



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

Ref: 8ENF-PJ

Rick Sprott, Executive Director
Utah Department of Environmental Quality
P.O. Box 144810-4810
Salt Lake City, UT 84114-4810

**Re: Final State Review Framework (SRF)
Evaluation Results for Fiscal Year (FY)
2006**

Dear Mr. Sprott:

Enclosed you will find the final SRF report summarizing evaluation of Utah's Clean Air Act Stationary Source, Resource Conservation and Recovery Act Subtitle C, and National Pollutant Discharge Elimination System enforcement programs for federal FY 2006. On August 16, 2007, we forwarded a final draft of the report to you for review and comments on the RCRA portion of the report were received from Dennis Downs in a letter dated August 31, 2007. Those comments have been addressed in the final report, as appropriate, and a response to comments is enclosed. Some changes to the final draft report were also made in response to feedback received from EPA Headquarters (which reviewed all draft SRF reports) and the enclosed response to comments also summarizes changes made to the report as a result of those comments. We look forward to working with the Utah Department of Environmental Quality in utilizing the results of this evaluation to advance our shared objective of protection of public health and the environment in Utah.

If you have any questions regarding the SRF evaluation or the SRF in general, please contact me or have your staff contact the most knowledgeable person on my staff, Corbin Darling at (303) 312-6426. Any program-specific questions should be directed to the EPA program contacts identified in the report.

Sincerely,

Eddie A. Sierra
Deputy Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

Enclosures

1. Final SRF report
2. Response to comments

cc: Bill Sinclair, UDEQ
Cheryl Heying, UDEQ
Dennis Downs, UDEQ
Scott Anderson, UDEQ
Walt Baker, UDEQ
John Whitehead, UDEQ

bcc (w/o encl):

Art Palomares
Diane Sipe
Martin Hestmark
Sharon Kercher
Cindy Reynolds
Kelcey Land
Sandy Johnson
Darcy O'Connor

Bcc (w/ encl.):

Carol Smith
Eric Johnson
Jennifer Meints

**U.S. EPA Region 8 Review of Utah Department of Environmental Quality
Compliance and Enforcement Programs
Federal Fiscal Year 2006**

September 18, 2007
FINAL

EXECUTIVE SUMMARY

Background

The United States Environmental Protection Agency (EPA) Office of Enforcement and Compliance Assurance (OECA), all ten EPA Regions, the Environmental Council of States (ECOS) Compliance Committee, and other state representatives have jointly developed a method to assess state performance in the enforcement and compliance assurance program. This report reflects the review by EPA Region 8 of the Utah Department of Environmental Quality (UDEQ) compliance and enforcement activities for the Clean Air Act (CAA) Stationary Sources program, the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) program, and the Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste program using the SRF and associated guidance. This review has been a collaborative effort between the Region and State and captures both successes of the state's program as well as any identified areas that need improvement. Future reviews will look at performance as a comparison to the level documented in this baseline review.

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

The review consists of 12 core program elements and associated metrics. The 12 evaluation areas posed by this Framework are consistent with evaluation areas delineated in the 1986 guidance memorandum signed by Jim Barnes entitled "Revised Policy Framework for State/EPA Enforcement Agreements." Additionally, the Framework utilizes existing program guidance, such as national enforcement response policies, compliance monitoring policies, and civil penalty policies or similar state policies (where in use and consistent with national policy) to evaluate state performance and to help guide definitions of a minimum level of performance.

Process Followed in the Review

Region 8's evaluation of UDEQ's core enforcement programs was conducted by staff from the Region's Air, RCRA, and Water enforcement programs using the Framework described

above. Part of the review consisted of analyzing FY 2006 data metric reports regarding UDEQ's compliance and enforcement programs which came from EPA's Online Tracking Information System (OTIS) SRF website. The data metric reports were pulled in February 2007 and forwarded by the EPA reviewers to the State contacts for each program. One exception is the NPDES data metric report which was not available for this review due to the change from PCS to ICIS-NPDES. The data metric reports used are attached. A subsequent preliminary analysis of the data metric report for each program was forwarded to the State for discussion.

The number and type of files reviewed was determined based on the protocol in the Implementation Guide, and was based on the number of facilities in the universe with activity during FY 2006, the number of inspections performed and the level of enforcement activity in each program. Twenty CAA files were reviewed, 36 RCRA files were reviewed, and 27 NPDES files were reviewed. For each program, representative files were randomly selected. The file reviews occurred both on-site (at UDEQ offices) and off-site (at EPA offices). Information sources included in the review are listed in the program-specific portion of this report.

The review process has relied heavily on communication between EPA and the State which has occurred both before and during the review. Communications have occurred at management and staff levels and have included face-to-face meetings, conference calls, e-mails, and other written communications.

The report contains findings of the review for each program (including successful performance and areas for improvement), a discussion of information reviewed for each element and, if applicable, recommendations for corrective action. The State chose not to submit information for consideration under optional Element 13.

Summary of Findings

The Region's review of the State's enforcement and compliance assurance program in the CAA Stationary Sources, the CWA NPDES and the RCRA Subtitle C hazardous waste programs has concluded that program standards are generally met, however, there are some areas for improvement which have been identified. The following is a summary of key findings of the review for each review area.

Inspections

NPDES Inspection commitments for all areas were exceeded in FY2006. Inspection numbers were increased by 26% in FY2006 over FY2005. The largest increase in inspection numbers occurred in the storm water priority area – inspections more than doubled in this area. From the on-site file reviews it was determined that NPDES inspectors are actually inspecting sites more frequently than recorded in the databases or reported in the End-of-Year Report. Nearly all of the NPDES inspection reports reviewed were completed in a timely manner, usually within 30 days after the inspection.

Overall, UDEQ does an excellent job of creating and completing the CAA Full Compliance Evaluation (FCE) inspections committed to within the Compliance Monitoring Strategy (CMS). UDEQ exceeded the minimum requirements by inspecting major and SM-80

facilities more frequently than required by the CMS policy and including numerous synthetic minor and minor source inspections in their CMS. Compliance monitoring reports are timely and of very high quality.

RCRA inspection commitments were exceeded for nearly every category. UDEQ's approach to SQG/CESQGs in the RCRA program is an issue, however. Only one percent (1%) of the universe was inspected, a seemingly low coverage amount. In addition, UDEQ does not enter these inspections into RCRAInfo, maintaining that they are compliance assistance visits. The State has now (FY07 and beyond) agreed to enter the compliance assistance visits into RCRAInfo, however, it has not yet agreed to enter alleged violations that were noted in inspection reports when the violations are first identified. UDEQ's position on reporting of such violations is a significant departure from national policy.

All of the RCRA inspection reports reviewed demonstrated a complete evaluation of the facility compliance status and apparent violations are identified. Nearly all were completed in a timely manner.

Enforcement

Most of the NPDES Notice of Violation/Administrative Orders (NOV/AOs) that were reviewed did not include specific language that the schedule developed by the violator to address the noncompliance would be incorporated into the NOV/AO. One NPDES site identified through file reviews had violations including a discharge without a permit that was not addressed by a formal action. The lack of formal enforcement was not consistent with UDEQ's enforcement escalation. Of the three NPDES penalty actions reviewed, only one considered both appropriate gravity and economic benefit calculations in the proposed penalty amount.

UDEQ identifies CAA High Priority Violations accurately and reports them to EPA and the AFS database in a timely manner. The violating facilities are also returned to compliance in a timely manner. EPA has been working with UDEQ over the last several years to improve the number of HPV settlements that are appropriate in accordance with penalty policy considerations. Two areas of focus have been to increase the magnitude of the penalty when there are violations that last for multiple days and when there is a history of noncompliance, especially for repeat violators that have not been deterred by previous enforcement actions. During FY06, progress was made in increasing penalties for facilities with a history of noncompliance, and EPA and UDAQ reached agreement on the importance of multi-day penalties. EPA expects to see an improvement in the percentage of appropriate HPV penalty settlements during FY07. Overall, UDEQ has an excellent record of resolving HPVs and other violations in a timely manner.

UDEQ's RCRA SNC identification rate is 6.2%, above half the national average goal of 3.1%. The State issued an appropriate number of formal enforcement actions, all of which were timely and contained adequate injunctive relief to return facilities to compliance within the required timeframes.

UDEQ maintains that its state law prohibits it from designating any RCRA violations until the Executive Secretary, Solid and Hazardous Waste Control Board, has issued a formal enforcement action (taking up to 180 days from the date of the inspection). While EPA agrees that only the Executive Director of the Board can approve an enforcement action, the state law does not specifically prevent the state from tracking violations that are discovered in the course of the inspection. UDEQ should enter the violations into RCRAInfo in accordance with applicable policy and regulation. The approach taken by the state now prevents EPA from tracking milestones associated with the timely and enforcement provisions of the Hazardous Waste Civil Enforcement Response Policy (ERP), and prevents the public from accessing information about inspection results.

Annual Agreements

Six deliverables for NPDES were identified in FY2006 PPA. Three were complete and on time, one was complete but not on time, two were not received. UDEQ met its Performance Partnership Agreement commitments for CAA enforcement. UDEQ's PPA commitments for RCRA were generally met, however, as also addressed elsewhere in the report, concerns have been identified regarding appropriate enforcement response for SQGs and repeat violators and the entry of data into RCRAInfo regarding SQGs.

Data Management

The Major and Minor facilities inspections conducted and DMRs were in ICIS-NPDES. Also, the enforcement actions reviewed are being tracked in ICIS-NPDES. The review found that for inspections, DMRs and enforcement actions the standard for timeliness was not always being met. This could have been due in part to the problems EPA was experiencing with ICIS-NPDES. The system was down often right after the State's data migration from PCS.

Due to the migration of Utah's data from PCS to ICIS-NPDES and the subsequent unavailability of accurate OTIS data metric reports, EPA can not draw conclusions as to how Utah performed compared to the requirements of data quality metrics until data metric reports from ICIS-NPDES are available. Information covered by these review elements will require further review and discussion between EPA and the state.

UDEQ generally maintains the integrity of the AFS database by entering complete and accurate data in a timely manner. Several findings discovered during the SRF review indicate the need for further dialogue between EPA Region 8, EPA Headquarters, and the State on the Minimum Data Requirements of the HPV Policy and how to best apply them to UDAQ's early settlement program, however.

Most data is entered into RCRAInfo in a timely manner, however, concerns were identified regarding the timely entry of violation data and SNC determinations. Data entered into RCRAInfo was generally found to be accurate, however, in some cases, UDEQ is not maintaining accurate data for the results of compliance evaluation inspections.

Follow-up and Planned Oversight Activities

The State is already taking steps to improve its programs and address problem areas identified in this report. The Region will continue to work closely with the State to continuously improve its programs. Specific action plans developed to address problem areas identified in this report will be incorporated into the FY 2008 PPA and progress will be monitored by both the Region and OECA.

Based on the results of this review, EPA plans to conduct baseline oversight activities and some targeted oversight activities for the FY 2007 and FY 2008 review periods.

Minimum/baseline oversight activities which will occur each year will include: 1) review and documentation (through End of Year Report) of progress towards meeting grant commitments, 2) routine communications and information sharing with state (to discuss, for example, HPVs, SNC, QNCR, etc.), 3) Watch List review and follow-up, 4) Data Metrics review, 5) Follow-up on open action items/recommendations from previous reviews, and 6) other oversight activities required by national program guidance (e.g. oversight inspections, etc.).

