

**Final Report**

**March 16, 2011**

## **State Review Framework**

# **Review of Kansas Department of Health and Environment Bureau of Waste Management for Federal Fiscal Year 2009**

**July 2010**

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## **I. EXECUTIVE SUMMARY**

### **Major Issues**

The SRF review of the Kansas RCRA Subtitle C program identified the following issue:

When calculating penalties, the state needs to calculate and document the economic benefit of non-compliance.

### **Summary of Programs Reviewed**

#### ***Resource Conservation and Recovery Act Program***

**The problems which necessitate state improvement and require recommendations include:**

- the State does not calculate the economic benefit of noncompliance in penalty calculations nor document this in its files; this problem continues from Round 1.

**The problems which necessitate state attention include:**

- the State does not ensure that all final orders are filed within 360 days of day zero; this issue continues from Round 1.

**Areas meeting SRF program requirements or with minor issues for correction include:**

- Data completeness;
- Data accuracy;
- Timeliness of data entry;
- Completion of commitments;
- Inspection coverage;
- Quality of inspection reports;
- Identification of alleged violations;
- Identification of SNC;
- Enforcement actions promote return to compliance;
- Appropriateness of enforcement actions;
- Documentation of differences between initial and final penalties and collection of final penalties.

## **II. Background Information on State program and Review Process**

The State Review Framework (SRF) is a program designed to ensure EPA conducts oversight of state and EPA direct implementation compliance and enforcement programs in a nationally consistent and efficient manner. Reviews look at 12 program elements covering data (completeness, timeliness, and quality); inspections (coverage and quality); identification of

violations; enforcement actions (appropriateness and timeliness); and penalties (calculation, assessment, and collection).

Reviews are conducted in three phases: analyzing information from the national data systems; reviewing a limited set of state files; and development of findings and recommendations. Considerable consultation is built into the process to ensure EPA and the state understand the causes of issues, and to seek agreement on identifying the actions needed to address problems.

The reports generated by the reviews are designed to capture the information and agreements developed during the review process in order to facilitate program improvements. The reports are designed to provide factual information and do not make determinations of program adequacy. EPA also uses the information in the reports to draw a "national picture" of enforcement and compliance, and to identify any issues that require a national response. Reports are not used to compare or rank state programs.

## **A. GENERAL PROGRAM OVERVIEW**

### **Agency Structure**

The Kansas Department of Health and Environment Secretary oversees the three (3) Divisions and many other offices that constitute the Kansas Department of Health and Environment (KDHE). The Division of Environment consists of five (5) Bureaus (Air, Waste Management, Water, Environmental Remediation, and Environmental Field Services). The Bureau of Environmental Field Services operates six (6) District Offices throughout the State. The Compliance Assistance and Enforcement Section within the Bureau of Waste Management is responsible for regulating the management of hazardous waste within the State of Kansas, planning and conducting inspections of generators and TSD facilities in the State, and encouraging the reduction of hazardous waste generation. The six District Offices provide staff support to conduct compliance evaluation inspections at the majority of the regulated facilities within the State and sampling support.

The Department of Health and Environment maintains legal resources in-house to assist BWM staff in enforcing the State's environmental regulations. The State has administrative penalty authority to issue compliance and penalty orders under the Secretary's signature. These include Administrative Orders, Cease and Desist Orders and Consent Agreements.

### **Hazardous Waste Program Roles and Responsibilities**

The KDHE maintains primary responsibility for implementation of the Subtitle C program in Kansas. The Compliance Assistance and Enforcement Section ("Section") monitors the compliance of facilities in Kansas and is responsible for taking the necessary enforcement actions. The Section targets inspections to ensure adequate coverage of all parts of the regulated universe in Kansas and provides the targets to the District Offices. The Section also coordinates inspection targets with the Region 7 RCRA program to further ensure that the Office of Enforcement and Compliance Assurance (OECA) National Program Manager (NPM) guidance commitments are met with respect to inspection coverage.

After a facility is inspected, the inspector works with the facility to return any noted violations to compliance. In most cases, a Notice of Non-Compliance (NONC) is issued by the inspector,

either at the close of the inspection or within a few days of the close of the inspection from the District Office. The NONC gives notice of the violations, directions for return to compliance and a specific deadline for response. Subsequent notices might be issued if the facility is working toward compliance but has additional actions to take to address the violations.

Concurrently, the inspection report is reviewed by the Section staff for consistency and enforcement. If an enforcement referral is necessary because significant non-complier (SNC) violations were noted, or the facility is recalcitrant in addressing violations, an enforcement officer is assigned, and the SNC evaluation is entered into RCRAInfo. The enforcement officer is responsible for development of the enforcement case. The enforcement officer will develop recommendations to the Penalty Assessment Team which are then carried forward to the Bureau Director for final enforcement decision. This decision can result in either a Letter of Warning issued to the facility, a Call-in Letter or an Administrative Order.

If a letter of warning is issued, the enforcement officer works with the facility to return it to compliance and an evaluation to denote that the facility is no longer a significant non-complier (SNN evaluation) is entered into RCRAInfo to terminate SNC status. If a call-in letter is sent to the facility, pre-filing negotiations begin with the goal of filing a Consent Agreement/Final Order with 360 days of the initial inspection. If pre-filing negotiations are not successful, an administrative order can be issued under the Secretary's signature.

(Source: KDHE Compliance and Enforcement Process chart, July 2010 and discussions with Section staff)

Section staff also addresses questions from regulated entities, provide compliance and technical assistance to regulated entities, issue EPA Identification numbers to new facilities, collect biennial report information, input compliance and enforcement information into RCRAInfo and maintain inspection and enforcement files.

**Local Agencies included/excluded from review**

Kansas has no local agencies who are involved in implementing the RCRA program.

**Resources**

<b>Positions in RCRA Subtitle C Program</b>	<b>number of FTE's</b>
Enforcement	5 (includes unit chief), 3 are also inspectors
Inspections	6 FTE equivalents throughout the 6 district offices
Legal Counsel	One attorney provided by the Secretary's office (via the Legal Department)

**Staffing/Training**

In FY09, the Section was fully staffed. However, the four enforcement officers are also credentialed inspectors who are available to conduct field inspections as necessary. Section staff provides training twice a year at meetings with the District Offices. Training topics vary throughout the year.

## **Data Reporting Systems/Architecture**

KDHE enters all RCRA compliance and enforcement activities in RCRAInfo, which is the EPA database of record for capturing RCRA facility information, compliance, enforcement, corrective action, and permit activities.

## **B. MAJOR PROGRAM PRIORITIES AND ACCOMPLISHMENTS**

### **Priorities**

In state fiscal year 2009, the Director of the Bureau of Waste Management at the Kansas Department of Health and Environment set as a priority for the Compliance Assistance and Enforcement Section the inspection of hazardous waste generators that had not been previously inspected, regardless of generator category. Based on a rough estimation of RCRAInfo data, it appears that over 40% of the inspections targeted during calendar year 2009 may have been conducted at generators that had not previously been inspected.

### **Accomplishments**

During FFY09, senior compliance staff within the Compliance Assistance and Enforcement Section prepared and held two training sessions for inspection and enforcement staff. These semi-annual training/meeting events are arranged to bring inspection and enforcement staff together at the District Offices to discuss timely topics and obtain training on new regulations and issues.

Section staff was also able to take advantage of the training opportunities at the annual Midwest Environmental Enforcement Association conference during the calendar year. The training allows the staff to meet with others in surrounding states to discuss environmental regulation enforcement and obtain training on new and timely topics.

The Section staff periodically prepares new editions of the Hazardous Waste Connection Newsletter which highlights timely environmental topics for Kansas facilities, and discusses enforcement and regulatory issues. The newsletter is distributed to the regulated community in hard copy and electronic format.

Section staff updates the BWM Hazardous Waste Penalty Matrix as necessary to include new regulations. The policy provides proposed penalty ranges for the majority of violations possible under the current regulatory program. The policy is guidance, and adjustments to penalty amounts outside the suggested ranges are not limited by the policy. The latest revision occurred December 1, 2009.

Section staff, in conjunction with Department legal counsel, issued and settled 37 formal enforcement actions in FFY09. Total penalties assessed reached \$557,270. The SNC identification rate during that same time period was over three times the national average for the inspections conducted by the State.

### **Element 13**

The BWM maintains a blog on its website for questions and answers from and for the regulated community. This blog has shown to be an effective, environmentally conscious vehicle for information exchange in the regulated community. The blog, in conjunction with the previously mentioned Hazardous Waste Connection Newsletter, helps to distribute timely information to the regulated community.

## **Best Practices**

BWM's efforts at outreach to regulated entities through the Hazardous Waste Connection Newsletter and blog on the Bureau's website provide the necessary avenues for hazardous waste generators to obtain information regarding the proper management of waste in Kansas. BWM's semi-annual training/meetings with the District Office staff help to keep the inspection staff current on new regulations and enforcement issues.

## **C. PROCESS FOR SRF REVIEW**

**Review Period:** FFY 2009

### **Key Dates and Communications with Region**

**Initial state notification:** The Kick-Off Letter was sent to the State on May 21, 2010.

**Data:** The data for the Preliminary Data Analysis (PDA) was generated on July 13, 2010.

**On-Site Review:** The On-Site Review was conducted in the KDHE offices in Topeka, Kansas, on July 12-14, 2010.

**Exit Meeting:** The EPA review team conducted the exit meeting for the On-Site Review with KDHE management on July 15, 2010, in Topeka, Kansas.

### **EPA and KDHE Lead Contacts for Review**

#### **EPA Evaluators**

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#### **State Contacts:**

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Jim Rudeen	Chief, Compliance Assistance and Enforcement Section	785-296-1603
Rebecca Wenner	Chief, Compliance and Enforcement Unit	785-296-1604

### III. Status of Outstanding Recommendations from Previous Reviews

During the previous SRF review of Kansas' hazardous waste compliance and enforcement program, EPA Region 7 identified several actions to be taken to address issues found during the review. These included increasing the level of detail in inspection reports, consistently entering SNC data into RCRAInfo, and documenting nexus of SEP to violation in enforcement settlements. The table below, however, indicates the two findings that were closed out from the previous review as programmatic areas to be monitored in future program reviews. Based on the results of this program review, these areas still require attention by the State. (Appendix A contains a comprehensive list of completed and outstanding actions for reference.)

State	Status	Due Date	Media	Element	Title	Finding
KS	Working (to be addressed in round 2 program review follow-up)	12/30/11	RCRA	8	Penalty Calculation	Economic benefit is not calculated for penalty actions.
KS	Working (to be addressed in round 2 program review follow-up)	12/30/11	RCRA	8	Penalty Calculation	Economic benefit not collected.

## IV. Findings

Findings represent the Region's conclusions regarding the issue identified. Findings are based on the Initial Findings identified during the data or file review, as well as from follow-up conversations or additional information collected to determine the severity and root causes of the issue. There are four types of findings, which are described below:

**Good Practices** – this describes activities, processes, or policies that the SRF data metrics and/or the file reviews show are being implemented exceptionally well and which the State is expected to maintain at a high level of performance. Additionally, the report may single out specific innovative and noteworthy activities, processes, or policies that have the potential to be replicated by other States and that can be highlighted as a practice for other states to emulate. No further action is required by either EPA or the State.

**Meets SRF Program Requirements** – this indicates that no issues were identified under this Element.

**Areas for State\* Attention** – this describes activities, processes, or policies that the SRF data metrics and/or the file reviews show are being implemented with minor deficiencies that the State needs to pay attention to strengthen its performance, but are not significant enough to require the Region to identify and track State actions to correct. This can describe a situation where a State is implementing either EPA or State policy in a manner that requires self-correction to resolve concerns identified during the review. These are single or infrequent instances that do not constitute a pattern of deficiencies or a significant problem. These are minor issues that the State should self-correct without additional EPA oversight. However, the State is expected to improve and maintain a high level of performance.

**Areas for State\* Improvement-Recommendations Required** – this describes activities, processes, or policies that the metrics and/or the file reviews show are being implemented by the state that have significant problems that need to be addressed and that require follow-up EPA oversight. This can describe a situation where a state is implementing either EPA or State policy in a manner requiring EPA attention, For example, these would be areas where the metrics indicate that the State is not meeting its commitments, there is a pattern of incorrect implementation in updating compliance data in the data systems, there are incomplete or incorrect inspection reports, and/or there is ineffective enforcement response. These would be significant issues and not merely random occurrences. Recommendations are required for these problems that will have well defined timelines and milestones for completion. Recommendations will be monitored in the SRF Tracker.

\*Or, EPA Region's attention, where program is directly implemented.

**[RCRA] Element 1 – Data Completeness**

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

Element + Finding Number	Finding 1.1	KDHE's RCRA compliance data for Kansas was complete overall.
	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement (Recommendation Required)
	Explanation of the Finding	<p>The file reviews indicated that the data in RCRAInfo agreed with the documentation contained in the facility files. The relatively small amount of missing data was not concentrated in any particular area to suggest a systemic data entry issue. Overall, KDHE's RCRA compliance data was complete. The missing data is described as follows:</p> <p>Two formal enforcement actions were missing from the database at the time of the file review.            One facility was missing an SNY evaluation and one was missing an SNN evaluation.            Two facilities were missing an informal enforcement action in the database.            SEP data for two facilities needed to be updated for SEP value.            The formal enforcement action for one facility did not have the appropriate violations linked to the enforcement action.</p> <p>RCRAInfo printouts for these seven facilities were subsequently provided to KDHE indicating where data was missing. All of the missing data has now been entered by KDHE and we consider this element to be meeting SRF program requirements.</p>
	Metric(s) and Quantitative Value	Data Metrics 1D2, 1F1, 1F2, 1G – Number of informal and formal actions, and associated SNC designations and penalties assessed in RCRAInfo.
	State's Response	
	Action(s)	KDHE should re-emphasize its data entry procedures to ensure that all formal and informal enforcement actions and SEP information are recorded in RCRAInfo.

**[RCRA] Element 2 – Data Accuracy**

**Degree to which data reported into the national system is accurately entered and maintained (example, correct codes used, dates are correct, etc.).**

Element + Finding Number	Finding 2.1	KDHE's compliance and enforcement data in RCRAInfo was accurate for most of the files reviewed.
	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement (Recommendation Required)
	Explanation of the Finding	<p>All of the <i>inspection</i> information from the 30 reviewed files was accurately reflected in the national data system. Dates and types of inspections were correctly recorded, as were violations and return to compliance dates. Overall, the amount of <i>enforcement</i> data recorded in RCRAInfo for the 30 files reviewed was accurate and complete. We did note, however, some enforcement data missing in seven of the 30 files reviewed. This is described and addressed in Element 1, above.</p>
	Metric(s) and Quantitative Value	File Review Metric 2c – Percentage of files reviewed where mandatory data are accurately reflected in the national data system. (77%)
	State's Response	
	Action(s)	KDHE should re-emphasize its data entry procedures to ensure that all formal and informal enforcement actions and SEP information are recorded in RCRAInfo.

**[RCRA] Element 3 - Timeliness of Data Entry**

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

Element + Finding Number	Finding 3.1	There appeared to be little change between the Production data set and the Frozen data set, indicating that where data was entered, it was entered in a timely fashion.
	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement (Recommendation Required)
	Explanation of the Finding	There is little change between the frozen data set and the production data set, indicating that the data is entered in a timely manner. In instances where the data is missing, however, this will not be reflected if not entered before the production data set is pulled.
	Metric(s) and Quantitative Value	File Review Metric 3b – comparison of the production data set results with the frozen data set.
	State's Response	
	Action(s)	Any missing or incorrect data will be brought to the State's attention, as discussed in Finding 1.1, above. Therefore, no further action is necessary for element 3.

**[RCRA] Element 4 - Completion of Commitments.**

**Degree to which all enforcement/compliance commitments in relevant agreements (i.e., PPAs, PPGs, categorical grants, CMS plans, authorization agreements, etc.) are met and any products or projects are completed.**

Element + Finding Number	Finding 4.1	KDHE generally met their 2009 Annual Performance goals in their FY09 work plan. Note that the State FY is equivalent to calendar year 2009.
	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement (Recommendation Required)
	Explanation of the Finding	Per KDHE's end of year report for FY09, the State completed a total of 263 compliance evaluation inspections (CEIs), including inspections at 14 operating and/or full-enforcement TSDFs, and 43 LQGs. These inspections constituted 98% of the inspections scheduled by KDHE for the reporting period. Twenty-six financial assurance reviews were also completed during this period. Thirty-four formal enforcement cases were initiated during the reporting period.
	Metric(s) and Quantitative Value	File Review Metric – Planned inspections completed. (TSDFs = 14; LQGs = 43)
	State's Response	
	Action(s)	No further action necessary.

**[RCRA] Element 5 – Inspection Coverage**

**Degree to which state completed the universe of planned inspections/compliance evaluations (addressing core requirements and federal, state and State priorities).**

Element + Finding Number	Finding 5.1	KDHE was within 7 percentage points of meeting the two-year goal for TSDf inspections, and within 3 percentage points of meeting the five-year goal for LQG inspections.
	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement (Recommendation Required)
	Explanation of the Finding	<p>The combined inspection coverage for operating TSDfS in Kansas over a two year period is 92.9%. One of 14 operating TSDfS did not receive an inspection within the two-year period, either by KDHE or EPA. That 1 remaining TSDf, however, was inspected shortly after completion of this draft report.</p> <p>The combined inspection coverage for LQGs in Kansas over a five year period is 96.5%. This exceeds the national average of 74.2%, but is less than the goal of 100%. Per the SRF data results, 6 LQGs were not inspected in the 5 year period. The status of these facilities has been reviewed and none of them are currently notified as LQGs in RCRAInfo. Five of the 6 former LQGs changed generator status in 2008. The remaining LQG ceased operations in 2009. As a result, the inspection of these LQG's and TSD is no longer an issue requiring attention.</p>
	Metric(s) and Quantitative Value	Data Metric 5a – Inspection coverage for operating TSDfS (2 FYs) (92.9%) Data Metric 5b – Inspection coverage for LQGs (1 FY). (36.4%) Data Metric 5c1 – Inspection coverage for LQGs (5 FYs) (96.5%) Data Metric 5c2 – Inspection coverage for active SQGs (5 FYs) (44.8%) Data Metric 5e1 – Inspections at active CESQGs (5 FYs) (801)
	State's Response	
	Action(s)	None required.

<b>[RCRA] Element 6 – Quality of Inspection or Compliance Evaluation Reports</b>		
<b>Degree to which inspection or compliance evaluation reports properly document observations, are completed in a timely manner, and include accurate description of observations.</b>		
<b>Element + Finding Number</b>	<b>Finding 6.1</b>	<b>KDHE's inspection reports were complete, provided sufficient information to determine compliance at the facility and were completed in a timely manner.</b>
	<b>Is this finding a(n) (select one):</b>	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement (Recommendation Required)
	<b>Explanation of the Finding</b>	<p>All of the inspection reports reviewed were complete and included the necessary level of detail to determine compliance at the facility. Two inspection reports missed one violation each. These violations were minor compared to the scope of the inspection overall, and would not have made any difference in the type of enforcement follow-up taken at each facility.</p> <p>26 of the 30 inspection reports were completed within 30 days of the inspection date. Four reports took longer to complete, but this did not appear to have an inordinate affect on the timeliness of enforcement in these cases. Two of these reports were completed shortly after the 30 day timeframe and the other two were very complex TSD inspections.</p>
	<b>Metric(s) and Quantitative Value</b>	<p>File Review Metric 6b – Percentage of inspection reports reviewed that are complete and provide sufficient documentation to determine compliance at the facility. (100%)</p> <p>File Review Metric 6c – Percentage of inspection reports completed within a specified time frame (30 days) (87%)</p>
	<b>State's Response</b>	
	<b>Action</b>	The State should ensure that all violations are noted in the inspection reports and remind all staff of the need to complete all reports within 30 days.

