure is then added to the base amount. By comparison, EPA uses a \$2500 threshold for economic benefit consideration. For administrative air cases, the State's statutory maximum is \$10,000 per violation per day.

Region 6 reviewed 19 enforcement actions with penalties. In each file, penalty calculations, including gravity and economic, were documented. TCEQ does a good job of calculating both gravity and economic benefit in keeping with its penalty policy. From the 19 penalties reviewed, the penalties appeared to be comparable to the amount EPA's penalty policy would generate notwithstanding the differences between the Agencies' penalty policies (e.g., economic benefit thresholds).

Citation of information reviewed for this criterion:

TCEQ Case files, HPV Policy, TCEQ Penalty Policy

Actions:

EPA recommends that TCEQ evaluate its Penalty Policy with respect to the economic benefit threshold to ensure that it provides the flexibility to recover economic benefit gained from non-compliance.

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

Findings: All 19 final penalty actions reviewed were assessed in final Commission orders. The standard procedure calls for the calculation of a proposed penalty as described in element 7. The facility is offered a 20% reduction in the proposed penalty figure if it signs the AO. This 20% reduction was prorated across the gravity and economic benefit components in all the final penalties reviewed.

Citation of information reviewed for this criterion:

Case Files, HPV policy

Actions:

See actions under element 7.

Section 3: Review of Other Enforcement Agreements

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

Findings:

Enforcement commitments in the Workplan with TCEQ are reviewed by Region 6 at mid-year and end-of-year (EOY) of the PPG funding cycle. FY 2005 EOY review indicated that the state has met all commitments. The PPG includes a number of inspections for all air sources (i.e., does not distinguish majors, or SMs). The PPA calls for TCEQ to provide an Air Inspection Targeting Strategy (AITS) for review and approval. The AITS distinguishes among sources as described in element 1 above. While the current (FY2007) PPG contains general language that TCEQ will provide investigation data to support EPA national databases including AIRS (via CCEDS), the 2005-2006 EOYs did not address TCEQ's efforts to address the AFS data issues.

Citation of information reviewed for this criterion:

Overview of TCEQ CMS Plan for FY 04 and 05.

Actions:

EPA and TCEQ will determine the appropriate mechanism (e.g., PPG) for monitoring progress on addressing the data issues identified in this review.

Section 4: Review of Database Integrity.

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

Findings:

Minimum data requirements (MDRs) represent the minimum amount of data that EPA believes is necessary to manage the national air stationary source compliance monitoring and enforcement program. FCEs, stack tests and stack test results, results of Title V ACC reviews, and compliance status are some examples of the MDRs. TCEQ tracks inspection and enforcement data in CCEDS. Data from CCEDS is uploaded into AIRS/AFS. At Region 6's request, in January 2006, TCEQ provided a data master plan to Region 6 that addressed issues with the uploads from its CCEDS database into EPA's national data bases including AFS. The issues involved investigation and enforcement records not being extracted from CCEDS for various reasons including coding discrepancies and in some instances missing data. The master plan described the measures to be taken and included a projected schedule for completion in 2007. In July 2006, TCEQ suspended data uploads because of duplicate actions being loaded (same action three or four times in some instances). With the concurrence of EPA, a complete data flush and reload was completed in August 2006. All previous Texas data now has a creation or upload date of August 14, 2006.

Citation of information reviewed for this criterion:

Workplan, AFS, CMS

Actions:

See Element 11.

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

Findings:

In 2005 TCEQ received verbal direction from Region 6 staff to code all off-site office permit compliance certification evaluations (OPCCs) as 'FF' (off-site FCEs). Later, in the Spring 2006, the TCEQ received alternative verbal instructions from EPA Region 6 to code Title V ACC reviews as 'SR' (Title V State Review) and 'FF'. After additional discussions between the State and the Region, in August 2006, TCEQ changed the code to reflect OPCC reviews as 'SR' (Title V State Review) and 'PX' (off-site PCEs). TCEQ also implemented a new code, OACC, which is equivalent to 'SR' (OPCC is more involved than an EPA 'SR'). This is the appropriate code.

Citation of information reviewed for this criterion:

AFS/AIRS.

Actions:

Region 6 will identify to TCEQ any remaining data accuracy or completeness issues not addressed in the master plan. TCEQ and the Region will negotiate details of addressing the remaining data issues. The outcome of this discussion will be a set of written guidelines from Region 6 to TCEQ. TCEQ will update its master plan accordingly. These activities are projected to be completed by December 1, 2007.

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

TCEQ did not upload all MDRs because its CCEDS database did not contain all the necessary data fields to track and upload the information. EPA's review of the data and data metrics indicated that the MDRs were not complete. Facility data including compliance status, applicable air programs, air program pollutants, air program pollutant classification, Title V ACC information and stack test pass/fail information was missing or incomplete in AFS. Although CCEDS tracks TCEQ enforcement data, TCEQ is not forwarding non-HPV enforcement data for AFS upload (i.e., AFS does not contain Texas non-HPV Agreed Order data). TCEQ developed a data master plan, submitted it to Region 6 on January 6, 2006, and updated it November 15, 2006. Under the master plan, TCEQ has continued the process of making revisions to the CCEDS database and rewriting codes to extract and upload data to AFS. The missing non-HPV enforcement data was not identified to TCEQ until this review, hence the master plan did not address this data. The Region and TCEQ are discussing this and will develop an agreed path forward for comprehensively addressing these incomplete or missing data in AFS.

TCEQ does not maintain an SM-80 universe. This was discussed with TCEQ. SM-80 designations would involve TCEQ's Office of Permitting, Remediation and Registration and could include a review of existing permits to determine if the permitted facility is at or above the 80% potential to emit (PTE) threshold and/or the review of permits as they are renewed to determine if the facility is at or above the 80% PTE threshold.

The review indicated that AFS does not reflect all PCEs done by TCEQ in 2005.

Citation of information reviewed for this criterion:

AFS/AIRS

Actions:

While previous stack test pass/fail information is not populated, the issue has been addressed as of November 2006 and all current and future uploads correctly indicate the pass/fail status. Also, the information for Title V ACCs, required to be entered by the State, has been uploaded according to verbal agreement with EPA.

Region 6 and TCEQ will address remaining data accuracy and completeness issues, associated with the minimum data requirements, as described in the Actions under element 11.

Texas Commission on Environmental Quality State Framework Review Report

Date: 10/30/06-11/03/06

Program Evaluated: Texas Commission on Environmental Quality (TCEQ)
Clean Water Act (CWA)

Information Sources Included in the Review: Permit Compliance System, State database: Consolidated Compliance and Enforcement Data System (CCEDS), Profile document, TCEQ PPG, Program Authorization documents, Compliance Inspection Manual, TCEQ Standard Operating Procedures, TCEQ Enforcement Initiation Criteria, and Joint Inspection Planning Project.

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The Water file review occurred at the TCEQ central office in Austin, Texas during the week of October 30, 2006. TCEQ operates 16 Regional offices across the State. The 16 Regional offices are divided among 4 geographical areas. The 4 geographic areas can be distinguished by the natures of their regulated communities and the environmental challenges they present. The West Texas Area has a large agri-business base with a growing number of concentrated animal feeding operations. The Border Area has the distinction of sharing air and water sheds with Mexico. TCEQ's North Texas Area has the Interstate 35 corridor of large metropolitan areas (e.g., San Antonio-Austin, Dallas-Ft. Worth) and a sizeable agri-business community. The Coastal Texas Area has one third of the US petro-chemical industry.

