



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

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Ref: 8ENF-PJ

John V. Corra, Director  
Wyoming Department of Environmental Quality  
122 W. 25th Street  
Cheyenne, WY 82002

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

Dear Mr. Corra:

Enclosed you will find the final SRF report summarizing evaluation of Wyoming'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 no comments were received. Some changes to the final draft report were made, however, in response to feedback received from EPA Headquarters (which reviewed all draft SRF reports). A response to comments is enclosed summarizing those changes. We look forward to working with the Wyoming 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 Wyoming.

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: Todd Parfitt, WDEQ  
LeRoy Feusner, WDEQ  
John Wagner, WDEQ  
David Finley, WDEQ  
Bill DiRienzo, WDEQ  
Bob Breuer, WDEQ  
Tim Link, WDEQ  
Bob Gill, WDEQ

bcc (w/o encl): Art Palomares

Diane Sipe  
Martin Hestmark  
Sharon Kercher  
Cindy Reynolds  
Kelcey Land  
Sandy Johnson  
Shawn McCaffrey

Bcc (w/encl.):

Linda Jacobson  
Aaron Urdiales  
Scott Whitmore



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

September 20, 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 Wyoming Department of Environmental Quality (WDEQ) 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 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 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 WDEQ'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 WDEQ'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. 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, twenty five RCRA files were reviewed, and twenty five NPDES files were reviewed. For each program, representative files were randomly selected. The file reviews occurred both on-site (at WDEQ 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 has not submitted any 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 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 review of the CAA Stationary Sources enforcement program revealed some significant deficiencies in key areas. The following is a summary of key findings of the review for each review area.

### ***Inspections***

The inspection commitments for NPDES majors, minors, and CAFOs were met or exceeded. The inspection commitment for storm water was not met (186 was the commitment, and 116 were conducted). The State's major inspection coverage is consistent with regional expectations and exceeds the national average.

About half of the NPDES inspection reports reviewed via file review and oversight inspection were found to be incomplete by reviewers. Most of the incomplete inspection reports were for storm water inspections. Inspectors are not always conducting complete file reviews (ie. SWPPP and self-inspections) and documenting the conditions of BMPs. Most of the inspection reports reviewed were completed in a timely manner, however, some did not have a clear notation of the date the report was completed.

Many CAA major source facilities are inspected every year while the Compliance Monitoring Strategy only requires a FCE of major sources every 2 years. The State selects facilities using the premise of getting the maximum environmental benefit from the expenditure of its limited resources. The State maintains a strong enforcement presence in the trona industrial area and at the five refinery and chemical facilities with multiple inspections per year.

The Air Quality Division inspected 35% of the state's 726 minor sources. The number of minor sources in the state is rapidly increasing due to the growth of the oil and gas production and coal bed methane industries. District personnel complete inspection reports quickly and promptly forward them to management for review.

The Air Quality Division should develop a reporting system to track and centralize stack test observation results. The date of the test observation and whether the source passed or failed the test should be entered into the AFS-AIRS database as directed by the Clean Air Act Stationary Source Compliance Monitoring Strategy, April 2001 and reaffirmed by the Clean Air Act National Stack Testing Guidance, September 2005.

The State has a strong RCRA inspection program, consistently inspecting 100% of its operating TSDFs within the required timeframe, and exceeding the national goal for LQG inspections by 9%. WDEQ consistently has high quality RCRA inspection reports.

### ***Enforcement***

All NPDES enforcement actions reviewed appeared to appropriately address violations and contained appropriate injunctive relief. Less than half of the actions reviewed were found to be timely, however. All of the penalty calculations reviewed included an appropriate gravity component and most included an appropriate economic benefit component. Only half of those resulted in the collection of appropriate economic benefit and gravity, however.

The Air Quality Division consistently expedites enforcement actions. CAA violations are determined and an appropriate enforcement action is initiated within the HPV guidance timeframes. EPA is promptly notified of any high priority violations. A penalty was collected for all CAA enforcement actions identified as a high priority violation. It is not apparent, however, whether or not the economic benefit and gravity portions of penalties were recovered or what criteria were used to calculate the proposed penalty amount. This is a significant concern. Penalty calculation documentation must be shared with EPA for the Agency to fulfill its core oversight function. Discussions about proposed penalty amounts will be included in the periodic conference calls held between EPA and the Division.

WDEQ's RCRA SNC identification rate is 3.9%, above half the national average goal of 3.1%. WDEQ has had some recent issues, however, with issuing RCRA NOV's that did not assess nor collect a penalty though a penalty would have been appropriate. WY has acknowledged this deficiency and has already proposed some procedure changes to address this issue.

### ***Annual Agreements***

Commitments found in the FY 2006 WDEQ/EPA Performance Partnership Agreement (PPA) were met. Only half of the required PPA deliverables for NPDES were submitted on time, however. There was also an issue with timeliness of submittals for the RCRA program. WDEQ conducts compliance monitoring and enforcement program activities throughout the state in a manner that demonstrates a commitment to the EPA-State partnership.

### ***Data Management***

Some data management issues were identified with regard to the Permit Compliance System (PCS) database utilized by the enforcement program. Data entry was often not timely and none of the enforcement actions were linked to violations in the database. Of significant concern is the lack of stack test data entry into the AFS-AIRS database. Entry and updating of the AFS-AIRS database is otherwise timely and thorough, however. The State's response to all corrections and reconciliations from an EPA AFS-AIRS data audit this year was very timely and the State continues to respond to all requests promptly. The State also maintains accurate and timely data in RCRAInfo.

### **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) for the NPDES and RCRA programs. The next SRF review for the CAA program is currently planned for FY 2009 (for the FY 2008 review period) as some significant deficiencies were found in key areas. 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 the Wyoming Pollution Discharge Elimination  
System Enforcement Program  
FY 2006**

**EPA Evaluator:** Colleen Gillespie phone: 303-312-6133

**State Contact:** Bill DiRienzo

**Introduction:**

The evaluation involved the review of 25 inspection files, and 10 formal enforcement files. Files reviewed included majors, minors, and storm water facilities. In addition, Region 8 utilized the EPA Headquarters data retrievals generated from PCS and available via the OTIS system.

In addition to file reviews, EPA used the Performance Partnership Agreement (PPA) for 2006, the 2006 End of Year Report, the 2006 Inspection Plan and various NPDES program documents to complete the review. These sources are listed for each of the 12 specific questions or elements in the review.

**Case Inspection Files Reviewed:**

Files were reviewed from July 31– August 2, 2006 and February 9, 2007. Files were chosen by randomly selecting files based on the number of inspections and enforcement actions taken or concluded during FY2006. Interviews with WYPDES staff were also conducted during the first file review. Only limited discussions with the State have occurred since that time.

The breakdown of files reviewed is as follows:

Source Type	Number of Files Reviewed
Majors	3
Minors	8
Storm Water	13
CAFOs	1
Total Files Reviewed:	25

The files reviewed were:

<b>Name</b>	<b>Permit Number</b>	<b>Permit Type</b>	<b>File Type</b>
Frontier Refining	WY0000442	Major	Inspection
JP Oil Company	WY0001804	Minor	Inspection
Kemmerer-Diamondville	WY0020320	Major	Inspection
Timberline Feedlot, Inc.	WY0022136	CAFO	Inspection
Cheyenne BOPU	WY0022381	Major	Inspection
Rim Operations	WY0026514	Minor	Inspection
Yates Petroleum	WY0037371	Minor	Inspection/Enforcement
Devon Energy	WY0038377	Minor	Inspection/Enforcement
Rocky Mountain Gas	WY0043141	Minor	Inspection/Enforcement
Western Gas Resources	WY0048313	Minor	Inspection/Enforcement
Pinnacle Gas Resources	WY0051764 (mult. Permits in Enforcement)	Minor	Inspection/Enforcement
Fleischi Oil Company	WYR000024	SW Ind	Inspection
Converse County Airport	WYR000082	SW Ind	Inspection
United Parcel Services	WYR000104	SW Ind	Inspection
North Park Transportation	WYR000117	SW Ind	Inspection
Intermountain Construction	WYR000913	SW Ind	Inspection

<b>Name</b>	<b>Permit Number</b>	<b>Permit Type</b>	<b>File Type</b>
South Park Development	WYR101435	SW Const	Inspection/Enforcement
Western Gas Resources	WYR101599	SW Ind	Inspection
Western Gas Resources	WYR101602	SW Ind	Inspection
Yates Petroleum	WYR102174	SW Ind	Inspection
Roche	WYR102380	SW Const	Inspection
Groathouse Construction	WYR102400	SW Const	Inspection/Enforcement
Black Hills Bentonite	WYR320101	SW Ind	Inspection
M&K Oil	WY0033341 & WY0036072	Minor	Enforcement
The Pointe, LLC	WYR101793	SW Const	Inspection/Enforcement

***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:*

Inspection commitments are reached between the State and EPA Region 8 during annual negotiations of the Performance Partnership Agreement (PPA) and Inspection Plan. The inspection commitments for majors, minors, and CAFOs were met or exceeded. The State's major inspection coverage exceeds the national average. The inspection commitment for storm water was not met.