**[RCRA] Element 7 - Identification of Alleged Violations.**

**Degree to which compliance determinations are accurately made and promptly reported in the national database based upon compliance monitoring report observations and other compliance monitoring information (e.g., facility-reported information).**

Element + Finding Number	Finding 7.1	KDHE's inspections resulted in accurate compliance determinations and those determinations were timely reported in the national database.
	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement (Recommendation Required)
	Explanation of the Finding	<p>All of the inspection reports reviewed contained the necessary information to indicate that the compliance determinations of SNC or SV were accurate.</p> <p>28 of the 30 SNC and SV determinations were made within 150 days of the inspection and entered into RCRAInfo in a timely manner. Two determinations were made within 240 days of the inspection and entered into RCRAInfo. These two determinations involved a large number of violations that took extra time to evaluate, including the need to make hazardous waste determinations before a final SNC evaluation could be made.</p> <p>KDHE's inspections resulted in accurate compliance determinations and, for the most part, those determinations were timely reported in the national database.</p>
	Metric(s) and Quantitative Value	<p>File Review Metric 7a – Percentage of accurate compliance determinations based on inspection reports. (100%)</p> <p>File Review Metric 7b – of violation determinations in the files reviewed that are reported timely to the national database (within 150 days). (93%)</p>
	State's Response	
	Action(s)	None Required.

**[RCRA] Element 8 - Identification of SNC and HPV**

**Degree to which the state accurately identifies significant noncompliance/high priority violations and enters information into the national system in a timely manner.**

Element + Finding Number	Finding 8.1	KDHE identified numerous SNCs during the year. Of the files reviewed, only one SNC designation was missing from the database of the 15 SNCs examined for the program review. The lack of SNC designation had no bearing on the formal enforcement action follow-up for this particular case.
	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement (Recommendation Required)
	Explanation of the Finding	<p>30 files were selected for review. Of these, 15 were designated as SNC and 15 were designated as SV by KDHE. Our review of the inspection reports and other file documentation finds that the KDHE accurately categorized the violations and noncompliance status of each facility in all cases. Of the 15 facilities found to be in SNC, only one did not have an SNY evaluation entered into the RCRAInfo database. The State has already entered the SNC designation for the one remaining SNC into the RCRAInfo database.</p> <p>KDHE's SNC identification rate is well above the national average.</p>
	Metric(s) and Quantitative Value	<p>Data Metric 8a – SNC identification rate at sites with inspections (1 FY). (11.7%)            Data Metric 8b – Percent of SNC determinations made within 150 days (1 FY). (71.4%)            Data Metric 8c – Percent of formal actions taken that received a prior SNC listing (1 FY). (89.5%)            File Review Metric 8d – Percentage of violations in files reviewed that was accurately determined to be SNC. (100%)</p>
	State's Response	
	Action(s)	None required.

**[RCRA] Element 9 - Enforcement Actions Promote Return to Compliance**

**Degree to which state enforcement actions include required corrective action (i.e., injunctive relief or other complying actions) that will return facilities to compliance in a specific time frame.**

Element + Finding Number	Finding 9.1	KDHE documents return to compliance for SNC and secondary violations in the program files.
	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement (Recommendation Required)
	Explanation of the Finding	<p>Fourteen of the 15 files reviewed for facilities that were in SNC contained documentation that the facility has or will return to compliance. Only one facility file lacked information regarding return to compliance, for disposal of a particular waste stream.</p> <p>Likewise, 14 of the 15 files reviewed for facilities that were secondary violators contained documentation that the facility has or will return to compliance. The one facility file that lacked information regarding return to compliance appears to be due to an unresolved issue involving a gasoline waste stream.</p>
	Metric(s) and Quantitative Value	<p>File Review Metric 9b – Percentage of enforcement responses that have returned or will return a source in SNC to compliance. (93%)</p> <p>File Review Metric 9c – Percentage of enforcement responses that have returned or will return Secondary Violators (SV's) to compliance. (93%)</p>
	State's Response	
	Action(s)	Follow up with the facility in SNC to obtain the waste disposal documentation by June 30. 2011.

**[RCRA] Element 10 – Timely and Appropriate Action**

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

Element + Finding Number	Finding 10.1	Formal enforcement actions are generally taken by KDHE in a timely manner with a few exceptions. Timeliness of enforcement actions was noted as an issue from the SRF Round 1 review.
	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input checked="" type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement (Recommendation Required)
	Explanation of the Finding	<p>The files reviewed indicated that all of the informal enforcement actions were taken within the 150 day timeframe to be considered timely.</p> <p>The formal enforcement actions were not timely in all instances. Five consent agreement/final orders (37%) were filed more than 360 days after the initial inspections.</p> <p>KDHE's preferred approach to enforcement is to return a facility to physical compliance prior to issuance of a formal enforcement action. This allows for the associated order or consent agreement to comprehensively address all areas of non-compliance, which can change as a facility responds to an inspection. The State believes that final enforcement documents can be simplified if compliance is achieved prior to formal enforcement.</p> <p>Although this was also an area for state attention in the Round 1 review, KDHE, in their response to the draft report, has committed to review and evaluate their present compliance/enforcement process to reduce timeframes. In addition, it is noted that the percentage of formal enforcement actions meeting the timely criteria had improved in Round 2 versus Round 1.</p>
	Metric(s) and Quantitative Value	File Review Metric 10c – Percentage of enforcement responses reviewed taken in a timely manner. (63% formal, 100% informal)
	State's Response	

	Action(s)	<p>The State should evaluate efforts to move settlement negotiations along so as to meet the 360 day timeframe for consent agreement/final orders. As a result of their evaluation, by June 30, 2011, the State should identify the steps to be taken at that time to avoid untimely enforcement action in the future. The Region will follow-up with the State and monitor progress regarding these improvements during FY11 and FY12.</p>
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Element + Finding Number	Finding 10.2	Enforcement responses taken by KDHE are appropriate to the violations.
	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement (Recommendation Required)
	Explanation of the Finding	For the 30 files reviewed, EPA determined that the appropriate enforcement action was taken by KDHE in response to the violations documented as result of the inspections. The 30 facility files included 15 facilities at which formal enforcement actions were taken, and 15 at which informal enforcement actions were taken by KDHE.
	Metric(s) and Quantitative Value	File Review Metric 10d – Percentage of enforcement responses reviewed are appropriate to the violations. (100%)
	State's Response	
	Action(s)	None required.

**[RCRA] Element 11 - Penalty Calculation Method**

**Degree to which state documents in its files that initial penalty calculation includes both gravity and economic benefit calculations, appropriately using the BEN model or other method that produces results consistent with national policy.**

Element + Finding Number	Finding 11.1	Initial penalty calculations consistently included a gravity component. However, none of the penalty calculations reviewed included a separate economic benefit calculation. KDHE does not calculate economic benefit independent of the gravity-based penalty. This is a continuing problem from the SRF Round 1 review.
	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement (Recommendation Required)
	Explanation of the Finding	Files for 14 penalty actions were reviewed. Gravity-based penalty calculations were documented in these files, however, economic benefit was not calculated as a separate penalty component in any of the penalty calculation.
	Metric(s) and Quantitative Value	File Review Metric 11a – Percentage of reviewed penalty calculations that consider and include where appropriate gravity and economic benefit. (0%)
	State's Response	
	Action(s)	KDHE needs to develop a standard procedure where economic benefit is consistently considered and calculated for each penalty action. This SOP should be drafted and submitted to Region 7 by September 30, 2011. The SOP should be finalized and implementation begun by December 30, 2011.

**[RCRA] Element 12 - Final Penalty Assessment and Collection**

**Degree to which differences between initial and final penalty are documented in the file along with a demonstration in the file that the final penalty was collected.**

Element + Finding Number	Finding 12.1	KDHE consistently documents the difference between initial and final penalties, and includes documentation in the files that penalties have been collected after settlement has been reached with Respondents.
	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement (Recommendation Required)
	Explanation of the Finding	<p>Seven formal actions resulted in a difference between the initial and final penalties. Documentation for six of these cases was represented in the files. The remaining penalty adjustment was the result of an inability to pay analysis. Although a memo from the financial analyst was available for review, the ABEL analysis was missing from the file. The state will insert this in the file. The remaining six penalty actions did not result in a change in penalties sought. The original penalty was obtained in settlement.</p> <p>In all 12 cases where penalties were due and payable at the time of the program review, there was documentation in the facility files that the penalty payments were received as required,</p>
	Metric(s) and Quantitative Value	<p>Data Metric 12b – Percent of final formal actions with penalty (1 FY). (97.3%)                  File Review Metric 12a – Percentage of penalties reviewed that document the difference and rationale between the initial and final assessed penalty. (100%)                  File Review Metric 12b – Percentage of files that document collection of penalty. (100%)</p>
	State's Response	
	Action(s)	None Required.

## Appendix A: Status of Recommendations from Previous Reviews

During the previous SRF review of Kansas' hazardous waste compliance and enforcement program, Region 7 identified several actions to be taken to address issues found during the review. The table below shows the status of progress toward completing those actions.

State	Status	Due Date	Element	Finding
KS- 2005	Completed	07/14/2010	Degree to which inspection/evaluation reports document inspection findings, including accurate identification of violations.	Some of the inspection reports did not include detailed information regarding how waste streams are generated, how the facility manages those waste streams on and off site, and how the facility conducted its hazardous waste determinations for each waste stream
KS- 2005	Completed	07/14/2010	Degree to which inspection/evaluation reports document inspection findings, including accurate identification of violations.	In those instances where the facility representative corrects a violation during the inspection, the report should include a description of the actions taken at that time by the facility.
KS- 2005	Completed	12/31/07	Degree to which significant violations are reported to EPA in a timely and accurate manner.	State does not consistently enter SNY evaluations for SNCs
KS- 2005	Completed	12/31/07	Degree to which a state takes timely and appropriate enforcement actions, in accordance with policy relating to specific media.	Five of twelve formal enforcement actions required more than 360 days to issue.
KS- 2005	Working	12/30/11	Degree to which the state includes both gravity and economic benefit calculations for all penalties, appropriately using the BEN model or consistent with state policy.	Economic benefit is not calculated for penalty actions.
KS- 2005	Working	12/30/11	Degree to which penalties in final enforcement actions include economic benefit and gravity in accordance with applicable penalty policies.	Economic benefit not collected.
KS- 2005	Completed	12/31/07	Degree to which penalties in final enforcement actions include economic benefit and gravity in accordance with applicable penalty policies.	Nexus of SEP to violation is not documented.
KS- 2005	Completed	12/31/07	Degree to which the minimum data requirements are complete.	Lack of Significant Noncompliers (SNC) evaluations in RCRAInfo.

**Appendix B**  
**Official Data Pull**  
**FY 2009 Data**

Metric	Metric Description	Metric Type	Agency	Nat'l Goal	Nat'l Avg	Kansas Result	Count	Universe	Not Counted
Date completeness, degree to which the minimum data requirements are complete									
1A1	Number of operating TSDFs in RCRAInfo	Data Quality	State			14	NA	NA	NA
1A2	Number of active LQGs in RCRAInfo	Data Quality	State			191	NA	NA	NA
1A3	Number of active SQGs in RCRAInfo	Data Quality	State			716	NA	NA	NA
1A4	Number of all other active sites in RCRAInfo	Data Quality	State			4889	NA	NA	NA
1A5	Number of LQGs per latest official biennial report	Data Quality	State			173	NA	NA	NA
1B1	Compliance monitoring: number of inspections (1 FY)	Data Quality	State			495	NA	NA	NA
			EPA			36	NA	NA	NA
1B2	Compliance monitoring: sites inspected (1 FY)	Data Quality	State			298	NA	NA	NA
			EPA			36	NA	NA	NA
1C1	Number of sites with violations determined at any time (1 FY)	Data Quality	State			209	NA	NA	NA
			EPA			35	NA	NA	NA
1C2	Number of sites with violations determined during the FY	Data Quality	State			184	NA	NA	NA
			EPA			24	NA	NA	NA
1D1	Informal actions: number of sites (1 FY)	Data Quality	State			200	NA	NA	NA
			EPA			26	NA	NA	NA
1D2	Informal actions: number of actions (1 FY)	Data Quality	State			417	NA	NA	NA
			EPA			29	NA	NA	NA

Metric	Metric Description	Metric Type	Agency	Nat'l Goal	Nat'l Avg	Kansas Result	Count	Universe	Not Counted
Date completeness, degree to which the minimum data requirements are complete									
1E1	SNC: number of sites with new SNC (1 FY)	Data Quality	State			35	NA	NA	NA
			EPA			4	NA	NA	NA
1E2	SNC: Number of sites in SNC (1 FY)	Data Quality	State			57	NA	NA	NA
			EPA			14	NA	NA	NA
1F1	Formal action: number of sites (1 FY)	Data Quality	State			37	NA	NA	NA
			EPA			9	NA	NA	NA
1F2	Formal action: number taken (1 FY)	Data Quality	State			37	NA	NA	NA
			EPA			11	NA	NA	NA
1G	Total amount of final penalties (1 FY)	Data Quality	State			\$557,270	NA	NA	NA
			EPA			\$496,059	NA	NA	NA
Data accuracy, degree to which the minimum data requirements are accurate.									
2A1	Number of sites SNC-determined on day of formal action (1 FY)	Data Quality	State			0	NA	NA	NA
2A2	Number of sites SNC-determined within one week of formal action (1 FY)	Data Quality	State			0	NA	NA	NA
2B	Number of sites in violation for greater than 240 days	Data Quality	State			2	NA	NA	NA
			EPA			14	NA	NA	NA
Timeliness of data entry, degree to which the minimum data requirements are complete.									
3A	Percent SNCs entered more than 60 days after designation (1 FY)	Review Indicator	State			41.9%	13	31	18
			EPA			50.0%	1	2	1

Metric	Metric Description	Metric Type	Agency	Nat'l Goal	Nat'l Avg	Kansas Result	Count	Universe	Not Counted
Inspection coverage, degree to which state completed the universe of planned inspections/compliance evaluations.									
5A	Inspection coverage for operating TSDFs (2 FYs)	Goal	State	100%	86.6%	71.4%	10	14	4
			Combined	100%	91.7%	92.9%	13	14	1
5B	Inspection coverage for LQGs (1 FY)	Goal	State	20%	25.2%	28.9%	50	173	123
			Combined	20%	27.2%	36.4%	63	173	110
5C	Inspection coverage for LQGs (5 FYs)	Goal	State	100%	68.7%	87.3%	151	173	22
			Combined	100%	74.2%	96.5%	167	173	6
5D	Inspection coverage for active SQGs (5 FYs)	Information Only	State			42.0%	301	716	415
			Combined			44.8%	321	716	395
5E1	Inspections at active CESQGs (5 FYs)	Information Only	State			763	NA	NA	NA
			Combined			801	NA	NA	NA
5E2	Inspections at active transporters (5 FYs)	Information Only	State			11	NA	NA	NA
			Combined			15	NA	NA	NA
5E3	Inspections at non-notifiers (5 FYs)	Information Only	State			0	NA	NA	NA
			Combined			1	NA	NA	NA
5E4	Inspections at active sites other than those listed in 5a-d and 5e1-5e3 (5 FYs)	Information Only	State			30	NA	NA	NA
			Combined			37	NA	NA	NA
Identification of alleged violations, degree to which compliance determinations are accurately made and promptly reported in the national database based upon compliance monitoring report observations and other compliance monitoring information.									
7C	Violation identification rate at sites with inspections (1 FY)	Review Indicator	State			61.7%	184	298	114
			EPA			66.7%	24	36	12

Metric	Metric Description	Metric Type	Agency	Nat'l Goal	Nat'l Avg	Kansas Result	Count	Universe	Not Counted
Identification of SNC and HPV, degree to which the state accurately identifies significant noncompliance & high priority violations and enters information into the national system in a timely manner.									
8A	SNC identification rate at sites with evaluations (1 FY)	Review Indicator	State	½ Nat'l Avg	3.2%	11.7%	35	298	263
			Combined	½ Nat'l Avg	3.4%	11.9%	39	327	288
8B	Percent of SNC determinations made within 150 days (1 FY)	Goal	State	100%	75.6%	71.4%	25	35	10
			EPA	100%	61.7%	100.0%	4	4	0
8C	Percent of formal actions taken that received a prior SNC listing (1 FY)	Review Indicator	State	½ Nat'l Avg	61.2%	89.5%	34	38	4
			EPA	½ Nat'l Avg	70.9%	25.0%	2	8	6
Timely and appropriate action, degree to which a state takes timely and appropriate enforcement actions in accordance with policy relating to specific media.									
10A	Percent of SNCs with formal action/referral taken within 360 days (1 FY)	Review Indicator	State	80%	45.2%	34.3%	12	35	23
			Combined	80%	41.2%	35.9%	14	39	25
10B	No activity indicator - number of formal actions (1 FY)	Review Indicator	State			37	NA	NA	NA
Final penalty assessment and collection, degree to which differences between initial and final penalty are documented in the file along with a demonstration in the file that the final penalty was collected.									
12A	No activity indicator - penalties (1 FY)	Review Indicator	State			\$557,270	NA	NA	NA
12B	Percent of final formal actions with penalty (1 FY)	Review Indicator	State	½ Nat'l Average	81.3%	97.3%	36	37	1
			Combined	½ Nat'l Average	79.8%	97.8%	44	45	1

## Appendix C

### PDA Transmittal Letter

Appendices C, D and E provide the results of the Preliminary Data Analysis (PDA). The PDA forms the initial structure for the SRF report, and helps ensure that the data metrics are adequately analyzed prior to the on-site review. This is a critical component of the SRF process because it allows the reviewers to be prepared and knowledgeable about potential problem areas before initiating the on-site portion of the review. In addition, it gives the Region focus during the file review and/or basis for requesting supplemental files based on potential concerns raised by the data metrics results.

This section, Appendix C, contains the letter transmitting the results of the PDA to the state. This letter identifies areas that the data review suggests the need for further examination and discussion during the review process.

(In this case, the PDA was not separately transmitted to the State. It was provided to program review participants at the time of the on-site program review. Therefore, no letter is attached here.)

## Appendix D

### Preliminary Data Analysis Chart

This section provides the results of the Preliminary Data Analysis (PDA). The PDA forms the initial structure for the SRF report, and helps ensure that the data metrics are adequately analyzed prior to the on-site review. This is a critical component of the SRF process because it allows the reviewers to be prepared and knowledgeable about potential problem areas before initiating the on-site portion of the review. In addition, it gives the Region focus during the file reviews and/or basis for requesting supplemental files based on potential concerns raised by the data metrics results.