The Regional offices conducted inspections for NPDES facilities and the Compliance Monitoring Section in Austin conducted record reviews of self-reported data. Any violations requiring formal enforcement were referred to, and handled by, the Enforcement Division in Austin. No Regional offices were visited for this review. Information needed from the Regional offices were compiled by TCEQ and made available to EPA in Austin.

The purpose of this review was to ensure that the TCEQ NPDES program was being operated in a manner consistent with the Clean Water Act (CWA) NPDES Memorandum of Agreement (MOA) between EPA and TCEQ, the TCEQ Authorization Position Description, TCEQ Enforcement Initiation Criteria (EIC), and all applicable Federal regulations, guidelines, and polices that implement the CWA. This review was based on FY 2005 data.

TCEQ and Region 6 have historically used the TCEQ fiscal year for NPDES inspection commitment purposes. Accordingly, for this Water review, the inspections conducted were during the period September 1, 2004 through August 31, 2005 (TCEQ's fiscal year 2005). During that period of time, TCEQ conducted inspections at 1233 facilities. The enforcement review period was October 1, 2004 through September 30, 2005 (EPA's fiscal year 2005). During that period of time, TCEQ issued a combination of NOV's and formal enforcement actions to 330 facilities. From this universe of facilities, EPA and TCEQ selected 51 files on a random basis by reviewing the following:

- Quarterly Non-Compliance Report (QNCR),
- A portion of both major and minor NPDES municipal/industrial facilities,
- Facilities with penalties, and
- Inspected facilities

File selection did not consider Regional or geographic distribution.

The breakout of the 51 files were; 23 majors, 10 minors, 8 Concentrated Animal Feeding Operations (CAFOs) and 10 storm water facilities.

Section 1: Review of State Inspection Implementation

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

Findings (including successful performance and areas for improvement):

Major Inspections

The performance standard for this review element is found in the Joint Inspection Planning Project document where TCEQ committed to inspect 50% of the NPDES majors each year. During the review period (9/1/04 - 8/31/05), TCEQ conducted 293 majors inspections out of a universe of 552 majors. This translates into 53% majors coverage, slightly exceeding TCEQ's commitments. TCEQ also conducted 7 RECON inspections.

Minor Inspections

The defined non-major (minor) universe was 2320 minor facilities. In FY05, the TCEQ conducted 860 minor inspections (37.1% coverage). These numbers come from the state

database CCEDS. An additional 63 minor RECON inspections were also conducted.

Other Major and Minor Inspections

Beyond the activities counted in PCS, the TCEQ conducted 40 follow-up inspections, 3 reconnaissance investigations, and 425 complaint investigations.

CAFO Inspections

The total number of permitted CAFOs in Texas is 617. TCEQ conducted a total of 636 CAFO inspections, including 75 mandatory inspections, 413 discretionary inspections, 53 follow-up inspections and 95 reconnaissance inspections. Sixty-nine complaint investigations were also conducted. About half of these inspections (338) were discretionary inspections conducted in the TCEQ Dallas/Fort Worth and Tyler Regions, which include the Dairy Outreach Program Areas (DOPAs).

Storm Water Inspections

TCEQ has not entered into any agreement(s) with EPA to perform storm water inspections, but projects approximately 950 storm water inspections per year. TCEQ is presently performing storm water inspections on a complaint basis in the TCEQ regions. In FY05, TCEQ conducted a total of 1197 storm water inspections which consisted of the following: 127 CEIs (Construction General Permit), 1 at a MS4 facility, 174 CEIs (Multi-Sector General Permit), 355 reconnaissance investigations (RECON), 137 Follow-up inspections, and 403 storm water complaint inspections.

Other Inspections

TCEQ also conducted 77 pretreatment inspections, 92 sludge inspections, and 57 sludge complaint inspections. These inspection types are not accounted for in the metric discussion.

Data Metric Discussion

The original metric chart provided by EPA Headquarters consists of data from the Permit Compliance System (PCS). The original metric chart on 09/28/06 reflects the number of inspections from 07/01/04 to 06/31/05. This metric chart indicated that TCEQ had 39.8% (237 out of a universe of 595) inspection coverage for majors. One of the differences in the original metric chart pulled on 09/28/06 and the corrected metric numbers (293 out of 552) is due, in part, to information coming from PCS versus Consolidated Compliance and Enforcement Data System (CCEDS). The metric chart major universe captures upgrades/downgrades which occurred after FY05. Therefore, the original metric chart retrieved on 9/28/06 does not accurately reflect the list of majors in the universe on 6/30/04 for FY05. Another difference in the metric chart is in the number of inspections. This is due to TCEQ's inspection year being 09/01/04 to 08/31/05 as opposed to the metric chart inspection period of 7/01/04 through 6/31/05.

Citation of information reviewed for this criterion:

NPDES Compliance Inspection Manual (September 1994), NPDES Compliance Inspection Strategy and Guidance, TCEQ Program Authorization documents, Joint Inspection Planning Project.

Actions:

No action needed.

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

Findings (including successful performance and areas for improvement):

Out of the Fifty-one (51) files, 41 facilities received 43 inspections during the period August 31, 2004 – September 1, 2005. There were 25 major/minor inspection reports, 10 storm water reports and 8 CAFO reports. The inspection types reviewed included Compliance Evaluation Inspections (CEIs), Compliance Sampling Inspections (CSIs), Pretreatment Compliance Inspections (PCIs), Reconnaissance Inspections (RECON), and Wet Weather inspections including storm water and CAFO inspections.

The TCEQ Field Operation Division inspectors accurately documented all the violations identified. The inspection reports for majors, minors, CAFOs, and stormwater were well organized and the violations were clearly identified and documented.

Results of the file review indicated that of the 33 NPDES (major and minor) files reviewed, 23 facilities had inspections conducted during TCEQ's FY05 and the 25 inspection reports in the files thoroughly and consistently documented inspection findings, including the accurate identification of violations. Eleven (11) of the 25 (44%) inspections reviewed noted deficiencies and/or violations for which the TCEQ issued Notice of Violation letters to all (100%) of the facilities with identified issues. Twelve (12) of the 25 inspections reviewed were found to be in compliance. The reports indicated that the inspections were conducted according to proper procedures.

All 8 of the CAFO inspection reports and the 10 storm water inspection reports documented findings and appeared to accurately identify violations.

Citation of information reviewed for this criterion:

TCEQ's Program Authorization documents, Memorandum of Agreement (MOA) between TCEQ and EPA, dated September 14, 1998.

Actions:

No action needed for this element.

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

Findings (including successful performance and areas for improvement):

The NPDES file review indicated that all 25 (100%) NPDES major and minor inspection reports that were reviewed were completed in a timely manner (within 60 days of the inspection).

With regards to CAFOs, 5 of the 8 (62.5%) inspection reports reviewed were completed within 60 days from the time of the inspection/investigation. Therefore, a majority of the inspection reports evaluated were completed in a timely manner, including timely identification of violations. According to TCEQ the 3 reports were late because certain citations had to be revised, along with the CCEDS database entries for those inspections, based upon rule changes. The CCEDS database must be updated any time the state or federal rules are amended or revised to reflect the new rule citations. Until that automated update occurs, any investigation documenting a violation of the new rules cannot be completed.

All of the storm water inspection reports were completed timely within the 60 days.

Citation of information reviewed for this criterion:

TCEQ's Program Authorization documents

Actions:

No action needed for this element.

Section 2: Review of State Enforcement Activity

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

Findings (including successful performance and areas for improvement):

TCEQ identifies and addresses all significant non-compliance violations (SNC) using Federal criteria as outlined in the program authorization documents. EPA is notified of significant violations via state submittal to EPA of copies of all TCEQ inspection reports and enforcement actions. EPA reviews the reports and enforcement actions as part of its program oversight. In accordance with the Memorandum of Agreement (MOA), TCEQ also submits a list of facilities that appear as SNC on the QNCR for which enforcement action has been initiated for development of an order. In addition, EPA thoroughly reviews the state facilities appearing on the QNCR.