Additionally, program-specific targeted oversight activities will be discussed with each program and incorporated into the PPA. Targeted oversight may include: 1) Targeted program improvement plans to address problems identified during the review, 2) more frequent communications and information sharing with state, 3) an increased number of oversight inspections, 4) targeted after-the-fact and real time review of files (*e.g.* proposed penalties, settlement documents, etc.).

Also based on the results of this review, EPA plans to conduct subsequent SRF reviews on a three year cycle with the next review occurring during FY 2010 (for the FY 2009 review period). Should baseline or targeted oversight activities demonstrate that program performance has declined such that program standards are generally no longer met, or, there are significant deficiencies in key areas, then an SRF review may be conducted for the next performance period. The SRF process and guidance is currently undergoing evaluation by EPA, the Environmental Council of States (ECOS), individual states, and other organizations and that evaluation may result in revisions to the national SRF guidance. SRF guidance revisions may result in changes to the guidance regarding the frequency of SRF reviews.

PROGRAM-SPECIFIC REVIEW RESULTS

EPA Review of Utah Division of Water Quality's National Pollutant Discharge Elimination System (NPDES) Enforcement Program FY 2006

EPA Evaluator: Darcy O'Connor, Environmental Scientist 303.312.6392
US EPA Region 8, Water Enforcement Unit

State Contacts: John Whitehead, DWQ Permits, Compliance and TMDL Branch Manager 801-538-6053
Mike Herkimer, UPDES IES Section Manager 801-538-6058
John Kennington, UPDES Engineering Section Manager 801-538-6713

Introduction:

The NPDES evaluation involved the on-site review of 27 files related to inspections conducted and enforcement actions initiated or concluded in fiscal year 2006 (FY2006). The files were selected using national enforcement and compliance databases and inspection/enforcement action tracking tables available at the time of the file reviews. As Utah migrated to the ICIS data system in June 2006, the EPA Headquarters' data retrievals (metrics) were not yet available at the time of this review. Initial findings regarding these file reviews were discussed with John Whitehead, Mike Herkimer and John Kennington on September 21, 2006.

In addition to file reviews, EPA used the following documents to complete this review: Performance Partnership Agreement (PPA) for 2006; the 2006 End of Year Report; the 2006 Inspection Plan; *NPDES Compliance Inspection Manual* (July 2004); *Utah Department of Health Division of Environmental Health Bureau of Water Pollution Control Enforcement Management System (EMS)*, dated 9/1/89; *The Enforcement Management System, National Pollutant Discharge Elimination System (Clean Water Act)*, 1989; and the *Interim Clean Water Act Settlement Penalty Policy*, dated 3/1/95. These sources are listed for each of the 12 specific questions or elements in the review.

Files were chosen by randomly selecting files based on the number of inspections and enforcement actions taken or concluded during FY2006. The breakdown of files reviewed is as follows:

Source Type	Number of Files Reviewed
Majors	3
Minors	8
Storm Water	13
CAFOs	3
Total Files Reviewed:	27

On-site file reviews were conducted by Darcy O'Connor from September 19 – 21, 2006. The files reviewed were:

Name	Permit Number	Permit Type	File Type
Central Weber	UT0021911	Major Pretreatment	Inspection
Magna Water & Sewer	UT0021440	Major	Inspection
Chevron USA	UT0000175	Major	Inspection
Richmond City	UT0020907	Minor	Enforcement
Tremonton City	UT0020303	Minor	Inspection
Corinne City	UT0020931	Minor	Inspection/Enforcement
Plain City	UT0021326	Minor	Inspection
Genwal Resources, Inc.	UT0024368	Minor	Inspection
Pollution Control System	unpermitted		Enforcement
Intermountain Farmers Association	unpermitted		Inspection/Enforcement
Dairy Farmers of America	unpermitted		Enforcement
Ivory Homes Bellevue Sub	UTR104003	SW Construction	Inspection/Enforcement
Chadwick Farms	UTR104195	SW Construction	Inspection/Enforcement
EK Bailey Construction	UTR103611	SW Construction	Inspection/Enforcement
Tuscany Cove, Rainey Homes	UTU000380	SW Construction	Inspection/Enforcement
Confluence Place	unpermitted	SW Construction	Inspection
Mercer Hollow Estates	UTR105167	SW Construction	Inspection
Old Mill Village (Lodder Homes)	UTR104377	SW Construction	Inspection/Enforcement
Suncrest	UT0211712	SW Construction	Inspection/Enforcement
Hunters Creek Woodside Homes	UTR104157	SW Construction	Inspection/Enforcement
Jacobs Ranch	UTR105560	SW Construction	Inspection
Quail Hollow	UTR104498	SW Construction	Inspection/Enforcement
Dakota Contracting Davis County Jail	UTR104544	SW Construction	Inspection
Richmond Homes Sycamores at Jordan Hills	UTR104029	SW Construction	Inspection
JY Ferry & Sons	UTG080047	CAFO	Inspection
Ritewood Eggs	UTG080016	CAFO	Inspection
Bud Shepherd Poultry Farm	UTG080012	CAFO	Inspection

Section 1: Review of State Inspection Implementation

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

Findings:

The 2006 PPA and 2006 Inspection Plan outline the inspection commitments for the 2006 inspection year. DWQ and EPA agreed to an alternative major inspection strategy in which DWQ agreed to inspect 80% (26) of the major permittees, with the remaining 20% (7) being replaced with biosolid and Concentrated Animal Feeding Operation (CAFO) inspections. Only those majors with no permit violation or enforcement actions in the past three years would be offset with biosolid or CAFO inspections.

As 2006 was used as a transition year for moving the NPDES inspection year from July through June to October through September, states had an additional 3 months to complete the 12-month PPA inspection commitments.

According to information provided in the 2006 End-of-Year Report, inspection commitments for all areas were exceeded in FY2006. Inspection numbers were increased by 26% in FY2006 over FY2005. The largest increase in inspection numbers occurred in the storm water priority area – inspections more than doubled in this area.

	PPA Commitment	# Completed	% Completed
Majors	26	34	> 100%
Minors	42	120	> 100%
PCI			> 100%
Ptmt. Audit	16 total	17 total	> 100%
IU	0	Not reported	N/A
CAFO	20	22	> 100%
SW	150	183	> 100%
CSO	N/A	N/A	N/A
SSO	0	1	> 100%
Biosolids	16	26	> 100%
Total	270	403	> 100%

From the on-site file review, it was determined that inspectors are actually inspecting sites more frequently than recorded in the databases or reflected in the numbers above. EPA found several files where additional site visits occurred and observations were documented to assist with the development of enforcement cases.

These enforcement support inspections were not recorded as such in the database or in the State's accounting process. DWQ believed that only site visits which result in a report being sent to the facility could be counted as an inspection.

The SRF Data Metrics indicate that Utah completed inspections at less than 100% of the major facilities. However, these data metrics do not consider the extending inspection year during FY2006 (June 2005 – September 2006). While the omission of the extra three months of inspections is the same for all states, during the time frame for which the data metrics are valid, Utah exceeded the national average major inspection coverage (59.2%).

Citation of information reviewed for this criteria:

- 2006 Inspection Plan
- FY2006 PPA
- FY2006 End-of-Year Report
- ICIS
- OTIS Management Reports
- OTIS SRF Data Metric Report
- File Reviews

Recommendations if corrective action is needed:

DWQ should ensure that it is getting credit for all of the inspections, including enforcement support inspections. As discussed with management during the on-site file reviews, the enforcement case development inspections do not require that a copy of the report be sent to the facility inspected. If an internal report is completed which documents the inspection, it should also be recorded as an enforcement support inspection in ICIS.

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

Findings:

The following oversight inspections were conducted during FY2006:

Facility Name	Inspection Date	Date EPA Received State Inspection Report	Date EPA's Oversight Report Sent to State
Huish Detergents, Inc.	3/16/06	4/28/06	6/1/06
Woodside Homes	3/16/06	4/19/06	6/1/06

While the DWQ inspectors were knowledgeable about the storm water program and provided good information to the facilities, the following areas of improvement were noted in the oversight reports:

- Documentation of the site conditions could be improved. It is suggested that the narrative portion of the reports be expanded to give a better description of the facility and the conditions at the time of the inspection.
- Inspectors do not routinely use bond inspection books for field notes, and an inspection photo log was not kept in the field.
- Inconsistencies regarding the compliance status were noted in the inspection report.

During the on-site file reviews, inspection reports were reviewed to determine whether observations were clearly recorded. While specific issues were not identified in most of the reports reviewed, two reports did not contain sufficient details on possible violations.

Citation of information reviewed for this criteria:

- Industrial storm water inspection conducted by Mike George, DWQ. Oversight report completed by Colleen Gillespie, EPA.
- Construction storm water inspection conducted Lonnie Shull, DWQ. Oversight report completed by Colleen Gillespie.
- File Reviews
- *NPDES Compliance Inspection Manual* (July 2004)

Recommendations if corrective action is needed:

Utah should review the recommendations provided in the oversight inspection reports and adjust its inspection procedures as necessary. Inspectors should provide adequate detail in the inspection reports to document areas of concerns. EPA will conduct additional oversight inspections in FY2008 to ascertain if inspection reports are optimally prepared.

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

Findings:

Of the 24 inspections reviewed, 22 reports were completed within 45 days. Utah routinely completes inspection reports in a timely manner, usually within 30 days after the inspection.

Citation of information reviewed for this criteria:

- Inspection File Reviews

Recommendations if corrective action is needed:

None.

Section 2: Review of State Enforcement Activity

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

Findings:

This question determines if significant noncompliance (SNC), as defined in 40 C.F.R. §§ 123.45(a)(2)(ii) and (iii), identified during inspections is accurately and timely reported to ICIS. SNC under these sections pertains to major permittees only. SNC definitions for areas such as storm water and CAFOs have not yet been developed, and violations of these sorts are not currently required to be entered in ICIS. In the three major files reviewed, violations which were identified during the inspections did not meet the definition of SNC. Violations identified during the 21 inspections at minor, storm water and CAFO sites were not required to be entered into ICIS.

One of the enforcement files reviewed included information regarding a sanitary sewer overflow (SSO) which occurred during FY2006. The facility in question is a non-major source. While SSOs at minor facilities are not yet required to be entered into ICIS as a single event violation, this will be a requirement in the near future.

In FY2006, no major facility appeared as SNC in the quarterly noncompliance report (QNCR). This compliance rate far exceeds the national average (19.8% of majors in SNC).

Citation of information reviewed for this criteria:

- File Review
- ICIS
- OTIS SRF Data Metric Report

Recommendations if corrective action is needed:

EPA will keep DWQ informed of any changes to the SNC definitions for the wet weather priority areas. As these definitions are finalized, the requirement that SNCs be

tracked in ICIS for these facilities will be implemented in a phased approach. Utah may want to begin tracking single event violations such as discharges w/o a permit and SSOs at minor facilities now in preparation for the requirement change. It should be noted that single event violations at major facilities are currently a WENDB data element and are required to be tracked in the national database.