The PDA reviews each data metric and evaluates state performance against the national goal or average, if appropriate. The PDA Chart in this section of the SRF report only includes metrics where potential concerns are identified or potential areas of exemplary performance. The full PDA Worksheet (Appendix E) contains every metric: positive, neutral or negative. Initial Findings indicate the observed results. Initial Findings are preliminary observations and are used as a basis of further investigation that takes place during the file review and through dialogue with the state. Final Findings are developed only after evaluating them against the file review results where appropriate, and dialogue with the state have occurred. Through this process, Initial Findings may be confirmed, modified, or determined not to be supported. Findings are presented in Section IV of this report.

Metric	Metric Description	Metric Type	Agency	Nat'l Goal	Nat'l Avg	Kansas Result	EPA Preliminary Analysis
5A	Inspection coverage for operating TSDFs (2 FYs)	Goal	State	100%	86.6%	71.4%	Review status of remaining TSD to determine if inspection is necessary
5C	Inspection coverage for LQGs (5 FYs)	Goal	State	100%	68.7%	87.3%	Remaining generators were not LQGs in 2009. Most left LQG status in 2008
8B	Percent of SNC determinations made within 150 days (1 FY)	Goal	State	100%	75.6%	71.4%	Evaluate timing of SNC determinations
10A	Percent of SNCs with formal action/referral taken within 360 days (1 FY)	Review Indicator	State	80%	45.2%	34.3%	Evaluate formal enforcement timeframes.

## Appendix E

### PDA Worksheet (with Regional and State Comments)

Metric	Metric Description	Metric Type	Agency	Nat'l Goal	Nat'l Avg	Kansas Result	Count	Universe	Not Counted	Discrepancy explanation	Regional evaluation
Date completeness, degree to which the minimum data requirements are complete											
1A1	Number of operating TSDFs in RCRAInfo	Data Quality	State			14	NA	NA	NA		
1A2	Number of active LQGs in RCRAInfo	Data Quality	State			191	NA	NA	NA		
1A3	Number of active SQGs in RCRAInfo	Data Quality	State			716	NA	NA	NA		
1A4	Number of all other active sites in RCRAInfo	Data Quality	State			4889	NA	NA	NA		
1A5	Number of LQGs per latest official biennial report	Data Quality	State			173	NA	NA	NA		
1B1	Compliance monitoring: number of inspections (1 FY)	Data Quality	State			495	NA	NA	NA		
			EPA			36	NA	NA	NA		
1B2	Compliance monitoring: sites inspected (1 FY)	Data Quality	State			298	NA	NA	NA		
			EPA			36	NA	NA	NA		
1C1	Number of sites with violations determined at any time (1 FY)	Data Quality	State			209	NA	NA	NA		
			EPA			35	NA	NA	NA		
1C2	Number of sites with violations determined during the FY	Data Quality	State			184	NA	NA	NA		
			EPA			24	NA	NA	NA		
1D1	Informal actions: number of sites (1 FY)	Data Quality	State			200	NA	NA	NA		
			EPA			26	NA	NA	NA		
1D2	Informal actions: number of action (1 FY)	Data Quality	State			417	NA	NA	NA		
			EPA			29	NA	NA	NA		

Metric	Metric Description	Metric Type	Agency	Nat'l Goal	Nat'l Avg	Kansas Result	Count	Universe	Not Counted	Discrepancy explanation	Regional evaluation
Date completeness, degree to which the minimum data requirements are complete											
1E1	SNC: number of sites with new SNC (1 FY)	Data Quality	State			35	NA	NA	NA		
			EPA			4	NA	NA	NA		
1E2	SNC: Number of sites in SNC (1 FY)	Data Quality	State			57	NA	NA	NA		
			EPA			14	NA	NA	NA		
1F1	Formal action: number of sites (1 FY)	Data Quality	State			37	NA	NA	NA		
			EPA			9	NA	NA	NA		
1F2	Formal action: number taken (1 FY)	Data Quality	State			37	NA	NA	NA		
			EPA			11	NA	NA	NA		
1G	Total amount of final penalties (1 FY)	Data Quality	State			\$557,270	NA	NA	NA		
			EPA			\$496,059	NA	NA	NA		
Data accuracy, degree to which the minimum data requirements are accurate.											
2A1	Number of sites SNC-determined on day of formal action (1 FY)	Data Quality	State			0	NA	NA	NA		
2A2	Number of sites SNC-determined within one week of formal action (1 FY)	Data Quality	State			0	NA	NA	NA		
2B	Number of sites in violation for greater than 240 days	Data Quality	State			2	NA	NA	NA		
			EPA			14	NA	NA	NA		
Timeliness of data entry, degree to which the minimum data requirements are complete.											
3A	Percent SNCs entered more than 60 days after designation (1 FY)	Review Indicator	State			41.9%	13	31	18		
			EPA			50.0%	1	2	1		

Metric	Metric Description	Metric Type	Agency	Nat'l Goal	Nat'l Avg	Kansas Result	Count	Universe	Not Counted	Discrepancy explanation	Regional evaluation
Inspection coverage, degree to which state completed the universe of planned inspections/compliance evaluations.											
5A	Inspection coverage for operating TSDFs (2 FYs)	Goal	State	100%	86.6%	71.4%	10	14	4		Review status of remaining TSD to determine if inspection is necessary
			Combined	100%	91.7%	92.9%	13	14	1		
5B	Inspection coverage for LQGs (1 FY)	Goal	State	20%	25.2%	28.9%	50	173	123		
			Combined	20%	27.2%	36.4%	63	173	110		
5C	Inspection coverage for LQGs (5 FYs)	Goal	State	100%	68.7%	87.3%	151	173	22		Remaining generators were not LQGs in 2009. Most left LQG status in 2008.
			Combined	100%	74.2%	96.5%	167	173	6		
5D	Inspection coverage for active SQGs (5 FYs)	Information Only	State			42.0%	301	716	415		
			Combined			44.8%	321	716	395		
5E1	Inspections at active CESQGs (5 FYs)	Information Only	State			763	NA	NA	NA		
			Combined			801	NA	NA	NA		
5E2	Inspections at active transporters (5 FYs)	Information Only	State			11	NA	NA	NA		
			Combined			15	NA	NA	NA		
5E3	Inspections at non-notifiers (5 FYs)	Information Only	State			0	NA	NA	NA		
			Combined			1	NA	NA	NA		
5E4	Inspections at active sites other than those listed in 5a-d and 5e1-5e3 (5 FYs)	Information Only	State			30	NA	NA	NA		
			Combined			37	NA	NA	NA		
Identification of alleged violations, degree to which compliance determinations are accurately made and promptly reported in the national database based upon compliance monitoring report observations and other compliance monitoring information.											
7C	Violation identification rate at sites with inspections (1 FY)	Review Indicator	State			61.7%	184	298	114		
			EPA			66.7%	24	36	12		

Metric	Metric Description	Metric Type	Agency	Nat'l Goal	Nat'l Avg	Kansas Result	Count	Universe	Not Counted	Discrepancy explanation	Regional evaluation
Identification of SNC and HPV, degree to which the state accurately identifies significant noncompliance & high priority violations and enters information into the national system in a timely manner.											
8A	SNC identification rate at sites with evaluations (1 FY)	Review Indicator	State	½ Nat'l Avg	3.2%	11.7%	35	298	263		
			Combined	½ Nat'l Avg	3.4%	11.9%	39	327	288		
8B	Percent of SNC determinations made within 150 days (1 FY)	Goal	State	100%	75.6%	71.4%	25	35	10		Evaluate timing of SNC determinations.
			EPA	100%	61.7%	100.0%	4	4	0		
8C	Percent of formal actions taken that received a prior SNC listing (1 FY)	Review Indicator	State	½ Nat'l Avg	61.2%	89.5%	34	38	4		
			EPA	½ Nat'l Avg	70.9%	25.0%	2	8	6		
Timely and appropriate action, degree to which a state takes timely and appropriate enforcement actions in accordance with policy relating to specific media.											
10A	Percent of SNCs with formal action/referral taken within 360 days (1 FY)	Review Indicator	State	80%	45.2%	34.3%	12	35	23		Evaluate formal enforcement timeframes.
			Combined	80%	41.2%	35.9%	14	39	25		
10B	No activity indicator - number of formal actions (1 FY)	Review Indicator	State			37	NA	NA	NA		
Final penalty assessment and collection, degree to which differences between initial and final penalty are documented in the file along with a demonstration in the file that the final penalty was collected.											
12A	No activity indicator - penalties (1 FY)	Review Indicator	State			\$557,270	NA	NA	NA		
12B	Percent of final formal actions with penalty (1 FY)	Review Indicator	State	½ Nat'l Average	81.3%	97.3%	36	37	1		
			Combined	½ Nat'l Average	79.8%	97.8%	44	45	1		

## Appendix F

### File Selection

The files were selected randomly by using the OTIS File Selection Tool. The total number of files in the selection universe was over 300. Therefore, approximately 35 files were selected, representing facilities with inspections, enforcement actions, SNC violations, and minor violations during the review period.

##	Facility City	Evaluation	Violation	SNC	Informal Action	Formal Action	Penalty	Universe	Select
1	Haysville	2	4	0	2	0	0	TSD(COM)	Acc/Rep
2	Kansas City	5	11	1	5	0	0	LQG	Acc/Rep
3	Kansas City	5	5	0	5	0	0	LQG	Acc/Rep
4	Oskaloosa	1	0	0	0	1	16,000	OTH	Acc/Rep
5	Elwood	2	12	1	3	1	11,300	LQG	Acc/Rep
6	Valley Center	2	3	0	2	0	0	TSD(LDF)	Acc/Rep
7	Wichita	2	1	0	2	0	0	TSD(TSF)	Acc/Rep
8	Roeland Park	3	16	1	4	1	33,500	CES	Acc/Rep
9	Herington	3	0	0	3	0	0	SQG	Acc/Rep
10	Kansas City	0	0	0	0	1	30,280	LQG	Acc/Rep
11	Meriden	3	13	0	3	0	0	SQG	Acc/Rep
12	Salina	1	2	0	1	0	0	TSD(LDF)	Acc/Rep
13	Edwardsville	6	4	1	7	0	0	SQG	Acc/Rep
14	Wichita	2	11	1	2	0	0	SQG	Acc/Rep
15	Liberal	2	3	0	2	0	0	SQG	Acc/Rep
16	Salina	1	6	0	1	0	0	LQG	Acc/Rep
17	Hays	1	6	0	1	0	0	SQG	Acc/Rep
18	Leavenworth	4	10	0	4	0	0	SQG	Acc/Rep
19	Wichita	2	2	0	2	0	0	SQG	Acc/Rep
20	Wichita	5	11	1	4	0	0	SQG	Acc/Rep
21	Wichita	0	0	1	0	1	37,300	LQG	Acc/Rep
22	Olathe	3	9	0	3	0	0	SQG	Acc/Rep
23	Garden City	2	3	0	2	0	0	SQG	Acc/Rep
24	Coffeyville	0	0	0	0	1	27,000	SQG	Acc/Rep
25	Pittsburg	2	4	0	2	0	0	SQG	Acc/Rep
26	Bonner Springs	0	0	0	0	1	38,060	CES	Acc/Rep
27	Lawrence	2	5	0	2	0	0	LQG	Acc/Rep
28	Coffeyville	1	5	0	1	0	0	LQG	Acc/Rep
29	Lawrence	6	1	1	7	0	0	LQG	Acc/Rep
30	Solomon	1	0	0	0	0	0	SQG	Acc/Rep
31	Lawrence	2	10	1	3	0	0	CES	Acc/Rep
32	Wichita	1	7	0	1	1	0	CES	Acc/Rep
33	Atchison	2	11	1	3	0	0	CES	Acc/Rep
34	Wichita	1	10	0	1	0	0	OTH	Acc/Rep
35	Wichita	2	1	0	2	0	0	SQG	Acc/Rep

## Appendix G

### File Review Analysis

This section presents the initial observations of the Region regarding program performance against file metrics. Initial Findings are developed by the Region at the conclusion of the File Review process. The Initial Finding is a statement of fact about the observed performance, and should indicate whether the performance indicates a practice to be highlighted or a potential issue, along with some explanation about the nature of good practice or the potential issue. The File Review Metrics Analysis Form in the report only includes metrics where potential concerns are identified, or potential areas of exemplary performance.

Initial Findings indicate the observed results. Initial Findings are preliminary observations and are used as a basis for further investigation. Findings are developed only after evaluating them against the PDA results where appropriate, and dialogue with the state have occurred. Through this process, Initial Findings may be confirmed, modified, or determined not to be supported. Findings are presented in Section IV of this report.

The quantitative metrics developed from the file reviews are initial indicators of performance based on available information and are used by the reviewers to identify areas for further investigation. Because of the limited sample size, statistical comparisons among programs or across states cannot be made.

Metric #	File Review Metric Description	Metric Value	Initial Findings
1D2, 1F1, 1F2, 1G	Number of informal and formal actions, and associated SNC designations and penalties assessed in RCRAInfo.	NA	KDHE's RCRA compliance data for Kansas is complete, except for a very few pieces of enforcement data. The file reviews indicated that the data in RCRAInfo agreed with the documentation contained in the facility files. The missing data was not concentrated in any particular area to suggest a systemic data entry issue.
3b	Comparison of the production data set results with the frozen data set.	NA	There appeared to be little change between the Production data set and the Frozen data set, indicating that where data was entered, it was entered in a timely fashion.
10c	Percentage of enforcement responses reviewed taken in a timely manner.	100% informal, 63% formal	Formal enforcement actions are generally taken by KDHE in a timely manner with a few exceptions. The files reviewed indicated that all of the informal enforcement actions were taken within the 150 day timeframe to be considered timely. The formal enforcement actions were not timely in all instances. Five consent agreement/final orders were files more than 360 days after the initial inspections.
10d	Percentage of enforcement responses reviewed are appropriate to the violations.	100%	Enforcement responses taken by KDHE are appropriate to the violations. In all files reviewed, the appropriate enforcement action was taken by KDHE in response to the violations found in the inspections.

Metric #	File Review Metric Description	Metric Value	Initial Findings
11a	Percentage of reviewed penalty calculations that consider and include where appropriate gravity and economic benefit.	0%	KDHE does not consistently document in the files that initial penalty calculations include gravity and economic benefit components. Economic benefit is not calculated independent of the gravity-based penalty. Files for 14 penalty actions were reviewed. Gravity-based penalty calculations were documented in these files, however, economic benefit was not calculated as a separate penalty component in any of the penalty calculation.
12a	Percentage of penalties reviewed that document the difference and rationale between the initial and final assessed penalty.	100%	KDHE consistently documents the difference between initial and final penalties, and includes documentation in the files that penalties have been collected after settlement has been reached with Respondents.
12b	Percentage of files that document collection of penalty.	100%	

**Appendix H**

**Correspondence**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

MAY 21 2010

Mr. William Bider
Director
Bureau of Waste Management
Kansas Department of Health and Environment
1000 SW Jackson, Suite 320
Topeka, KS 66612-1366

Subject: Performance Partnership Agreement #D00796409

Dear Mr. Bider:

The purpose of this letter is to confirm that the annual program evaluation of the Resource Conservation and Recovery Act (RCRA) Hazardous Waste Management Program will be performed by the U. S. Environmental Protection Agency (EPA), Region 7, in the third quarter of federal fiscal year (FFY) 2010.

This year the program review components will be Hydrogeology, Enforcement, and Program Management activities that have occurred since the last review, with an emphasis on activities in FFY and calendar year 2009. The Hydrogeology review will be performed at your offices by Kurt Limesand and Jeff Johnson on June 22, 2010. They will be completing reviews of existing reports and file information for the following sites:

Comprehensive Monitoring Evaluations

E I DuPont De Nemours & Co. Inc.....KSD133579698
Kansas State University .....KSD980632772

Operation and Maintenance Inspections

Kansas Army Ammunition Plant .....KS0213820467
Koch Nitrogen Co. LLC.....KSD044625010

The Enforcement component of this year's program review will be performed by Beth Koesterer, Demetra Salisbury, and Stacie Tucker. They will begin with an introductory meeting at 2:00 p.m. on July 12, 2010. The file review will begin immediately thereafter. Don Toensing will join the team for the exit interview at 9:00 a.m. on July 15, 2010.

Jeannette Kerr will conduct the Program Management portion of the review and will accompany the Enforcement Team to the introductory meeting on the afternoon of July 12 and should complete her review that afternoon.



Letter to Mr. William Bid.  
Kansas Department of Health and Environment

The Program Review Checklists are enclosed. EPA requests that you designate a staff person to serve as the point of contact for issues relating to our program review. If you or your staff have issues or successes you would like EPA to specifically address or recognize in this part of the program review, please provide this information to EPA by May 31, 2010.

We will issue a draft report within 30 days after all review components have been completed, and request that you provide a written response to the report within 30 days of receipt. After resolution of any issues, we will issue a final report within 60 days of receipt of your final response. If you have any questions or comments regarding this program review, please contact Jeannette Kerr of my staff at (913) 551-7245. Thank you for your assistance.

Sincerely,



Don Toensing, Chief  
Waste Enforcement and Materials Management Branch  
Air and Waste Management Division

Attachment: Hydrogeology review checklists (2)  
Enforcement review checklist (2)  
Program review checklist (1)

cc: Mostafa Kamal, KDHE/BWM  
Jim Rudeen, KDHE/BEM



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7  
901 NORTH 5TH STREET  
KANSAS CITY, KANSAS 66101

NOV 29 2010

Mr. William L. Bider, Director  
Bureau of Waste Management  
Kansas Department of Health and Environment  
1000 SW Jackson  
Suite 320  
Topeka, Kansas 66612

RE: Hazardous Waste Management Program  
Assistance Number: D007964 09 0

Dear Mr. Bider:

Enclosed please find the draft report of the U. S. Environmental Protection Agency (EPA) Resource Conservation and Recovery Act (RCRA) Hazardous Waste Enforcement Program review. The review was conducted in your offices on July 12 through 14, 2010, for inspection and enforcement activities completed in federal fiscal year 2009. Beth Koesterer, Stacie Tucker, Ed Buckner and Demetra Salisbury of my staff conducted the review. I appreciate the assistance and cooperation extended to them during the review as the report was drafted.

The purpose of the review is to examine continuing programmatic performance under the above referenced assistance agreement. As identified in your current work plan, you have 30 days from receipt of this report to provide your written response. We continue to be committed to working in partnership with KDHE to promote improvements where opportunities allow. If you have any questions, please feel free to contact me at (913) 551-7446. For technical questions, or if you require additional time in which to complete your review of this draft report, please contact Beth Koesterer at (913) 551-7673. For administrative questions, you may contact Jeanette Kerr at (913) 551-7245. Again, thank you for your continued participation in our reviews.

Sincerely,

A handwritten signature in blue ink, appearing to read "Donald Toensing".