According to the Metric chart 4.B, the number of major facilities in SNC is 114. The major universe for this metric was corrected to show 574 facilities based on the official list pulled from PCS on 06/30/04. This number is the agreed upon major universe for FY05 (552) plus the 22 MS4s. Therefore, the percentage of Texas majors in SNC is

19.9%; the national average is 18.5%.

In the NPDES program assumption process, EPA retained the enforcement lead for some facilities with ongoing EPA enforcement actions. Some of those files have not been transferred to TCEQ. According to statistical SNC data retrieved from PCS and provided for Reporting for Enforcement and Compliance Assurance Priorities (RECAP), for the review period of 10/01/04 to 09/30/05, the SNC rate for the facilities transferred to the TCEQ was approximately 7.9%, while the SNC rate for the EPA lead facilities was approximately 12%. The percentage of (TCEQ-lead) SNC majors in Texas fluctuated significantly, from 10.28 % for the first Quarterly Noncompliance Report (QNCR) period ending 12/04 to 5.44% and 5.04% for the second and third quarters and 10.39% in the quarter ending 09/30/05. Of the 23 major facilities reviewed, 17 were on the QNCR. Eleven (11) had reporting violations which were resolved and one was a data quality error. Four (4) of the 17 (23.5%) major facilities were SNC. Of the 4, 1 was for DMR non-receipt, a reporting violation; 2 were for effluent and reporting violations and 1 was for a compliance schedule violation. One (1) facility returned to compliance within the review period without formal enforcement action. Although a formal enforcement action was issued for 1 facility, it remained noncompliant due to new and continuing violations. In all, 3 of the facilities in SNC remained noncompliant due to continuing effluent and reporting violations. The SNCs reviewed were entered into PCS in a timely manner.

TCEQ records single event violations in the state database, CCEDS, not in PCS. For FY2005, the number of major single event violations in CCEDS is 216. The number of non-major single event violations in CCEDS is 598 for TCEQ. PCS shows 12 EPA Region 6 non-major single event violations. The combined number of non-major single event violations is 610.

Other Major and Minor Inspection Single Event Violations

Beyond the activities in PCS, an additional 163 major and non-major single event violations were recorded in the state database.

Other Single Event Violations

It should also be noted that 28 sludge, 13 pretreatment, 184 AFO and 765 stormwater single event violations are also documented in the state database. These inspection types are not accounted for in the metric discussion.

Citation of information reviewed for this criterion:

TCEQ Program Authorization documents and RECAP statistics from 10/04 to 09/05, CWA EMS

Actions:

EPA Region 6 will work with TCEQ to get the single event data into ICIS-NPDES. To do this, TCEQ plans to build an upload program to electronically transfer all required data elements from the state CCEDS database to ICIS-NPDES. TCEQ will develop the

upload program once EPA provides an XML schema for inspection and enforcement data for ICIS-NPDES.

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

Findings (including successful performance and areas for improvement):

Violations are handled in accordance with TCEQ EIC. The EIC is consistent with federal guidelines for enforcement in the NPDES program. The EIC provides directions on whether a violation should be addressed through issuance of a notice of violation with a compliance schedule or through referral for formal enforcement. It also indicates when enforcement should be escalated for repeat or continuing violations that have previously been addressed by a NOV. Any deviations from the procedures outlined in the EIC require management approval. TCEQ identifies violations primarily by routine compliance inspections, compliant investigations, pretreatment audits, record review of files or database information including reviews of self-reported data. Mechanisms used by TCEQ to return facilities to compliance are:

- informal actions specifically Notice of Violation (NOV)s,
- formal actions such as Agreed Orders (AO), Default Orders, Court Orders, or Compliance Agreements.

NPDES Major/Minor Enforcement

Of the 33 NPDES files selected for this review, 21 of the 33 files selected for review had enforcement activity. The 21 files contained 25 enforcement actions issued to return the facilities back into compliance (11 informal actions were issued, 13 AO's and 1 Compliance Agreement). Of the 21 files, the 13 AO's (61.9%) had assessed penalties, and 5 (23.8%) had a Supplemental Environmental Project (SEP) which resulted in a redirection of a portion of the penalty amount. The informal enforcement actions and the Compliance Agreement included requirements to take complying actions and time frames. None of the 13 AO's had compliance schedules because the facility returned back into compliance by the time the AO was effective.

CAFO Enforcement

TCEQ initiated 11 CAFO formal enforcement actions during the fiscal year 2005. The 8 enforcement actions reviewed required facilities to return to compliance, as specified in the "Administrative Agreed Orders Assessing Penalties and Requiring Certain Actions".

Storm Water Enforcement

TCEQ generated 45 formal enforcement actions as a result of storm water violations; 10 of these AOs were reviewed. Generally the AO required compliance within 60 days of issuance of the Order or included a specific schedule for compliance. One (1) of the

orders reviewed had been amended to include a 75 day schedule for complying actions. One (1) case reviewed was for a large construction site (1500 acres) and included a revised schedule for compliance that extended to September 2006.

Citation of information reviewed for this criterion:

TCEQ Program Documents, PPG Document 2005, TCEQ Profile, CWA EMS

Actions :

No actions needed for this element.

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

Findings (including successful performance and areas for improvement):

TCEQ's Enforcement Standard Operating Procedures (SOP), with defined time lines, are used by TCEQ to process a formal enforcement case. When a violation is identified that appears to warrant enforcement, an Enforcement Action Referral (EAR) is prepared. The EAR is screened by the Enforcement Division. If deemed appropriate, a proposed Agreed Order is drafted and sent to the violator for consideration. It typically contains a penalty calculated using TCEQ's penalty policy. If accepted and signed, the Order is returned to the Enforcement Division, published in the Texas Register for public notice and then scheduled for consideration at the Commission Agenda. If approved by the Commission, the order is issued with an effective date.

Most cases are handled through the Agreed Administrative Order process described above. If agreement is not reached on the proposed order, the case is referred to the TCEQ Litigation Division for further action. There may be additional settlement negotiations, with the possibility of a higher penalty, and/or the case might be filed for administrative hearing. TCEQ can also refer cases to the Attorney General's Office for civil or criminal prosecution.

NPDES Major/Minor Enforcement

Fourteen (14) files were reviewed for formal enforcement actions. Two of the 14 (14.3%) AOs were effective in less than a year (both were completed in 11 months) from the last documented violation. The average time from the last documented violation to the date of issuance for the remaining 12 AOs was 21 months. Under TCEQ's enforcement process, described above, it is difficult for the TCEQ to consistently meet the Federal criteria for timely action. In accordance with the NPDES Program Assumption Memorandum of Agreement, TCEQ notifies EPA Region 6 in writing if it will not meet the EPA timely criteria and provides an alternate schedule. EPA Region 6 issues the formal enforcement action to address the violations until the TCEQ Agreed Order can be issued.

CAFO Enforcement

Seven of 8 CAFO files reviewed indicated that TCEQ took appropriate enforcement actions, in accordance with the national CAFO enforcement response policies. However, one (1) facility file reviewed indicated that TCEQ did not take formal enforcement action to address the unauthorized discharge of wastewater, which occurred at this facility, as a result of a broken irrigation line. TCEQ addressed the violation at the time of the inspection by verbally recommending that the facility take the necessary steps to repair the broken irrigation line, which had caused the discharge of process wastewater to waters of the State. At the time of the file review there was no information in the file to indicate that TCEQ initiated any other enforcement actions to address this unauthorized discharge of wastewater to waters of the State. This instance was discussed with TCEQ. According to TCEQ, the unauthorized discharge in question was repaired the day of TCEQ's investigation and a Notice of Violation was issued to the facility on April 7, 2006, consistent with its Enforcement Initiation Criteria.