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

During FY2006, DWQ issued 23 Notices of Violation/Administrative Orders (NOV/AOs) and entered into 7 Settlement Agreements (SAs) (which resolved previous NOV/AOs). One judicial action was also concluded in FY2006. During the on-site file review, EPA reviewed 13 files with formal enforcement (10 NOV/AOs and three SAs).

Of the 13 actions reviewed, 12 included injunctive relief (10 NOV/AOs and two SAs). Of those 12 formal actions which included injunctive relief, five (three NOV/AOs and two SAs) included specific enforceable compliance schedules to address the violations. None of the remaining eight enforcement actions included specific language that the schedule developed by the violator to address the noncompliance would be incorporated into the NOV/AO. Detailed review findings have been provided to the State.

Citation of information reviewed for this criteria:

File reviews

Recommendations if corrective action is needed:

Utah should include language in all of its Orders which specifically states that schedules developed by the violators must be approved by Utah and incorporated into the Orders and are enforceable under the provisions of the Orders. This will assist in keeping the schedules on track as negotiations of a final settlement agreement continue. DWQ is working to incorporate this language into the NOV/AO boiler plates. DWQ may want to consider developing additional language specific to the types of violations found at construction storm water sites. As many of the violations can be addressed within the traditional 30 days given to respond, a requirement that the violator provide photo documentation and a signed certification statement that the violations have been addressed by the required response date could be added to assure that compliance is achieved. EPA will spot check Orders for this language during FY2008.

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 State's Enforcement Management System (EMS), EPA's EMS and best professional judgment were used to determine timeliness and appropriateness of formal enforcement actions. To evaluate this criterion, formal enforcement actions that had specific timeliness requirements and violations identified through file reviews were assessed. SNC as used in this section applies to both major and minor facilities. According to the Utah 1989 EMS, "The EMS is applicable to all facilities in the State." As NOV/AOs are used to address noncompliance, the 10 NOV/AOs reviewed as part of the file review are included in this measure. Also included are violations identified through inspection and enforcement file reviews that appear to require enforcement elevation. Of the 10 formal actions reviewed, all were determined to be appropriate, and two were determined to be timely.

Six of the eight actions which were not timely, based on best professional judgment, were construction storm water actions. At the time these actions were being developed, the Division was working on several additional storm water enforcement actions. This relatively high number of enforcement actions for the Division's storm water staff (2 FTEs) contributed to the increased time frame for issuing the actions.

One site identified through file reviews had violations including a discharge without a permit that was not addressed by a formal action. The lack of formal enforcement was determined to be inappropriate. Detailed review findings have been provided to the State.

Citation of information reviewed for this criteria:

- File reviews
- *Utah Department of Health Division of Environmental Health Bureau of Water Pollution Control Enforcement Management System (EMS)*, dated 9/1/89.
- *The Enforcement Management System, National Pollutant Discharge Elimination System (Clean Water Act)*, 1989

Recommendations if corrective action is needed:

Utah should complete enforcement actions in a timely manner as defined in its EMS. Enforcement actions reviewed by EPA in FY2008 will verify whether the actions are timely and this information will be provided to Utah as part of the review. As DWQ works on updating its EMS, enforcement time frames should be developed for any new areas added to the EMS (such as wet weather areas covered by general permits). DWQ should provide a copy of the draft EMS to EPA for review once it is developed.

Violations identified during inspections and through other compliance review activities should be escalated per Utah's EMS.

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

Findings:

Three SAs with penalties finalized in FY2006 were reviewed for this measure. One of the three enforcement actions considered both gravity and economic benefit calculations in the proposed penalty amount. This proposed penalty was determined to be appropriate as compared to the Interim Clean Water Act Settlement Penalty Policy. The two remaining actions did not include appropriate gravity and/or economic benefit. Detailed findings have been provided to the State.

Citation of information reviewed for this criteria:

- *Interim Clean Water Act Settlement Penalty Policy*, dated 3/1/95.
- BEN Model
- File reviews

Recommendations if corrective action is needed:

Utah should calculate appropriate penalty amounts in accordance with its penalty policy, and based on the facts and circumstances of the case. The economic benefit of noncompliance should be considered in each case to ensure that a violator is not receiving an unfair advantage over competitors who are complying with the regulations. Due to the fact that the State Review Framework review period may be up to three years prior to formal review of enforcement actions, EPA is asking all states to share information on all actions on a real-time basis.

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

As stated above, one of the three penalty actions reviewed calculated appropriate gravity and economic benefit of non-compliance. The penalty amount collected in this case was less than the proposed penalty, though still deemed appropriate using the EPA Interim Clean Water Act Settlement Penalty Policy, Municipal Litigation Consideration. However, no documentation was included in the file on how this reduced penalty amount was reached.

Citation of information reviewed for this criteria:

- Corrine City Docket # M05-04SA signed 3/14/06

Recommendations if corrective action is needed:

DWQ should ensure that the enforcement file clearly identifies how the final penalty amount was reached and that both gravity and economic benefit are taken into account. Progress on this recommendation will be verified during the next SRF review.

Section 3: Review of Performance Partnership Agreement

9. Degree to which enforcement commitments in the PPA categorical grants are met and any products or projects are completed.

Findings:

Six deliverables for NPDES were identified in FY2006 PPA. Three were complete and on time, one was complete but not on time, two were not received.

	PPA Deliverable	Date Due	Submitted	On Time	Complete
1.	IY07 Wastewater Inspection Plan	8/31/06	Y	Y	Y
2.	Annual SSO Report	9/30/06	Y	N	Y
3.	Inventory of collection systems in priority watersheds	12/31/05	N	N/A	N/A
4.	Storm Water Tracking system semi-annually	3/31/06, 9/30/06	Y	Y	Y
5.	Draft storm water compliance and enforcement plan	12/31/05	N	N/A	N/A
6.	End-of-Year Report	12/31/06	Y	Y	Y

The Division has indicated that it has not identified priority watersheds for SSOs, and will not be completing the inventory of collection systems. The draft storm water and compliance and enforcement plan has been drafted but has not yet been through the Division's management review.

Recommendations if corrective action is needed:

Discussion of upcoming PPA deliverables will be conducted between EPA and Division during quarterly calls in FY2007. The Division is currently working to incorporate a Storm Water Compliance and Enforcement Plan into its EMS. The updated

draft EMS should be submitted to EPA as soon as possible. Time lines for any remaining deliverables will be negotiated in the FY2008 PPA.

Section 4: Review of Database Integrity

10. Degree to which the Minimum Data Requirements are timely

Findings:

The timeliness of data entry was evaluated (File Review Metric B) during the file reviews by noting indications of data entry (*i.e.* date and initials) in the files and comparing timeliness with National PCS data quality guidance. EPA's Office of Wastewater Enforcement and Compliance (OWEC) and Office of Water (OW) 1992 Permit Compliance System (PCS) Quality Assurance Guidance Manual indicates that Measurement/Violation Data (DMRs) are to be date stamped when received and entered in PCS within 10 working days of receipt of the DMR. The Manual also indicates that inspection data are to be entered within 10 working days of receipt of the inspection report.

All of the forty two DMRs reviewed had dates of data entry (and were initialed) and, of those, about half (20) were entered in a timely manner. This could have been due in part to the problems EPA was experiencing with ICIS-NPDES. The system was often down immediately following the State's data migration from PCS. Likewise, most (twenty-one) of the inspection reports reviewed had dates of data entry (and were initialed), however, less than half (eight) met the standard for timelessness for data entry.

Citation of information reviewed for this criteria:

Data metric report
File reviews

Recommendations if corrective action is needed: EPA will work with UDEQ to determine the cause of the data entry timeliness issues and will address the findings in the FY07 end-of-year report.

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

Findings:

The last available data metric information shows eighteen (18) out of nineteen (19) enforcement actions were linked to violations. This information might change after the OTIS data metric reports are fixed to reflect ICIS-NPDES data.

Citation of information reviewed for this criteria:

Data Metric Report

Recommendations if corrective action is needed: None

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

Findings:

The Major and Minor facilities inspections conducted and DMRs were entered in ICIS-NPDES. Also, the enforcement actions reviewed are being tracked in ICIS-NPDES. Due to the migration of Utah's data from PCS to ICIS-NPDES and the subsequent unavailability of accurate OTIS data metric reports, EPA can not draw conclusions as to how Utah performed compared to the requirements of this data metric. Information covered by this data metric will require further review and discussion between EPA and the state.

Citation of information reviewed for this criteria:

Data Metric Report

Recommendations if corrective action is needed: None

**EPA Review of Utah Division of Air Quality's
Clean Air Act (CAA) Stationary Source Enforcement Program
FY 2006**

EPA Evaluator: Carol A. Smith Phone: 303-312-7815

State Contacts: Bryce Bird Phone: 801-536-4064
Harold Burge Phone: 801-536-4129
Jay Morris Phone: 801-536-4079
Robert Ford Phone: 801-536-4451
Susan Weisenberg Phone: 801-536-4045

Introduction:

EPA's evaluation of the Clean Air Act portion of the Utah Department of Environmental Quality's (UDEQ) program involved a review of Utah Division of Air Quality's (UDAQ) Compliance Monitoring Strategy and its implementation, timeliness and appropriateness of enforcement activities, implementation of the appropriate portions of the EPA/UDEQ Performance Partnership Agreement, and database integrity. The FY06 review followed the national State Reviews Framework (SRF) process, a change from the Uniform Enforcement Oversight System used in previous years.

Database trend review (data metrics) reflected favorably on UDAQ's program, showing inspection coverage and completion rates exceeding national averages. In addition, timeliness of resolving High Priority Violation (HPV) enforcement actions and database integrity trends exceeded national averages. The ratio of HPV to non-HPV enforcement actions was 36% compared to 78% nationally, therefore EPA decided to add several file reviews of non-HPV enforcement actions in the file review to ensure that violation determinations are made appropriately.

EPA selected twenty files for review. Eight of the files were selected because they were HPVs. Three non-HPV enforcement files also were selected. The remaining files were selected randomly with care taken to include a report written by each inspector. The files selected included a mixture of fourteen major sources, five synthetic minor (SM) sources including one that met the definition of SM-80 and one minor source. Files were provided by UDAQ to EPA electronically when possible, some were faxed to the Region 8 office and some sent by regular mail.

EPA and UDAQ communicated by conference call, e-mail, individual telephone calls, and regular mail. EPA introduced the national SRF process to UDEQ by a letter dated September 15, 2006 from Carol Rushin, then Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice to Dianne Neilson, Executive Director of the Utah Department of Environmental Quality. Conference and individual calls were used by EPA to kick off and then work through the SRF process with first and second level

managers. On March 14, 2007, EPA and UDAQ discussed EPA's Preliminary Data Metric Analysis, generating areas where additional information and clarification was needed. The new information was incorporated into the next version, an EPA report dated April 9, 2007, which also included results from the file reviews. On April 12, 2007, EPA and UDAQ discussed EPA's latest draft report and comments were incorporated into the next update.

Overall, UDAQ and EPA have exchanged the needed information and agree on the accuracy of the draft report. EPA's findings suggest minor changes UDAQ can make to improve their program. There were no issues that rose to the level of making formal recommendations for corrective action.