Donald Toensing, Chief  
Waste Enforcement and Materials Management Branch  
Air and Waste Management Division

Enclosure

cc: Mr. Jim Rudeen, Kansas Department of Health and Environment  
Ms. Rebecca Wenner, Kansas Department of Health and Environment





DEPARTMENT OF HEALTH  
AND ENVIRONMENT

Mark Parkinson, Governor  
John W. Mitchell, Acting Secretary

[www.kdheks.gov](http://www.kdheks.gov)

December 10, 2010

AWMD / WEMM

Mr. Don Toensing  
Chief, Waste Enforcement and Materials Management Branch  
Air and Waste Management Branch  
U.S. Environmental Protection Agency  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

RECEIVED

Re: RCRA Hazardous Waste Enforcement Program Review  
KDHE Response to EPA Draft Report dated November 18, 2010

Dear Mr. Toensing:

The KDHE Bureau of Waste Management (BWM) appreciates the feedback that EPA staff provided to KDHE regarding our RCRA compliance and enforcement efforts both during the program review conducted in July 2010 as well as in the November 18, 2010 program review report. We are always looking for ways to improve our RCRA program and EPA's comments are helpful.

Our response to EPA's report is limited to the following two elements where EPA has concerns:

Element 10 – Timely and Appropriate Action  
Element 12 – Final Penalty Assessment and Collection

**Element 10 – Timely and Appropriate Action**

EPA concluded that *"formal enforcement actions were not timely in all instances. Five consent agreement/final orders were filed more than 360 days after the initial inspections."* We agree that this length of time is undesirable; however, our approved RCRA workplan states that KDHE-BWM will make enforcement decisions within 150 days of the date the facility returns to compliance. The return to compliance is usually overseen by our waste inspectors. KDHE believes that it is important to wait for a facility to return to compliance because any associated order or consent agreement should comprehensively address all areas of non-compliance which can possibly change or expand as a facility responds to an inspection. In addition, final enforcement documents can be simplified if compliance schedules or required corrective actions do not need to be included.

Mr. Don Toensing  
December 10, 2010  
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Of the 42 hazardous waste cases initiated between October 1, 2009 and September 30, 2010, only 2 exceeded our 150 day enforcement decision goal (95 percent success). We will strive for 100 percent conformance to our goal in the future.

I believe it is appropriate for KDHE-BWM to evaluate the reasons why it took so long to document the return to compliance at some facilities subsequently leading to the delayed enforcement decisions identified by EPA. Despite our preference to wait until the noted violations are corrected before producing an enforcement document, we will determine whether it is necessary in certain cases to initiate an enforcement action before a facility returns to compliance. Various options will be considered for how to address such cases including the incorporation of compliance schedules and stipulated additional penalties for failure to satisfy identified corrective measures. Appropriate timeframes for such actions will also be considered.

#### **Element 12 – Final Penalty Assessment and Collection**

KDHE-BWM recognizes that EPA has raised this issue as a concern in the past. We also understand that a facility should not be allowed to gain an economic benefit through non-compliance or some type of economic advantage over business competitors. For this reason, KDHE has developed a RCRA penalty matrix that gives consideration to the kinds of economic benefits that are typically realized by non-compliance. The penalty amounts vary considerably from regulation to regulation taking into consideration the costs avoided by non-compliance. Therefore, a separate calculation of economic benefit would duplicate the amount already estimated and incorporated into the matrix. We would need to totally redo our penalty matrix if economic benefit was separately calculated.

The initial decision to include economic benefit in the penalty matrix simplifies the penalty calculation process; however, a more important reason for this approach in Kansas relates to the very specific penalty authority assigned to our department in K.S.A. 65-3446:

*"The secretary of the department of health and environment or the director of the division of environment, if designated by the secretary, upon a finding that a person has violated a provision of K.S.A. 65-3441 and amendments thereto, may impose a penalty not to exceed \$10,000 which shall constitute an actual and substantial economic deterrent to the violation for which it is assessed and, in the case of continuing violation, every day such violation continues shall be deemed a separate violation."*

We believe that our method of determining penalties conforms to this statutory limitation rather than separately calculating economic benefit. The single penalty amount for a specific violation should be a deterrent because it includes both the economic benefit gained along with additional "punishment" for violating the law.

KDHE will continue to work closely with EPA to ensure that the RCRA program is properly implemented in Kansas. I would like to emphasize that the BWM has a long term goal of enhancing technical compliance assistance through a variety of ways including voluntarily

Mr. Don Toensing  
December 10, 2010  
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requested compliance assistance visits by KDHE staff, compliance assistance through third parties (such as the Kansas State Small Business Assistance Program), technical newsletters (such as our Hazardous Waste Connections newsletter), and annual generator training workshops (about 800 are expected to attend the 2010 workshops).

Please let me know if you have any questions or comments regarding this response to your program review report.

Sincerely,



William L. Bider  
Director  
Bureau of Waste Management

C John Mitchell, Director, Division of Environment  
Jim Rudeen, Chief, Compliance Assistance and Enforcement Section  
Nancy Ulrich, KDHE Staff Attorney

**Kansas Department of Health and Environment (KDHE) - Clean Air Act  
Program**

**State Review Framework Report – Round 2**

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## **I. EXECUTIVE SUMMARY**

### Major Issues

The SRF review of the Kansas Clean Air Act program identified the following major issues:

- HPVs were not entered into AFS within 60 days of designation;
- Timeliness in settling larger, more complex enforcement cases; and,
- Penalty calculations do not consistently consider economic benefit.

### Summary

The problems which necessitate state improvement and require recommendations and actions include the following:

- Entering of HPVs into AFS within 60 days of designation;
- Timeliness in settling larger, more complex enforcement cases; and,
- Penalty calculations do not consistently consider economic benefit.

Areas meeting SRF program requirements or with minor issues for correction include:

- Data Completeness;
- Data Accuracy;
- Inspection Coverage; and,
- Identification of Alleged Violations.

Minor issues:

- Some inspectors review facility records, but fail to document if records are complete and meet rule requirements;
- KDHE's compliance determinations appear to be accurate and prompt, however KDHE falls below the national guideline as it relates to discovery of facilities in noncompliance with FCE, stack or enforcement; and,
- Some data elements in AFS are missing, incomplete or incorrect.

## **II. BACKGROUND INFORMATION ON STATE PROGRAM AND REVIEW PROCESS**

### **A. State Review Framework Process**

The State Review Framework (SRF) is a program designed to ensure EPA conducts oversight of state and EPA direct implementation, compliance and enforcement programs in a nationally consistent and efficient manner. Reviews look at 12 program elements covering: data (completeness, timeliness, and quality); inspections (coverage and quality); identification of violations, enforcement actions (appropriateness and timeliness); and, penalties (calculation, assessment and collection). Reviews are conducted in three phases: analyzing information from the national data systems; reviewing a limited set of state files; and development of findings and recommendations. Considerable consultation is built into the process, to ensure EPA and the state understand the causes of issues, and to seek agreement on identifying the actions needed to address problems. The reports generated by the reviews are designed to capture the information and agreements developed during the review process in order to facilitate program improvements. The reports are designed to provide factual information and do not make determinations of program adequacy. EPA also uses the information in the reports to draw a “national picture” of enforcement and compliance, and to identify any issues that require a national response. Reports are not used to compare or rank state programs.

### **B. General Program Overview**

#### Agency Structure

The Kansas Department of Health and Environment (KDHE) Clean Air Act responsibilities are performed by the Bureau of Air (BOA). BOA consists of three sections: Compliance & Enforcement; Permitting; and Modeling, Inventory & Planning. This review focuses on the air compliance and enforcement activities conducted by KDHE.

#### Compliance/Enforcement Program Structure

The Compliance and Enforcement Section is responsible for implementing the compliance and enforcement elements of the Clean Air Act (CAA).

Headquartered in Topeka, Kansas, KDHE also has CAA staff in District Offices in Dodge City,

Wichita, Chanute, Lawrence, Salina, and Hays. The Compliance and Enforcement Section is responsible for investigations, enforcement, data management, inspections and compliance assistance. The staff in the District Offices are primarily responsible for inspections (scheduled and complaints) and compliance assistance.

KDHE has also delegated inspection responsibilities to the City of Wichita Department of Environmental Health; the Wyandotte County Health Department; the Shawnee County Health Department; and the Johnson County Environmental Department. Contracts detailing responsibilities are in place for each of the local agencies. KDHE oversees the contracts to ensure compliance with the contract conditions. As of FY2010, the Shawnee County Health Department no longer conducts scheduled facility inspections. The Shawnee County Health Department will continue to respond to air-related complaints, open burning compliance issues and conduct compliance assistance outreach activities.

All Administrative Orders and Consent Agreements are signed by the Secretary of KDHE. The Kansas Department of Administration is responsible for conducting hearings associated with Administrative Orders.

### Roles and Responsibilities

#### *Compliance and Enforcement Section*

The Compliance and Enforcement Section is responsible for ensuring compliance with the CAA, preparing enforcement actions, data management, conducting investigations, observing performance tests, reviewing facility submissions and compliance assistance. The Compliance and Enforcement Section staff also conduct/participate in facility inspections. In State Fiscal Year 2009, the Section was able to achieve the following:

- Observe 43 performance tests;
- Observe 18 RATAs;
- Issue 85 Notice of Noncompliance letters;
- Issue 16 Letters of Warning;
- Issue 4 Administrative Orders;
- Enter into 33 Consent Agreements; and,
- Collect \$676,725 in Civil Penalties.

### *District Offices*

The District Offices are responsible for conducting compliance inspections, preparing inspection reports, responding to complaints and providing compliance assistance. Inspectors are not responsible for enforcement; however, they will provide the facility with a letter discussing the results of the inspection if no violations were identified. Inspection reports are forwarded to the Compliance and Enforcement Section for enforcement consideration when potential violations are identified.

### *Local Agencies*

The Local Agencies are responsible for conducting inspections at specific facilities, responding to all complaints, compliance outreach activities, compliance investigations as assigned and delivering inspection reports to the Compliance and Enforcement Section. The Wyandotte County Health Department also provides source testing observers and reviews test results for demonstration of compliance. The other Local Agencies provide source test observers when requested by BOA. All materials maintained in facility files at the Local Agencies are copied or scanned and shared with BOA.

District Offices and Local Agencies are valuable resources because they have the ability to respond quickly to complaints and investigation requests. The District Offices and Local Agencies account for the majority of CAA inspections and complaints addressed in the state. During State Fiscal Year 2009 KDHE conducted 886 air inspections and approximately 135 complaint investigations.

### Local Agencies Excluded From Review

This review will include discussions of Local Agencies with respect to their relationship with and responsibilities to KDHE. However, this review does not include an in depth evaluation of the Local Agencies.

### Resources

The Compliance and Enforcement Section consist of 9 FTE positions, one of which is currently vacant. At this staffing level, the Compliance and Enforcement Section is the smallest section of BOA behind the Permitting Section (18 FTE) and the Modeling, Inventory & Planning Section

(21 FTE). It is anticipated that the Compliance and Enforcement Section vacant position will be filled by the end of the calendar year. However, the Section may lose one or more staff by the end of the calendar year due to retirement from KDHE.

The Compliance and Enforcement Section has seen the workload steadily increase with no addition of FTE. (The Section is at the same FTE level as noted in the 2006 review.) The Section feels an optimal staffing level would be approximately 15 FTE. With increased staffing, the Section would have the ability to dedicate more time and effort on a wider range of review and investigation efforts, which could result in increased violation identification and improve the overall CAA compliance rate in the state.

Each of the six District Offices is staffed with an air program field inspector (1 FTE each), with the exception of the Northwest District Office located in Hays. The Hays field inspector's time is split between the waste program (solid and hazardous) and the air program. Approximately 60% of the inspector's time is dedicated to the air program.

#### Staffing/Training

BOA encourages the office and field staff to take advantage of all available training which provides the knowledge and understanding to improve the performance of their duties. Staff participate in regulatory training provided by EPA (including the annual EPA Region 7 meeting with the states and locals), CenSara training, NETI training and the EPA field inspector workshop when available.

In addition to training, the Compliance and Enforcement Section communicates with the field staff on a regular basis. Monthly conference calls are held with the field staff to discuss current and upcoming training, new rules impacting various industries, and current status of enforcement actions. The calls also serve as an open forum to discuss field staff needs and requirements. The Compliance and Enforcement Section also hosts a semi-annual meeting with the field staff. The purpose of the meeting is to provide rule updates, proposed rule changes, guidance on regulatory issues in the field and open discussions/feedback for field and local inspector needs.

#### Data Reporting Systems/Architecture

KDHE inputs data into its I-Steps database. The data is then batched by KDHE and exported into AFS. This modification of the KDHE AFS data management was made in 2009. Prior to

the change, KDHE would submit the I-Steps files to EPA Region 7, who in turn would import the batch file into AFS. KDHE has encountered some difficulties with the transition to batching data into AFS. Most of the issues have been resolved and the process is running smoother. However, recent AFS upgrades by EPA have resulted in difficulty accurately batching files from I-Steps into AFS. KDHE continues to work with EPA Region 7 to resolve AFS data issues as they are identified.

KDHE is concerned about problems associated with adapting to AFS changes. The state does not have a dedicated FTE to work on data issues that will arise as changes to AFS occur. This is further compounded by the fact that KDHE uses I-Steps to track and maintain data, and does not use AFS. Even though KDHE does not use AFS, they understand the importance of ensuring Kansas data is accurately transferred into AFS.

### C. Major State Priorities and Accomplishments

#### Priorities

The Compliance and Enforcement Section's highest priority is ensuring compliance with the CAA requirements. This point is emphasized in the following statements provided by the Compliance and Enforcement Section when asked of their compliance and enforcement priorities:

- To protect the public from harmful air pollution and conserve the natural resources of the state by preventing damage to the environment from the release of air contaminants.
- To effectively manage a comprehensive compliance and enforcement program in order to protect the valuable air resources of the state.

#### Accomplishments

Despite its relatively small air staff, KDHE has a number of CAA related accomplishments. Accomplishments for the past two years include the following:

- 1700 Inspections/Audits Conducted;
- 90 Performance Test Attended;
- 40 RATA's attended;
- 190 Notices of Noncompliance Issued;

- 250 Complaint Investigations;
- 44,450 Tons of Air Pollution Reduced;
- Over 60 Consent Agreements with Civil Penalties;
- No Back Log of Enforcement Actions;
- Initiated a Multimedia Landfill Workgroup to Coordinate Air Issues with Waste Bureau Staff;
- Developed a Comprehensive Inspection/Audit Policy; and,
- Resolved 10 Self-Disclosures.

### Best Practices

BOA seeks opportunities to more efficiently and effectively conduct compliance and enforcement activities. There have been a number of improvements since the 2006 review. The following highlights a small collection of “best practices” noted during the SRF review.

#### *Inspection Report Format*

With six inspectors in the District Offices and the inspectors in the Local Agencies, the Compliance and Enforcement Section was receiving inspection reports that were similar in format, but inconsistent in content. Each of the inspectors used a checklist, however, they each utilized their own unique approach to document inspection findings. Some would provide additional supporting documentation (such as a memo), some would write a brief paragraph on their findings, while others provided little more than a completed checklist. BOA realized a consistent format with the inspector providing more detail on observations and findings would better document compliance. Following the 2006 review, BOA modified its air inspection report format. The inspectors initially voiced opposition to the new, longer inspection report format. But, the inspectors and enforcement officers now feel the new format has resulted in better documentation of the inspector’s observations and findings.

#### *AFS Data Entry*

The Compliance and Enforcement Section uses I-Steps to track information on air sources in Kansas. Prior to 2009, KDHE would provide I-Steps data to Region 7, who in turn entered the data into AFS. With the retirement of Region 7’s AFS Coordinator, EPA encouraged the Compliance and Enforcement Section to batch I-Steps data directly into AFS. The Compliance and Enforcement Section agreed to pilot an effort to determine if I-Steps data could be exported

into AFS. The pilot was successful and KDHE began entering I-Steps data into AFS in 2009. The process has not consistently run smoothly, but KDHE and Region 7 addressed each issue that arose. The Compliance and Enforcement Section does not directly benefit by adding data to AFS, but indirectly benefits by ensuring Kansas data is entered into the national data base in a timely manner.

### *Enforcement Case Settlement*

The Compliance and Enforcement Section has placed an emphasis on bringing facilities into compliance quickly. Once violations have been identified and it has been determined a penalty will be assessed, the facility is invited to participate in an informal settlement conference. Once settlement is reached and terms agreed upon by all parties, a Consent Order is prepared and entered into. This approach has proven effective in quickly settling many of the Kansas air enforcement cases because most facilities are willing to address the cited violations and return to compliance. An Administrative Order is still an option, but is typically reserved for situations where the facility refuses to settle, is a repeat violator or is uncooperative in resolving previous violations.

### *Inspection Frequency*

The CMS states major sources should be inspected once every two years and SM80 are to be inspected once every 5 years. BOA inspects almost every major and SM source annually. There are some exceptions, such as natural gas compressor stations and SM sources in the Southeastern part of the state, but all sources are targeted for inspections on a more frequent timeframe than required by the CMS. BOA considers the inspection frequency above the CMS minimums to be a demonstration of their commitment to ensure compliance with CAA requirements.

### Element 13

This review does not include information under Element 13 of the SRF.

#### D. Process For SRF Review

### Review Period

This review addresses data for Fiscal Year 2009. Although data for Fiscal Year 2009 was

evaluated, the file review was conducted for years 2008 and 2009. Reviewing files for two consecutive years allowed the reviewer to obtain a better understanding of compliance and enforcement activities initiated in 2008 and brought to conclusion in 2009.

### Key Dates

The SRF review was officially initiated with a letter to the KDHE BOA Director on May 25, 2010.

The review of the KDHE files was conducted via electronic download of files beginning May 26, 2010 and concluding July 13, 2010. BOA scanned all of the air permitting and enforcement files requested for this review and allowed the reviewer to access the files via the Internet. The length of time taken for the file review is not a reflection of BOA's speed in placing the files on-line, but rather the reviewer's availability to review the files.

A meeting was held between EPA Region 7 and KDHE on August 16, 2010 to discuss the State's activities, priorities, organization, accomplishments and resources for Fiscal Year 2009; as well as preliminary findings from the file review and the AFS data for Fiscal Year 2009. The draft report was shared with KDHE on September 7, 2010. KDHE provided comments on the draft report to EPA Region 7 on September 13, 2010.

### Communication with the State

EPA Region 7 and the KDHE Air Permitting and Compliance Section began discussions regarding the SRF review during monthly enforcement conference calls in 2009. Once the review was officially initiated, SRF communication was primarily between the EPA reviewer and the BOA Public Service Administrator, who located and made available (electronically) the requested files.

Upon completion of the file review, a meeting was held on August 16, 2010, with representative of the Compliance and Enforcement Section to discuss preliminary findings and obtain additional information necessary to complete the report. A draft of preliminary findings and questions were provided to KDHE in advance of the meeting. KDHE prepared a response to many of the questions, which was provided to the reviewer at the meeting.

### State and Regional Lead Contacts for Review

<b>EPA</b>	<b>KDHE</b>
Gary Bertram, Environmental Engineer Air Permitting and Compliance Branch	Vic Cooper, Chief Compliance and Enforcement Section
	Russ Brichacek, Unit Supervisor Compliance and Enforcement Section
	Ralph Kieffer Compliance and Enforcement Section

### **III. STATUS OF OUTSTANDING RECOMMENDATIONS FROM PREVIOUS REVIEWS**

Recommendations from Round 1 SRF review have been completed by KDHE.