	<b>PPA Commitment</b>	<b># Completed*</b>	<b>% Completed</b>
Majors	25	25	100%
Minors	20% (345)	656	>100%
CAFO	9	29	>100%
SW	10% of 1865 permitted sites as of July 1, 2005	116	60%

	including 75 CEIs		
SSO	Address 20% of SSOs (6)	2 (LOVs)	>100%
total			92%

\*The WYPDES end of year report was used as the source for these numbers.

Note: The SSOs were self reported and addressed through letters of violation rather than inspections. The LOVs are an acceptable response under the PPA.

The WYPDES end-of-year report disagrees with the data metrics 1a, b, and c. The data metrics were pulled for the old inspection year, July 1, 2005-June 30, 2006. However, the 2006 inspection year was extended until September 30, 2006 in order to align inspection years with the fiscal year. The difference in the inspection year may account for some of the discrepancy in the number of minors (metric 1.b) and storm water inspections (metric 1.c). However, when a PCS pull was done for the extended inspection year, there are still discrepancies in the number of CAFO, storm water, and minor inspections reported in the database versus in the end of year report. Further, none of the four major facilities noted as uninspected in the data metrics (1.a) are in PCS when the extended fiscal year is used, although they are listed in the end of year report. It appears that many inspections are not in the PCS database. How many is not precisely known because of the misalignment of inspection year dates.

As noted in the table, the WYPDES program did not meet the stormwater inspection commitment for FY06. It appears that this is partially a result of a miscommunication within the program, whereby inspection staff were not notified of the commitment. The WYPDES program hired two new inspectors in September 2006 to focus on stormwater inspections.

*Citation of information reviewed for this criteria:*

FY06 Inspection Plan, FY06 PPA, FY06 End-of-Year Report, SRF Data metrics, PCS Pull

*Recommendations if corrective action is needed:*

WYPDES should ensure all inspection commitments are met and inspections are entered into PCS. EPA will spot check the data entry of inspection reports during FY08.

**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 FY06:

Facility Name	Inspection Date	Date EPA Received State Inspection Report	Date EPA's Oversight Report Sent to State
Summit View East	9/12/2006	10/11/2006	10/18/2006
Cameron Building	9/12/2006	9/25/2006	10/13/2006 (approx)

Of the 25 inspection reports reviewed via file review and oversight inspection, 14 were found to be incomplete by reviewers. The largest problem appears to be inadequate file reviews, particularly for storm water inspections, of which 8 of 12 were found to be incomplete. Inspectors are not always conducting complete file reviews on site (i.e., SWPPP and self-inspections) and documenting the conditions of BMPs. The inspection reports from the two storm water oversight inspections were complete, and recommendations for improvement were included in EPA's oversight inspection reports.

One Major inspection did not indicate which DMRs were reviewed during the inspection. The other Major inspection reviewed did not clearly indicate whether or not a file review was done. The inspection reports for Rim Operations and Fleischi Oil noted violations/deficiencies which were not noted as such in the inspection report.

*Citation of information reviewed for this criteria:*

File Review Summary- Attachment 1, Oversight Inspections

*Recommendations if corrective action is needed:*

Inspections should include a file review, especially for storm water inspections. It's not possible to fully determine compliance if the SWPPP and self-inspections are not reviewed. When deficiencies in files are found, they need to be clearly and specifically detailed in the report. EPA will conduct oversight inspections in FY08 to determine if the recommendations are being implemented.

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

*Findings:*

Inspection reports are to be completed within forty-five days of the date of inspection, or forty-five days after sampling results are received per the PPA. Of the 25 inspection reports reviewed via file review and oversight inspections, 19 were completed within forty-five days, 4 did not have a clear notation of the date the report was completed, and 2 were overdue.

*Citation of information reviewed for this criteria:*

File Review Summary- Attachment 1, Oversight Inspections

*Recommendations if corrective action is needed:*

Inspection reports should be dated upon completion. EPA will spot check inspection reports during FY08.

***Section II: 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 PCS. 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 two major files reviewed, violations which were identified during the inspections did not meet the definition of SNC. Violations identified during the 23 inspections at minor, storm water and CAFO sites were not required to be entered into PCS.

The data metrics identify 2 majors as having SNC violations for overdue DMRs. However, these DMRs were submitted, but were entered into the data base late. Wyoming did not have any NPDES Majors in SNC in FY06. Even with the two incorrectly identified SNCs, the SNC rate in Wyoming is below the national average.

*Citation of information reviewed for this criteria:*

File Review, PCS, SRF Data Metric Report

*Recommendations if corrective action is needed:*

EPA will keep WYPDES informed of any changes to the SNC definitions for the wet weather priority areas. As these definitions are finalized, the requirement that SNC be tracked in ICIS for these facilities will be implemented in a phased approach. EPA will be working with the state on revising the Enforcement Agreement to include the new Wet Weather SNC definitions when they are finalized. WYPDES has indicated it will begin tracking the single event violations when it is converted to ICIS from PCS. 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 at this time. In addition, WYPDES should ensure that DMRs for Majors are entered into the database on time, to avoid facilities being incorrectly identified as being in SNC. EPA will continue to work with WYPDES during the RNC runs to ensure that DMRs are entered into PCS in a timely fashion.

**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.**

**Findings:**

During FY06, 3 actions with injunctive relief were reviewed. Most formal enforcement actions are not included in data metrics 6 and 8 because the state does not enter settlement agreements into PCS. All 3 actions reviewed included appropriate injunctive relief.

Pinnacle Gas Resources Docket # 3920-06

The Order includes appropriate injunctive relief.

M&K Oil Docket # 3830-05

The Order includes appropriate injunctive relief.

Yates Petroleum Docket #3845-06

The Settlement Agreement includes appropriate injunctive relief.

*Citation of information reviewed for this criteria:*

File review and Notices of Violation, Orders, and Settlement Agreements for the enforcement actions reviewed.

*Recommendations if corrective action is needed:* none

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

*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, only the formal enforcement actions that had specific timeliness requirements in the WYPDES EMS were assessed. Of the 10 formal actions reviewed, all were determined to be appropriate, and four were determined to be timely. For two actions, reviewers could not determine when the violation was identified to determine timeliness. One violation was identified through file reviews of inspection reports was not addressed by formal action. It is important to note that most enforcement actions are not included in data metrics 6 and 8 because the state does not enter settlement agreements into PCS. Detailed review findings have been provided to the State.

*Citation of information reviewed for this criteria:*

File review and Notices of Violation, Orders, and Settlement Agreements for the enforcement actions reviewed.

*Recommendations if corrective action is needed:*

Many of the violations are identified during inspections. To improve on the timeliness of enforcement, WYPDES should ensure that the enforcement staff are informed of violations in a timely manner. WYPDES should also ensure that the date of the violation's discovery is properly recorded in the inspection report and/or enforcement action.

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

*Findings:*

Of the eight penalty calculations reviewed, 6 included an appropriate gravity and economic benefit. The remaining two included appropriate gravity calculations, but not economic benefit. Only penalties for which settlement was reached in FY06 were included in this evaluation. It is important to note that none of these enforcement actions are included in data metrics 6 and 8 because the state does not enter settlement agreements into PCS.

### Southpark Redevelopment Docket #3802-05

The gravity calculated was not appropriate. The economic benefit was not calculated and no justification was provided.

### Western Gas Resources Docket #3803-05

The gravity and economic benefit calculated were appropriate.

### Devon Energy Docket #3833-05

The gravity calculated was appropriate. However, the economic benefit was not calculated and no justification was provided.

### Yates Petroleum Docket # 3845-06

The gravity and economic benefit calculated were appropriate.

### Pinnacle Gas Resources Docket # 3858-06

The gravity and economic benefit calculated were appropriate.

### The Point, LLC Docket # 3867-06

The gravity and economic benefit calculated were appropriate.

### Groathouse Construction Docket # 3897-06

The gravity and economic benefit calculated were appropriate.

Rocky Mountain Gas Docket # 3905-06

The gravity and economic benefit calculated were appropriate.

*Citation of information reviewed for this criteria:*

Notices of Violation and penalty calculations for the enforcement actions reviewed.