Section 1: Review of State Inspection Implementation

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

Findings:

Overall, UDAQ does an excellent job of creating and completing the Full Compliance Evaluation (FCE) inspections committed to in the Compliance Monitoring Strategy (CMS). UDAQ exceeded the minimum requirements of EPA's Clean Air Stationary Source CMS, dated April 25, 2001, by inspecting major and SM-80 facilities more frequently than required by the CMS policy and including numerous synthetic minor and minor source inspections in their CMS. The majority of UDAQ's inspection targeting is completed through use of the Inspection Targeting Model (ITM) developed through EPA for state air programs. Use of the ITM ensures a greater focus on the use of field time toward sources that are more significant in size and have a greater potential for non-compliance. This results in focusing more resources on facilities where the potential environmental benefits are greatest.

Inspections at Major sources:

The CMS requires that all active major sources should receive a FCE every 2 years. Overall, UDAQ's major source FCE coverage of 95% exceeds the national average of 81% and is close to the national goal of 100%. The data metric incorrectly counts facilities on tribal land, an area which is EPA's and not UDAQ's responsibility. Once the 16 tribal land facilities are subtracted, UDAQ has completed 96 of 101 CAA major source full compliance evaluations for a 95% coverage rate.

UDAQ has been able to conduct annual on-site compliance evaluations at all of its major sources where other states are unable to do so. EPA notes that UDAQ has an experienced staff of CAA inspectors and has experienced very little turnover, enabling them to exceed the national average in inspection frequency.

One of the major sources counted as not inspected was due to the fact that it only became a major source on the last month of the fiscal year, changing it from a five-year frequency to an annual inspection frequency. One other major source not counted for a FCE did receive a Title V compliance certification review in FY06 and will receive an on-site full compliance evaluation in FY07. The remaining three facilities that were not counted as being inspected in FY06 actually did receive full compliance evaluations in FY06 but they were not entered into the AIRS/AFS database.

Based on this new information, the major source FCE coverage rate for UDAQ should have been 99 of 100 for a coverage percentage of 99%.

Inspections at SM80s - (synthetic minor >=80 percent of major source level):

Active SM-80 sources should receive a FCE every 5 years. UDAQ's conduct of FCEs at least every five years at SM-80 facilities was 92%, exceeding the national average of 84%, and approaching the national goal of 100%.

EPA and UDAQ discussed the four facilities that were not counted as receiving FCEs in the last five years. Two of the facilities were permanently shut down and this has been updated in AFS. One facility was not targeted for FY06 due to its portable location status. The last facility is a synthetic minor located on tribal lands which is EPA's jurisdiction.

UDAQ is commended for evaluating compliance at 100% of the SM80s.

While the OTIS SRF metrics indicate an SM-80 universe of 51 sources, the UDAQ CMS plan flags 99 sources, almost double. There is a need for UDAQ to determine whether these sources are all SM-80s or are true minor sources. UDAQ needs to ensure that future CMS plans reflect the current correct SM-80 universe.

Inspection at Synthetic Minor sources:

Active synthetic minors should receive a FCE every five years. UDAQ conducted FCEs at 73% or 177 of 244 facilities in the last five years. UDAQ has very good coverage for inspecting synthetic minor and minor sources which are prioritized using the ITM.

Title V Annual Compliance Certifications received and reviewed:

EPA's CMS Policy requires all self-certifications due and received in FY06 to be reviewed. UDAQ reviewed and entered results into the database for 100% of the 54 Title V Certifications recorded in AIRS and OTIS. While this exceeds the national average of 81% and meets the national goal of 100%, the number of certifications received and reviewed seems low compared with the number of Title V permits issued to date. UDAQ investigated the discrepancy between the 74 compliance certifications they actually received and reviewed, with the 54 reported by the data metrics. UDAQ reports that all of the 74 certifications that were received were reviewed and entered into the AIRS database and therefore should have been counted in the data metric. EPA ran an OTIS report again and it

showed 66 Title V certification reviews completed by Utah and 63 Title V certification reviews received by Utah for 2006. While the reason for the small discrepancy in the numbers is unknown, the positive point is that UDAQ is reviewing all the Title V certifications it receives.

Sources with Unknown Compliance Status Designations:

UDAQ had four instances of unknown compliance status based on a major source universe of 101. The reasons for the unknown compliance status in AFS included one facility that was located on tribal land in EPA's jurisdiction, two facilities that were permanently shut down during the year and one facility that was portable and not targeted for inspection. Once UDAQ enters these into AFS, three of the four instances of unknown compliance status will be resolved. The remaining unknown is EPA's responsibility.

Citation of information reviewed for this criterion:

1. FCEs are required pursuant to and are defined in the Clean Air Act Stationary Source Compliance Monitoring Strategy, April 2001 (CMS). The CMS and supporting guidance and policies provide the basis for these evaluation criteria.
2. The UDAQ Compliance Section CMS for FY 2006, dated October 31, 2005, which includes FY 2006 and FY 2007 CMS and Compliance Program Operating Plan.
3. The UDAQ Hazardous Air Pollutants Section (HAPS) Compliance Monitoring Strategy for FFY 2006 submitted to EPA on November 7, 2005.
4. AFS/OTIS databases

Recommendations: none

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

Findings:

Overall, UDAQ compliance monitoring reports (CMR) are of very high quality. The CMRs document the findings of compliance monitoring activities, including accurate identification of violations. If evidence is needed to support enforcement actions, the documentation level in the State's CMRs provide the necessary documentation to support an enforcement action.

All twenty of the CMRs reviewed contained the basic data elements, however, four of the reports did not contain a description of the enforcement history. The summary of enforcement history was missing only from Partial Compliance Evaluation (PCE) reports such as stack test review reports and Title V compliance certification review reports, not from any of the FCE inspection reports reviewed. Since PCEs can result in HPV enforcement actions, including enforcement history in these reports in the future would be beneficial.

Citation of information reviewed for this criterion:

EPA selection of twenty source files reviewed.

The “Clean Air Act Stationary Source Compliance Monitoring Strategy”, April 2001, lists minimum information requirements for inspection or compliance monitoring reports. The general categories for review are General Information, Facility Information, Applicable Requirements, Inventory and Description of Regulated Units, Enforcement History, Compliance Monitoring Activities, and Findings and Recommendations.

Recommendations: None.

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

Findings:

Eighteen of the twenty (or 90%) of the CMRs reviewed were completed in a timely manner. Overall, UDAQ has a very good record of completing CMRs and identifying violations in a timely manner. Twelve of the 20 CMRs documented violations, and eleven of these were timely.

One of the late CMRs that identified a NON-HPV was for a complex facility that required multiple PCEs during the year to complete a FCE. The final CMR shows inspection dates of December 7, 2005, July 26, 2006, and August 28, 2006, with records being received on September 18, 2006 and March 12, 2007. The final CMR was dated March 15, 2007, two days after receipt of the last set of records. The AFS database was not updated for the PCEs at this facility during FY06. This is a deviation from UDAQ’s normal procedure of writing timely CMRs after each PCE at complex facilities.

EPA requested additional explanation from UDAQ on this reporting delay and received a response that internal policy requires the inspection memo be finalized and issued after the compliance advisory process is fully resolved but before the early settlement agreement (or other action) is issued. UDAQ expects that 99.5% of future compliance monitoring reports will be issued in a timely manner. Occasionally, a violator may drag out the process of submitting needed information, and the timeliness of completing the inspection report may exceed the 60 day goal.

EPA believes that CMRs should, generally, be completed within 60 days following the completion of the FCE or PCE while the information is fresh and to allow timely updates to AFS. In order to meet this goal, UDAQ needs to consistently follow its standard procedure for timely compliance monitoring reporting for facilities that require multiple partial compliance evaluations during the year to make up one full compliance evaluation.

Citation of information reviewed for this criterion:

List of twenty files reviewed identified above.

EPA and UDAQ have previously agreed that CMRs should be completed no later than 60 calendar days following the on-site evaluation or in-office report review. The Uniform Enforcement Oversight System reviews over the past seven years have used the 60 day standard.

Recommendations: None.

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

Findings:

Of eight new HPVs in FY06, seven or 87.5% were reported to EPA in a timely and accurate manner. UDAQ initially reports HPVs to EPA by e-mail or telephone as they are discovered. Monthly HPV calls between EPA and UDAQ help ensure timely reporting.

The violation at one facility was incorrectly identified by the inspector as a non-HPV; therefore, it was not reported to EPA as an HPV. This facility was originally identified by the inspector as a true minor source and not subject to the HPV policy. Upon EPA's review, however, based on the emission inventory and permit conditions identified in the inspection report, it appears to meet the definition of a SM-80 facility for PM10 and NOx, making it subject to the HPV Policy. The facility exceeded production limits for asphalt, concrete and aggregate and possibly exceeded major source thresholds for PM10 and NOx in FY06. This meets the definition of HPV in General Criteria "A.3" from the HPV policy :

Violation by a synthetic minor of an emission limit or permit condition that affects the source's PSD, NSR or Title V status (i.e., fails to comply with permit restrictions that limit the source's potential emissions below the appropriate thresholds; refers only to pollutants for which the source is a synthetic minor. It is not necessary for a source's actual emissions to exceed the NSR/PSD>Title V thresholds.)"

EPA and UDAQ discussed the case and decided that it did meet the definition of a HPV. This instance of incorrectly identifying a HPV was an isolated case as UDAQ normally does a very good job at identifying HPVs and reporting them to EPA in a timely manner.

Data Metric: High Priority Violation Discovery Rate – New HPVs identified in the fiscal year by the State divided by the number of facilities with FCE or PCEs performed in the

fiscal year. Utah reported six High Priority violations (HPV) for the 89 major source full compliance evaluations conducted in FY06 for a HPV discovery rate of 6.7% This is greater than ½ of the national average or 4.6% and therefore meets the national goal.

Regarding the implementation of the HPV Policy in AFS, several findings discovered during the SRF review indicate the need to further dialogue and clarification on the HPV Policy and its related Minimum Data Requirements. Topics for further dialogue include the definitions of “Day Zero”; “Addressed”; “Resolved”; and correct codes for NOV/Compliance Advisories as they relate to UDAQs administrative early settlement process. This is discussed in further detail under Element 12.

Citation of information reviewed for this criterion:

“Policy on Timely an Appropriate Enforcement Response to High Priority Violations”; December 22, 1998. (a.k.a.: HPV Policy”)

List of twenty files reviewed identified above.

Recommendations: none

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

Findings:

The evaluation for this criterion is based on the percent of UDAQ enforcement actions that specifically require the appropriate measures (improved work practices, installation of emission controls, cessation of violating activity/practice, etc.) that must be performed to attain compliance and that specify a reasonable compliance schedule for completing such activity and attaining compliance.

Of the seven HPV cases addressed by UDAQ in FY06, the State obtained appropriate injunctive relief in all seven cases which were promptly returned to compliance. The eighth HPV was appropriately resolved with no further agency action based on new information demonstrating compliance.

The Compliance Advisory/Early Settlement Agreement process used by UDAQ requires the violating facility to develop a compliance schedule or demonstrate that the facility has been returned to compliance. The Settlement Agreement document will summarize the compliance schedule status. If a violator does not provide a compliance schedule or return to compliance in a timely manner, UDAQ will initiate a formal enforcement action. All seven HPVs returned to compliance before the final settlement agreement was signed. Information on compliance status is exchanged between EPA and UDAQ during monthly HPV meetings.