#### IV. FINDINGS AND RECOMMENDATIONS

CAA Element 1	
Degree to which the Minimum Data Requirements are Complete	
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
Finding	KDHE has met the requirements for SRF Element 1.
Explanation. (If Area for State Attention,, describe why action not required, if Area for Improvement,, provide recommendation narrative.	The KDHE BOA has placed an emphasis on data management and data accuracy and has spent several hours ensuring the minimum data elements have been properly entered into the data system. KDHE’s effort has resulted in achieving the National Goal of 100% for four of the six metrics identified below. The remaining two metrics (1c4 – 99.7% and 1c6 – 99.6%) are well above the National Average and less than a percentage point below the National Goal. There are some data points which were not entered into the data system but they are addressed under element 2, as the process allows, given that they involve data accuracy as well.
Metric(s) and Quantitative Value	1c4 – CAA subprogram designation: % NSPS Facilities with FCE conducted after 10/1/05 <b>KDHE – 99.7%; National Goal – 100%; National Average – 84.6%</b> 1c5 – CAA subprogram designation: %NESHAP Facilities with FCE conducted after 10/1/05 <b>KDHE – 100%; National Goal – 100%; National Average – 46.8%</b> 1c6 – CAA subprogram designation: %MACT Facilities with FCE conducted after 10/1/05 <b>KDHE – 99.6%; National Goal – 100%; National Average – 92.4%</b> 1h1 – HPV Day Zero Pathway Discovery date: Percent DZs with discovery <b>KDHE – 100%; National Goal – 100%; National Average – 50.7%</b> 1h2 – HPV Day Zero Pathway Violating Pollutants: Percent DZs <b>KDHE – 100%; National Goal – 100%; National Average – 75.7%</b> 1h3 – HPV Day Zero Pathway Violation Type Code(s): Percent DZs with HPV Violation Type Code(s) <b>KDHE – 100%; National Goal – 100%; National Average – 79.5%</b>
State Response	
Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.)	No recommendations for improvement are necessary

## CAA Element 2 – Data Accuracy

### Degree to which data reported into the national system is accurately entered and maintained

<p>Is this finding a(n) (select one):</p>	<p><input type="checkbox"/> Good Practice</p> <p><input type="checkbox"/> Meets SRF Program Requirements</p> <p><input checked="" type="checkbox"/> Area for State Attention</p> <p><input type="checkbox"/> Area for State Improvement – Recommendations Required</p>
<p>Finding</p>	<p>In general, the AFS data is accurate. However, there were a number of issues identified during the file review.</p>
<p>Explanation. (If Area for State Attention,, describe why action not required, if Area for Improvement,, provide recommendation narrative.)</p>	<p>KDHE has placed an emphasis on data management and data accuracy. The file review identified a number of situations where data was entered incorrectly into AFS or may have been missing. The following describes discrepancies noted during the file review:</p> <ul style="list-style-type: none"> <li>- File 007-00031: A zip code was not entered into AFS</li> <li>- File 015-00065: A site visit to evaluate new installed equipment entered into AFS as an FCE</li> <li>- File 055-00055: A site visit to evaluate new installed equipment was not entered into AFS</li> <li>- File 091-00119: 2008 investigation determined permit required, however CMS source category and frequency indicator were not entered into AFS; date of 2008 investigation was not entered into AFS</li> <li>- File 091-00121: CMS source category and frequency indicator not entered into AFS</li> <li>- File 189-00004: CMS source category or frequency indicator were not entered into AFS</li> </ul> <p>Of the 30 sources reviewed, specific AFS data (zip code, CMS source category, frequency indicator) were not entered into AFS for 4 sources. Of the 40 evaluations conducted of these sources in 2009 (35 FCE and 5 PCE), inaccurate or missing data was discovered for 2 of the site visits. In addition, Kansas inspects each of its major and synthetic minor sources annually, which is more frequent than the CMS requirements.</p> <p>The discrepancies appear to be isolated incidents of input error or inadvertent omission. As such, EPA is bringing its concerns to KDHE’s attention so that they can address them.</p>
<p>Metric(s) and Quantitative Value</p>	<p>2a - # of HPVs/# of noncompliant sources <b>KDHE – 56.5%; National Goal - ≤ 50%; National Average – 60.2%</b></p> <p>2b1 - % stack tests without pass/fail result <b>KDHE – 0%; National Goal – 0%; National Average – 1.7%</b></p>
<p>State Response</p>	<p>The AFS information found to be incorrect or missing was limited to a handful of instances. We have some concern as to the accuracy problems being a mix of EPA and KDHE input errors. KDHE will work with EPA to increase the accuracy of data entered into AFS.</p>
<p>Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.)</p>	<p>KDHE should correct the input errors and inadvertent omissions noted above by December 31, 2010.</p>

### CAA Element 3 – Timeliness of Data Entry

#### Degree to which the Minimum Data Requirements are timely

<p>Is this finding a(n) (select one):</p>	<p><input type="checkbox"/> Good Practice  <input type="checkbox"/> Meets SRF Program Requirements  <input type="checkbox"/> Area for State Attention  <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required</p>
<p>Finding</p>	<p>KDHE falls below the national average for the Element 3 metrics.</p>
<p>Explanation. (If Area for State Attention,, describe why action not required, if Area for Improvement,, provide recommendation narrative.)</p>	<p>KDHE falls below the national average for all three of the CAA Element 3 metrics. Compliance and Enforcement data is entered into AFS, however, the data is not entered within 60 days of the activity (inspection or investigation) or compliance determination.</p> <p>It is unclear as to the reason for the delayed entry of MDRs into AFS. A review of the process may identify the potential delays. The inspectors in the district offices are required to have reports drafted and mailed to the central office within 15 days of the inspection. Once received by the central office, the inspection data is input into the State's database (I-Steps). I-Steps data is uploaded into AFS on a monthly basis. The process should result in data input to AFS at or near 60 days from the date of the inspection. A delay at any point of the process could result in an exceedance of the 60 days. In addition, KDHE transitioned from EPA Region 7 entry of AFS data (batching monthly) to the current process during the timeframe covered by this review. The learning curve of learning the new data entry procedures resulted in delayed entry of information into AFS. KDHE has made a commitment to evaluate the problem and correct the data entry delays.</p> <p>In addition to the above information, KDHE takes additional time collecting evidence for potential HPVs to ensure an accurate designation. The additional time will in many cases result in AFS data entry later than 60 days from the identification of violation/day zero.</p>
<p>Metric(s) and Quantitative Value</p>	<p>3a - % HPVs entered in less than/equal 60 days  <b>KDHE – 0%; National Goal – 100%; National Average – 31.5%</b>  3b1 - % compliance monitoring MDRs entered in less than/equal 60 days  <b>KDHE – 34.4%; National Goal – 100%; National Average – 50.9%</b>  3b2 - % enforcement MDRs entered in less than/equal 60 days  <b>KDHE – 46.3%; National Goal – 100%; National Average – 66%</b></p>
<p>State Response</p>	<p>KDHE acknowledges not sending most, if not all, HPVs within 60 days of determination to EPA Region VII for entry into AFS. HPVs in FFY 2009 were entered into AFS only by EPA Region VII. The timeliness of HPVs was exacerbated by EPA Regions VII when HPVs submitted to the region were not uploaded into AFS; many HPVs were not entered for a number of months after submittal to EPA Region VII. At this point, KDHE and EPA have worked together to apply a concerted effort to improve the timeliness of entering HPVs into AFS.</p>
<p>Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.)</p>	<p>EPA recommends KDHE prepare a Standard Operating Procedure (SOP) to address timeliness of data entry. The SOP should be developed and implemented by March 31, 2011. Region 7 will monitor this situation at mid-year and at the end of FY 2011 to ensure that this issue has been resolved and is not continuing.</p>

**CAA Element 4 – Completion of Commitments**

**Degree to which all enforcement/compliance commitments in relevant agreements are met and any products or projects are completed**

	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
Finding		KDHE has met the requirements of all enforcement and compliance agreements with EPA
Explanation. (If Area for State Attention,, describe why action not required, if Area for Improvement,, provide recommendation narrative.		KDHE has met all compliance and enforcement commitments contained in the FY2009 workplan with EPA Region 7.
Metric(s) and Quantitative Value		
State Response		
Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.)		No recommendations are necessary

## CAA Element 5 – Inspection Coverage

Degree to which local program completed the universe of planned inspections/compliance evaluations	
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
Finding	In general, KDHE meets the requirements for inspection coverage
Explanation. (If Area for State Attention,, describe why action not required, if Area for Improvement,, provide recommendation narrative.	<p>KDHE exceeded the national average for FCE coverage and self certification review. KDHE fell just under the national average for FCE/PCE coverage.</p> <p>KDHE inspects major sources and SM80 sources on a more frequent schedule than required. KDHE has set a goal of conducting inspections at most major and SM sources annually, which is much more aggressive than the CMS minimum. Mega sources and facilities with recent enforcement activity or compliance concerns receive multiple inspections during the year.</p> <p>A typical KDHE FCE observes emission points, evaluates rule and/or permit requirements, interviews employees and reviews records. FCEs conducted by KDHE meet the EPA definition of FCE.</p>
Metric(s) and Quantitative Value	<p>5a1 – FCE coverage – Majors  <b>KDHE – 98.6%; National Goal – 100%; National Average – 87.8%</b></p> <p>5a2 – FCE coverage – All Majors  <b>KDHE – 97%; National Goal – 100%; National Average – 82.8%</b></p> <p>5b1 – FCE coverage – SM80  <b>KDHE – 99.3%; National Goal – 20 – 100%; National Average – 83.7%</b></p> <p>5b2 – FCE coverage – CMS SM80  <b>KDHE – 97.3%; National Goal – 100%; National Average – 90%</b></p> <p>5c – FCE/PCE coverage – All SMs  <b>KDHE – 75.1%; National Average – 80.3%</b></p> <p>5d – FCE/PCE coverage – other minors  <b>KDHE – 27%; National Average – 29.3%</b></p> <p>5g – Review of Self Certifications completed  <b>KDHE – 96.2%; National Goal – 100%; National Average – 94%</b></p>
State Response	
Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.)	No recommendations are necessary.

**CAA Element 6 – Quality of Inspection or Compliance Evaluation Reports**

**Degree to which inspection or compliance evaluation reports properly document observations, are completed in a timely manner, and include accurate description of observations.**

	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input checked="" type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	Finding	In general the KDHE inspection reports are accurate and properly document observation.
	Explanation. (If Area for State Attention,, describe why action not required, if Area for Improvement,, provide recommendation narrative.	<p>KDHE has made improvements to the inspection report format since SRF Round 1. A standard format, identical to EPA Region 7's, has been developed in which the rule and permit requirements are incorporated into the report and the inspector documents his/her findings in detail. In general, the inspection reports appear to be accurate, detailed and complete. The following were observed during the file review:</p> <ul style="list-style-type: none"> <li>- Four inspection reports noted that the inspector had reviewed facility records, but provided no indication as to whether the records were complete and/or met rule/permit requirements. A copy of the records were not included in the report.</li> <li>- File 057-00030: The inspector did not discuss finding or provide observations in the body of the report. Inspection findings were briefly described in the report summary.</li> <li>- Two inspection reports noted the inspector reviewed records and attached sample copies of some records to the report, but there was no discussion as to the inspector's observations would lead them to believe the records were complete.</li> </ul> <p>EPA had comments on seven of the approximately 60 FCE reports reviewed.</p>
	Metric(s) and Quantitative Value	
	State Response	
	Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.)	<p>In the first quarter of FY 2011, KDHE management will talk to the appropriate inspectors to ensure that the aforementioned issues do not occur in future inspection reports.</p> <p>By December 31, 2010, the KDHE air program field inspectors should review the example CMRs that are available at <a href="http://www.epa-otis.gov/srf/srf_compliance_monitoring_reports.html">www.epa-otis.gov/srf/srf_compliance_monitoring_reports.html</a>. KDHE should provide inspectors training on the CMS policy during its next meeting with the district offices.</p>

## CAA Element 7 – Identification of Alleged Violations

### Degree to which compliance determinations are accurately made and promptly reported in the national database based upon compliance monitoring report observations and other compliance monitoring information

	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input checked="" type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	Finding	In general, KDHE compliance determinations appear to be accurate and prompt; however, KDHE falls far below the national guideline as it relates to discovery of facilities in noncompliance with FCE, stack, or enforcement.
	Explanation. (If Area for State Attention,, describe why action not required, if Area for Improvement,, provide recommendation narrative.)	<p>KDHE utilizes a number of tools to determine compliance with the CAA requirements. In addition to FCEs and PCEs, KDHE reviews submitted reports and certifications, has conducted investigations of selected industry sectors, reviewed TRI data, and received/reviewed voluntary disclosure of violations from some facilities. Utilizing these approaches, KDHE has been able to identify violations that may not be evident during an on-site inspection.</p> <p>KDHE falls below the national average for facilities in noncompliance with FCE, stack or enforcement. KDHE management should try to understand and address this situation. This low number may be attributed to the state's goal of bringing all of the facilities into compliance. The KDHE annual inspection rate, which is more frequent than the CMS inspection requirement, provides a greater regulator presence at the facilities. Such frequency may result in most facilities not only understanding their regulatory requirements under the CAA, but also the awareness that an inspector will be visiting them annually instead of once every five years. For these reasons, an increased inspection frequency should result in a lower noncompliance rate. Exceptions would be situations where facilities are unfamiliar with requirements of new rules, or situations where violations would only be discovered through an in depth investigation of the facility records.</p>
	Metric(s) and Quantitative Value	<p>7c1 - % facilities in noncompliance with FCE, stack test, or enforcement  <b>KDHE – 6.4%; National Goal - &gt;1/2 National Average; National Average – 22.1%</b></p> <p>7c2 - % facilities with failed stack test and have noncompliance status  <b>KDHE – 100%; National Goal - &gt;1/2 National Average; National Average – 43.4%</b></p>
	State Response	
	Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.)	No recommendations are necessary

**CAA Element 8 – Identification of SNC and HPV**

**Degree to which the state program accurately identifies significant noncompliance/high priority violations and enters information into the national system in a timely manner**

<p>Is this finding a(n) (select one):</p>	<p><input type="checkbox"/> Good Practice  <input type="checkbox"/> Meets SRF Program Requirements  <input checked="" type="checkbox"/> Area for State Attention  <input type="checkbox"/> Area for State Improvement – Recommendations Required</p>
<p>Finding</p>	<p>KDHE’s HPV discovery rate of 1% is below the national goal and average.</p>
<p>Explanation. (If Area for State Attention,, describe why action not required, if Area for Improvement,, provide recommendation narrative.</p>	<p>KDHE’s HPV discovery rate of 1% is below the national goal and the national average. This low number may be attributed to the state’s goal of bringing all of the facilities into compliance.</p> <p>The KDHE annual inspection rate, which is more frequent than the CMS inspection requirement, provides a greater regulator presence at the facilities. Such frequency may result in most facilities not only understanding their regulatory requirements under the CAA, but also the awareness that an inspector will be visiting them annually instead of once every five years. For these reasons, an increased inspection frequency should result in a lower noncompliance rate.</p> <p>KDHE also aggressively reviews facility submitted semi-annual and annual reports and TRI data in an effort to identify violations and HPVs.</p> <p>KDHE has also been able to reduce HPVs with compliance assistance activities. For example, Title V facilities are notified by postcard when their renewal application is due.</p>
<p>Metric(s) and Quantitative Value</p>	<p>8a – HPV discovery rate – Major sources  <b>KDHE – 1%; National Goal - &gt;1/2 National Average; National Average – 7.8%</b></p> <p>8b – HPV discovery rate – SM sources  <b>KDHE – 0%; National Goal - &gt;1/2 National Average; National Average – 0.6%</b></p> <p>8c - % formal actions with prior HPV – Majors  <b>KDHE – 52.9%; National Goal - &gt;1/2 National Average; National Average – 74.9%</b></p> <p>8d - % informal enforcement actions without prior HPV – Majors  <b>KDHE – 94.1%; National Goal - &lt;1/2 National Average; National Average – 45.6%</b></p> <p>8e - % sources with failed stack test actions that received HPV listing – Majors and Synthetic Minors  <b>KDHE – 33.3%; National Goal - &gt;1/2 National Average; National Average – 43%</b></p>
<p>State Response</p>	
<p>Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.)</p>	<p>No recommendations necessary.</p>

**CAA Element 9 – Enforcement Actions Promote Return to Compliance**

**Degree to which local enforcement actions include required corrective action that will return facilities to compliance in a specific time frame**

<p>Is this finding a(n) (select one):</p>	<p><input type="checkbox"/> Good Practice  <input checked="" type="checkbox"/> Meets SRF Program Requirements  <input type="checkbox"/> Area for State Attention  <input type="checkbox"/> Area for State Improvement – Recommendations Required</p>
<p>Finding</p>	<p><b>KDHE Formal Enforcement Actions include actions to bring facilities into compliance</b></p>
<p>Explanation. (If Area for State Attention,, describe why action not required, if Area for Improvement,, provide recommendation narrative.</p>	<p>KDHE formal enforcement actions focus on bringing the facility back into compliance. The state rarely utilizes administrative penalty orders. Instead, KDHE contacts the facility when a formal enforcement action is warranted, notifies the facility of the violations identified and recommends the parties begin negotiation of settlement. The resulting Consent Agreement and Final Order (CAFO) requires the facility to return to compliance, pay a penalty and, where appropriate, conduct a Supplemental Environmental Project. The case is not closed until all elements of the CAFO have been satisfied.</p>
<p>Metric(s) and Quantitative Value</p>	
<p>State Response</p>	<p>File Review            9a – number of enforcement actions reviewed 10            9b - % enforcement actions returning source to compliance 100%</p>
<p>Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.)</p>	<p>No recommendations are necessary</p>

**CAA Element 10 – Timely and Appropriate Action**

**Degree to which a local program takes timely and appropriate enforcement actions in accordance with policy relating to specific media**

<p>Is this finding a(n) (select one):</p>	<p><input type="checkbox"/> Good Practice  <input type="checkbox"/> Meets SRF Program Requirements  <input type="checkbox"/> Area for State Attention  <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required</p>
<p>Finding</p>	<p>50% of KDHE’s HPV Enforcement actions met timeliness goals.</p>
<p>Explanation. (If Area for State Attention,, describe why action not required, if Area for Improvement,, provide recommendation narrative.</p>	<p>The AFS data pull shows that 50% of the state HPVs did not meet timeliness goals for the previous two year period. This is above the national average of 36%. The file review identified three cases in which at least 18 months passed from the discovery of the violations to the signing of the Consent Agreement.</p> <ul style="list-style-type: none"> <li>- File 055-00055: 18 months</li> <li>- File 133-00001: 22 months</li> <li>- File 081-00015: 29 months</li> </ul> <p>KDHE makes every effort to conduct timely and appropriate enforcement actions and settle cases quickly. However, each enforcement case is unique in its own way. Many of the enforcement actions taken against small or medium sized facilities tend to be relatively straightforward and compliance issues are resolved quickly. Some of the larger facilities, with larger assessed penalties, are much more complex. Such cases take much more time to resolve as both parties not only negotiate penalties, but also discuss and debate the violations identified by KDHE.</p> <p>Each of the three cases identified above were delayed because the facilities were especially active in contesting the enforcement actions.</p> <p>KDHE has decided to be proactive and has drafted a guidance document to address enforcement timeliness goals.</p>
<p>Metric(s) and Quantitative Value</p>	<p>10a - % HPVs not timely  <b>KDHE – 50%; National Average – 36%</b></p>
<p>State Response</p>	<p>KDHE recently addressed these issues with a new enforcement guidance document to specifically address enforcement timeliness goals. This guidance document has been approved by KDHE management and is now in force. This guidance document has been provided to EPA Region VII.</p>
<p>Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.)</p>	<p>EPA understands that complex enforcement cases may take more time to address than “smaller straightforward” cases, however, data shows 50% of KDHE’s cases in 2009 were not addressed in a timely manner. EPA recommends that KDHE prepare and implement the proposed guidance document to address enforcement timeliness goals. The guidance document will be finalized and implementation begun by March 31, 2011.</p>



Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.)	To ensure national consistency, KDHE should consider the economic benefit the facility gains by failing to comply with the state Clean Air Act rules for every penalty assessed. Including economic benefit in the penalty calculation will ensure a more appropriate penalty is assessed. Penalty calculation documentation should be included in each enforcement file and such calculation should include economic benefit consideration. If necessary, adjustments to the assessed penalty can be made. If economic benefit is not included in the penalty calculation, justification should be noted on the penalty calculation form. By December 31, 2010, KDHE management will notify compliance staff of the need for calculation and documentation of economic benefit and gravity consistent with national policy.
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**CAA Element 12 – Final Penalty Assessment and Collection**

**Degree to which differences between initial and final penalty are documented in the file along with a demonstration in the file that the final penalty was collected**

	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	Finding	In general, differences between initial and final penalty, as well as the collected final penalty are documented in the files.
	Explanation. (If Area for State Attention,, describe why action not required, if Area for Improvement,, provide recommendation narrative.	<p>KDHE rarely issues an administrative penalty order, so the initial penalty is negotiated during settlement discussions and the agreed settlement is documented in the Consent Agreement and Final Order. The CAFO will, in many cases, include a small amount of the penalty held in abeyance as an incentive for the facility to quickly return to compliance and meet the terms of the agreement.</p> <p>Documentation of penalty payment was not found in file 050-00055. However, the payment was received and documentation was in possession of compliance officer. The documentation has been placed in file.</p>
	Metric(s) and Quantitative Value	12a – Actions with penalties <b>KDHE - 44</b> 12b - % HPV actions with penalty <b>KDHE – 100%; National Goal - ≥ 80%; National Average – 87.4%</b>
	State Response	
	Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.)	No recommendations are necessary

## **V. APPENDICES**

**APPENDIX A**  
**STATUS OF RECOMMENDATIONS FROM PREVIOUS REVIEWS**

Region	State		Status	Due Date	Media	E#	Element	Finding	Due	Region
Region 07	KS - Round 1 □C0	Total:	Completed	12/30/2007 11:00:00 PM	CAA	E1	Insp Universe	The inspection reports would benefit from a consistent format. Some inspection reports consisted solely of the inspection checklist. Some reports consisted of the inspection checklist with handwritten notes in the margins. Some reports consisted of a checklist and narrative describing inspection observations and violations. The latter better described the inspector's findings.		07

**APPENDIX B**  
**OFFICIAL DATA PULL**

OTIS State Review Framework Results



Metrics Information

CAA Data for Kansas (Review Period Ending: FY09)

**Please note:** For display purposes, some important explanatory details about the data metrics are not included on the metrics results screen. To see detailed information about each data metric, refer to the data metrics informational spreadsheet or data metrics plain language guide when reviewing the data - all SRF guidance is available on the [OTIS SRF documents page](#). The [data problems page](#) indicates any known data metrics issues.

Metric	Metric Type	Agency	National Goal	National Average	Production FY 2009 Data (Data Refresh Dates)				Frozen FY 2009 Data (Frozen Refresh Dates)				
					Kansas (Metric=x/y) 0	Count (x)	Universe (y)	Not Counted (y-x)	Kansas (Metric=x/y) 0	Count (x)	Universe (y)	Not Counted (y-x)	
1. Data completeness, degree to which the minimum data requirements are complete. 0 Recommendations													
A	Title V Universe: AFS Operating Majors (Current)	Data Quality	State			300	NA	NA	NA	299	NA	NA	NA
			Combined			300	NA	NA	NA	299	NA	NA	NA
	Title V Universe: AFS Operating Majors with Air Program Code = V (Current)	Data Quality	State			293	NA	NA	NA	293	NA	NA	NA
			Combined			293	NA	NA	NA	293	NA	NA	NA
B	Source Count: Synthetic Minors (Current)	Data Quality	State			766	NA	NA	NA	774	NA	NA	NA
			Combined			766	NA	NA	NA	774	NA	NA	NA
	Source Count: NESHAP Minors (Current)	Data Quality	State			1	NA	NA	NA	1	NA	NA	NA
			Combined			1	NA	NA	NA	1	NA	NA	NA
	Source Count: Active Minor facilities or otherwise FedRep, not including NESHAP Part 61 (Current)	Informational Only	State			777	NA	NA	NA	784	NA	NA	NA
			Combined			777	NA	NA	NA	784	NA	NA	NA
C	CAA Subprogram Designations: NSPS (Current)	Data Quality	State			530	NA	NA	NA	529	NA	NA	NA
			Combined			530	NA	NA	NA	529	NA	NA	NA
	CAA Subprogram Designations: NESHAP (Current)	Data Quality	State			12	NA	NA	NA	12	NA	NA	NA
			Combined			12	NA	NA	NA	12	NA	NA	NA
	CAA Subprogram Designations: MACT (Current)	Data Quality	State			163	NA	NA	NA	154	NA	NA	NA
			Combined			163	NA	NA	NA	154	NA	NA	NA
	CAA Subpart Designations: Percent NSPS facilities with FCEs conducted after 10/1/2005	Data Quality	State	100%	84.7%	99.7%	326	327	1	99.7%	317	318	1
	CAA Subpart Designations: Percent NESHAP facilities with FCEs conducted after 10/1/2005	Data Quality	State	100%	46.6%	100.0%	6	6	0	100.0%	5	5	0

	CAA Subpart Designations: Percent MACT facilities with FCEs conducted after 10/1/2005	Data Quality	State	100%	92.3%	99.6%	273	274	1	99.6%	265	266	1
			Combined	100%	90.1%	98.6%	273	277	4	98.9%	266	269	3
D	Compliance Monitoring: Sources with FCEs (1 FY)	Data Quality	State			594	NA	NA	NA	601	NA	NA	NA
	Compliance Monitoring: Number of FCEs (1 FY)	Data Quality	State			650	NA	NA	NA	654	NA	NA	NA
	Compliance Monitoring: Number of PCEs (1 FY)	Informational Only	State			64	NA	NA	NA	64	NA	NA	NA
E	Historical Non-Compliance Counts (1 FY)	Data Quality	State			56	NA	NA	NA	56	NA	NA	NA
			Combined			87	NA	NA	NA	87	NA	NA	NA
F	Informal Enforcement Actions: Number Issued (1 FY)	Data Quality	State			56	NA	NA	NA	56	NA	NA	NA
	Informal Enforcement Actions: Number of Sources (1 FY)	Data Quality	State			53	NA	NA	NA	53	NA	NA	NA
G	HPV: Number of New Pathways (1 FY)	Data Quality	State			3	NA	NA	NA	3	NA	NA	NA
	HPV: Number of New Sources (1 FY)	Data Quality	State			3	NA	NA	NA	3	NA	NA	NA
H	HPV Day Zero Pathway Discovery date: Percent DZs with discovery	Data Quality	State	100%	51.0%	100.0%	3	3	0	100.0%	3	3	0
	HPV Day Zero Pathway Violating Pollutants: Percent DZs	Data Quality	State	100%	75.9%	100.0%	3	3	0	100.0%	3	3	0
	HPV Day Zero Pathway Violation Type Code(s): Percent DZs with HPV Violation Type Code(s)	Data Quality	State	100%	79.6%	100.0%	3	3	0	100.0%	3	3	0
I	Formal Action: Number Issued (1 FY)	Data Quality	State			44	NA	NA	NA	44	NA	NA	NA
	Formal Action: Number of Sources (1 FY)	Data Quality	State			36	NA	NA	NA	36	NA	NA	NA
J	Assessed Penalties: Total Dollar Amount (1 FY)	Data Quality	State			\$408,250	NA	NA	NA	\$426,250	NA	NA	NA
K	Major Sources Missing CMS Policy Applicability (Current)	Review Indicator	State	0		1	NA	NA	NA	3	NA	NA	NA
2. Data accuracy, degree to which the minimum data requirements are accurate.													
0 Recommendations													

A	Number of HPVs/Number of NC Sources (1 FY)	Data Quality	State	≤ 50%	60.7%	56.5%	<u>13</u>	<u>23</u>	<u>10</u>	56.5%	<u>13</u>	<u>23</u>	<u>10</u>
			Combined	≤ 50%	60.8%	50.0%	<u>14</u>	<u>28</u>	<u>14</u>	50.0%	<u>14</u>	<u>28</u>	<u>14</u>
B	Stack Test Results at Federally-Reportable Sources - % Without Pass/Fail Results (1 FY)	Goal	State	0%	1.3%	0.0%	<u>0</u>	<u>137</u>	<u>137</u>	0.0%	<u>0</u>	<u>135</u>	<u>135</u>
			Data Quality	State			<u>2</u>	NA	NA	NA	<u>1</u>	NA	NA
3. Timeliness of data entry, degree to which the minimum data requirements are complete. 0 Recommendations													
A	Percent HPVs Entered ≤ 60 Days After Designation, Timely Entry (1 FY)	Goal	State	100%	31.3%	0.0%	<u>0</u>	<u>3</u>	<u>3</u>	0.0%	<u>0</u>	<u>3</u>	<u>3</u>
			Goal	State	100%	50.4%	34.3%	<u>469</u>	<u>1,368</u>	<u>899</u>	34.4%	<u>470</u>	<u>1,365</u>
B	Percent Compliance Monitoring related MDR actions reported ≤ 60 Days After Designation, Timely Entry (1 FY)	Goal	State	100%	65.6%	45.8%	<u>38</u>	<u>83</u>	<u>45</u>	46.3%	<u>38</u>	<u>82</u>	<u>44</u>
			Goal	State	100%	65.6%	45.8%	<u>38</u>	<u>83</u>	<u>45</u>	46.3%	<u>38</u>	<u>82</u>
C Comparison of Frozen Data Set Compare the production data results under Element 1 to the frozen data. Please see Plain Language Guide for details.													
5. Inspection coverage, degree to which state completed the universe of planned inspections/compliance evaluations. 1 Recommendation(s)													
A	CMS Major Full Compliance Evaluation (FCE) Coverage (2 FY CMS Cycle) <sup>1</sup>	Goal	State	100%	87.8%	98.6%	<u>290</u>	<u>294</u>	<u>4</u>	98.6%	<u>290</u>	<u>294</u>	<u>4</u>
			Combined	100%	88.1%	98.6%	<u>290</u>	<u>294</u>	<u>4</u>	98.6%	<u>290</u>	<u>294</u>	<u>4</u>
B	CAA Major Full Compliance Evaluation (FCE) Coverage (most recent 2 FY) <sup>2</sup>	Review Indicator	State	100%	82.8%	96.7%	<u>294</u>	<u>304</u>	<u>10</u>	97.0%	<u>294</u>	<u>303</u>	<u>9</u>
			Combined	100%	83.1%	96.7%	<u>294</u>	<u>304</u>	<u>10</u>	97.0%	<u>294</u>	<u>303</u>	<u>9</u>
B	CAA Synthetic Minor 80% Sources (SM-80) FCE Coverage (5 FY CMS Cycle) <sup>3</sup>	Review Indicator	State	20% - 100%	83.8%	99.3%	<u>428</u>	<u>431</u>	<u>3</u>	99.3%	<u>428</u>	<u>431</u>	<u>3</u>
			Combined	20% - 100%	84.2%	99.3%	<u>428</u>	<u>431</u>	<u>3</u>	99.3%	<u>428</u>	<u>431</u>	<u>3</u>
B	CAA Synthetic Minor 80% Sources (SM-80) FCE Coverage (last full 5 FY) <sup>4</sup>	Informational Only	State	100%	89.8%	96.0%	<u>431</u>	<u>449</u>	<u>18</u>	97.3%	<u>431</u>	<u>443</u>	<u>12</u>
			Combined		90.0%	96.0%	<u>431</u>	<u>449</u>	<u>18</u>	97.3%	<u>431</u>	<u>443</u>	<u>12</u>
CAA Synthetic			State		79.9%	74.7%	<u>621</u>	<u>831</u>	<u>210</u>	75.1%	<u>624</u>	<u>831</u>	<u>207</u>

C	Minor FCE and reported PCE Coverage (last 5 FY)	Informational Only	Combined		80.2%	74.8%	<u>622</u>	832	<u>210</u>	75.1%	<u>625</u>	832	<u>207</u>
D	CAA Minor FCE and Reported PCE Coverage (last 5 FY)	Informational Only	State		29.3%	27.0%	<u>894</u>	3,308	2,414	27.0%	<u>893</u>	3,302	2,409
E	Number of Sources with Unknown Compliance Status (Current)	Review Indicator	State			0	NA	NA	NA	0	NA	NA	NA
			Combined			0	NA	NA	NA	0	NA	NA	NA
F	CAA Stationary Source Investigations (last 5 FY)	Informational Only	State			<u>6</u>	NA	NA	NA	<u>6</u>	NA	NA	NA
G	Review of Self-Certifications Completed (1 FY)	Goal	State	100%	94.0%	96.5%	<u>276</u>	286	<u>10</u>	96.2%	<u>275</u>	286	<u>11</u>

7. Identification of alleged violations, degree to which compliance determinations are accurately made and promptly reported in the national database based upon compliance monitoring report observations and other compliance monitoring information.

0 Recommendations

C	Percent facilities in noncompliance that have had an FCE, stack test, or enforcement (1 FY) <sup>5</sup>	Review Indicator	State	> 1/2 National Avg	22.1%	6.5%	<u>41</u>	<u>635</u>	594	6.4%	<u>41</u>	<u>637</u>	596
			EPA			not prg	not prg	not prg	not prg	not prg	not prg	not prg	not prg
	Percent facilities that have had a failed stack test and have noncompliance status (1 FY)	Review Indicator	State	> 1/2 National Avg	43.0%	100.0%	<u>4</u>	<u>4</u>	<u>0</u>	100.0%	<u>3</u>	<u>3</u>	<u>0</u>
			EPA	> 1/2 National Avg	33.3%	0 / 0	<u>0</u>	<u>0</u>	<u>0</u>	0 / 0	<u>0</u>	<u>0</u>	<u>0</u>

8. Identification of SNC and HPV, degree to which the state accurately identifies significant noncompliance & high priority violations and enters information into the national system in a timely manner.

0 Recommendations

A	High Priority Violation Discovery Rate - Per Major Source (1 FY)	Review Indicator	State	> 1/2 National Avg	7.9%	1.0%	<u>3</u>	<u>300</u>	297	1.0%	<u>3</u>	<u>299</u>	296
			EPA		0.9%	0.0%	<u>0</u>	<u>300</u>	300	0.0%	<u>0</u>	<u>299</u>	299
B	High Priority Violation Discovery Rate - Per Synthetic Minor Source (1 FY)	Review Indicator	State	> 1/2 National Avg	0.6%	0.0%	<u>0</u>	<u>766</u>	766	0.0%	<u>0</u>	<u>774</u>	774
			EPA	> 1/2 National Avg	0.0%	0.0%	<u>0</u>	<u>766</u>	766	0.0%	<u>0</u>	<u>774</u>	774
C	Percent Formal Actions With Prior HPV - Majors (1 FY)	Review Indicator	State	> 1/2 National Avg	75.1%	52.9%	<u>9</u>	<u>17</u>	<u>8</u>	52.9%	<u>9</u>	<u>17</u>	<u>8</u>
D	Percent Informal Enforcement Actions Without Prior HPV - Majors (1 FY)	Review Indicator	State	< 1/2 National Avg	45.3%	94.4%	<u>17</u>	<u>18</u>	<u>1</u>	94.1%	<u>16</u>	<u>17</u>	<u>1</u>
E	Percentage of Sources with Failed Stack Test Actions that received HPV listing - Majors and Synthetic Minors (2 FY) <sup>6</sup>	Review Indicator	State	> 1/2 National Avg	43.0%	25.0%	<u>1</u>	<u>4</u>	<u>3</u>	33.3%	<u>1</u>	<u>3</u>	<u>2</u>

10. Timely and Appropriate Action. Degree to which a state takes timely and appropriate enforcement actions in accordance with policy relating to specific media.

0 Recommendations													
A	Percent HPVs not meeting timeliness goals (2 FY)	Review Indicator	State		35.8%	50.0%	10	20	10	50.0%	10	20	10
12. Final penalty assessment and collection. Degree to which differences between initial and final penalty are documented in the file along with a demonstration in the file that the final penalty was collected.													
0 Recommendations													
A	No Activity Indicator - Actions with Penalties (1 FY)	Review Indicator	State			44	NA	NA	NA	44	NA	NA	NA
B	Percent Actions at HPVs With Penalty (1 FY)	Review Indicator	State	≥ 80%	87.3%	100.0%	9	9	0	100.0%	9	9	0

[Save Results \(a comma delimited text file\)](#)

[Save Results \(Excel file\)](#)

Report Generated on 8/27/2010  
[Data Refresh Dates](#)

**Note:** EPA Regions must archive the state official data set (first results screen) used for a state review, as these data cannot be reproduced at a later date. SRF data metrics results may change as data are updated in AFS, ICIS, PCS, and RCRAInfo. The above data set may be saved in Excel or comma delimited text format by clicking on the appropriate Save Results link above. Drilldown tables that are linked from this page also cannot be exactly reproduced after a new data refresh occurs if the state has entered or changed data. OECA does not require regions to save the drilldown facility lists in order to document their review; however, if potential problem areas are identified through regional analysis or via state dialogue, the region may want to save selected drilldown lists.

**General Notes:**

- \* Blue-shaded rows denote that the metric was pulled manually.
- \* The results counts of some metrics contain enforcement sensitive (ES) records/actions. When using the drilldowns, [enforcement sensitive access](#) may be required to view all records/actions included in the results counts.
- \* Because of timeout issues, links are not provided to drilldowns that produce more than 1500 records.

**Caveats:**

- <sup>0</sup> State Metric column is generally computed from the value in the Count column (x) divided by the value in the Universe column (y).
- <sup>1</sup> FY2008 Frozen data for for metric 5A1 is inaccurate. FY2008 5A1 production data is correct.
- <sup>2</sup> FY2008 Frozen data for for metric 5A2 is inaccurate. FY2008 5A2 production data is correct.
- <sup>3</sup> The current CMS Cycle for SM80s started with FY07; therefore, metric 5B1 includes number of FYs since FY07 through selected FY. Goal percentages expected to increase with selected FY until CMS Cycle completion in FY11, e.g., 20%- FY07,40% -FY08, etc.
- <sup>4</sup> FY2008 Frozen data for for metric 5B2 is inaccurate. FY2008 5B2 production data is correct.
- <sup>5</sup> Programming for Metric 7C1 will be complete in the Spring of 2010.
- <sup>6</sup> FY2008 Frozen data for metric 8ES is inaccurate. FY2008 8ES production data is correct.