*Recommendations if corrective action is needed:*

Wyoming should make every effort to 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. Justification should be clearly documented for any failure to calculate economic benefit. 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 final enforcement actions (settlement or judicial results) collect appropriate economic benefit and gravity portions of a penalty.**

Of the 8 penalties reviewed, four collected appropriate economic benefit and gravity as determined using EPA's *Interim Clean Water Act Settlement Penalty Policy*. Wyoming's penalty policy also requires the consideration of economic benefit and factors such as duration of the violations, size, impact to human health and the environment and cooperation (factors equating to gravity). Only penalties for which settlement was reached in FY06 were included in this evaluation.

Southpark Redevelopment Docket #3802-05

The gravity and economic benefit collected were not appropriate.

Western Gas Resources Docket #3803-05

The gravity and economic benefit collected were not appropriate. The CBM wells were shut in when an unauthorized discharge of produced water was discovered. WYPDES determined that the interest that could have been earned on the revenues from the shut in wells was greater than the calculated penalty. Therefore, WYPDES waived the penalty.

Devon Energy Docket #3833-05

Economic benefit was not calculated or collected, and no justification was documented in the file. The SEP meets the requirements of the WYPDES SEP policy, and the gravity collected was appropriate.

Yates Petroleum Docket # 3845-06

The gravity and economic benefit collected were appropriate. The SEP meets the requirements of the WYPDES SEP policy

Pinnacle Gas Resources Docket # 3858-06

The gravity collected was appropriate. However, the economic benefit collected was not. A SEP was used to offset the gravity and part of the economic benefit portion of the penalty. According to paragraph 2 of WYPDES SOP C-007, *NOV Penalty and SEP SOP*, the entire economic benefit must be paid in cash and cannot be offset by a SEP.

The Point, LLC Docket # 3867-06

The gravity and economic benefit collected were appropriate.

Groathouse Construction Docket # 3897-06

The gravity and economic benefit collected were appropriate.

Rocky Mountain Gas Docket # 3905-06

The gravity and economic benefit collected were appropriate.

*Citation of information reviewed for this criteria:*

WYPDES SEP policy, Notices of Violation, penalty calculations, and settlement agreements for the enforcement actions reviewed.

*Recommendations if corrective action is needed:*

Wyoming must make every effort to collect appropriate gravity and economic benefit of noncompliance. Progress on this recommendation will be verified in FY08 during penalty action reviews.

**Section III: Review of Performance Partnership Agreement**

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

*Findings:*

	PPA Deliverable	Date Due	Submitted	On Time	Complete
1.	Draft Inspection Plan*	6/1/06	6/7/06	Y	Y
2.	Final Inspection Plan*	7/1/06	7/10/06	Y	Y
3.	Non-major non-compliance report	4/30/06	4/29/06	Y	Y
4.	Draft FY07 PPA	8/1/06	9/22/06	N	Y
5.	Final FY07 PPA	9/15/06	10/23/06	N	Y
6.	End of Year Report FY	12/31/06	2/8/07	N	Y

2006				
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\*The due dates listed for the inspection plans are from the PPA. However, States were given more time to draft the inspection plan when the inspection year was extended, and the WYPDES plans were considered on time.

Items four through six are agency-wide documents; the timeliness of these documents are beyond the control of WYPDES.

*Recommendations if corrective action is needed:*

EPA and Wyoming will discuss PPA deliverables during quarterly meetings to ensure that any problems with completing deliverables are anticipated and late submittal is avoided if possible.

#### ***Section IV: Data Integrity***

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

*Findings:*

The timeliness of data entry was evaluated (File Review Metric B) during 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.

Twenty two of the forty seven DMRs reviewed had dates of data entry (and thirty nine were initialed) and, of those, about half (22) were entered in a timely manner. Only one of the thirty four inspection reports reviewed had dates of data entry (and four were initialed) and, therefore, the reviewer was unable to determine if the State is meeting the standard for timelessness for inspection reports entered into PCS. The State should initial and date both DMRs and inspection reports so that the timeliness of data entry can be evaluated.

*Citation of information reviewed for this criteria:*

- 1) File Reviews
- 2) PCS

*Recommendations if corrective action is needed:*

WDEQ will work to improve the timeliness of data entry. WDEQ and EPA will monitor progress towards improving the timeliness of data entry and will hold quarterly conference calls to discuss progress.

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

*Findings:*

Data Metric 11.A. shows that none of the eight enforcement actions are linked to violations in PCS. File Review Metric 11.B. shows that, for the Major facility files reviewed, data were accurately reflected in PCS.

*Citation of information reviewed for this criteria:*

Data metric report dated February 13, 2007.

*Recommendations if corrective action is needed:*

WDEQ and EPA will monitor progress towards improving the number of enforcement actions linked to violations and will hold quarterly conference calls to discuss progress.

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

*Findings:*

The State was asked to provide feedback regarding the completeness of the data reflected in the metrics for this review element. No feedback has been received to date. As discussed in Element 5, WPDES does not enter enforcement actions into PCS.

*Citation of information reviewed for this criteria:*

Data metric report dated February 13, 2007.

*Recommendations if corrective action is needed:*

Enforcement actions for majors and minors are WENDB data elements and should be entered into PCS. EPA will work with WDEQ to develop a plan to address this and will monitor the State's progress quarterly.

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

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**Introduction:**

The State Review Framework (SRF) review for Wyoming's implementation of the compliance and enforcement provisions of the Clean Air Act (CAA) consisted of a data review and reviews of Wyoming Air Quality Division (Division) compliance and enforcement files for certain selected CAA sources.

The SRF File Selection Protocol required EPA to select at least 15 files from the universe of more than 200 CAA inspections performed by the Division during FY 2006. Several considerations guided the selection of inspection reports to review. The Division has divided Wyoming into five distinct geographical regions. EPA initially selected 20 inspection reports for evaluation using a stratified random sample - 4 sources per Wyoming District, then selected 3 majors and either 1 synthetic minor or 1 minor per District, then randomly selected sources within these categories. Additionally, all High Priority Violation (HPV) enforcement actions within the appropriate time frame were evaluated.

The Division submits all completed inspection reports to EPA on a monthly basis. The reports were tracked against Compliance Monitoring Strategy for timeliness and completeness. Also, all enforcement documents for actions against major sources are submitted to EPA by the State Attorney General's office. Periodically, EPA and the Division conduct a HPV conference call to exchange information about current actions, make a final determination of its HPV status, and clarify which agency has the lead in the action.

The SRF evaluation began with an introductory phone conversation between Cindy Reynolds of EPA and Bob Gill, Wyoming Air Compliance Manager on September 28, 2006. As a follow-up to this discussion, EPA sent to the Division a list of selected sources for file review and invited the Division to respond. On both December 14, 2006 and February 22, 2007, an early and then final data report was transmitted to the Division for review and discussion. The Division responded with telephone calls and emails that resulted in reconciling several data elements. In like manner, the file review information was transmitted to the Division for review and discussion on March 26, 2007. The Division again responded with written comments and revisions.

*Information Sources Included in the Review:*

1. Inspection Reports received thorough-out entire year and, specifically, those randomly selected for review;
2. Selected Enforcement Case Documents;
3. Data from Online Tracking Information System (OTIS), as summarized in the *CAA Framework Metric Results*, February 20, 2007.
4. Data in AFS-AIRS as of January 11, 2007
5. Periodic High Priority Violation meetings with State of Wyoming Air Quality Division
6. State of Wyoming Air Quality Division Compliance Monitoring Inspection Strategy, FY2006
7. Responses to discussion guide and data metric guide from State of Wyoming Air Quality Division
8. End of Year Grant Accomplishments Report
9. FY 2006 PPA Air Program Workplan

***Section 1: Review of State Inspection Implementation***

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

*Findings:*

Overall, the Division did an excellent job of completing its compliance monitoring strategy (CMS) for Full Compliance Evaluations (FCEs). The Division met the minimum requirements of EPA's Clean Air Stationary Source CMS, dated April 25, 2001, by inspecting major facilities as frequently as required by the CMS policy and including numerous synthetic minor (SM) and minor source inspections in their CMS.

The State of Wyoming Inspection Plan was submitted with the CMS for year 2006. The plan provided a list of 203 sources intended to be inspected during the calendar year of 2006. The total number of inspections completed for the year was 204.