All the CAFO actions reviewed were timely.

Storm Water Enforcement

The NPDES Program Assumption MOA for Texas does not include timeframes specifically for storm water enforcement. Ten (10) storm water enforcement actions, out of the 10 storm water files, were reviewed. On average, the actions were issued within 7 months of the violation determination. TCEQ has decreased the amount of time needed for issuance from an average of 18 months in 2000 to 7 months (if the Order is agreed upon by the violator) in 2005.

Data Metric Discussion

TCEQ enters formal enforcement for majors and 92-500 minors (minor municipal facilities constructed with a federal grant) with SNC violations into PCS. Metric 12.H shows 33 formal actions issued in FY 2005 that were entered into PCS. TCEQ enters formal enforcement actions for all facilities into the state CCEDS database, CCEDS shows 146 formal actions issued by TCEQ in FY 2005 (28 majors, 14 92-500 minors, and 104 non-grant minors). The difference between the PCS and CCEDS numbers is primarily a result of enforcement cases not being entered into PCS for non-92-500 minors. There are also some non-SNC cases for majors and 92-500 minors that are not entered into PCS. In data metric 6.A, the number of major facilities without a timely action is 52. The major universe for this metric (617) was corrected to show 574 (as discussed in element 4 above). The corrected percentage is 9.1%, which is slightly above the national average of 7.7%.

Citation of information reviewed for this criterion:
TCEQ Program Authorization Documents, CWA EMS

Actions:

TCEQ plans to provide enforcement data for non-SNC cases and more minors by building an upload program to electronically transfer data from the state CCEDS database to ICIS-NPDES. TCEQ will work with Region 6 to implement an upload program. The upload program will be developed once EPA provides an XML schema for inspection and enforcement data for ICIS-NPDES.

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

Findings (including successful performance and areas for improvement):

Most cases are handled through the Agreed Order process. For these actions, the Enforcement Division drafts a proposed order that typically includes a penalty. The proposed penalty is developed using the TCEQ Penalty Policy (This Policy applies to all media and program areas.) At NPDES Program assumption, the approved TCEQ Penalty Policy was the Policy effective October 1, 1997. A new TCEQ Penalty Policy was effective September 1, 2002. This policy was approved and implemented within the TCEQ but was never submitted to the EPA for official and timely review or approval. In reviewing the 2002 Penalty Policy, there were no substantial changes to the 1997 Policy, though the economic benefit matrix became a bit more stringent. In the 2002 policy, the economic benefit component is calculated as follows: Economic benefit is determined from avoided/delayed capital expenditures and costs. If the economic benefit amount is greater than or equal to \$15,000, then there is a 50% adjustment to the calculated base penalty (i.e., gravity component). This adjustment is the economic benefit component and it is added back into the base penalty amount. If the economic benefit is determined to be less than \$15,000, then there is no adjustment made to the base penalty for economic benefit. By comparison, EPA uses \$2500 as its economic benefit threshold. In the 1997 Penalty Policy, the economic benefit trigger amount was \$25,000. Though this does not recover any of the economic benefit for a calculation of less than \$25,000, it adds a percentage (25% or 50%) of the base penalty amount for an economic benefit calculation greater than \$25,000.

NPDES Major/Minor Enforcement

Of the 14 formal enforcement actions reviewed, 9 (64.3%) AO's had assessed penalties; 5 of the 14 (35.7%) AO's had a Supplemental Environmental Project (SEP) which resulted in a penalty reduction from the proposed amount. Documentation in the files indicated that the Agreed Orders with penalties had appropriately calculated gravity and economic benefit components, in accordance with the TCEQ Penalty Policy.

CAFO Enforcement

The CAFO files reviewed indicated that TCEQ consistently utilized a penalty calculation worksheet. However, in some cases, it was difficult to justify the rationale used to

evaluate gravity or economic benefit. For example, one facility violated its CAFO permit by essentially damming the Creek to construct a pond that the facility then used as a cooling pond for its cattle. The inspection report indicated that this facility had severely impacted the Creek up to 1.5 miles downstream of the pond. However, according to the TCEQ penalty calculation worksheet, environmental harm was determined to be minor and economic benefit was calculated to be one dollar. TCEQ's Agreed Order assessed a penalty of \$650. TCEQ calculated this penalty according to its Penalty Policy. The penalty, however, appears to be lower than what EPA might have assessed.

Storm Water Enforcement

For the facilities reviewed for storm water, the penalties were appropriate although in some cases somewhat low as compared to the penalties that EPA Region 6 might assess for the same violations. TCEQ uses the timeframe from the inspection date to the screening date as the basis for some of their penalty calculations. This serves to make the penalties lower as compared to a calculation for the entire period of non-compliance.

Citation of information reviewed for this criterion:

TCEQ Program Authorization Documents (MOA), TCEQ Penalty Policy

Actions:

EPA recommends that TCEQ evaluate its Penalty Policy with respect to the economic benefit threshold to ensure that it provides the flexibility to recover economic benefit gained from non-compliance.

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

Findings (including successful performance and areas for improvement):

The file reviews indicated TCEQ successfully assessed and collected penalties. Explanations for the calculation of economic benefit and gravity components are being documented. TCEQ keeps a state database that tracks the amount of all penalties requested, the penalty amount settled, cash penalty settlement, the SEP assessed, and the amount and the date the penalty payment was received.

TCEQ records penalties for formal actions in the state CCEDS database, not in PCS. CCEDS shows 146 formal enforcement actions in FY05. Of these, 135 had penalties. The percent of formal enforcement actions with penalties was 92.5%. The total penalties assessed in FY05 were \$6,089,489.84. All of the 146 formal enforcement actions were linked to violations in CCEDS (100%).

NPDES Major/Minor Enforcement

Fourteen (14) enforcement actions with assessed penalties were reviewed. The file

reviews indicated that the final actions included penalties that appropriately calculated the gravity and economic benefit components in accordance with the TCEQ Penalty Policy. The total amount assessed for the orders reviewed was \$1,695,435, cash settlement was \$626,305, and the deferred amount totaled \$13,360.

Supplemental Environmental Project (SEP)

In addition, SEPs were included as mitigation of the penalties. Total SEPs amounted to \$1,055,770.00. SEP information/project description was included as part of the Agreed Order. The SEP files, which include the project proposal from the facility, appropriateness review, approval, and tracking information are located in the Legal Department of the TCEQ and were available and reviewed during the file review. Four (4) of the five (5) SEPs reviewed appeared to be in line with state guidelines for SEPs. The facility that did not had an Agreed Order effective on January 30, 2005. There was no documentation in the file that indicated any work had been done on its SEP, and the completion date for the SEP had passed. The missing documentation was discussed with TCEQ. TCEQ located the letter from the facility providing notification that the SEP had been completed.

Deferred Penalty

In the TCEQ Penalty Calculation Worksheet, there is a deferred amount for which the calculated penalty can be reduced; however, there is no information in the Penalty Policy about this “deferred” penalty reduction. This information regarding the “deferred” reduction is located in the TCEQ Enforcement SOP document. In the Enforcement SOP, it states that an up-front 20% penalty deferral may be used in order to encourage a quick settlement if there is no documentation that indicates culpability exists. This deferral is conditional upon meeting the provisions of the Agreed Order.