IDEA fields:

- SRFG012
- SRFG077
- SRFG078
- SRFG001
- SRFG026
- SRFG091
- SRFG064
- SRFG027
- SRFG058
- SRFG100
- SRFG047
- SRFG090

SRFG073  
SRFG036  
SRFG084  
SRFG037  
SRFG006  
SRFG095  
SRFG101  
SRFG046  
SRFG007  
SRFG082  
SRFG089  
SRFG086  
SRFG105  
SRFG011  
SRFG079  
SRFG029  
SRFG085  
SRFG057  
SRFG034  
SRFG094  
SRFG061  
SRFG019  
SRFG042  
SRFG102  
SRFG049  
SRFG074  
SRFG044  
SRFG098  
SRFG080  
SRFG043  
SRFG056  
SRFG092  
SRFG013  
SRFG023  
SRFG072  
SRFG022  
SRFG050  
SRFG051  
SRFG048  
SRFG099  
SRFG016  
SRFG071  
SRFG062  
SRFG093  
SRFG014  
SRFG033  
SRFG087  
SRFG005  
SRFG021  
SRFG039  
SRFG045

**APPENDIX C**  
**PDA TRANSMITTAL LETTER**

**APPENDIX D**  
**PDA ANALYSIS CHART**

Original Data Pulled from Online Tracking Information System (OTIS)							EPA Preliminary Analysis
Metric	Metric Description	Metric Type	Agency	National Goal	National Average	StateAAA Metric	Initial Findings
A03A0S	Percent HPVs Entered <= 60 Days After Designation, Timely Entry (1 FY)	Goal	State	100%	32%	0%	State is well below National Average and National Goal
A03B1S	Percent Compliance Monitoring related MDR actions reported <= 60 Days After Designation Timely Entry (1 FY)	Goal	State	100%	52.6%	34.4%	State is below National Average and Well below National Goal
A03B2S	Percent Enforcement related MDR actions reported <= 60 Days After Designation Timely Entry (1 FY)	Goal	State	100%	67.3%	46.3%	State is below National Average and well below National Goal
A08D0S	Percent Informal Enforcement Actions Without Prior HPV – Majors (1 FY)	Review Indicator	State	< 1/2 National Avg	45.7%	94.1%	State is well above the National Average and National Goal

**APPENDIX E**  
**PDA WORKSHEET**

Metric	Metric Description	Metric Type	Agency	National Goal	National Average	Kansas Metric Prod	Count Prod	Universe	Not Counted Prod	State Discrepancy (Yes/No)	State Correction	State Data Source	Discrepancy	Evaluation	Initial Findings
A01A1S	Title V Universe: AFS Operating Majors (Current)	Data Quality	State			299	NA	NA	NA					Appears Acceptable	
A01A1C	Title V Universe: AFS Operating Majors (Current)	Data Quality	Combined			299	NA	NA	NA					Appears Acceptable	
A01A2S	Title V Universe: AFS Operating Majors with Air Program Code = V (Current)	Data Quality	State			293	NA	NA	NA					Appears Acceptable	
A01A2C	Title V Universe: AFS Operating Majors with Air Program Code = V (Current)	Data Quality	Combined			293	NA	NA	NA					Appears Acceptable	
A01B1S	Source Count: Synthetic Minors (Current)	Data Quality	State			774	NA	NA	NA					Appears Acceptable	
A01B1C	Source Count: Synthetic Minors (Current)	Data Quality	Combined			774	NA	NA	NA					Appears Acceptable	
A01B2S	Source Count: NESHAP Minors (Current)	Data Quality	State			1	NA	NA	NA					Appears Acceptable	
A01B2C	Source Count: NESHAP Minors (Current)	Data Quality	Combined			1	NA	NA	NA					Appears Acceptable	
A01B3S	Source Count: Active Minor facilities or otherwise FedRep not including NESHAP Part 61 (Current)	Informational Only	State			784	NA	NA	NA					Appears Acceptable	
A01B3C	Source Count: Active Minor facilities or otherwise FedRep not including NESHAP Part 61 (Current)	Informational Only	Combined			784	NA	NA	NA					Appears Acceptable	
A01C1S	CAA Subprogram Designations: NSPS (Current)	Data Quality	State			529	NA	NA	NA					Appears Acceptable	
A01C1C	CAA Subprogram Designations: NSPS (Current)	Data Quality	Combined			529	NA	NA	NA					Appears Acceptable	
A01C2S	CAA Subprogram Designations: NESHAP (Current)	Data Quality	State			12	NA	NA	NA					Appears Acceptable	
A01C2C	CAA Subprogram Designations: NESHAP (Current)	Data Quality	Combined			12	NA	NA	NA					Appears Acceptable	
A01C3S	CAA Subprogram Designations: MACT (Current)	Data Quality	State			154	NA	NA	NA					Appears Acceptable	
A01C3C	CAA Subprogram Designations: MACT (Current)	Data Quality	Combined			154	NA	NA	NA					Appears Acceptable	
A01C4S	CAA Subpart Designations: Percent NSPS facilities with FCEs conducted after 10/1/2005	Data Quality	State	100%	83.8%	99.7%	317	318	1					Minor Issue	
A01C5S	CAA Subpart Designations: Percent NESHAP facilities with FCEs conducted after 10/1/2005	Data Quality	State	100%	42.2%	100.0%	5	5	0					Appears Acceptable	
A01C6S	CAA Subpart Designations: Percent MACT facilities with FCEs conducted after 10/1/2005	Data Quality	State	100%	92.8%	99.6%	265	266	1					Minor Issue	
A01C6C	CAA Subpart Designations: Percent MACT facilities with FCEs conducted after 10/1/2005	Data Quality	Combined	100%	90.7%	98.9%	266	269	3					Minor Issue	
A01D1S	Compliance Monitoring: Sources with FCEs (1 FY)	Data Quality	State			601	NA	NA	NA					Appears Acceptable	
A01D2S	Compliance Monitoring: Number of FCEs (1 FY)	Data Quality	State			654	NA	NA	NA					Appears Acceptable	
A01D3S	Compliance Monitoring: Number of PCEs (1 FY)	Informational Only	State			64	NA	NA	NA					Appears Acceptable	
A01E0S	Historical Non-Compliance Counts (1 FY)	Data Quality	State			56	NA	NA	NA					Appears Acceptable	
A01E0C	Historical Non-Compliance Counts (1 FY)	Data Quality	Combined			87	NA	NA	NA					Appears Acceptable	
A01F1S	Informal Enforcement Actions: Number Issued (1 FY)	Data Quality	State			56	NA	NA	NA					Appears Acceptable	
A01F2S	Informal Enforcement Actions: Number of Sources (1 FY)	Data Quality	State			53	NA	NA	NA					Appears Acceptable	
A01G1S	HPV: Number of New Pathways (1 FY)	Data Quality	State			3	NA	NA	NA					Appears Acceptable	
A01G2S	HPV: Number of New Sources (1 FY)	Data Quality	State			3	NA	NA	NA					Appears Acceptable	
A01H1S	HPV Day Zero Pathway Discovery date: Percent DZs with discovery	Data Quality	State	100%	49.5%	100.0%	3	3	0					Appears Acceptable	
A01H2S	HPV Day Zero Pathway Violating Pollutants: Percent DZs	Data Quality	State	100%	75.0%	100.0%	3	3	0					Appears Acceptable	
A01H3S	HPV Day Zero Pathway Violation Type Code(s): Percent DZs with HPV Violation Type Code(s)	Data Quality	State	100%	78.5%	100.0%	3	3	0					Appears Acceptable	
A01I1S	Formal Action: Number Issued (1 FY)	Data Quality	State			44	NA	NA	NA					Appears Acceptable	
A01I2S	Formal Action: Number of Sources (1 FY)	Data Quality	State			36	NA	NA	NA					Appears Acceptable	
A01J0S	Assessed Penalties: Total Dollar Amount (1 FY)	Data Quality	State			\$426,250	NA	NA	NA					Appears Acceptable	
A01K0S	Major Sources Missing CMS Policy Applicability (Current)	Review Indicator	State	0		3	NA	NA	NA					Minor Issue	
A02A0S	Number of HPVs/Number of NC Sources (1 FY)	Data Quality	State	<= 50%	59.1%	56.5%	13	23	10					Minor Issue	

A02A0C	Number of HPVs/Number of NC Sources (1 FY)	Data Quality	Combined	<= 50%	59.3%	50.0%	14	28	14						Appears Acceptable	
A02B1S	Stack Test Results at Federally-Reportable Sources - % Without Pass/Fail Results (1 FY)	Goal	State	0%	1.5%	0.0%	0	135	135						Appears Acceptable	
A02B2S	Stack Test Results at Federally-Reportable Sources - Number of Failures (1 FY)	Data Quality	State				1 NA	NA	NA						Appears Acceptable	
A03A0S	Percent HPVs Entered <= 60 Days After Designation, Timely Entry (1 FY)	Goal	State	100%	32.0%	0.0%	0	3	3						Potential Concern	0 of the 3 HPVs were entered within 60 days
A03B1S	Percent Compliance Monitoring related MDR actions reported <= 60 Days After Designation, Timely Entry (1 FY)	Goal	State	100%	52.6%	34.4%	470	1,365	895						Potential Concern	34.4% of MDRs entered within 60 days
A03B2S	Percent Enforcement related MDR actions reported <= 60 Days After Designation, Timely Entry (1 FY)	Goal	State	100%	67.3%	46.3%	38	82	44						Potential Concern	46.3% of MDRs entered within 60 days
A05A1S	CMS Major Full Compliance Evaluation (FCE) Coverage (2 FY CMS Cycle)	Goal	State	100%	87.5%	98.6%	290	294	4						Minor Issue	
A05A1C	CMS Major Full Compliance Evaluation (FCE) Coverage (2 FY CMS Cycle)	Goal	Combined	100%	87.7%	98.6%	290	294	4						Minor Issue	
A05A2S	CAA Major Full Compliance Evaluation (FCE) Coverage(most recent 2 FY)	Review Indicator	State	100%	83.2%	97.0%	294	303	9						Minor Issue	
A05A2C	CAA Major Full Compliance Evaluation (FCE) Coverage(most recent 2 FY)	Review Indicator	Combined	100%	83.6%	97.0%	294	303	9						Minor Issue	
A05B1S	CAA Synthetic Minor 80% Sources (SM-80) FCE Coverage (5 FY CMS Cycle)	Review Indicator	State	20% - 100%	83.0%	99.3%	428	431	3						Appears Acceptable	
A05B1C	CAA Synthetic Minor 80% Sources (SM-80) FCE Coverage (5 FY CMS Cycle)	Review Indicator	Combined	20% - 100%	83.4%	99.3%	428	431	3						Appears Acceptable	
A05B2S	CAA Synthetic Minor 80% Sources (SM-80) FCE Coverage (last full 5 FY)	Informational Only	State	100%	90.3%	97.3%	431	443	12						Minor Issue	
A05B2C	CAA Synthetic Minor 80% Sources (SM-80) FCE Coverage (last full 5 FY)	Informational Only	Combined		90.5%	97.3%	431	443	12						Appears Acceptable	
A05C0S	CAA Synthetic Minor FCE and reported PCE Coverage (last 5 FY)	Informational Only	State		80.9%	75.1%	624	831	207						Appears Acceptable	
A05C0C	CAA Synthetic Minor FCE and reported PCE Coverage (last 5 FY)	Informational Only	Combined		81.2%	75.1%	625	832	207						Appears Acceptable	
A05D0S	CAA Minor FCE and Reported PCE Coverage (last 5 FY)	Informational Only	State		29.7%	27.0%	893	3,302	2,409						Appears Acceptable	
A05E0S	Number of Sources with Unknown Compliance Status (Current)	Review Indicator	State				0 NA	NA	NA						Appears Acceptable	
A05E0C	Number of Sources with Unknown Compliance Status (Current)	Review Indicator	Combined				0 NA	NA	NA						Appears Acceptable	
A05F0S	CAA Stationary Source Investigations (last 5 FY)	Informational Only	State				6 NA	NA	NA						Appears Acceptable	
A05G0S	Review of Self-Certifications Completed (1 FY)	Goal	State	100%	93.9%	96.2%	275	286	11						Minor Issue	
A07C1S	Percent facilities in noncompliance that have had an FCE stack test, or enforcement (1 FY)	Review Indicator	State	> 1/2 National Avg	21.9%	6.4%	41	637	596						Minor Issue	
A07C2S	Percent facilities that have had a failed stack test and have noncompliance status (1 FY)	Review Indicator	State	> 1/2 National Avg	45.4%	100.0%	3	3	0						Appears Acceptable	
A07C2E	Percent facilities that have had a failed stack test and have noncompliance status (1 FY)	Review Indicator	EPA	> 1/2 National Avg	33.3%	0 / 0	0	0	0						Appears Acceptable	
A08A0S	High Priority Violation Discovery Rate - Per Major Source (1 FY)	Review Indicator	State	> 1/2 National Avg	7.8%	1.0%	3	299	296						Minor Issue	
A08A0E	High Priority Violation Discovery Rate - Per Major Source (1 FY)	Review Indicator	EPA		0.8%	0.0%	0	299	299						Appears Acceptable	
A08B0S	High Priority Violation Discovery Rate - Per Synthetic Mino Source (1 FY)	Review Indicator	State	> 1/2 National Avg	0.6%	0.0%	0	774	774						Minor Issue	
A08B0E	High Priority Violation Discovery Rate - Per Synthetic Mino Source (1 FY)	Review Indicator	EPA	> 1/2 National Avg	0.0%	0.0%	0	774	774						Appears Acceptable	
A08C0S	Percent Formal Actions With Prior HPV - Majors (1 FY)	Review Indicator	State	> 1/2 National Avg	74.6%	52.9%	9	17	8						Appears Acceptable	
A08D0S	Percent Informal Enforcement Actions Without Prior HPV - Majors (1 FY)	Review Indicator	State	< 1/2 National Avg	45.7%	94.1%	16	17	1						Potential Concern	
A08E0S	Percentage of Sources with Failed Stack Test Actions that received HPV listing - Majors and Synthetic Minors (2 FY)	Review Indicator	State	> 1/2 National Avg	42.8%	33.3%	1	3	2						Appears Acceptable	
A10A0S	Percent HPVs not meeting timeliness goals (2 FY)	Review Indicator	State		34.8%	50.0%	10	20	10						Minor Issue	
A12A0S	No Activity Indicator - Actions with Penalties (1 FY)	Review Indicator	State				44 NA	NA	NA						Appears Acceptable	
A12B0S	Percent Actions at HPVs With Penalty (1 FY)	Review Indicator	State	>= 80%	86.7%	100.0%	9	9	0						Appears Acceptable	

**APPENDIX F**  
**FILE SELECTION**

f_name	Program ID	FCE	PCE	Violation	Stack Test	Title V	Dev	HPV	Informal A	Formal Act	Penalty	Universe	Select
AMSTED RAIL COMPANY, INC.	2020900009		1	0	4	0	1	0	0	2	105,000	MAJR	accepted_representati
APAC - KANSAS, INC., KANSAS CITY DIV	2009100121		1	0	1	0	0	0	1	0	0	SM	accepted_representati
API FOILS	2004500006		2	0	0	0	1	0	0	0	0	MAJR	accepted_representati
ARCHER DANIELS MIDLAND CO.	2018900004		0	0	1	0	0	0	0	1	2,000	FRMI	accepted_representati
ASH GROVE CEMENT COMPANY	2013300001		1	3	4	0	1	0	0	2	18,000	MAJR	accepted_representati
BUNGE NORTH AMERICA, INC.	2011100008		2	0	0	0	0	0	0	0	0	MAJR	accepted_representati
CARGILL MEAT SOLUTIONS	2005700030		0	0	0	0	1	0	0	1	48,000	MAJR	accepted_representati
CARGILL, INC.	2017300029		1	0	0	0	0	0	0	0	0	MAJR	accepted_representati
CHANCE RIDES MFG, INC.	2017300155		1	0	4	0	0	0	0	2	23,000	MAJR	accepted_representati
CROSS OIL REFINING & MARKETING	2020900270		1	0	0	0	0	0	0	0	0	SM80	accepted_representati
DCP MIDSTREAM, LP	2008100015		1	0	0	0	0	0	0	1	7,500	MAJR	accepted_representati
DE ELLIOTTE COMPANY, INC.	2009100119		0	0	1	1	0	0	0	2	7,000	FRMI	accepted_representati
DRY CLEANERS OF JOHNSON COUNTY	2009100211		1	0	4	0	0	0	0	1	1,000	FRMI	accepted_representati
HESS SERVICES INC	2005100056		2	0	0	0	1	0	2	0	0	MAJR	accepted_representati
ICL PERFORMANCE PRODUCTS, LP	2004500013		2	0	0	0	0	0	0	0	0	MAJR	accepted_representati
MAGELLAN PIPELINE COMPANY, L.P.	2012500056		2	0	0	0	0	0	0	0	0	MAJR	accepted_representati
MISSION HILL CLEANERS	2009100255		2	0	0	0	0	0	1	0	0	OMIN	accepted_representati
NATIONAL BEEF PACKING COMPANY, I	2017500012		1	0	4	0	0	0	0	0	0	MAJR	accepted_representati
NEXSUN ETHANOL LLC	2006700164		1	0	0	0	0	0	0	0	0	SM80	accepted_representati
NORTH AMERICAN SALT COMPANY	2015900005		1	0	0	0	1	0	0	0	0	MAJR	accepted_representati
NORTON MUNICIPAL POWER PLANT	2013700005		1	0	0	0	0	0	0	0	0	SM80	accepted_representati
NUSTAR PIPELINE OPERATING PARTNE	2015500066		1	0	0	0	0	0	0	0	0	MAJR	accepted_representati
ONEOK FIELD SERVICES COMPANY, L.L	2000700031		1	0	0	0	0	0	0	0	0	SM80	accepted_representati
ONEOK FIELD SERVICES COMPANY, LLC	2005300002		1	0	0	0	1	0	1	0	0	MAJR	accepted_representati
PALMER MANUFACTURING AND TANK	2005500055		2	0	0	0	1	0	0	1	15,750	MAJR	accepted_representati
PIONEER BALLOON COMPANY	2001500036		1	0	0	0	0	0	1	0	0	MAJR	accepted_representati
ROYAL CLEANERS	2005900041		2	0	0	0	0	0	1	0	0	OMIN	accepted_representati
SOUTHERN STAR CENTRAL GAS PIPELII	2000100004		1	0	0	0	0	0	0	0	0	MAJR	accepted_representati
TYSON FRESH MEATS, INC.	2011100014		1	0	0	0	1	0	0	0	0	MAJR	accepted_representati
VALMONT NEWMARK INDUSTRIES, INC	2001500065		1	1	1	0	0	0	0	1	2,000	SM80	accepted_representati

**APPENDIX G**  
**FILE REVIEW ANALYSIS**

Compliance and enforcement files were reviewed to determine consistency with reported AFS information; completeness of inspection reports; appropriate enforcement response; appropriate penalty calculation documentation; documentation of facility compliance/return to compliance; and file documentation was complete. A summary of file review findings follows:

## Preliminary Findings: KS Air Compliance/Enforcement SRF

### Inspection Reports

- There has been improvement in inspection report format. The reports parallel the format used by EPA Region 7 and contains narrative descriptions of the inspector's observations.
- In at least four of the reports reviewed, the inspector stated that records were reviewed...however there was no discussion as to whether the records were complete or incompliance. The inspector should document findings, which would include a description of the records observed and whether they appeared complete and in compliance.
- 057-00030. Inspector did not discuss findings in body of report. The body of the report was used to list the permit requirements. Inspection findings were briefly described in the report summary.
- In at least two reports the inspector stated that records were reviewed and included some copies. But, no additional information provided regarding the state of the facility's records.