Sources are inspected on an annual, biennial, or 5-year frequency. The State of Wyoming traditionally uses the Inspection Frequency Guidance (IFG) method of setting inspection priorities. There were 69 sources targeted for annual inspections – 53 Class A majors, 3 synthetic minors, 13 minor sources. There were 59 facilities targeted for biennial inspection and 85 facilities targeted for inspection under the 5-year frequency plan. The State continuously reviews all Title V Compliance Certifications and test reports received during the off years for all facilities. All synthetic minor sources in Wyoming are inspected which include the subset of 80% SM minors. The synthetic minor schedule varies from annual, biennial, to every 5 years. Moreover, ten sources were selected to receive complete FCEs twice in one year. This placed

emphasis on trona plants, petroleum refineries, and one chemical plant because of air quality concerns in the Green River Basin and because of the complex and consistently changing nature of these facilities, as well as seasonal differences. A suggestion is to continue inspecting these facilities twice a year but instead of conducting complete inspections at each visit, conduct a partial inspection during each visit. While all compliance points will not be covered during each visit, the compliance points can be more thoroughly evaluated and a savings of inspector resources can be realized.

Regarding the justification for inspecting sweet gas processing plants every 5-years, the state has offered the following response: “When the Compliance Monitoring Strategy was developed, it was envisioned that alternatives to the every two year inspection requirements could be developed and were acceptable. Section VII on the CMS discusses this. Historically, we have inspected compressor stations on an every five year basis and we identify this in our CMS plan. The reasons for this is our manpower limitations (we get very little return for the time spent visiting compressor engine sites), the fact the most of the compressor stations are located in more remote areas of the state which at times are difficult to reach, many of these compressor stations are unmanned, there is very little at the compressor stations which change, likewise, there is very little at the compressor station to inspect - not much can be determined by visually seeing the engine itself. Conversely, we get extensive monitoring reports from compressor engines. The state developed a portable analyzer monitoring protocol which is similar to the EPA portable analyzer monitoring protocol. All compressor engines are subject to in-depth portable monitoring requirements ranging from quarterly for larger engines to annually for smaller engines. All monitoring results are required to be sent to the Division. With the amount of monitoring data required from compressor engines, this category of sources is more extensively monitored than any other source category and we have more actual operational and emission data for compressor engines than any other source category. With this extensive monitoring data, we believe we can very effectively evaluate a compressor station site's compliance status more closely than any other source category and accurately determine that compliance status. Therefore, on-site evaluations at compressor stations at a reduced frequency - every five years.”

There is a group of sources not routinely inspected which include oil storage batteries and their flares, production sites, asphalt plants, and concrete plants. If any of these sources are Class A majors, the Division should ensure they are inspected at least every 5 years.

The Division submitted final inspection reports and enforcement documents on a monthly basis. An electronic paperless system to transmit reports would reduce the paper burden for the State and EPA.

It should be noted as a highlight that 53 major sources are inspected annually, while the EPA's CMS only requires an FCE of major sources every 2 years.

*Data Metric Findings:*

*IA2.* The OTIS report indicates 67.4% of all major CMS sources were evaluated through an FCE (120 of 178) against a national average of 84.4%. However, an evaluation of the 58 sources reported listed as not inspected revealed a database error. Fifty-four of these sources were captured in the OTIS report as requiring a 2-year inspection frequency when their actual agreed upon frequency is every 5 years. Three more sources were shutdown and thus not inspected, while another source was inspected by EPA and not entered into the database by the State. The result is a false low percentage of FCE reported in OTIS. The actual percentage more accurately approaches 100%, meeting the goal of inspecting major sources every two years (120 of 120).

*IB.* The Division conducted FCEs at 71.4% of all “80% synthetic minor” sources (20 of 28). The National average is 84.9%. Adjustments were made to change the class and coding of major and minor sources. This has decreased the number of major sources, which will increase the state percentage of FCEs performed on 80% synthetic minors within the state for FY 2006. This information was submitted to EPA via the AFS system, we await a refresh of the system.

*IA1, IA2, and I2J.* The universe of CMS majors and CAA majors differ by 12 sources. To address and correct the differences between the CMS and CAA major sources, reports of the major sources from AFS were requested, downloaded, and compared and the twelve differences between lists were corrected.

*IA1 and IA2.* The universe of CMS majors with FCEs and CAA majors with FCEs differ by eight sources. To address and correct the differences between the CMS and CAA major sources, reports of the major sources from AFS were requested, downloaded, and compared, and the twelve differences between lists were corrected.

*ID.* The State of Wyoming Air Quality Division conducted FCE at 35.8% of all minor sources. (260 of 726) This data is for informational purposes only and will be compared to future years.

*IF.* Initially, no Title 5 compliance certifications were registered as completed in AFS. The problem was found and corrected. All compliance inspections were entered under program code 0. EPA has specified that they should be entered in code V. All 2007 compliance inspections are currently entered under this code, and 2006 codes are being changed when the 2007 inspections are entered.

*IG.* Number of sources with “unknown compliance status” is two (2). The two sources with unknown compliance status have been corrected.

*Citation of information reviewed for this criterion:*

Information source numbers 1, 3, 6, and 7.

*Recommendations and Actions:*

1. Ensure that the State CMS Plan is accurately reflected in the AFS with correct evaluation frequencies cited. The AFS database should indicate the actual CMS inspection

frequency for each source. For example, the 53 sources inspected annually should be coded as annually. EPA will monitor the State's progress periodically throughout the year and document findings in the end-of-year report.

2. Ensure that all majors received an FCE and an on-site visit at least once every 5 years. The CMS specifies a group of sources which are not routinely inspected. If any of these sources are Class A major, they should receive an on-site full compliance evaluation at least every 5 years. EPA will monitor the State's progress periodically throughout the year and document findings in the end-of-year report.

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

### *Findings:*

EPA selected 20 inspection reports for evaluation - 4 sources per Wyoming District, then selected 3 majors and either 1 synthetic minor or 1 minor per District, then randomly selected sources within these categories. However, one of the selected reports was not received and thus not available for review and another report was received but could not be located in the files. Therefore to maintain randomness, no additional reports were added to the evaluation thus leaving 18 reports for review.

All reports are thorough and complete. It is obvious the inspectors conduct a thorough FCE. The reports contain a great amount of information on both compliance and permitting. The permitting information is very helpful to gain a complete understanding of the history and current conditions of the source. All this information is useful and provides an excellent record of activity for each facility. Two notable report sections are the Previous and Current Air Quality Concerns, and Permits and Waivers. The reports use a good mix of narrative and tables to convey the compliance determination. All appropriate documentation is included as appendices, including good color photographs and continuous emission information.

The overarching comment for all reports relates to the general flow of information. The purpose of an inspection is to develop a compliance determination from the applicable rules and requirements. Given the amount of information in these reports, it is important for the reader to be able to learn about the facility, have quick reference to the compliance requirements, and understand how compliance is determined. The general flow of an inspection report should begin with a description of the facility and its processes, then a complete listing of the underlying rules and conditions, and then show all emission points and their controls, their specific numeric limits, an explanation of the method of compliance determination, and then the actual number or condition observed during the inspection. The reader can then compare the indicated limit with the observed condition leading to a compliance determination.

Moreover, an inspection report should reach a conclusion to the compliance status of the facility. Inspection recommendations should be stated that refer to necessary actions by facility personnel or other outside agents, often the permitting authority to resolve any deviations. These reports use three sections to describe any compliance issues – Previous Concerns, Current Concerns, and Compliance Status. The information in these sections describes a mix of administrative corrections, compliance assistance suggestions, and potential non-compliance conditions. While the reports contain all this information, it could be more clearly delineated into administrative corrections, compliance assistance suggestions, and potential non-compliance conditions for referral.

The following specific findings are noted in a few individual reports:

1. the facility process description could be presented earlier in the report,
2. include a list of the applicable rules and emission points,
3. if the source has a synthetic minor status, clearly indicate what program the source is synthetic minor for and exactly what is the limiting condition,
4. clearly indicate which permit is the currently active permit,
5. while the facility's enforcement history is noted somewhere in the narrative of the report, it would be helpful to include a separate section recounting the enforcement activities of the past 3-5 years, if no such activity occurred, it is helpful to note this absence,
6. while the inspection category can usually be deduced from the report (such as from the title), it would be clearer to provide it as a data point on the first page (e.g. FCE, PCE, Annual, Biennial, 5 year, initial, follow-up, first of two).

*Citation of information reviewed for this criterion:* Information source number 1.

*Recommendations and Actions:* None

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

*Findings:*

The Compliance Monitoring Inspection Strategy included in the State of Wyoming Inspection Plan committed the Air Quality Division to 203 inspections for calendar year 2006. The FY2006 End-of-Year Accomplishments Report indicates the Division completed 204 inspections.

The Wyoming PPA Air Program Workplan states 10% of all inspection reports will be sent to EPA for review and normally be provided to EPA within 60 days of inspection. It should be noted as a highlight that the Division sends 100% of the completed inspection reports. EPA then uses the reports throughout the year to research information, answer specific questions that come up throughout the year, and monitor compliance issues that arise.