Citation of information reviewed for this criterion:

File reviews for the High Priority Violation files listed above.

Recommendations: none

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:

Of the eight HPV cases in FY06, UDAQ took enforcement action in a timely manner for all eight. The HPV identified for Geneva Rock Products – Orem was resolved with no further action when additional information showed the facility to be in compliance.

UDAQ issues Compliance Advisories to serve as a means to provide timely notice to a facility of apparent violations found during an inspection or other compliance monitoring activity. Noncompliance events described in a Compliance Advisory may or may not be pursued by UDAQ through a formal enforcement action, depending on the type of violation and the response of the facility to the advisory. In all eight HPV cases, Compliance Advisories were issued in less than 60 days, and often in less than 30 days from the CMR date. Facilities that receive clear, written notice of problems soon after the inspection have the opportunity (and are more likely) to take steps to remedy the problem.

After receipt of a Compliance Advisory, a facility may request an informal conference with UDAQ. This conference provides an opportunity to the facility to discuss the issues noted in a Compliance Advisory and means of resolving them. The facility may present information not previously available to UDAQ and discuss appropriate ways to correct the deficiencies. The conference may also serve as a forum for establishing mutually agreed upon compliance schedules. Typically, the conference will also include discussion of the administrative process to be used to resolve the Compliance Advisory, including pre-enforcement settlement path discussions and/or formal enforcement.

Of the eight HPVs identified in FY06, two will be resolved in FY07, five were resolved through the Early Settlement Agreement process, and one was resolved with no further action. Of the five resolved HPVs, all five met timeliness guidelines by being resolved in less than 270 days. During the informal conference, UDAQ will ask whether the company is interested in reaching an early settlement if UDAQ ultimately determines that the violations have occurred and an enforcement action is warranted. If the other party agrees to the Early Settlement Agreement process, the Compliance Advisory conference proceeds. After conclusion of the conference, UDAQ will calculate a civil penalty and settlement agreement to the other party for its comments, acceptance, or rejection. If this process is not successful, a formal enforcement action would proceed.

Data Metric: Utah's timeliness in taking enforcement actions is evident from this data metric showing 0% of their HPVs exceeded the 270 day timeliness guideline, significantly better than the national average of 44%

Citation of information reviewed for this criterion:

File and data metric reviews for the same eight HPVs listed in item 4.

Recommendations: none

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

Findings:

UDAQ provided EPA with both gravity and economic benefit calculations for all seven HPV penalties resolved in FY06. UDAQ has calculated a significant economic benefit for one HPV and determined minimal economic benefit at the others. EPA independently reviews UDAQ's gravity and economic benefit calculations and provides feedback on the appropriateness of the proposed settlement to UDAQ.

Citation of information reviewed for this criterion:

File reviews for the HPVs resolved in FY06.

Recommendations: none

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:

EPA has been working with UDAQ over the last several years to improve the number of HPV settlements that are appropriate in accordance with penalty policy considerations. Two areas of focus have been to increase the magnitude of the penalty when there are violations that last for multiple days and when there is a history of noncompliance, especially for repeat violators that have not been deterred by previous enforcement actions.

EPA and UDAQ have agreed that upward adjustments to the penalty will be made in the case of repeat and recalcitrant violations in order to achieve deterrence. During FY06, one HPV settlement for a repeat violator was a good example of increasing the penalty amount for history of noncompliance in order to achieve deterrence. Through negotiations between UDAQ and EPA, an agreement was reached on an appropriate penalty for this HPV.

During FY06, there were two instances of multi-day penalties not being assessed in HPV settlements. Late in FY06, EPA and UDAQ reached an agreement on the importance of multiday penalties. Due to the significant lag time between reaching this agreement and writing this report, EPA expects to see an improvement in the number of appropriate HPV penalty settlements during FY07.

EPA's review finds that five of the seven resolved HPV settlements in FY06 are appropriate since they collect economic benefit, when applicable, and gravity portions of a penalty, in accordance with penalty policy considerations.

The remaining two HPV settlements are of concern to EPA because they do not consider multiple days of violation:

1. An HPV for failing an emissions test with PM/PM10 emissions of 13.3 lb/hr versus a limit of 10.8 lb/hr. Testing was performed on 6/3/05 and the owner/operator provided the stack test report to UDAQ on 7/17/05 along with additional information on 10/14/05. The owner/operator retested the facility on 11/15/05 and found it in compliance, for a length of violation of 166 days. UDAQ responded in a timely manner by issuing a Compliance Advisory on October, 20, 2005. The Compliance Advisory functions as an addressing action similar to a Notice of Violation and Compliance Order. The UDAQ penalty calculation assessed \$4,080 and was limited to one day of violation. An early settlement agreement resolved the violation when a check for \$4,080 was received from the owner/operator. While this enforcement action was timely and the facility was returned to compliance, EPA deemed it inappropriate because it did not consider the length of violation in the penalty assessment and may not achieve the desired deterrent effect.
2. An HPV was identified and addressed in FY05 and was resolved in FY06. This facility is subject to 40 CFR 63, Subpart O, Ethylene Oxide Emission Standards for Sterilization Facilities. The facility failed to demonstrate continuous compliance with the operating limit for the Ceilcote scrubber from January 13 through February 22, 2005 and March 28 through April 15, 2005, which subtotals 40 and 19 days respectively for a total of 59 days of violation. The penalty calculation and settlement for this violation, \$21,493 accounted for only one event and therefore did not consider the length of the violation. EPA deems the settlement inappropriate because it did not consider the 59 day length of violation.

UDAQ normally provides penalty calculations to EPA for comment prior to settlement negotiations, although this did not occur for these two HPVs. Discussions on the penalty before settlement, UDAQ's normal operating procedure, could have resulted in appropriate HPV settlements in these two cases.

Data Metric: Utah collected penalties in 87.5% of the HPV settlements, exceeding the national average of 77% and the national goal of >80%. Discussions with UDAQ revealed that one of these HPVs is expected to settle with a penalty in early FY07, which would bring this data metric up to 100%.

Citation of information reviewed for this criterion: File reviews for above listed HPVs

Recommendations: none

9. Enforcement commitments in the PPA are met and any products or projects are complete.

Findings:

The Performance Partnership Agreement for CAA compliance/enforcement has a commitment which was met by UDAQ's timely delivery of the FY06 Compliance Monitoring Strategy for EPA's review and approval on October 31, 2005 for the Compliance Section and November 7, 2005 for the Hazardous Air Pollutant Section. Both CMSs were delivered before November 15, 2005 as agreed to in the PPA.

Citation of Information Reviewed for this Criterion: Utah PPA and UDAQ CMS.

Recommendations: none

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

Findings:

From the Data Metric, Utah reported 100% of the HPVs to the AFS database before the 60-day reporting threshold. This is better than the national average of 57.6% of HPVs being reported within 60 days.

The inspection dates for two of twenty facilities for which FCEs were completed were not entered into AFS in a timely manner. This may have occurred because the inspection reports were not completed in a timely manner for these two facilities. UDAQs standard operating procedures are expected to prevent this from reoccurring.

Citation of Information Reviewed for this Criterion: AFS and OTIS.

Recommendations: none

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

Findings:

UDAQ does an excellent job keeping the AFS database accurate. All twenty files

selected above were compared with data in AFS. The majority of the data evaluated was accurate. It is EPA's practice to inform UDAQ of any suspected inaccuracy in AFS data. UDAQ has been responsive in resolving these issues.

Data Metric: Stack test results - % without pass/fail results: Utah does not have any instance of missing pass/fail stack test reports. This is significantly better than the national average where 16.2% of these pass/fail results have gone unreported.

Data Metric: Utah's ratio of number of HPVs to the number of sources in noncompliance is 85.7%, meeting the national goal of being < 100%.

Citation of Information Reviewed for this Criterion:

AFS database and information from the twenty files listed above.

Recommendations: none

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

Findings:

UDAQ does an excellent job at keeping AFS complete for the Minimum Data Requirements. Comparison of numerous data elements from the twenty file reviews with the AFS database only revealed one missing data element. Dialogue with EPA Headquarters reveals that UDAQ's use of the Minimum Data Requirements (MDRs) "Day Zero"; "Addressed" and Resolved" are not consistent with the HPV policy nationally. As described in the findings for Element 4, regarding the implementation of the HPV Policy in AFS, these findings discovered during the SRF review indicate the need to further dialogue and clarification on the HPV Policy and its related Minimum Data Requirements (MDRs). Topics for further dialogue include the definitions of "Day Zero";, "Addressed" and "Resolved" as they relate to the UDAQ Early Settlement Agreement process.

Citation of Information Reviewed for this Criterion:

AFS database and information from the twenty files listed above.

Recommendations:

By November 1, 2007, EPA Region 8, EPA Headquarters, and the State will discuss the MDRs related to the HPV Policy and determine what changes, if any, are needed, to ensure that data is complete and accurate in AFS. Any specific changes needed will be clearly documented. EPA will evaluate progress towards implementing any changes identified throughout the year, will communicate findings to the State, and will document progress made during the FY08 End-of-Year review.

EPA Review of Utah's RCRA Enforcement Program FY 2006

EPA Evaluator: Eric Johnson, Environmental Scientist
U.S. EPA Region 8 Office of Enforcement, Compliance and
Environmental Justice – RCRA Technical Enforcement Program

State Contacts: Dennis Downs, Division Director
Scott Anderson, Hazardous Waste Branch
Solid and Hazardous Waste Control Board
Utah Department of Environmental Quality
Division of Solid and Hazardous Waste (DSHW)

Introduction:

The RCRA evaluation involved the review of 14 formal enforcement actions, 21 inspection reports, and documentation for 18 small quantity generator (SQG) compliance assistance visits generated during FY2006. EPA's review covered large quantity generators (LQGs), SQGs, treatment, storage and/or disposal facilities (TSDFs), transporters, and used oil facilities. In addition, Region 8 utilized EPA Headquarters' data retrievals (metrics) generated from national enforcement and compliance databases (the February 2007 OTIS report), and pulls from the RCRAInfo national database. This information was used to answer 12 specific questions or elements. The 12 elements address four specific topics: Inspection Implementation; Enforcement Activity; Commitments in Annual Agreements; and Database Integrity.

Randomly selected FY2006 enforcement case and inspection file information was reviewed by EPA Region 8 during September 6, 2006 through February 21, 2007. Michael Barrette and Ann Stephanos of EPA's Office of Enforcement and Compliance Assurance (OECA) assisted the Region in reviewing files in Salt Lake City on February 21st. Most of the 21 inspection reports and 14 enforcement actions reviewed for this RCRA program evaluation were provided by DSHW via certified mail or electronically through a DSHW Web site. Copies of 18 SQG compliance evaluation checklists were provided to EPA during office visits. DSHW staff members assisting EPA during this review were Allan Moore, Don Verbica, Cheryl Prawl, Brad Maulding, Marty Gray, and Rusty Lundberg.

During FY2006, the Region and DSHW completed monthly conference calls to review and discuss various concerns and issues related to areas covered by the SRF and implementation of the Division's Solid and Hazardous Waste program. The DSHW was provided a copy of the EPA Headquarters' data metrics report for FY2006; a conference call was completed on January 11, 2007 to review the report. Issues raised in a preliminary findings report were discussed on February 5th, and clarification of several topics was provided by the DSHW. The results of a Region 8 and OECA file review were discussed in Salt Lake City on February 22nd. Numerous

topics were covered during the close-out meeting, including data entry quality, used oil, SQGs and business assistance, appropriateness of enforcement actions/Notices of Violation (NOV), inspection reports/coverage, significant non-complier (SNC) determinations, and citizen complaints.