CAFO Enforcement

TCEQ initiated 11 formal enforcement actions against CAFOs during 2005. The total penalty amount assessed was \$41,459.00. The total penalty amount deferred was \$7,032.00 and for all 11 enforcement actions the total payable penalty amount was \$34,427.00. Penalties were calculated in accordance with the TCEQ Penalty Policy. In general final penalty amounts appeared lower than what EPA might have assessed.

Storm Water Enforcement

With regards to storm water, the economic benefit and gravity portions of the penalty are calculated as the TCEQ penalty policy requires and are appropriate, based on the period of non-compliance and other factors as the policy requires.

Citation of information reviewed for this criterion:

TCEQ Program Authorization documents.

Actions:

None needed for this element.

Section 3: Review of Other Enforcement Agreements

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

Findings (including successful performance and areas for improvement):

The FY 2005 PPG/PPA included projections for water facilities inspections. It also stated that TCEQ would take timely and appropriate enforcement actions to address violations of federal regulations or state rules adopted in fulfillment of federal requirements. The PPG also included general language that TCEQ would support EPA databases.

The FY 2005 PPG end-of-year report indicated the TCEQ met its PPG enforcement commitments.

Citation of information reviewed for this criterion:

TCEQ PPG/PPA FY05,

Actions:

No actions needed for this element.

Section 4: Review of Database Integrity

- 10) **Degree to which the Minimum Data Requirements are timely.**

Findings (including successful performance and areas for improvement):

PCS is the primary data system that TCEQ is required to use for the NPDES program. TCEQ maintains more program data in the state CCEDS database than in PCS. For inspections and enforcement actions, TCEQ enters data into PCS for majors and a subset of minors. TCEQ maintains inspections and enforcement data for all NPDES facilities in its state database (CCEDS). PCS targets for timeliness vary by the type of data being entered into the system. PCS data elements related to inspections, enforcement actions, limit summaries and effluent violations were reviewed for 23 major and 10 92-500 minor files. The Compliance Procedures Manual contained within TCEQ's Program Authorization documents requires that DMR data for majors, significant minors, and 92-500 minors are entered into PCS within 10 days of receipt of the DMR form. DMR data was entered timely for both majors and minors for the files evaluated in this review. Since program assumption, TCEQ has entered only formal enforcement for majors and 92-500 minors with SNC violations into PCS. Program assumption documents indicate that all major and 92-500 minor information should be entered into PCS regardless of

SNC status.

TCEQ is not required to enter minor inspections into PCS unless the facility is a 92-500 minor.

The defined major universe agreed upon by EPA Region 6 and TCEQ was the official list pulled from PCS on 06/30/04. The major universe at that time was 552 facilities. The original data in the Metrics chart pulled 09/28/06 was compared to the official list of majors in FY05 to determine that 533 majors had correctly coded limits. Using this corrected data, the percent of major limits correctly coded is 96.6%. The percent of non-major limits correctly coded is 84.2%.

Citation of information reviewed for this criterion:

PCS Policy Statement and TCEQ Program Authorization documents.

Actions:

TCEQ plans to provide formal enforcement action data for non-SNC cases and more minors by developing an upload program to transfer data electronically from CCEDS to ICIS-NPDES. TCEQ will work with Region 6 to implement an upload program. The upload program will be developed once EPA provides an XML schema for inspection and enforcement data for ICIS-NPDES.

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

Findings (including successful performance and areas for improvement):

Accuracy refers to the absence of erroneous data resulting from mistakes during any point in the data preparation, entry, or transmission process. The current permits for all major and minor facilities were in TCEQ files and the limit summaries for all files reviewed were coded correctly in PCS. Overall data accuracy was high. Some isolated data inaccuracies were identified to TCEQ as follows:

One major facility had an informal enforcement action that was not coded.

One major facility had a formal enforcement action date that was coded incorrectly.

One minor enforcement action was not coded into PCS.

One major inspection was not in PCS and 1 major inspection was coded incorrectly.

One minor inspection was not in PCS.

Discrepancies were found when comparing Discharge Monitoring Reports (DMRs) with PCS data. Minor data entry errors and missing or incomplete data was found for specific monitoring periods for 9 major facility files and 6 of 10 minor facility files.

Telefax copies of DMRs were found in 2 major facility files and 2 minor facility files instead of the required original or a copy with an original authorized signature. During the file review, it was observed that original DMR documents as well as other documents are kept in desk files until they are sent to state archives. According to TCEQ, this is

done in order to give the compliance monitoring staff immediate access to the DMR files to evaluate and resolve reporting violations.

TCEQ maintains formal enforcement actions for all facilities in the state database, CCEDS. All formal enforcement actions, 146, are linked to violations. The TCEQ percentage of actions linked to violations is 100%.

Citation of information reviewed for this criterion:

TCEQ Program Authorization documents

Actions:

TCEQ has corrected the inspection data and enforcement data. TCEQ will either complete corrections of the enforcement DMR data or provide a schedule for completion by September 28, 2007.

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

Findings (including successful performance and areas for improvement):

Completeness refers to the amount of data present in the database at a specific point in time. According to the data metrics, the percentage of majors with correctly coded limits is 96.6%. The percentage of non-majors with correctly coded limits is 84.2%. Of the 33 NPDES files selected for review, 100% of facilities had correctly coded limits.

According to data metric 12.B.2, the major DMR entry rate based on DMRs expected is 92.8%, and the non-major DMR entry rate based on DMRs expected is 78.9%. All (100%) DMRs for the 33 NPDES files reviewed were entered into PCS. Of the 23 NPDES major enforcement actions reviewed, 2 actions were missing some data in PCS. All of the minor enforcement actions reviewed had complete data. Of the 25 major/minor NPDES inspection reports reviewed there were 2 that were missing some data. Facility report data for all of the 33 NPDES files reviewed were complete. All facilities reviewed had complete compliance schedule data. Overall completeness of major and minor facilities' data was very high. Specifics on the missing data described above was provided to TCEQ.

Citation of information reviewed for this criterion:

Data Metrics Chart

Actions:

TCEQ has provided the missing inspection and enforcement data in PCS or will do so by September 28, 2007.

Texas Commission on Environmental Quality State Framework Review Report

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

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TCEQ has 16 regional offices divided among 4 geographical areas. The 4 geographic areas can be distinguished by the natures of their regulated communities and the environmental challenges they present. The West Texas Area has a large agri-business base with a growing number of concentrated animal feeding operations. The Border Area has the distinction of sharing air and water sheds with Mexico. TCEQ's North Central Texas Area has the Interstate 35 corridor of large metropolitan areas (e.g., San Antonio-Austin, Dallas-Ft. Worth) and a sizeable agri-business community. The Coastal Texas Area has one third of the US petro-chemical industry.

TCEQ's inspection, enforcement and related data support functions are consolidated for all media under the Office of Compliance and Enforcement.

Information Sources Included in Review:

The review period covers FY 2005, October 1, 2004 – September 30, 2005. The 16 Regional offices conduct inspections, issue notices of violation, refer significant violations for formal enforcement, maintain related files and perform data entry functions for inspections. The Enforcement Division in the central office processes enforcement referrals from the Regions and other offices, manages the formal enforcement process, maintains files, performs data entry for formal enforcement actions and coordinates data uploads to RCRAInfo. Inspection and enforcement related data are entered into the TCEQ data system, Consolidated Compliance and

Enforcement Data System (CCEDS) by each Regional Office and the Enforcement Division. The data is then uploaded via a data translator into RCRAInfo.

This Framework Review was conducted at the central office in Austin. No Regional Offices were visited. TCEQ compiled files and information as needed based upon the files selected for review, and provided them to the EPA review team.