Of the 18 inspection reports selected for review, all but two were completed within 60 working days of completing the inspection. The two late inspection reports were received in 70 days and in 150 days. The remaining reports were received an average of 31 days from date of inspection.

Among the total of inspection reports received by EPA, the average time between inspection and receipt was 46 days with a range of 6 to 227 days. Also among the inspection reports, the average time between inspection and date inspection report was written was 17 days with a range of zero to 140 days.

*Citation of information reviewed for this criterion:* Information source numbers 1, 6, and 9.

*Recommendations and Actions:* None

## ***Section 2: Review of State Enforcement Activity***

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

#### *Findings:*

EPA reviewed 18 inspection reports. The State of Wyoming inspectors discovered 9 sources with current areas of concern. A review of these concerns by EPA generated six questions about their HPV status. The questions have since been clearly answered by the Division, and it appears none met the HPV standard.

In addition to the 18 inspection reports reviewed by EPA, 7 sources designated as HPV were reviewed as well. For five of these HPVs the Division commenced enforcement action during FY2006 and for four of these HPV sources Wyoming concluded an enforcement action in FY2006. Wyoming notified EPA in a timely fashion of all potential HPVs. An email is sent giving the State's initial determination of HPV status and the justification. The final determination is made during a discussion between EPA and the State. Of the 5 HPVs commencing this year, notices were all provided to EPA within 2 weeks after issuing a Notice of Violation (NOV) to the source, which is well before the 150 day conference for reviewing the enforcement case.

The Division sends EPA an email notice at the time of NOV issuance. The notice includes a description of the violation, whether the source is major and for what pollutant. The notice does not provide which criteria, from the HPV Policy, the violation has triggered, but is determined during the HPV meeting.

#### *Data Metric Findings*

4A. Of all FCEs conducted, 6.6% resulted in identification of an HPV (6 of 91). The national average is 9.2%. The state's percentage is above ½ the national average meeting the national goal.

4B. Of all major sources, 2.9% resulted in identification of an HPV (6 of 208). The national average is 4.3%. The national goal is to be greater than ½ the national average. The state's percentage is above ½ the national average meeting the national goal.

4D. Of all major sources with a formal enforcement action taken during FY2006, 70.0% were initiated against facilities identified as a HPV (7 of 10). The national average is 77.8%. The state's percentage is above ½ the national average meeting the national goal.

*Citation of information reviewed for this criterion:*

Information source numbers 1, 2, 3, 5, and 7.

*Recommendations and Actions:* None

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

*Findings:*

EPA reviewed 4 enforcement cases concluded in FY2006 which resolved high priority violations. In 3 of the 4 cases, it is unclear if injunctive relief to return the facility to compliance was necessary.

One source submitted a letter admitting that a dehydration unit under MACT Subpart HH did not have emission controls in place during the 2003-2004 time period. A cash penalty of \$25,000 was collected. The NOV, Complaint, or consent decree did not address injunctive relief or indicate if the facility returned to compliance. It is presumed that the source was admitting to a past violation and emission controls were already in place at the time of the admission letter eliminating the need for injunctive relief. The State later confirmed that injunctive relief was completed before settlement.

A second source submitted an excess emission report to the State revealing the sulfur recovery plant operated below the required 99.0% efficiency for 22% of one quarter. The NOV, Complaint, and consent decree did not address injunctive relief or indicate if the facility returned to compliance. It is presumed that the excess emissions did not continue beyond that quarter eliminating the need for injunction.

The third source failed to obtain a preconstruction permit prior to construction. The NOV, Complaint, and consent decree did not order injunctive relief, or indicate if the facility

returned to compliance. However, the Complaint states payment of settlement amount shall constitute full satisfaction of the claims.

The Division confirmed that no statements about injunctive relief are included in the settlement documents if the facilities are in compliance at the time the settlement agreement is completed. It is suggested that a statement be placed in the settlement document indicating the facility's compliance status regarding the subject violations at the time of settlement and the absence of injunctive relief or the lack of need for a compliance schedule.

*Citation of information reviewed for this criterion:* Information source numbers 2, 5, and 7.

*Recommendations and Actions:* 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:*

EPA reviewed 5 enforcement cases for timeliness to address or resolve the action. The HPV policy suggests the actions be addressed within 60 days of discovering the violation. All 5 actions were addressed within 60 days.

EPA reviewed 4 enforcement cases for timeliness to resolve the action. The HPV policy suggests the actions be resolved within 270 days of discovering the violation. Three recent cases were settled within 270 days (104, 145, and 163). One older case with outstanding issues was originally referred to the State Attorney General's office on October 31, 2000. The case was settled on March 20, 2006.

*Data Metric Findings*

6A. None of the "unaddressed" HPV have been in this status for greater than 270 days. This is a highlight - all state HPVs were addressed in very short time frame.

*Citation of information reviewed for this criterion:*

Information source numbers 2, 3, 5, and 7.

*Recommendations and Actions:* None

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

*Findings:*

EPA does not receive information on the amount of penalty proposed to the company as calculated by the State's policies. It is unknown which portion of the collected penalty as recorded in the consent decree is for economic benefit and what is for gravity.

*Citation of information reviewed for this criterion:* None

*Recommendations and Actions:*

For EPA to exercise its core oversight function and implement the SRF consistent with national SRF guidance, all information and documentation described in the SRF guidance must be made available by the State to EPA. WDEQ should provide to EPA upon request all documentation required by EPA to exercise its core oversight function (including, but not limited to, penalty calculation documentation). The State and EPA will incorporate a discussion of economic benefit and gravity penalty applicability during the periodic State/EPA HPV meetings. The discussion will include a comparison of EPA and State penalty calculations and the policy factors that were used to derive the amounts. It will also be determined if appropriate economic benefit was obtained. These discussions should occur early in the enforcement proceeding prior to settlement.

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

*Findings:*

All 4 enforcement actions with high priority violations resolved in FY2006 collected a cash penalty pursuant to the consent decree. One enforcement action collected a cash penalty of \$129,430. Based on the information available, the EPA Clean Air Act Penalty Policy estimates a proposed penalty of \$112,500.

A second enforcement action collected a cash penalty of \$25,000. Based on limited information available, the EPA Clean Air Act Penalty Policy estimates a proposed penalty of \$90,000 gravity with the economic benefit assumed to be below the de minimis amount of \$5,000.

A third enforcement action collected a cash penalty of \$10,000. Based on limited information available, the EPA Clean Air Act Penalty Policy estimates a proposed penalty of \$70,000 gravity with the economic benefit assumed to be below the de minimis amount of \$5,000.

The fourth enforcement action collected a cash penalty of \$5,000. Based on limited

information available, the EPA Clean Air Act Penalty Policy estimates a proposed penalty of \$33,000 gravity with the economic benefit assumed to be below the de minimis amount of \$5,000.

Please note the EPA CAA Penalty Policy calculations above are estimates only and do not reflect a thorough research of all the facts surrounding the violation. The calculations were based on minimal information obtained from State enforcement documents. Of particular note, the size of the violator factor was not researched, and a more accurate valuation may affect the total gravity amount.

#### *Data Metric Findings*

*6C and 8A.* Of the 23 “state formal enforcement actions” taken, 3 actions resulted in no penalty collected. The 3 actions with no penalty were the result of entering data in one source file for a multiple source action. There was one settlement agreement representing 4 facilities owned by one company. The penalty information is now split and entered between the four source files for this one company. The penalty amount for each file was proportioned per size of each facility.

*8B.* Of all HPVs, 100% resulted in a penalty collection (4 of 4). The national average is 76.7%.

*Citation of information reviewed for this criterion:* Information source numbers 2, 3, and 7.

#### *Recommendations and Actions:*

See recommendation in Element 7 above.

### ***Section 3: Review of Performance Partnership Agreement or State/U.S. EPA Agreement***

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

#### *Findings:*

A review of all air program workplan commitments found in the Wyoming/EPA Performance Partnership Agreement (those overlooked by the Technical Enforcement Program) revealed all commitments were completed.

The Division submitted a complete Compliance Monitoring Strategy (CMS) for FY07 on August 2, 2006.

The Division committed to and completed all 203 inspections and one additional inspection. The State traditionally uses the Inspection Frequency Guidance method of

identifying and committing to inspections each year. “Annual” inspections were completed at 69 sources which included 53 major sources, 3 synthetic minors, and 13 minors. It should be noted major compressor stations are excluded from this group and inspected on a five-year frequency, major gas plants on a two-year frequency, and major oil storage batteries and flares are not routinely inspected. Moreover, “biennial” inspections were completed at 24 of 59 sources. A few sources were removed from the list based on a clear compliance history. Lastly, “five-year” inspections were completed at 85 of 425 possible sources which included majors, synthetic minors, and minors. Asphalt and cement plant inspections are conducted only when warranted.