Information Sources Included in the Review:

1. EPA RCRAInfo, and OTIS databases;
2. State of Utah DSHW hazardous waste compliance monitoring and enforcement files;
3. State of Utah/EPA FY2006 Performance Partnership Agreement (PPA);
4. Letter from Sharon Kercher (EPA) to Scott Anderson (DSHW) re: Inspection and Enforcement Time Frames, dated July 3, 2002
5. EPA Revised RCRA Inspection Manual, dated 1998;
6. EPA Hazardous Waste Civil Enforcement Response Policy (ERP), dated December 2003;
7. OTIS State Review Framework (SRF) Results (review period: FY06), dated February 2007;
8. EPA RCRA Civil Penalty Policy, dated June 23, 2003;
9. State of Utah DSHW Annual PPA Inspection Schedule for FY2006;
10. Utah/EPA Memorandum of Agreement (MOA), dated May 10, 2006;
11. 40 CFR § 271.15(b)(2) – Requirements for compliance evaluation programs;
12. RCRA § 3000(a), FR Vol. 46/No. 16/Monday/Jan. 26, 1981 – Requirements for Authorization of State Hazardous Waste Programs;
13. OECA FY2005-07 National Program Managers Guidance (NPG);
14. Final FY2006 Update NPG, Office of Enforcement and Compliance Assurance, dated June 2005;
15. EPA State Review Framework Training Manual, dated April 2006;
16. Utah/EPA Enforcement Agreement, dated August 16, 1988;
17. DSHW Guidance for Implementing the Penalty Policy of the Utah Solid and Hazardous Waste Control Board, dated August 2006; and,
18. Penalty Policy of the Utah Solid & Hazardous Waste Control Board, August 2006

Section 1: Review of State Inspection Implementation

1. Degree to which state program has completed the universe of planned inspections

Findings:

DSHW completed all inspections planned in the FY2006 PPA and Inspection Schedule.

The annual inspection targets in the State of Utah/EPA FY2006 PPA Inspection Schedule committed DSHW to conduct 48 hazardous waste inspections and to ensure that 20% of

the LQG universe¹ was covered. At the time of the PPA negotiation, the EPA expected DSHW to conduct 19 LQG inspections. The remaining 29 inspections were to occur at TSDFs, transporters, and/or used oil facilities.

The OTIS State Review Framework Results Report indicates that DSHW completed 37 LQG and nine TSDF inspections during FY2006. RCRAInfo also indicates that eight SQG, two CESQG, and eight used oil facility inspections were completed by DSHW. [Note: some of these facilities are also hazardous waste transporters]. Using the Inspection Schedule universe of 97 LQG facilities, DSHW inspected 38% of its LQG universe, versus the national average of 16.2%.

Although not tracked in the SRF data metrics, the Region acknowledges DSHW's attention to Environmental Justice (EJ) areas. Eleven of the LQG inspections were in EJ areas as defined by poverty. Additionally, 5 used oil inspections were in EJ areas.

One-hundred percent of the planned inspections at TSDFs, and used oil facilities were completed. Four additional inspections were also accomplished by DSHW in FY2006.

DSHW completed 100% of the scheduled annual compliance evaluation inspections (CEIs) at all operating TSDFs within two years, exceeding the national average of 90.2%. The DSHW and EPA also coordinated annual CERCLA Off-Site Rule inspections of TSDFs. Findings from these inspections were later incorporated into annual DSHW inspection reports.

Additional Observations:

RCRA inspection national core program requirements stipulate that ground water monitoring inspections (CMEs) and/or Operation and Maintenance (O&M) inspections should be conducted once every three years at land disposal facilities (LDFs). DSHW completed CME and/or O&M inspections at all LDFs within the required three-year time frame.

EPA and DSHW believe that assisting small businesses to achieve compliance is an important element of its hazardous waste program. Since its inception, DSHW has visited over 3,200 small businesses providing information regarding the safe handling and disposal of hazardous wastes and ensuring facilities are aware of regulatory requirements. During these compliance assistance visits (CAVs), DSHW personnel complete a "compliance evaluation checklist" which is designed as a tool to assist the facility in achieving compliance. During FY2006, DSHW provided 247 compliance assistance visits to small quantity generators (SQGs) and conditionally exempt small quantity generators (CESQGs) covering approximately 20% of the universe.

DSHW draws a strong distinction between compliance assistance visits and inspections

¹ The LQG universe fluctuates during the fiscal year due to changes in generator status (i.e., some facilities are revised to SQG generator status, or new facilities submit notifications as LQGs). There were 97 LQGs in RCRAInfo as of September 2006.

with potential enforcement for SQGs and CESQGs. During FY2006, ten formal inspections were conducted. This represents approximately one percent (1%) of the SQG/CESQG universe. There is no specific minimum requirement in national guidance or the PPA regarding the number of small quantity generator (SQG) inspections to be conducted each year. However, inspection coverage in the SQG/CESQG universe is expected per the original State Authorization regulations (40 CFR § 271.15(b)(2)).

DSHW and the Region agree that an initial visit to a SQG/CESQG facility should focus on compliance assistance, and information on potential violations and how to correct them should be provided. However, DSHW also conducts repeat CAVs at these same facilities and continues to provide compliance assistance even though potential violations are found during second or third visits. For FY2006, twelve out of 18 (66%) of SQG/CESQG facilities reviewed received a CAV, even though these facilities had been evaluated by the DSHW through prior inspections and/or compliance assistance visits. EPA believes that subsequent visits to the same facility should be conducted as inspections with appropriate enforcement follow-up.

Violations at SQGs have the potential to be serious with significant public health or environmental impacts. The Region is concerned that in FY2006, DSHW inspected one percent of the SQG universe, the lowest inspection rate in the country. Findings and potential violations from compliance assistance visits are not recorded in the databases; therefore both EPA and the public are unable to determine the compliance status of SQG facilities. A business that receives repeated compliance assistance may have an economic advantage over businesses that are inspected and subject to enforcement.

The Utah/EPA MOA requires the DSHW to carry out a timely and effective program for monitoring compliance by hazardous waste transporters with applicable program requirements. The Code of Federal Regulations – 40 CFR § 271.15(b)(2), requires the DSHW to maintain a program for *periodic* inspections of the facilities and activities subject to regulation. Inspections of hazardous waste transporters is a core program requirement to verify compliance with standards in RCRA § 3003(a).

There are no inspections entered in RCRAInfo for 90 hazardous waste transporters. Many transporter notifications were protectively filed in 1980 when the notification requirement was originally established. DSHW believes that many of these entities no longer exist. There is no federal or state requirement to submit a revised notification form when changes occur in the information originally or previously submitted. For FY2006, the need to address these data gaps was not reflected in the PPA or inspection workplan, therefore no commitments were made in this regard. In hindsight, the Region and DSHW acknowledge that data gaps may exist and should be addressed

OECA FY2005-07 NPG and Federal Register Notice, Vol. 46/No. 16/Monday January 26, 1981 – *Requirements for Authorization of State Hazardous Waste Programs* – stipulate that all regional programs should respond to tips, complaints, and referrals from private citizens.

Five citizen complaints were received by EPA during FY2006 and were referred to the DSHW for a response. As a courtesy to the Region, DSHW has agreed to provide a quarterly update on complaint referrals. DSHW has an adequate program for responding to citizens complaints.

Information sources utilized for this criterion: 1, 3, 4, 7, 9, 10, 12, 13, 14

Recommendations and Actions:

EPA believes that DSHW should complete periodic inspections of SQG and/or CESQG facilities. CAVs are often appropriate for a first-time SQG or CESQG compliance evaluation, however, EPA requests that subsequent evaluations at the same facility be conducted as “inspections”. The Region will request that the State of Utah/EPA FY2008 PPA contain a provision specifying a reasonable number of inspections for SQG and/or CESQG facilities. (October 1, 2007)

DSHW should attempt to identify current hazardous waste transporters and resolve their status in RCRAInfo. The FY2008, PPA should include an appropriate number of transporter inspections. (October 1, 2007)

The Region anticipates receiving quarterly status reports regarding citizen complaints.
(January 20, May 20, July 20, October 20, 2008)

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

Findings:

All DSHW inspection reports and compliance reviews reviewed by EPA provide adequate documentation of inspection observations such that apparent violations can be identified.

EPA’s Revised RCRA Inspection Manual (OSWER Directive #9938.02b) states that RCRA inspection reports are comprised of 3 elements: a narrative discussion (including a description of facility operations and inspection findings); an inspection checklist; and supporting documentation.

Thirty-nine DSHW inspection reports and compliance checklists were reviewed. All 39 of them met the basic requirement for complete inspection reports. The 39 reports reviewed represent 12% of the inspection reports written in FY2006. DSHW readily documents its inspection observations and identifies all potential HWMR violations during or just after inspections upon completion of inspection reports.

SQG compliance evaluation checklists adequately cover HWMR requirements for these types of facilities. Where deficiencies are found, facilities are normally required to return to compliance within 30 days from the date of the evaluation. DSHW personnel provide a copy of the compliance checklist form and any corrective action items to facility representatives upon completion of compliance assistance visits.

Information sources utilized for this criterion: 2, 9, 10, 12

Recommendations and Actions: None

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

Findings:

The Utah/EPA Enforcement Agreement, and July 3, 2002 Inspection and Enforcement Time Frames letter from EPA to DSHW specifies that inspection reports shall be completed within 45 days from the last date of physical presence on site. For “once-a-year” facility inspections, this shall mean the last day an inspector visited a facility to gather all the required information to complete the report (receipt of sampling data may postpone this date). The last inspection date for facilities requiring “year-round” inspections shall be the last day of the year in which an inspection occurred.

The Hazardous Waste Civil ERP national standard allows 150 days for violation determination (180 days from the date of the inspection per Utah/EPA Enforcement agreement). The Utah/ EPA MOA, OECA FY2005-07 NPG, State of Utah/EPA FY2006 PPA, and Utah/EPA Enforcement Agreement require the DSHW to maintain timely and complete information (e.g., facility violations) in RCRAInfo, the national electronic database.

The State of Utah/EPA FY2006 PPA requires the DSHW to accurately and timely reflect the status of the RCRA handler universe by reporting required data elements in RCRAInfo by the 20th day of the month following the activity.

Nineteen of the 21 inspection reports reviewed were completed within required time frames. One report was a few days late due to inspector illness; and an O&M inspection report also exceeded the timeliness standard. EPA’s review finds that DSHW completes inspection reports in a timely manner.

Compliance evaluation checklists for five SQG facilities were reviewed. The checklists documented compliance issues or problems. Detailed review findings have been provided to DSHW.

Violations at LQGs, TSDFs, transporters, and used oil facilities were identified in RCRAInfo up to 180 days from the date of the inspection.