The review encompassed three data sources: the national RCRAInfo data system, CCEDS and information located in the state inspection and enforcement facility files. In 2005, the TCEQ conducted 960 inspections at 739 facilities. It also issued 72 formal and 38 informal enforcement actions to 60 facilities and 36 facilities respectively. This makes a universe of 835 facilities from which to select files. A total of 42 facility files were selected for review. Facilities were selected for review randomly by using Excel to select numbers that were linked to the facilities. File selection did not consider regional or geographic distribution. Twenty-nine (29) facilities with a total of 42 inspections (conducted in FY 2005) were reviewed.

FY 2005 RCRA Facilities Reviewed for Inspections

Treatment, Storage and Disposal Facilities	9
Large Quantity Generators	6
Small Quantity Generators	5
Conditionally Exempt Small Quantity Generators	6
Transporters	1
No Universe	2

According to RCRAInfo in FY 2005, TCEQ issued 72 formal enforcement actions to 60 facilities. EPA selected 8 of those facility files, at random, for review. TCEQ also issued 38 informal enforcement actions to 36 facilities and 7 of those facilities were selected for review, randomly.

FY 2005 RCRA Facilities Reviewed for Enforcement

Treatment, Storage and Disposal Facilities	5
Large Quantity Generators	3
Small Quantity Generators	2
Conditionally Exempt Small Quantity Generators	2
Transporters	1
No Universe	2

Section 1: Review of State Inspection Implementation

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

Findings:

For FY 2005, TCEQ committed to conduct 82 treatment, storage and disposal facility (TSDF) inspections. TCEQ exceeded their commitment by conducting 108 TSDF inspections. The RCRA Program requires States to conduct inspections at TSDF facilities once every 2 years. Data metric 12.a.1 shows the Texas TSDF universe at 111. In FY 2005, the State inspected 97% of their TSDF Universe (108 out of 111), exceeding the national average of 90.9% and meeting the national goal of 50% per year.

A national program goal is to have all large quantity generators (LQG) inspected every 5 years (i.e., 20 % every year). In FY 2005, TCEQ inspected 290 out of 940 LQGs (31%). This exceeds the national average (27.4%) for LQG coverage in FY 2005. For the 5 year period, 2001 – 2005, the data metrics show TCEQ inspected 69% of the LQG universe. While this does not meet the national goal of 100%, it exceeds the national average for the same 5 year period (68%). TCEQ attributes its level of LQG coverage to resource prioritization and the need to cover other waste handlers of equal or greater risk potential such as small quantity generators.

Citation of information reviewed for this criterion:

RCRA State Review Framework Metrics and the national RCRAInfo data system

Actions:

TCEQ and Region 6 will work together in optimizing LQG coverage, including flexibilities such as a 2:1 ratio of SQG/CESQGs to LQGs.

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

The total number of RCRA inspections conducted by TCEQ in FY 2005 was 960. EPA reviewed 42 FY 2005 inspection reports (29 facilities) from a random selection of the 960 inspections (739 facilities). All of the inspection reports that were reviewed were complete and had detailed narratives of what was found during the inspection as well as a history of previous inspections conducted at the facilities. Every inspection conducted by the State has RCRA inspection checklists. Photographs are included as well as other documentation needed to support cited potential violations.

Citation of information reviewed for this criterion:

TCEQ inspection and enforcement facility files, The Hazardous Waste Civil Enforcement Response Policy, dated December 2003.

Actions:

No actions needed for this review element.

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

Findings:

All 42 inspection reports from the inspection list were completed in a timely manner and all of the violations were identified within the prescribed timeframe of 150 days. TCEQ requires the inspectors to prepare their inspection report and provide notification to the facilities by day 150. Twenty-nine of the 42 inspection reports had no violations. Eleven of the inspections denoted secondary violations.

Citation of information reviewed for this criterion:

TCEQ inspection and enforcement facility files, The Hazardous Waste Civil Enforcement Response Policy, dated December 2003

Actions:

No actions needed for this review element.

Section 2: Review of State Enforcement Activity.

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

Findings:

Data metric 4.a indicates a relatively low SNC identification rate for this review element. TCEQ discovered an apparent problem with the coding that interfered with some SNC designations in the state database being uploaded to RCRAInfo.

Data metric 4.c shows 7 SNCs in RCRAInfo that were identified at five facilities for FY 2005. As part of the review of enforcement actions, 21 inspection reports (supporting the enforcement actions) were examined. These were not counted under Section 1. The facilities were advised of compliance concerns in a timely manner. In three of the 21 inspection reports (at 2 facilities), EPA might have designated additional SNC violations. These were communicated to TCEQ for analysis.

Review metric 4.d. indicates a relatively low percentage (31.1%) of formal enforcement actions with prior SNC designations. Of the 8 formal enforcement actions reviewed, 2 had prior SNC designations in RCRAInfo. One formal enforcement action cited violations (no SNC designation) that EPA might have designated as SNC. This was communicated to TCEQ for analysis.

Citation of information reviewed for this criterion:

TCEQ inspection and enforcement facility files, The Hazardous Waste Civil Enforcement Response Policy, dated December 2003

Actions:

TCEQ examined the instances identified above where EPA might have designated additional SNCs. In three out of the four inspection reports for two facilities, TCEQ does not disagree (agrees) with EPA's assessment. TCEQ is in the process of making modifications to the coding for uploading SNC designations to RCRAInfo. The changes have been tested and put into production for the RCRAInfo uploads.

Since the end of FY05, TCEQ has re-organized the Enforcement Division by Media (i.e., Water, Waste and Air). According to TCEQ, this allows Enforcement staff to be cognizant of the subtleties of each program, specifically the conditions where violations need to be designated as SNCs and their appropriate time frames for enforcement response. Additionally, CCEDS has been upgraded to allow for SNC designations to be affixed to specific violations in the enforcement side of the case. This allows cases to be flagged where the SNC designations were missed in the Field Investigation Report of CCEDS. This capability was not available during FY05.

TCEQ and Region 6 will schedule SNC training in FY 2008 for field investigators and enforcement coordinators. TCEQ plans to complete its analysis of SNC designations and discuss any additional measures with the Region in conjunction with scheduling SNC training. A working session on SNC identification was provided at the annual RCRA inspector work shop, attended by TCEQ field investigators, in May 2007.

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

Violations are handled in accordance with TCEQ Enforcement Initiation Criteria (EIC). The EIC is consistent with federal guidelines for enforcement in the RCRA program. The EIC provides directions on whether a violation should be addressed through issuance of a notice of violation with a compliance schedule or through referral for formal enforcement. It also indicates when enforcement should be escalated for repeat or continuing violations that have previously been addressed by a NOV. Any deviations from the procedures outlined in the EIC require management approval.

All TCEQ formal enforcement actions reviewed included compliance related activities to be completed within a specified time frame from the effective date of the Order (e.g. on the effective date of the Order, or within 30 or 45 days of the effective date of the Order). Secondary Violation Letters reviewed also required the facilities to document to TCEQ their return to compliance within a specified period of time, usually 30 days. All enforcement actions reviewed met this review element. In addition, the files contained correspondence indicating that complying requirements were met.

Citation of information reviewed for this criterion:

TCEQ inspection and enforcement facility files, The Hazardous Waste Civil Enforcement Response Policy, dated December 2003, TCEQ Enforcement Initiation Criteria

Actions:

No action needed for this review element.

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

Findings:

The EPA Hazardous Waste Civil Enforcement Response Policy (ERP) provides 2 options for timely and appropriate enforcement for violations deemed to be SNC. One is to issue a proposed formal enforcement action within 240 days of day zero (i.e., first day of the inspection identifying the violation). The other option is to issue a final formal enforcement action within 360 days of day zero. The Policy also contains provisions for alternative schedules for issuing formal enforcement actions to address SNCs.