The Division continued to place additional resources and time on the trona plants and petroleum refineries. The Division feels the perceived deterioration of air quality in the Green River Basin warrants additional enforcement presence. Thus, 10 sources are inspected twice – 5 trona operations, 4 petroleum refineries, and one chemical plant.

The Division reviewed all Title 5 Compliance Certifications received in FY2006. Two data elements are entered into AFS, Date Received and Compliance Status using codes VS and MC.

Only one facility is on the Watch List. This company is participating in an EPA/State global settlement under the National Petroleum Refining Sector Initiative. Settlement is expected in FY2007.

*Citation of information reviewed for this criterion:* Information source numbers 8 and 9.

*Recommendations and Actions:* None

#### ***Section 4: Review of Database Integrity***

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

##### *Findings:*

The State uses a centralized data entry method to maintain information in AFS. Inspection reports and other documents are written by personnel in the 5 District offices and Division Headquarters. The documents are reviewed by the Compliance Program Manager and then forwarded to the AFS Database Administrator. The Administrator enters all information into the database. This method ensures consistency in timeliness and quality of data entry.

The State’s response to all corrections and reconciliations from an EPA data audit this year was very timely, and the Division continues to respond to all requests promptly.

##### *Data Metric Findings*

**10A.** No HPVs were entered into AFS later than 60 days after designation (0 of 4). This is a highlight - all HPVs were entered into AFS in a timely fashion

*Citation of information reviewed for this criterion:*

Information sources number 1, 3, 4, and 7.

*Recommendations and Actions:* None

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

*Findings:*

The accuracy and completeness of the AFS data as compared to the information reviewed in the inspection reports and enforcement documents are generally of good quality and consistency. The bulk of the information is entered according to agreed upon guidelines with one exception noted below. Fifteen sporadic items were noted during the review. Most of them concern correctly listing all pollutants or programs, incomplete attainment status, or missing action item dates.

The State of Wyoming CMS indicates there were 53 major sources evaluated annually, but the AFS database shows only 3 sources with an annual inspection frequency while the remaining show biennial or 5-year frequency. It is suggested the AFS database be corrected to reflect the actual inspection frequencies. All annual inspections should be designated as such.

*Data Metric Findings*

*11A.* There are more HPVs entered into AFG than total non-compliance sources (12 versus 7). Adjustments were made to change the class and coding of major and minor sources which should adjust the number of universe sources to accurately reflect the total non-compliance sources.

*11B1.* No stack test activities were entered into AFS. The Division does not enter stack test data into the AFS. As part of the EPA's CMS, stack test information is required, as a component of the Minimum Data Requirements, to be tracked and entered into the AFS database. Currently, the Division does not have a state-wide system in place to record and transmit the results of a stack test to the central office in Cheyenne where the AFS database administrator can enter the information. The State of Wyoming Department of Environmental is currently developing an electronic recordkeeping system, called the IT Project, which will eventually have the capability to transmit stack test information. The project's pilot production phase is complete while the initial demonstration phase is underway. Other specific modules, such as the oil and gas industry permitting activities, are slated to be built first. A compliance reporting module is scheduled for later.

It should be noted that one of the four HPV enforcement settlements reviewed as part of

this evaluation was a stack test failure violation. This violation demonstrates the Division does enforcement against stack test failures and communicates them as a HPV to EPA.

*Citation of information reviewed for this criterion:*

Information source numbers 1, 3, 4, and 7.

*Recommendations and Actions:*

The Division should develop a reporting system to track and centralize stack test report reviews and on-site observation results. The date of the test observation and whether the source passed or failed the test should be entered into the AFS database. EPA considers this gap in data reporting a serious deficiency. Without this information, EPA is unable to evaluate the State's stack test program. The frequency which tests are observed, if action is taken for failed tests, whether the correct HPV priority status is assigned, and correct reporting in Title V annual compliance certifications, all rely upon stack test information reported from AFS. Until the IT Project is implemented and capable of transmitting the test information, the Division should expeditiously create an interim method to report, track, and centralize stack test information allowing the database administrator to enter the information at the Cheyenne office. EPA will monitor the State's progress periodically throughout the year and document findings in the end-of-year report.

**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:*

12I. Total dollar amount of penalties reported in AFS as assessed in last FY was \$371,554. For FY 2006, 22 actions with a total penalty amount of \$385,554.00. Two of these actions had not been previously recorded into the AFS database. These two actions were reconciled and recorded in the AFS database, which would adjust both actions and penalties.

The following numbers are the count on January 11, 2007 of each category in AFS:

a. Majors .....	190	12B1
b. Synthetic Minors.....	31	12B2
c. NESHAP Minors.....	3	12B3
d. NSPSs .....	81	12C1
e. NESHAPs.....	9	12C2
f. MACTs .....	38	12C3
g. Sources with FCEs.....	101	12D1
h. FCEs.....	108	12D2
i. PCE .....	7	12D3
j. Sources in Violation .....	16	12E
k. NOV's .....	23	12F1

l. Sources with NOV's .....	23	12F2
m. HPV's .....	6	12G1
n. Sources with HPV's .....	6	12G2
o. Actions .....	30	12H1
p. Sources with Actions .....	28	12H2

The State CMS shows there were 10 sources inspected twice during FY2006; however, the difference of data elements (g) and (h) above indicate only 7 sources were inspected twice.

Highlight: there were 2 or more actions at 1 source (o, p)

*Citation of information reviewed for this criterion:* Information source numbers 1, 3, 4, and 7.

*Recommendations and Actions:* None

**EPA Review of Wyoming's  
Resource Conservation and Recovery Act (RCRA) Enforcement Program  
FY 2006**

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Robert W. Breuer, Manager  
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Solid and Hazardous Waste Division

**Introduction:**

The RCRA evaluation involved the review of 5 formal enforcement actions and 25 inspection reports generated during FY2006. EPA's review covered large quantity generators (LQGs), small quantity generators (SQGs), treatment, storage and/or disposal facilities (TSDFs), transporters, and used oil facilities. In addition, Region 8 utilized the Online Tracking Information System (OTIS) SRF data metrics report (dated February 13, 2007) and pulls from the RCRAInfo national database.

Randomly selected FY2006 enforcement case and inspection file information was

reviewed by EPA Region 8 during October 2006 and February 2007. These files were reviewed at the WDEQ offices. WDEQ staff members assisting EPA during this review were Tim Link and Bob Breuer.

Nearly all of the issues of concern have been discussed with the Wyoming Department of Environmental Quality (WDEQ) during exit conferences following file review sessions held in October 2006 and February 2007. The WDEQ was provided a copy of the EPA Headquarters' data metrics report for FY2006 in a February 14, 2007, email. A copy of EPA's preliminary draft findings report was provided to the state via an email on March 14, 2007. Issues raised in this report were discussed with the state in a conference call on April 11, 2007. Numerous issues were covered during the close-out meeting in February 2007, including identification of the LQG universe, failure to assess and collect penalties for formal enforcement actions, and timeliness of inspection report completion.

#### Information Sources Included in the Review:

1. EPA RCRAInfo, and OTIS databases;
2. State of Wyoming Department of Environmental Quality hazardous waste compliance monitoring and enforcement files;
3. State of Wyoming/EPA FY 2006 Performance Partnership Agreement (PPA);
4. Wyoming FY2006 RCRA End-of-Year Evaluation Report;
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 January 19, 2007;
8. EPA RCRA Civil Penalty Policy, dated June 23, 2003;
9. State of Wyoming DEQ Annual PPA Inspection Schedule for FY2006;
10. Memorandum of Agreement (MOA) between the State of Wyoming and Region 8, dated August 29, 2005;
11. 40 CFR Section 271.15(b)(2)—Requirements for Compliance Evaluation Programs;
12. RCRA Section 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. State Review Framework Training Manual, dated April 2006;
16. U.S. EPA Region 8—Solid and Hazardous Waste and RCRA Technical Enforcement Programs Program Performance Standards and Oversight of State Hazardous Waste Programs, January 27, 2005

## ***Section 1: Review of State Inspection Implementation***

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

#### *Findings:*

Per the Wyoming Performance Partnership Agreement, the DEQ committed to develop an annual compliance monitoring plan. In its annual inspection plan, WDEQ committed to inspect 35 CESQG/SQGs, 10 LQGs, 3 transporters, 34 non-notifiers, and 18 used oil facilities. Based on the generator categories unique to Wyoming, the state has identified 5 sectors which they target; these are vehicle service (25 facilities in FY06), oilfield service facilities (15 facilities in FY06), petroleum refineries (6 facilities in FY06), contractors (10 facilities in FY06), and others (13 facilities in FY06). The identified targets were met or exceeded for all those facilities identified in the inspection plan. In FY06, WDEQ conducted a total of 179 inspections which fall into the following categories: 4 TSD, 11 LQG, 65 SQG/CESQG, 3 transporters, 38 non-notifiers, 49 used oil, 24 complaint. For their identified sectors, WDEQ conducted the following inspections: 46 auto vehicle service, 17 oilfield service, 9 petroleum refinery, 7 contractor, 28 other. This exceeded the projected number in all areas except for contractor inspections. The reason for the discrepancy in the number of inspections reported by the state (179) and that reflected in the OTIS data metrics used for this evaluation (140) needs to be verified with the state. One possible explanation may be due to the difference in the count of inspection type (TSD, LQG, used oil, non-notifier, etc.) vs. the number of individual facilities inspected. This will be verified with the state.