Information sources utilized for this criterion: 1, 3, 4, 6, 10, 13, 14, 16

Recommendations and Actions:

DSHW has agreed to enter all SQG inspection/compliance assistance visit (CAV) data in RCRAInfo by the 20th day of the month after the month in which the activity occurred. This will be reflected in the 2008 PPA. (October 1, 2007)

EPA acknowledges that RCRAInfo does not provide a data entry field for non-compliance elements found during a compliance assistance visit. Region requests that any compliance issues and problems be described in the comment field. (On-going 2008)

Violations identified in enforcement actions as determined by the Executive Secretary and documented during inspections have been and will continue to be entered into RCRAInfo. (On-going 2008)

Section 2: Review of State Enforcement Activity

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

Findings:

RCRA enforcement national core program standards and the State of Utah/EPA FY2006 PPA require states to maintain timely data entry in the RCRAInfo national database, and classify all facilities meeting the definition of a significant non-complier² (including used oil transporters/ processors/ marketers) as SNC in the RCRAInfo database.³ The Hazardous Waste Civil ERP stipulates that the SNC determination shall be made within 150 days (180 days per Utah/EPA Enforcement Agreement) of the first day of the inspection, or in the case of facilities that receive multiple inspections per year (i.e. TSDF) from the last day of the inspection.

The State of Utah/EPA FY2006 PPA requires the DSHW to accurately and timely reflect the status of the RCRA handler universe by reporting required data elements in

² 2003 ERP Definitions: Significant Non-Compliers (SNCs) are violators that have caused actual exposure or a substantial likelihood of exposure to hazardous waste or hazardous waste constituents; are chronic or recalcitrant violators; or deviate substantially from the terms of a permit, order, agreement or from RCRA statutory or regulatory requirements. Secondary Violators are violators which do not meet the criteria listed above for SNC; are violators that pose no actual threat or a low potential threat of exposure to hazardous waste or constituents; and/or do not have a history of recalcitrance or non-compliant conduct.

³ RCRA § 3006 sets forth, among other things, requirements for EPA's authorization of state hazardous waste programs. Specifically, RCRA § 3006(h) provides that with respect to used oil, "which is not listed or identified under this subchapter as a hazardous waste, but which is regulated under section 6935 of this title," the requirements for the authorization of state hazardous waste programs shall apply in the same manner and to the same extent to used oil as they do to hazardous waste.

RCRAInfo by the 20th day of the month following the activity.

The SNC identification rate in the State of Utah, based on inspections completed at LQGs, TSDFs, SQGs, transporters, and/or used oil facilities in FY2006, is 6.2%, according to the OTIS data metrics report. This figure is high when compared with the rest of the country (3.1%). The SNC reporting indicator (actions receiving SNC listing) is 16.7% versus a national average of 54.6%.

One out of five SNC facilities was identified in the RCRAInfo database during FY2006. The one TSDF that was identified as SNC was designated as such 162 days after the last inspection date on the same day the NOV enforcement action was issued for 69 FY2005 violations. This meets the standard for timeliness based on the Regional interpretation of the Hazardous Waste Civil ERP as it relates specifically to those commercial TSDFs in Utah which receive almost daily inspections throughout the year. Subsequent to the NOV and before SNC designation removal for this TSDF (on or about September 7, 2006), inspectors documented 51 new HWMR deficiencies for FY2006. DSHW did not continue to designate the facility as a SNC because the final pending violation from the open enforcement action was resolved on September 7, 2006, and because of DSHW's definition of when a violation is identified. Two other FY2006 SNC facilities (TSDFs) were reported in RCRAInfo late as significant non-compliers, after the end of fiscal year 2006.

DSHW has issued enforcement actions (Warning Letters, NOVs and/or NOV/Compliance Orders (CO) with penalty) to the above five SNC facilities in the past, and multiple violations (including numerous repeat violations and/or violations that could cause a substantial likelihood of exposure to hazardous waste) continue to occur.

Most of the compliance monitoring data for LQGs, TSDFs, transporters, and used oil facilities was entered in a timely manner (see Table 1). Some of the late data entries after February, 2006 may have been due to the unavailability of the RCRAInfo database (Version 3) during several months of system upgrade until June, 2006 when the database was fully functional.

Table 1. RCRAInfo Data Input Record – Timeliness

DSHW Organization Unit	# Data Entries	# Reported Timely	% Timely
Used Oil	50	44	88
Hazardous Waste Facilities	9	8	89
Hazardous Waste Management	33	22	67
Commercial Federal Facilities	64	60	93
Chemical Demilitarization	-	-	100

As noted in the joint OECA/Region 8 review, the DSHW enter LQG, TSDF, and/or used oil facility violations after the issuance of a formal enforcement action (i.e., 180 days ± from the date that apparent HWMR violations were found during a DSHW inspection); this meets the standard for timely data entry.

Information sources utilized for this criterion: 1, 2, 3, 6, 7, 13, 14, 16

Recommendations and Actions:

Timely compliance monitoring and enforcement information should continue to be maintained in the RCRAInfo database (including data for SQGs and SNC facilities). (On-going 2008)

The Region encourages DSHW to continue to designate violators as SNC whenever violators meet the current definition of a SNC. The Region acknowledges DSHW's position that the SNC designation is arbitrary and does not affect its approach to enforcement with these violators. However, the Region also encourages DSHW to consider all enforcement approaches as described in the Hazardous Waste Civil ERP including sanctions and/or referral to the U.S. Department of Justice or the State Attorney General's Office⁴ particularly for those facilities with significant violations year after year. (On-going 2008)

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

Findings:

The Hazardous Waste Civil ERP requires violators to return to compliance within 240 days. The Utah/EPA Enforcement Agreement requires the DSHW to include, where appropriate, an enforceable compliance schedule in enforcement actions.

All 14 formal enforcement cases reviewed by EPA contained adequate injunctive relief to return facilities to compliance within specified time frames, i.e., within 240 days.

Information sources utilized for this criterion: 1, 2, 3, 6, 13, 14, 16

Recommendations and Actions: None

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

Findings:

The Utah/EPA Enforcement Agreement requires the DSHW to complete enforcement actions and settlements within specific time frames. Formal enforcement actions (i.e., Warning Letters, NOVs, and NOV/COS) are to be issued within 180 days (per Utah/EPA

⁴ Guidance on enforcing orders can be found in EPA's "Manual on Monitoring and Enforcing Administrative and Judicial Orders," dated January 6, 1990. Guidance on stipulated penalties is available in EPA's "Guidance on the Use of Stipulated Penalties in Hazardous Waste Consent Decrees," dated September 21, 1987.

Enforcement Agreement) from the last day of the inspection (150 day is the national standard). Final Stipulation and Consent Order (SCO) settlements are required to be submitted for public comment within 360 days from the date of inspection/violation discovery, versus the 360-day national standard.

Addressing administrative cases within 360 days (i.e., settle or litigate cases issued in years prior to FY2006) is a basic core program component identified in the OECA FY2005-07 NPG (and Final FY2006 Update NPG).

RCRA enforcement national core program requirements and the Utah/EPA Enforcement Agreement also specify that the DSHW complete appropriate enforcement actions. According to the OECA FY2005-07 NPG, strategic planning for appropriate use of compliance assistance should “...consider all available tools including compliance assistance, compliance incentives ..., compliance monitoring, *and enforcement...*”.

All 14 enforcement actions against reviewed (LQG, TSDF, and used oil facilities) met the criteria for timeliness. The DSHW typically takes formal enforcement action within 180 days from the last day of the inspection. Final SCO settlements accomplished in FY2006 were completed within 360 days from the date of inspection/violation discovery.

The OTIS State Review Framework Results Report shows that DSHW completed 24 formal enforcement actions during FY2006. The percent of formal actions with penalty was 64.3%; this is above the national average of 44.5%. According to the DSHW, there are no informal actions issued by the DSHW; all enforcement responses are considered to be formal actions, including Warning Letters (15 issued in FY2006).

No judicial enforcement cases were referred to the State Attorney General’s Office and/or DOJ during FY2006.

Nineteen enforcement actions were reviewed. Thirteen (69%) of the DSHW enforcement responses to HWMR violators were appropriate in FY2006; six DSHW responses to violators were inappropriate.

The DSHW inappropriately issued a Warning Letter to a facility for 10 violations documented during a FY2006 DSHW inspection. While the company had only operated in Utah for 7 months prior to the inspection, the facility had applied for and received a DSHW Used Oil Transporter/Transfer/Marketer Facility Permit in 2004. The company previously operated a similar facility in another state for 20 years. Violations of HWMRs and RCRA Part 279 Standards for the Management of Used Oil were listed in the four and one-half page DSHW Warning Letter. Violations included failure to test each used oil load for halogen concentration, poor records management, and no written documentation of spill plan training performed. EPA acknowledges that the Utah Used Oil Program is broader in scope than the Federal program, and the reviewer’s comments are applicable only to those violations common to the Federal program.

The State's and EPA's differing views regarding the appropriateness of this enforcement action hinge on the approach to compliance assistance. Because the facility was a new operator in Utah, DSHW approached the facility in an assistance posture and felt a warning letter would serve to educate the facility as to its regulatory obligations. On the other hand, because the company was an experienced used oil operator (albeit in another state) and had held a Utah permit for more than a year before the inspection, EPA views the facility as having a duty to know its regulatory obligations, and it had adequate notice of those obligations. Given this view, EPA believes an enforcement action with a penalty would have been the appropriate response.

No Warning Letters or NOVs were issued to five SQG facilities for problems found during follow-up compliance assistance visits; potential violations included unmarked/dated hazardous waste containers (repeat occurrence at one facility); failure to inspect hazardous waste storage areas; open hazardous waste containers (repeat occurrence at one facility); and/or no emergency procedure arrangements with fire departments/hospitals/ local authorities. EPA's position is that having already received prior compliance assistance visits, the violations found during these follow-up evaluations should have been treated as inspections, and apparent violations should have had appropriate enforcement. DSHW maintains that within the construct of its compliance assistance program for SQGs no enforcement response was necessary.

Information sources utilized for this criterion: 1, 2, 3, 7, 13, 14, 16, 17, 18

Recommendations and Actions:

The Utah/EPA Enforcement Agreement and Penalty Policy of the Utah Solid & Hazardous Waste Control Board should be followed to execute timely, effective, appropriate enforcement actions. Facilities with repeat and/or continuous HWMR violations should receive an appropriate enforcement response in accordance with the Hazardous Waste Civil ERP. (On-going 2008)

EPA appreciates that DSHW is entitled to its own deliberations and enforcement discretion. However, if the DSHW determines that no action (e.g., Warning Letter, NOV and/or NOV/CO) should be taken against a facility with apparent HWMR violations, it would be helpful for documentation of the decision and rationale for the decision to be included in the case file. Having such an explanation would perhaps avoid misunderstandings and misinterpretations.

The DSHW should continue to complete final SCO enforcement actions within the required 360-day standard/guidance. (On-going 2008)

- 7. Degree to which the state includes both gravity and economic benefit calculations for all penalties, appropriately using the BEN model or consistent state policy.**

Findings:

The Hazardous Waste Civil ERP and Utah/EPA MOA require DSHW to issue appropriate enforcement responses to serve as a deterrent to future non-compliance by eliminating any economic advantage received by the violator. The OECA FY2005-07 NPG and Utah/EPA Enforcement Agreement require DSHW penalties to be appropriate and consistent with the Penalty Policy of the Utah Solid and Hazardous Waste Control Board, which incorporates economic benefit (where appropriate) into penalty calculations.