TCEQ enforcement responses are guided by its Enforcement Initiation Criteria. Accordingly, formal enforcement actions may address secondary violations as well as SNCs. Early in the TCEQ enforcement process, an Enforcement Action Referral is generated. This document is screened by the Enforcement Coordinator and supervisor to determine the appropriate enforcement response. SNC designations which are made during the completion of the investigation or inspection report by the Field Operations staff are re-examined during the screening of the case by the Enforcement Division staff to determine the validity of any SNC designations and to determine if any violations were missed for SNC designation. Formal enforcement responses include an Agreed Order (AO); Contested Case Processing, Default Order, referral to the State AG's office, referral to EPA, or criminal action.

Most TCEQ formal enforcement is through the AO. It describes the violation, includes a proposed penalty and requires compliance. A proposed AO is sent to the facility for consideration. The facility has 60 days in which to respond. If agreement is reached, the facility signs the proposed agreed order and, if after satisfying State public notice requirements and approved by the Commission, the appropriate TCEQ authority signs and issues the final AO. If agreement is not reached the case proceeds down one of the other formal enforcement tracks.

Under TCEQ's Enforcement Standard Operating Procedures (for hazardous waste violations warranting formal enforcement), enforcement action must be taken through the expedited enforcement process or the more formal enforcement process requiring the filing of an Executive Director's Report and Petition for a Commission Order (EDPRP). In the first one, the final Commission order must be issued by day 240. In the second one, an EDPRP must be filed within 150 days of day zero (the violation discovery day).

Historically, TCEQ has used the proposed AO as a formal enforcement action, coding it as such (code 211) for RCRAInfo purposes. This was done by TCEQ with the understanding that EPA considered the proposed AO to be a formal action. Similarly, Region 6 understood TCEQ's proposed AO to meet the ERP provisions. However, upon closer examination through this Framework review, it now appears to Region 6 that the proposed AO, when it is sent to the

facility for consideration, does not constitute a formal action (code 211), but rather an informal action (code 126). EPA reviewed 5 such proposed AOs (i.e., 5 of the 8 formal actions reviewed). They were issued during FY 2005 and were coded as formal actions by TCEQ. The AOs addressed secondary violations. The violation classification appeared to be appropriate hence informal enforcement actions were appropriate responses.

Eight formal enforcement actions, issued in FY 2005, were reviewed. Two of these actions, cited violations designated as SNC. Neither of the two actions addressing SNC were timely.

RCRAInfo (data metric 6.b) shows that TCEQ issued 72 formal enforcement actions (at 60 facilities) in FY 2005. Thirty-one of the 72 were expedited orders (code 211), 9 were initial orders (code 210), 27 were final orders (code 310), 2 were referrals to the Attorney General's office (code 410), 1 was a civil judicial action (code 510) and 2 were final judicial orders (code 620).

Citation of information reviewed for this criterion:

TCEQ inspection and enforcement facility files, The Hazardous Waste Civil Enforcement Response Policy, dated December 2003, TCEQ Enforcement Initiation Criteria, TCEQ Enforcement Standard Operating Procedures

Actions:

TCEQ will begin coding proposed Administrative Orders as informal enforcement actions (code 126) starting in FY 2007. Since FY 2005, TCEQ has implemented changes in the enforcement process which have significantly streamlined the processing of formal actions. These changes will facilitate TCEQ's ability to process RCRA enforcement cases in accordance with EPA timeliness criteria. With respect to identifying violations as SNC, see element 4.

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

Findings:

TCEQ has one penalty policy (Policy) that covers most of its enforcement programs including RCRA hazardous waste. The Policy divides violations into two categories: actual/potential harm and documentation/programmatic. It also distinguishes major from minor facilities (e.g., for RCRA a major facility is one that generates more than 12,000 kg). A base penalty amount is calculated from a set of matrices that consider the gravity of the violation (e.g., actual release, extent of deviation, etc.). The Policy calls for the calculation of economic benefit. If the calculated economic benefit is equal to or greater than \$15,000, the base amount is multiplied by 50% and that figure is then added to the base amount. For administrative RCRA hazardous waste cases the State's statutory maximum \$10,000 per violation per day.

Penalty calculations for 8 formal enforcement actions were reviewed (all contained penalties). All of the penalty calculation sheets were marked to show that both gravity and economic benefit were considered. The penalties reviewed appeared to be appropriate.

Citation of information reviewed for this criterion:

Penalty Policy for the Texas Commission on Environmental Quality; RCRA Civil Penalty Policy

Actions:

No action need for this review element.

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

Findings:

TCEQ collects the penalties associated with their final formal enforcement actions. Files reviewed included documentation on concluded actions stating that penalty payment had been made. Settled penalties issued in one fiscal year may be collected in the next FY or beyond. Some facilities pay in installments. According to the data metrics report, penalties assessed in FY 2005 totaled \$1,693,894.

For the Agreed Orders, which makes up the majority of TCEQ formal enforcement and all of the final formal enforcement actions reviewed, the penalty calculation in the proposed AO is the figure documented. The final penalty is a percentage, typically 80% of the proposed amount for expedited settlement cases. TCEQ's penalty policy prescribes a 20% reduction in the total proposed penalty for expedited settlements.

According to the Framework data metric 8.b.2, 84% of TCEQ's FY 2005 final formal enforcement actions carried penalties. RCRAInfo shows TCEQ issued 38 Orders in FY 2005. Thirty-one of these have penalties listed in RCRAInfo. This percentage (84%) exceeds the corresponding national average (78%).

Citation of information reviewed for this criterion:

The RCRAInfo CME Formal and Informal Enforcement Actions with Timeliness Data Report, dated 11/29/06; the Hazardous Waste Civil Enforcement Response Policy, dated December 2003. Penalty Policy for the Texas Commission on Environmental Quality.

Actions:

No action needed for this review element.

Section 3: Review of Other Enforcement Agreements

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

Findings:

TCEQ has a PPA and PPG with Region 6. Those documents reference the Multi-media Enforcement Memorandum of Understanding (MOU) signed April 1, 1999. The MOU, PPA and PPG include projections for inspections and for TSD inspection coverage as well as timely and

appropriate enforcement. The FY 2005 end of year report concluded that TCEQ met its enforcement related PPA, PPG and MOU commitments.

In 2005, TCEQ committed to 900 hazardous waste inspections as follow: 12 federal facilities inspections, 82 TSD inspections, 159 LQG inspections, 212 SQG inspections and 435 others (e.g., conditionally exempt, transporters, non-notifiers). The 2005 end-of-year report credited TCEQ with 13 federal facilities inspections, 189 TSD inspections, 212 LQGs, 210 SQGs and 346 others; for a total of 960 inspections.

Citation of information reviewed for this criterion:

The 1999 Enforcement Memorandum of Understanding between TCEQ and EPA. 2005 Performance Partnership Grant.

Actions:

No action needed for this review element.

Section 4: Review of Database Integrity

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

Findings:

TCEQ uses a translator program to upload data from CCEDS into RCRAInfo. In FY 2005, TCEQ was not able to upload data to RCRAInfo on a routine basis because of issues with the translator program. Data was uploaded in October 2004, February 2005 (mid-year) and September (end-of-year).