The state noted the following during the telephone conference call held on April 11, 2007, and documented in a follow-up email dated April 13, 2007: *“As we discussed during the 4/11/07 conference call, EPA will revise the SRF to list the total number of non-notifier inspections to be 38 and not 24.”* This change has been made and is reflected in the text of the preceding paragraph. The number of non-notifier inspections listed was increased to reflect the actual number of inspections conducted: WDEQ had inspected 38 rather than 24 non-notifiers during this evaluation time frame.

The state achieves good coverage of its entire generator universe, inspecting 100% of its two operating TSDFs annually, 29.2% of its estimated 18 LQGs in FY 2006 (please see further discussion of the discrepancy in the OTIS number of LQGs and those identified by WDEQ as verifiable LQG facilities), and approximately 29.7% of its SQG universe of 320 generators over the past five fiscal years.

WDEQ’s inspection coverage at TSDFs (Metric 1a), 100%, is above the national average of 90.2% and meets the national goals for inspections at TSDs of 100%. WDEQ is above both the national average of 16.2% and the national goal for annual inspection of LQGs of 20%, conducting 29.2% (per OTIS numbers of 7 of 24). Please note that the state feels an LQG universe of 18 is a more accurate counting, which would increase its annual percentage for FY06 to 38.9%. WDEQ falls below the national goal of achieving 100% LQG coverage every 5 years,

based upon a universe of 24 LQGs in the January 19, 2007 OTIS report, achieving a 5-year coverage of only 54.2%. If the smaller universe is used to compute the 5-year coverage, WDEQ's performance level rises to 72.2%.

As discussed throughout the preceding text, there is a discrepancy between the LQG universe in the OTIS drilldown report and the list of LQG facilities produced by state staff from RCRAInfo and review of the Biennial Reporting System. The difference in the identified universe needs to be rectified. The state of Wyoming has provided the following statement regarding their LQG universe:

*A recent data pull, February 26, 2007, from RCRAInfo lists the total number of LQGs for Wyoming as being 21. After reviewing all of the LQGs listed, the state determined that 9 of the 21 would be episodic LQGs (i.e., pipelines, etc.), one is a duplicate entry, and two will need further checking but probably are not LQGs. Therefore, a more accurate LQG universe number for Wyoming would be 18, 9 LQGs and 9 episodic LQGs. This number would still bring our inspection percentages less than 100% but still above the national average. One problem with using episodic generators as part of the total universe and determining inspection percentages is that episodic generators would only be subject to the LQG requirements during the years they generate hazardous waste, in some cases every 5 to 7 years. To be required to inspect all of these facilities every year to assure we meet the 100% goal would not be a good use of I & C resources; therefore, it is unreasonable to require that episodic LQGs be required to be inspected on an annual basis just for purposes of meeting the EPA commitment.*

The actual number of LQGs is difficult to track due to episodic generators (e.g., petroleum pipeline tanks) and one-time large quantity generators (necessitated by a spill or disposal of expired chemicals, for example). Region 8 and the state have agreed to use a universe of 18 LQGs, which will be tracked to ensure that they are inspected once in every 5-year cycle.

In addition, the state performs and documents inspections of its SQG universe. Metric 1d indicates that approximately thirty percent of WDEQ's SQGs, or 95 out of a universe of 320 facilities, were inspected during a five-year period. EPA confirmed the accuracy of the identified universe of SQGs with the state. Based on the state's self-reported 65 SQG/CESQG inspections in FY06 alone, the number listed in the OTIS report seems low for the 5-year coverage.

Regarding the number of SQG inspections conducted for the past five years, the state offers the following response: *"The total number of SQGs inspected during the five year period (2002-2006) was 113 SQG from the state records; therefore the correct figure was 113 out of a universe of 320 facilities or 35% of WDEQ's SQGs. EPA needs to also be aware that a large number of facilities that previously notified as an SQG a long time ago, may no longer be SQG and/or there is no longer a facility at the particular location (i.e., 14 Sun Oil facilities that notified in 1985 and company no longer does business at the locations, 10 Amoco oil gas stations, where it is doubtful they are no longer there and/or or now CESQG status, etc.)."*

The state also conducts compliance assistance audits/inspections on an as-requested basis. Nine of these were conducted in FY 2006.

Environmental Justice (EJ) was not considered in development of the state inspection plan; but, coverage of some of the EJ areas occurs by default. The state is receptive to have the region develop and provide maps of EJ areas in Wyoming which can be factored into inspection targeting.

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

The state tracks complaints, maintains an electronic Complaint Log, refers them to other programs as appropriate, and performs onsite inspections as needed. Twenty-four complaint inspections were conducted in FY 2006.

*Information sources utilized for this criterion:* 1, 2, 3, 7, 9, 12, 13, 15,

*Recommendations and Actions:*

EPA commits to work with the WDEQ staff in defining the LQG universe, clarifying that the LQG annual inspection requirement is only 20% per year, and reaching an agreeable approach to inspection and counting of the episodic LQG universe. WDEQ needs to ensure that 100% of the LQG universe is inspected on a five-year cycle. EPA and WDEQ commit to work together to develop a plan to clarify the SQG universe, ensure the federal and state database records agree, and increase the SQG inspection coverage if limited state resources allow.

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

*Findings:*

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.

All of the inspection reports reviewed were of high quality, thereby allowing appropriate compliance determinations. All of the reviewed reports met the basic requirement of completely determining the compliance status for the appropriate areas reviewed under Wyoming hazardous waste regulations. WDEQ readily identifies all apparent violations during or just after inspections upon completion of inspection reports.

EPA conducted eleven oversight inspections during FY06. The state inspectors are well trained, conduct high quality, thorough inspections, and couple compliance evaluation with technical and regulatory assistance.

*Information sources utilized for this criterion: 2, 5*

*Recommendations and Actions: None*

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

*Findings:*

Inspection reports were completed in a timely manner for 21 of the 25 inspection files reviewed. Two of the late reports, which exceeded the established criteria of 45 days from the first day of inspection, either involved more complex facilities, had a multi-day component, or required a regulatory determination as part of the report finalization.

*Information sources utilized for this criterion: 2, 6*

*Recommendations and Actions:* The region and the state commit to explore ways to ensure timely completion of inspection reports in the future, even if a multi-day aspect is involved or the facility is more complex.

***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 the EPA national database in a timely manner.**

*Findings:*

The RCRA enforcement national core program standards and the Memorandum of Agreement between the State of Wyoming and the Region require the state to maintain timely data entry in the RCRAInfo national database, and classify all facilities meeting the definition of a significant non-complier (including used oil transporters/processors/marketers) as SNC in the RCRAInfo database. The Hazardous Waste Civil ERP stipulates that the SNC determination shall be made within 150 days of the first day of any inspection completed.

As noted for OTIS Metric 4a, Enforcement Activity, SNC Identification, of the 128 evaluations reported in the OTIS drilldown report, the state identified 5 SNCs. This SNC identification rate of 3.9% is above half of the national average of 3.1%.

Regarding the number of SNCs, the state has provided the following response: “There

*was only one NOV issued to one X facility that is located at 0.2 miles southwest of City Y. This was a data entry error in RCRAInfo since the same NOV was issued for the second facility X location in City Y. A RCRAInfo USITS ticket has been sent to delete the duplicative entry.”*

The state clarified, as stated above, that it inadvertently entered an NOV issuance in the data base twice: once to the correct facility and a second time incorrectly entered this NOV issuance to a sister facility owned by the same company.

As reflected in OTIS Metric 4d, for the percent of actions with prior SNC listings, the WDEQ performance is 100%, which is above the national average of 54.6% and well above the national goal.