The DSHW adequately considered economic benefit and gravity portions of penalties for all enforcement penalty actions reviewed. Penalties have been issued to SNC facilities, however, numerous violations, including repeat violations continue to occur every year.

There was one supplemental environmental project (SEP) incorporated into an SCO settlement in FY2006.

Information sources utilized for this criterion: 2, 6, 8, 17, 18

Recommendations and Actions:

Whenever HWMR violators meet the current definition of a SNC, the DSHW should consider incorporating sanctions and/or stipulated penalties into formal enforcement actions. If orders have no stipulated penalty provision, then the DSHW should take another type of formal enforcement action such as referral to the State Attorney General's Office, or DOJ in accordance with the Hazardous Waste Civil ERP.

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

Findings:

The Final FY2006 Update NPG, Utah/EPA Enforcement Agreement, Hazardous Waste Civil ERP, Utah/EPA MOA, State Penalty Policy, and *Guidance for Implementing the Penalty Policy of the Utah Solid and Hazardous Waste Control Board* require the DSHW to incorporate economic benefit (where appropriate) and a gravity component into all penalty calculations.

Staff are adequately classifying violations and calculating proposed penalties for inclusion into NOVs and/or NOV/COs using the State Penalty Policy. Where appropriate, the DSHW incorporates economic benefit factors in determining penalties for HWMR violations.

The frequency in which penalties are included with formal enforcement actions completed by the DSHW is 64.3%. This figure is significantly higher than the national average of 44.5%. The percent of DSHW final formal enforcement action settlements

that include a penalty is 100.0% versus 81.7% for the national average (nine penalty actions – NOVs and/or NOV/COs – were completed in FY2006).

Information sources utilized for this criterion: 1, 2, 7, 8, 17, 18,

Recommendations and Actions: None

Section 3: Review of Commitments in Annual Agreements

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

Findings:

The State of Utah/EPA FY2006 PPA provides annual goals and measures to be completed by the DSHW to receive funding through annual Performance Partnership Grants.

The DSHW provided copies of inspection reports and enforcement actions to Region 8 via certified mail for most of FY2006. For the last several months of the fiscal year, documents were made available to EPA through a DSHW Web site; this arrangement has worked out well.

An annual inspection work plan was submitted within schedule by November 15, 2005. The DSHW completed all targeted inspections by September 30, 2006, continued implementation of the SQG compliance assistance program, and periodically provided facility compliance information through automated data systems.

All LQG, TSDF, transporter, and used oil inspection and enforcement data was entered in the national database.

All LQG, TSDF, transporter, and used oil violators were reported

Information sources utilized for this criterion: 1, 3, 4, 6, 7, 10, 13, 14

Recommendations and Actions:

The DSHW has agreed to enter all SQG compliance assistance visit data in RCRAInfo by the 20th day of the month after the month in which the activity occurred, starting in FY2007. DSHW will continue to enter all SQG inspections. (On-going 2008)

Whenever HWMR violators meet the definition of SNC, the DSHW should consider all appropriate enforcement responses in accordance with the Hazardous Waste Civil ERP. (On-going 2008)

Section 4: Review of Database Integrity

10. Degree to which the Minimum Data Requirements (Nationally Required Data Elements for the RCRA program) are timely.

Findings:

According to the OECA FY2005-07 NPG, compliance monitoring activities such as inspections and/or compliance assistance visits are nationally required essential data elements.⁵ The Utah/EPA Enforcement Agreement and Utah/EPA MOA require the DSHW to enter compliance monitoring and enforcement data in RCRAInfo in a timely manner by the 20th calendar day following the month in which the activity occurred.

The Hazardous Waste Civil ERP stipulates that the prompt entering of SNCs in RCRAInfo (i.e., within 150 days (180 days per Utah/EPA Enforcement Agreement) from the date of violation discovery) is an essential part of tracking facility compliance. The State of Utah/EPA FY2006 PPA requires the DSHW to designate appropriate facilities (e.g., chronic and/or recalcitrant violators) as SNC in the RCRAInfo database.

The DSHW did not maintain the national RCRAInfo database in a timely manner for all required data elements. Most of the compliance monitoring inspection data for LQGs, TSDFs, transporters, and used oil facilities was entered in RCRAInfo in a timely manner (see Table 1). Fourteen out of 15 DSHW enforcement actions were entered timely. Some of the late data entries after February, 2006 may have been due to the unavailability of the RCRAInfo database during periods (several months) of system upgrade to Version 3. HWMR violations are not entered in the RCRAInfo database until the Executive Secretary, Solid and Hazardous Waste Control Board, has issued a formal enforcement action (up to 180 days from the date of the DSHW inspection). The DSHW believe its state law prohibits them from listing a facility as being in violation prior to the issuance of a Warning Letter, NOV and/or NOV/CO. While EPA agrees that only the Executive Secretary of the Board can sign an enforcement action, the state law does not specifically prevent the DSHW from tracking violations that are discovered in the course of an inspection. The DSHW routinely makes preliminary violation determinations that lead to either a request for the facility to fix minor issues quickly, or a formal enforcement proceeding (e.g., the work that leads up to issuing a formal NOV). EPA would like to see violations entered as soon after an inspection as possible, but the Region acknowledges that the plain language of the ERP allows for the violations to be entered at the time of the enforcement action.

The one TSDF that was identified as SNC was designated as such 162 days after the last inspection date on the same day the NOV enforcement action was issued for 69 FY2005

⁵ The states have had the capability to track/enter compliance assistance data in RCRAInfo for years. The completion of RCRAInfo Version 3 during June of FY2006 updated this capability.

violations. This meets the standard for timeliness based on the Regional interpretation of the Hazardous Waste Civil ERP as it relates specifically to those commercial TSDFs in Utah which receive almost daily inspections throughout the year

Information sources utilized for this criterion: 1, 3, 6, 7, 13, 14, 16

Recommendations and Actions:

The DSHW has agreed to enter all SQG inspection/compliance assistance visit data in RCRAInfo by the 20th day of the month after the month in which the activity occurred, starting in FY2007. (On-going 2008)

Whenever a violator meets the definition of SNC in the Hazardous Waste Civil ERP, the DSHW should designate such facility as SNC in RCRAInfo within 150 days (180 days per Utah/EPA Enforcement Agreement) of the first inspection date, or in the case of facilities that receive multiple inspections per year (i.e., TSDF) from the last day of inspection. (On-going 2008)

The Region will work with DSHW to address differences in the provisions of the 2003 RCRA ERP (and 2005 Data Appendix) and like provisions in the earlier 1989 Utah/EPA Enforcement Agreement. (2008)

11. Degree to which the Minimum Data Requirements (Nationally Required Data Elements for the RCRA program) are accurate.

Findings:

According to the OECA FY2005-07 NPG, the results of compliance monitoring activities such as inspections and/or compliance assistance visits are nationally required data elements and reporting this data (including apparent violations) to RCRAInfo is essential to accurately reflect program activities and measure RCRA program performance. The DSHW agreed in the Utah/EPA MOA and State of Utah/EPA FY2006 PPA to maintain accurate data in RCRAInfo.

The Hazardous Waste Civil ERP requires states to classify all facilities meeting the definition of a significant non-complier (see footnote #3), an essential data element in RCRAInfo. The State of Utah/EPA FY2006 PPA also requires the DSHW to designate appropriate facilities as SNC in the RCRAInfo database.

All of the inspection and enforcement action data reviewed for 21 facilities (LQGs, TSDFs, transporters, and/or used oil facilities) was accurate in RCRAInfo.

The OTIS State Review Framework Results Report (metric 4.d) indicated there were 12 facilities that may qualify for SNC designation. The Region and OECA reviewed 10 of these files, and concluded that five facilities would meet the SNC definition under the

Hazardous Waste Civil ERP. The DSHW entered one of these facilities as SNC in RCRAInfo during FY2006.

Neither the Region or DSHW realized that not populating the extract flag for certain facilities in RCRAInfo had the effect of removing facility information from public view (e.g., inspections, violations, and enforcement actions at LQGs, SQGs, and/or transporters). This also resulted in the facilities not showing up in the data metrics reports. Therefore, information on 1,127 facilities was missing. Changes in the RCRAInfo upgrade led to this misunderstanding.

Information sources utilized for this criterion: 1, 3, 6, 7, 10, 13, 14

Recommendations and Actions:

The DSHW has agreed to enter all SQG compliance assistance visit data in RCRAInfo by the 20th day of the month after the month in which the activity occurred, starting in FY2007. (On-going 2008)

Whenever a violator meets the definition of SNC in the Hazardous Waste Civil ERP, the DSHW should designate such facility as SNC in RCRAInfo within 150 days (180 days per Utah/EPA Enforcement Agreement) of the first inspection date, or in the case of facilities that receive multiple inspections per year (i.e., TSDF) from the last day of inspection. (On-going 2008)

Once HQS helped the Region and DSHW to understand how to deal with the extract flag, DSHW immediately re-classified approximately 1,127 facilities as either active or inactive with the handler flag. Problem corrected in 2007.

12. Degree to which the Minimum Data Requirements (Nationally Required Data Elements for the RCRA program) are complete.

Findings:

According to the OECA FY2005-07 NPG, the results of compliance monitoring activities such as inspections and/or compliance assistance visits are nationally required data elements and reporting this data (including apparent violations) to RCRAInfo is essential to reflect program activities and measure RCRA program performance. The DSHW agreed in the Utah/EPA MOA and State of Utah/EPA FY2006 PPA to maintain complete data in RCRAInfo.

The Hazardous Waste Civil ERP requires states to classify all facilities meeting the definition of a significant non-complier (see footnote #3), an essential data element in RCRAInfo. The State of Utah/EPA FY2006 PPA also requires the DSHW to designate all appropriate facilities as SNC in the RCRAInfo database.

Most of the required inspection and enforcement data elements reviewed were complete in the national RCRAInfo database. Inspections, violations, enforcement actions, and return-to-compliance dates for the 21 LQG, TSDF, transporter, and/or used oil facilities reviewed were all entered correctly.

The active facility universe count for LQGs and TSDFs is complete and was agreed upon by the Region and DSHW during the fall of FY2006.

There were 10 Warning Letters, 10 NOVs, 4 NOV/COs, and 14 SCOs completed by DSHW in FY2006. All of these formal enforcement action accomplishments have been reported to RCRAInfo. The total amount of final (assessed) penalties was \$268,099.

One of the five SNC facilities was identified in the RCRAInfo database during FY2006.

There has been improvement in database entry for LQG, TSDF, transporter, and used oil facility compliance monitoring.

Information sources utilized for this criterion: 1, 3, 6, 7, 10, 13, 14

Recommendations and Actions:

The DSHW has agreed to enter all SQG compliance assistance visit data in RCRAInfo by the 20th day of the month after the month in which the activity occurred, starting in FY2007. (On-going 2008)

Whenever a violator meets the definition of SNC in the Hazardous Waste Civil ERP, the DSHW should designate such facility as SNC in RCRAInfo within 150 days (180 days per Utah/EPA Enforcement Agreement) of the first inspection date, or in the case of facilities that receive multiple inspections per year (i.e., TSDF) from the last day of inspection. (On-going 2008)