Citation of information reviewed for this criterion:

RCRA State Review Framework Metrics; TCEQ inspection and enforcement files and the RCRAInfo Data System

Actions:

The Region has assisted TCEQ with uploads by verifying data quality before migrating into RCRAInfo. Region 6 provided the QA tools to TCEQ and trained TCEQ Enforcement staff on how to run the QA checks independently. TCEQ has developed and is implementing a master plan to address issues with the translator program. Beginning in FY 2006, TCEQ uploaded data to RCRAInfo on a monthly basis from October 2005 until March 2006 when RCRAInfo became unavailable for uploads due to conversion to Version 3. TCEQ resumed uploads after EPA's CDX portal for Version 3 became operational in September 2006. The conversion to Version 3, however, has introduced the need for additional testing and coding adjustments. TCEQ is working towards performing more regular uploads to RCRAInfo with intent of returning to monthly uploads as soon as possible.

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

Findings:

As discussed in element 6 findings, TCEQ has been coding proposed administrative orders as formal actions (code 211) in accordance with accepted practice and based upon prior Region 6 concurrence. During this review, Region 6 reevaluated this matter and decided that proposed Agreed Orders should be coded in the future as informal actions (code 126).

The file review denoted some data inaccuracies in RCRAInfo for the selected files. Most of these were related to mislabeling of inspection types in RCRAInfo as NRRs (non-financial record reviews) due to coding problems with the translator program. The list of the data inaccuracies were provided to TCEQ.

Citation of information reviewed for this criterion:

RCRA State Review Framework Metrics; TCEQ inspection and enforcement files and the RCRAInfo Data System

Actions:

All noted inspection data inaccuracies in RCRAInfo were corrected on November 27, 2006. Beginning with FY 2007, TCEQ will code proposed Agreed Orders as informal enforcement actions (code 126).

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

Findings:

The file review revealed some missing data in RCRAInfo. Most of these pertained to missing informal actions (NOVs) in RCRAInfo. The data problems were discussed with TCEQ. Resolution of the translator issues has been affected by the move from RCRAInfo Version 2 to RCRAInfo Version 3. In addition, there were coding errors and some data were not uploaded. These issues have been communicated to TCEQ.

Citation of information reviewed for this criterion:

RCRAInfo Data System

Actions:

In regards to the informal enforcement data discrepancies, TCEQ is reviewing each of these items and will take action to correct any necessary data changes in CCEDS for a future upload to RCRAInfo.

Region 6 will identify to TCEQ any remaining data accuracy or completeness issues not addressed in the master plan. TCEQ and the Region will negotiate details of addressing the remaining data issues. The outcome of this discussion will be a set of written guidelines from Region 6 to TCEQ. TCEQ will update its master plan accordingly. These activities are projected to be completed by December 1, 2007.

MDR	TCEQ 2005 AFS Data, Findings	TCEQ Master Plan Issue/Fix	Current Status (corrected?)
<u>Identification</u>			
Facility Name	In AFS	NA	NA
State Code/Abbreviation	In AFS	NA	NA
County Code	In AFS	NA	NA
Facility Number	In AFS	NA	NA
Street	In AFS	NA	NA
City	In AFS	NA	NA
Zip	In AFS	NA	NA
SIC or NAICS Code	In AFS	NA	NA
Government Ownership	In AFS	NA	NA
HPV Linkage and Key Action (Day Zero)	Data: TCEQ designates HPVs, not all HPVs in AFS timely. Findings: Timely HPV status affected by unsuccessful data uploads from CCEDS to AFS.	Issue: records not being extracted from CCEDS due to data problems with investigation records. Fix: Enforcement Division corrected investigation records through QA process.	??
<u>Compliance Monitoring Strategy (CMS)</u>			
CMS Source Category	Data: Majors universe not accurate, SM 80s not distinguished from SMs Findings: Historic universe not in AFS	NA	SM80% not accurate. TCEQ reports that assistance from Permitting, Remediation and Registration Division is needed.
CMS Minimum Frequency Indicator	Inspection schedule updated in TCEQ's 2005 AITS. CMS frequency not updated in AFS.	NA	TCEQ will update CMS frequencies annually
<u>All Regulated Air Program(s)</u>			

Air Program	In AFS	NA	NA
Operating Status	In AFS	NA	NA
Subparts for NSPS, NESHAP and MACT	Data: Subpart information in AFS for Texas incomplete	Issue: Needed to add new associative entity type in CCEDS which would impact Central Registry	Had Spring 2007 Est. Completion Date; update comment "Pending sign off and may be released on October 11, 2006" Status?
<u>Regulated Pollutant(s) within Air Program(s)</u>			
Pollutant(s)			
Classification(s)			
Attainment Status	In AFS	NA	NA
Compliance Status			
<u>Actions within Air Programs</u>			
Minimum Reportable Actions*	AFS did match CCEDS for enforcement actions and FCEs. Stack Test results codes/pollutants missing in AFS,	Issue: records not being extracted from CCEDS due to data problems with investigation (i.e., inspection) records. (e.g., missing/faulty AFS number, site classification, address, SIC code) Fix: Enforcement Division corrected investigation records through QA process. Issue: Duplicate and orphan data in AFS because CCEDS records being recurrently extracted Fix: Field Ops contractor modified method for marking records. Issue: Data for enforcement orders with multiple facilities not loading (AFS associates action to only one	

		<p>facility) – see fix below</p> <p>Issue: Multiple day zeros being loaded for same enforcement action. - see fix below</p> <p>Issue: Coding change needed for administratively resolved cases. – see fix below</p> <p>Issue: CCEDS extract code requires activity checklist – not being provided.</p> <p>Issue: CCEDS extract code not picking up referrals to AGs office.</p> <p>Issue: Inspections not extracted due to problems associated with multiple type codes and multiple activity counts. (???)</p> <p>Fix: From August 2005-October 2006, TCEQ contractor made CCEDS code upgrades to address multi-facility actions, day zero, admin resolution and to allow upload of historic enforcement actions without activity checklist (procedural change to include checklist with new actions). Additional coding changes were made to cover referrals to the AG, and to address the multiple type and multiple count issues ???</p>	
Action Number	In AFS	NA	NA
Action Type	In AFS	NA	NA
Date Achieved	In AFS	NA	NA
HPV Violation Discovered	FCEs, Stack Tests and Title V ACC Reviews in AFS	NA	NA

HPV Day Zero (i.e., Key Action)	In AFS	NA	NA
HPV Violating Pollutant	In AFS – Defaulting all violations to “FACIL” currently	Issue: All pollutants associated with each of the HPV violations will be uploaded and linked to Day Zero for a site.	Not corrected. Estimated completion date was Summer 2007. Update comment: “Further discussion needed, no release date set for this functionality.”
HPV Addressing Date	In AFS	NA	NA
HPV Resolving Date	Not all in AFS	Issue: Administratively resolved enforcement actions and referrals to the Attorney General not uploading to AFS Fix: Modify the code to handle these actions	Update to Master Plan indicates this was completed; however not all administratively resolved actions appear to be uploading to AFS. On April 07 Watch List, 12 of 20 administratively resolved actions were not in AFS.
Results Code (Title V review)	In AFS as of November 2006	NA	Yes; no plans to populate past reviews with Results Code
Certification Deviations (RD08 field)	Not in AFS	Not in Master Plan	

*Notice of Violation(s) (NOVs); Administrative Orders and Assesses Penalties (includes Enforcement Orders, Consent Decrees, Consent Agreements); Civil Referrals; HPV Violation Discovered (examples: FCEs, On- or Off-Site PCEs, Stack Tests, Title V Annual Compliance Certifications); HPV Day Zero, HPV Addressing Actions, HPV Resolving Actions; Full Compliance Evaluations (FCEs); Stack Tests with Pass/Fail in Results Code; Title V ACCs received (EPA enters unless otherwise negotiated; Due Date reported as a date scheduled) and Title V ACCs reviewed (results codes for Annual Compliance Certification reviews are: in compliance (MC), in violation (MV) and unknown (MU)); Investigations