The metrics spreadsheet that was posted with the report indicated a 0/0 for WDEQ’s reporting of SNCs, with nothing to calculate. Due to Region 8 queries about this result, HQ corrected a programming bug, and the corrected metric does indeed indicate that the state reports SNCs in a timely manner. Please note that metric 11a indicates WDEQ enters SNC determination dates as the same date as the addressing enforcement action. None of the state SNCs was entered greater than 60 days after designation.

*Information sources utilized for this criterion: 1, 2, 6, 7, 10*

*Recommendations and Actions: None*

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

*Findings:*

The Hazardous Waste Civil ERP requires state enforcement actions to include a 240-day return-to-compliance date for significant violators. The state issued 5 formal enforcement actions in FY 2006. All of the enforcement actions required appropriate injunctive relief or included a compliance schedule (File Review Metric 5a).

*Information sources utilized for this criterion: 1, 2, 4, 6,*

*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:*

WDEQ adheres to the timelines in EPA’s Hazardous Waste Civil Enforcement Response

Policy (ERP) for initiation and completion of enforcement actions and settlements within specific timeframes. These timeframes, as listed in the December 2003 ERP are as follows: Violation Determination Date, 150 days from Day Zero, the date by which the implementing agency should issue a warning letter or other appropriate notification of violations to violators designated as secondary violators (SVs) or SNCs; Day 240, SVs should be returned to compliance and a unilateral order or initial order should be issued to SNCs; Day 360, a referral to the DOJ or state Attorney General's office should be made or the final order entered with the violator. The ERP recognizes that there are circumstances in which enforcement cases may exceed the standard response times and asserts that a 20% exceedance is allowable.

For OTIS Data Metric 6—Timely and Appropriate Enforcement Actions: Although data is not yet provided for Metric 6a, based on review of state files and review of RCRAInfo, 4 of the 5 formal enforcement actions taken in FY 2006 were timely. None of the 4 issued NOVs assessed or collected a penalty, which is inappropriate based on the degree of violation.

None of the 4 NOVs, issued in FY06, met the enforcement responsiveness criteria for appropriateness (File Review Metric 6.d) because no penalties were assessed or collected for any of the NOVs issued to these facilities. The issuance letter indicates that the DEQ deferred action to seek penalties, contingent upon future compliance, although some of these facilities were repeat violators or were currently non-compliant in several media.

Of the 25 files reviewed, one timely and appropriate Compliance Advisory was issued. Based on the seriousness of the violations documented in the inspection reports, two additional Warning Letters and either a Letter of Violation or NOV should have been issued to three other facilities.

The state has provided the following response to the above findings, which were shared with them in the preliminary draft report: *“The EPA concerns with more aggressive efforts to seek penalties will be given serious consideration in future, similar enforcement cases. However, we recognize and accept there may be different conclusions on enforcement response by states and EPA, particularly when considering EPA may not have the advantage of directly observing the violations or other site conditions/factors affecting a decision to seek a penalty except during oversight inspections. Also, SHWD does not have the legal authority to assess penalties and must pursue either a court case or other more resource-intensive methods to achieve voluntary settlements. With each enforcement case, we must assure appropriate availability and allocation of resources in pursuit of a penalty, particularly when the resources of a separate, independent state entity such as the AGO are required. In retrospect, WDEQ agrees the NOV issued to Frontier's Cheyenne refinery in June, 2006 should have been accompanied by a referral to the AGO to seek a penalty (as evidenced by subsequent inspections indicating repeat violations and failures to completely resolve violations alleged in the June, 2006 NOV). This has been corrected with NOV (Docket No. 4042-07) and referral to seek a penalty sent to Frontier on March 19, 2007.”*

Information sources utilized for this criterion: 1, 2, 7,

*Recommendations and Actions:*

The region and WDEQ need to further discuss and reach agreement on WDEQ's criteria for assessment of penalties. A process issue which has been identified and needs further discussion and resolution involves the identification and referral of additional violations for facilities which have outstanding unresolved NOV's. Specifically, when an NOV has been referred to the state attorney general and negotiations are continuing, additional inspections may reveal repeat or new violations, which could result in issuance of a new NOV or perhaps amendment of the existing referral to address these new counts and increase the assessed penalty amount.

Regarding the identified process issue, the state has offered the following response: *"The SHWD/I&C group has implemented a different procedure to minimize delays or restrictions on our enforcement response for newly discovered violations while settlement negotiations are still in progress for past violations by the same facility. The new procedure allows WDEQ/SHWD to hold off on any referrals to the AGO (including memos, case summaries, etc.) and pursue voluntary settlement without AGO involvement unless timely, voluntary settlement fails. An additional resolution is, wherever possible, SHWD/I&C plans to avoid combining RCRA waste generator and/or operating violations with RCRA Corrective Action (CA) violations or CA Supplemental Environmental Projects (SEP). This should avoid delay of settlements for waste generator and/or operator violations by assuring separate enforcement of cases more likely to require more protracted CA negotiations, exchange of work plan proposals, etc. Future cases are difficult to foresee but there may be rare exceptions to this policy when CA objectives can not be achieved by any other means or separate enforcement cases."*

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

*Findings:*

There were no new penalties assessed by WDEQ in FY 2006. A final enforcement action with a penalty was completed through finalization of the settlement agreement for Wyoming Refining Company. This penalty had appropriately considered both gravity and economic benefit.

*Information sources utilized for this criterion:* 1, 2, 4, 7, 8,

Recommendations and Actions: None

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

*Findings:*

As reflected in the OTIS Report Metric 8a, the state is below half the national average of

44.5% for formal actions with a penalty, achieving an average of 16.7%, for 1 in 6 enforcement actions taken. A final enforcement action with a penalty was completed through finalization of the settlement agreement for Wyoming Refining Company. For the percent of final formal actions with penalty, the state, at 100%, is above the national average.

When WDEQ assesses a penalty, it appropriately considers both an economic benefit and gravity component.

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

*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:*

Copies of inspection reports for facilities targeted for EPA oversight were provided in a timely manner. Although required by the Memorandum of Agreement, WDEQ did not provide copies of formal and informal enforcement actions to the region within the agreed timeframe and as issued; but, copies were provided upon request in one bulk submittal. Annual inspection work plan commitments were all met or exceeded. All of the LQG, TSDf, transporter, and used oil inspection/enforcement accomplishments were reported to RCRAInfo.

*Information sources utilized for this criterion:* 2, 3

*Recommendations and Actions:* None

### ***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:*

As agreed in the Memorandum of Agreement between the State of Wyoming and the Region, the DEQ maintains timely, accurate, and complete information in the national electronic database. The state ensures entry of its data pursuant to the most recent Region 8 Program

Performance Standards and Oversight Procedures.

*Information sources utilized for this criterion:* 1, 2, 7, 10

*Recommendations and Actions:* None

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

*Findings:*

As agreed in the Memorandum of Agreement between the State of Wyoming and the Region, the Department is maintaining timely, accurate, and complete information in the national database. EPA's review of files, in conjunction with OTIS and RCRA data pulls, verified the accuracy of the state's data entry.

Metric 11a indicates that WDEQ may be dating its SNC determinations as the same day as the addressing enforcement actions. This usually indicates that the determination dates are inaccurate. The ERP recommends that SNC determination dates be entered when the determination is made. The evaluation of this metric affects the results of Metric 10a because the SNC determination date is used to assess entry delay.

Metric 11b shows that the state has 78 sites in violation for greater than 3 years. Many of these are residual data remnants prior to Wyoming's authorization in October 1995. It will be determined if these are EPA or state actions and appropriate follow-up action to close these outstanding violations will be taken by the responsible agency.

Regarding Metric 11b, the state has provided the following response: *"The state has confirmed the majority of these sites were inspected by EPA before the state became authorized. However, there a few sites (4-5) that the state is responsible for and is currently working with staff to update."*

*Information sources utilized for this criterion:* 1, 2, 7, 10, 16

*Recommendations and Actions:*

EPA and WDEQ will ensure that the 78 facilities in violation for greater than three years are appropriately evaluated and returned to compliance.

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

*Findings:*

The RCRAInfo database was maintained for all required data elements. All of the LQG, TSD, transporter and used oil facility information for both inspections and enforcement actions are being entered. Based on file reviews and review of data from RCRAInfo, the data elements are complete. As noted previously, refinement of the LQG universe will be necessary.

The accuracy of the Element 12 metrics, which served as a basis for the SRF draft review, have been assessed and reflected in this redraft of the report. Please refer to Element 1, regarding the number of inspections conducted. The number of enforcement actions taken, amended as the state requested in Element 4, are accurate.

*Information sources utilized for this criterion:* 1, 2

*Recommendations and Actions:* None