### AFS

- 007-00031 did not have a zip code entered in AFS.
- 4/22/09 inspection of 015-00065 to evaluate new installed equipment. Entered in AFS as a FCE instead of PCE.
- 5/12/09 visit to 015-00065 was identified as FCE in report, but accurately entered as a PCE in AFS.
- 8/5/09 inspection of 055-00055 identified as FCE in report, but the purpose of the visit was to evaluate new installed equipment. Inspection was not entered into AFS.
- 091-00119. Violations were identified during 2008 investigation where facility PTE required permit. However, no CMS source category or frequency indicator has been entered into AFS.
- Date of investigation for 091-00119 not entered into AFS.
- CMS source category and frequency indicator not entered into AFS for 091-00121.
- Inspector identified 4/9/08 inspection of 133-00001 as PCE, but it was recorded as FCE in AFS.
- 7/8/09 inspection was to evaluate new installed equipment. Entered into AFS as FCE instead of PCE.
- 133-00001. CMS category and frequency indicator show facility as a Mega Source. Is this correct?

- The file shows two FCE conducted at 155-00066 on consecutive days. One FCE is not entered in AFS...and should be a PCE because the purpose of the visit was to evaluate a new installed storage tank.
- AFS does not contain CMS source category or frequency indicator for 189-00004.

### **Enforcement**

- 015-00036 is a major source which received an NON for installing a printing press without a permit. (Should have been HPV?)
- No documentation of penalty payment or SEP completion found in file for 055-00055.
- From documentation of violation to signing of CAO was approximately 18 months for 055-00055.
- From documentation of violation to signing of CAO was approximately 29 months for 081-00015.
- From documentation of violation to signing of CAO was approximately 22 months for 133-00001.

### **Penalty Calculation**

- Penalty calculation not found in file for 015-00065.
- Penalty calculation not found in file for 055-00055.
- Penalty calculation for 057-00030 did not consider economic benefit, only base penalty calculated.
- Penalty calculation for 081-00015 did not consider economic benefit, only base penalty calculated.
- Penalty calculation for 091-00119 did not consider economic benefit, only base penalty calculated.
- Penalty calculation not found in file for 091-00211.
- Penalty calculation for 173-00155 did not consider economic benefit, only base penalty calculated.

### **Compliance**

- An NON was issued to 091-00121 on 7/7/09 and inspector was to conduct follow up inspection to document compliance with NON. The file reviewed did not contain documentation of return visit or facility response to NON.

### **Files**

- AFS shows two FCE conducted and an NON issued to 091-00255 for the review period. However, documentation was not available in file provided to EPA. Files were unavailable for second request by EPA.

**APPENDIX H**  
**CORRESPONDENCE**



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7  
901 NORTH 5TH STREET  
KANSAS CITY, KANSAS 66101

MAY 25 2010

Mr. Rick Brunetti, Director  
Bureau of Air  
Kansas Department of Health and Environment  
1000 S W Jackson  
Topeka, Kansas 66612

Dear Mr. Brunetti:

Through this letter, the U.S. Environmental Protection Agency (EPA) Region 7 is initiating a review of the Kansas Department of Health and Environment (KDHE) enforcement program. EPA will review inspection and enforcement activity from Federal Fiscal Years 2008 and 2009.

In Fiscal Year (FY) 2007, EPA regions completed the first round of reviews using the State Review Framework (SRF) protocol. This work created a baseline of performance from which future oversight of state compliance and enforcement programs can be tracked and managed.

In the second round of the SRF (SRF/2), EPA has made a commitment to review all states within a four-year cycle, or by the end of FY 2012. SRF/2 is a continuation of a national effort that allows EPA Region 7 to ensure that KDHE meets agreed upon minimum performance levels in providing environmental and public health protection. The review will include:

- Discussions between EPA Region 7 and KDHE program managers and staff,
- Examination of data in EPA and KDHE data systems, and
- Review of selected KDHE inspection and enforcement files and policies.

The SRF/2 protocol includes numerous program specific worksheets, metrics, and report templates that EPA Region 7 and KDHE will use to complete the review. We believe it will assist us in carrying out an efficient, focused review.

EPA and the KDHE have agreed through recent correspondence/discussions that review of the state's CAA program will occur during the spring of 2010, here at EPA Region 7. Enclosed you will find the list of files we plan to review, the Official

Data Set (ODS), and a Program Review Guidance document. The file list was provided to your staff via e-mail on January 25, 2010, and has not been modified. Based on previous conversations, EPA understands that KDHE will make the selected files available electronically so they may be accessed and reviewed here at the EPA Region 7 office. Since KDHE and EPA discussed the program review procedures during a meeting on November 30, 2009, we do not feel it is necessary to hold an entrance conference. However, we will conduct interviews and an exit conference with you and your staff upon completion of the file review.

By May 31, 2010, please provide Mr. Bertram with either confirmation that the ODS is accurate or discrepancies exist.

ODS discrepancies may be provided electronically to Mr. Bertram. Mr. Bertram can be reached at 913-551-7533, or by email at [Bertram.Gary@epa.gov](mailto:Bertram.Gary@epa.gov) if you have any questions. Please note that minor discrepancies that would not have a substantive impact on the review do not need to be reported. If we do not receive a response from you by the date noted above, we will proceed with our preliminary data analysis under the assumption that the ODS is correct.

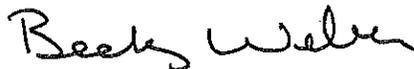
EPA has designed the SRF Tracker as the repository for holding all SRF products including the ODS, draft and final documents, letters, data sets etc. It is also a management tool used to track the progress of a state review and to follow-up on the recommendations. Regions will enter and update all information for their states in the SRF Tracker. The EPA Headquarters Office of Enforcement and Compliance Assurance (OECA) will use the Tracker to monitor implementation of SRF/2. States can view and comment on their information securely on the internet.

Please note that all information and materials used in this review may be subject to federal and/or state disclosure laws. While EPA does not intend to post this information on any public website, EPA will release the information in response to a request under the Freedom of Information Act that is properly submitted.

Our intent is to assist KDHE in achieving implementation of programs that meet federal standards, and are based on the goals and procedures we have agreed to in the CAA Performance Partnership Grant Workplan Agreement. EPA Region 7 and KDHE are partners in carrying out the review. If we find issues, we want to address them in the most constructive manner possible. Gary Bertram of my staff will be the primary EPA Region 7 CAA SRF contact and will lead the CAA review team.

We look forward to working with you and your staff in this effort. Should you require additional information, or wish to discuss this matter in greater detail, please feel free to contact me at 913-551-7487 or Gary Bertram at 913-551-7533.

Sincerely,



Becky Weber, Director  
Air and Waste Management Division

Enclosures:

1. KDHE Air Program Review File List
2. Program Review Guidance Document
3. Official Data Set

cc: Mark Hague  
Environmental Protection Agency, R7

**APPENDIX I**  
**STATE SUPPLIED MATERIALS**

**Annual Report for SFY 2009  
Air Compliance and Enforcement**

<b>Total Number of Staff (including current vacancy of ES I)</b>	<b>9</b>
<b>Total Number of Enforcement Actions Pending – start of FFY 2009</b>	<b>11</b>
<b>Total Number of Enforcement Actions Pending – end of FFY 2008</b>	<b>7</b>

<b>Total Number of Inspections (all types)</b>	<b>886</b>
--	------------

<b>Total Number of Performance Tests Attended</b>	<b>43 of 104</b>
<b>Total Number of RATAs Attended</b>	<b>18 of 86</b>
<b>Total Number of Performance Tests and RATAs Attended</b>	<b>61 of 190</b>

<b>Total Number of KDHE enforcement settlements in negotiations</b>	<b>19 →16</b>
<b>Total Number of EPA-KDHE Global settlements in negotiations</b>	<b>3→2</b>
<b>Total Number of enforcement settlements in negotiations (beginning →end)</b>	<b>22→18</b>

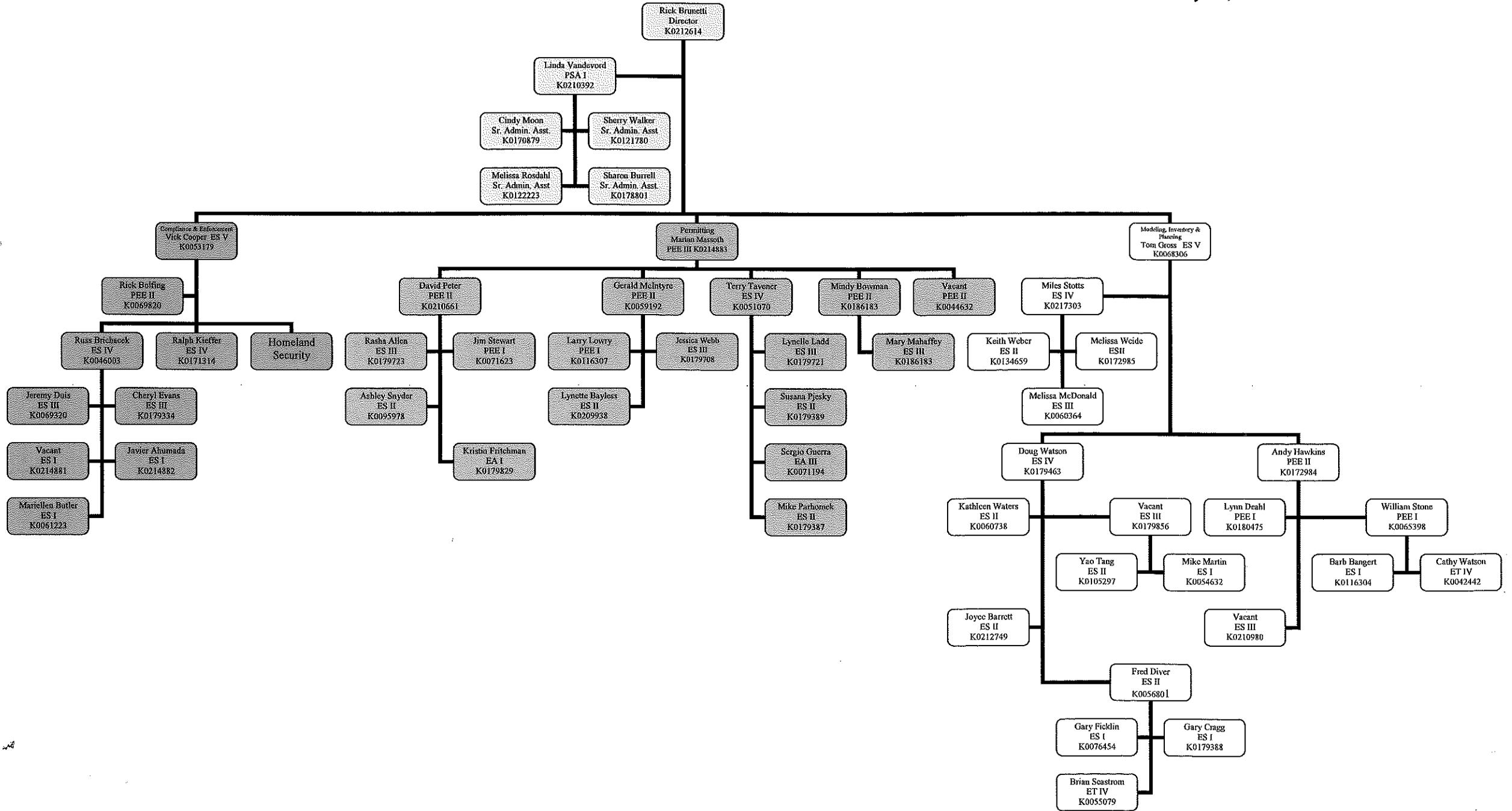
<b>Total Number of Notices of Noncompliance (NONs) issued</b>	<b>85</b>
<b>Total Number of Letters of Warning (LOWs) issued</b>	<b>16</b>
<b>Total Number of Bureau Director's Letters (BDL) issued</b>	<b>3</b>
<b>Total Number of NONs, LOWs and BDLs issued</b>	<b>104</b>
<b>Total Number of Administrative Orders (AO) issued</b>	<b>4</b>
<b>Total Number of Consent Agreements (CAO) issued</b>	<b>33</b>
<b>Total Number of AOs and CAOs Issued</b>	<b>37</b>
<b>Total Number of CAO with partial penalty held in conditional abeyance</b>	<b>16</b>
<b>Total Number of Supplemental Environmental Projects (SEPs) in CAO</b>	<b>2</b>
<b>Total Number of NONs, LOWs, AOs, and CAOs</b>	<b>138</b>
<b>Total Number of Memorandums of Understanding (MOUs) issued</b>	<b>0</b>

<b>Total Number of Compliant Investigations</b>	<b>est. 135</b>
<b>Total Number of Open Burn Exceptions/Approvals issued</b>	<b>est. 350</b>

<b>Total Number of Civil Penalties collection (\$767,675 assessed)</b>	<b>\$676,725</b>
<b>Total Dollar Amount in Traditional SEPs (2)</b>	<b>\$902,000</b>
<b>Total Dollar Amount SEP Contributions to KS Green Schools Program(4)</b>	<b>\$41,500</b>
<b>Total Dollar Amount held in abeyance at the end of the SFY 2009</b>	<b>\$49,750</b>

BUREAU OF AIR

July 21, 2010



# FOR INTERNAL BOA USE ONLY

## KDHE /Bureau of Air Compliance and Enforcement Section Guidance Timeline for All Enforcement Actions

**Purpose:** To eliminate the backlog and the length of time it takes to bring enforcement actions to resolution. Create a timeline everyone will know and be required to follow.

In order to maintain a reasonable expectation from our facilities, we must do the following:

- During the initial informal/formal meeting explain the sequence of events
- Explain what the violations are
- Explain the timeline so each party will know what the expectations are and there are no surprises as to what is going to take place in the future for failure to comply.
- The above items must be performed in a very tactful manner so as not to appear threading or bullying a facility.

**The time Sequence Categories shall be as follows:**

Date the action for enforcement was determined  
30-60 days Simple  
60-90 days Moderate  
90-180 days Complex  
Over 180 days must be discussed with Bureau Director and Section Chief.

**Example: All enforcement actions must fit within the time span allotted for that category.**

**Sequence of events:**

Review of documents  
Site visit / investigation if necessary  
Call in for informal/formal discussion  
Response from facility  
Action Traditional, CAO, Order or Referral to EPA  
Give timeline at the initial meeting  
Response due 10 working days from facility  
3 days legal  
3 days concurrence

Return back to facility 5 days return from facility  
5 days discussion/corrections  
5 days returned to facility  
10 days return form facility with signature  
5 days Sent to Secretary for signature  
3 days final agreement sent to facility

**Categories:**

**30 days Simple**

Abeyance collections  
Violation of CAO or comply with CAO

**60 days Moderate**

Open burns,  
Failure to Performance Test  
Late Testing  
Late Semi & Annual Certifications  
Late Class I Application  
Failure to comply with permit condition  
Opacity  
Monitoring  
Reporting  
Self Disclosures  
Exceeding Limits of Permit  
Flare Issues  
Repeat Violators

**90 days Complex**

Failure to submit a Class I application  
Failure to submit a Construction application  
MACT Issues  
RACT Issues  
Flash Emissions  
Combination of any Issues in the 60 day cycle

**180 days Advance Complex**

Combination of any Issues in the 90 day cycle  
PSD /BACT Issues  
Partnership with other Agencies or Bureaus  
Willful violations  
Falsifications of records

Prepared by:

Approved by:

\_\_\_\_\_ date \_\_\_\_\_

\_\_\_\_\_ date \_\_\_\_\_

**Air Regulatory Enforcement Policy  
For the State of Kansas**

**Kansas Department of Health and Environment  
Division of Environment  
Bureau of Air and Radiation**

**July 14, 2005**

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Appendix A Penalty Amounts for Large and Small Emitters

Appendix B Penalty Calculation Worksheet

## **I. INTRODUCTION**

In accordance with K.S.A. 65-3018 of the Kansas Air Quality Act, the Secretary of the Kansas Department of Health and Environment (KDHE) has the authority to impose administrative fines not to exceed \$10,000 per day per violation. The statute further states that the penalty imposed “will constitute an actual substantial economic deterrent to the violation for which it is assessed.”

Once enforcement by KDHE has begun, the alleged violator will have the opportunity to resolve the case through a settlement agreement with KDHE. The settlement will be in the form of a Consent Agreement and Final Order of the Secretary (CAO) for the resolution of the enforcement action, and will include an agreed civil penalty to be paid by the alleged violator. Supplemental environmental projects (SEPs) may be considered in lieu of portions of the penalty. For more information about SEPs, review the KDHE Bureau of Air and Radiation SEP Policy.

This document has been prepared to establish procedures to be used by KDHE personnel in developing proposed administrative penalties for consideration by management of KDHE for violations of the state and federal air quality regulations. Criminal enforcement cases are not covered by this enforcement policy.

The procedures contained in this document are intended to be used solely as guidance for KDHE personnel in conjunction with the overall Division of Environment Enforcement strategy and other KDHE guidance as part of a comprehensive Bureau of Air and Radiation (BAR) compliance and enforcement program. Each proposed enforcement action and/or administrative penalty must be approved by the Director of BAR, the Director of Environment, and the Secretary of KDHE before it is final. During the process of developing enforcement actions and penalties, agency management may revise the proposed action at any time. This policy is intended to serve only as guidance, with final decisions made by KDHE management during the process. This policy document is not intended and cannot be relied upon to create rights, substantive or procedural, enforceable by any in litigation with the State of Kansas. KDHE reserves the right to variances with this policy in those cases where individual circumstances dictate a lower or higher penalty.

## **II. GOALS**

This policy has been prepared to accomplish multiple goals.

- A. To ensure that any administrative penalty issued by KDHE will have the deterrent effect required by the statute.

- B. To recognize facilities that have shown exemplary effort to comply with existing environmental regulatory requirements by investing in environmental improvements beyond the minimum required. This will be accomplished by including such expenditures in the calculation of penalties.
- C. To ensure consistent, equitable treatment in the calculation of penalties.
- D. To ensure the wise use of limited program resources by developing an easy-to-follow formal process which can be readily applied to most circumstances.

To achieve these goals, this policy outlines procedures to ensure factors specific to the facility and the violation are considered in developing the penalty amount.

### **III. DETERMINING NONCOMPLIANCE**

#### **A. Methods**

There are several different ways that BAR might discover a noncompliance. Compliance inspections are conducted by local agencies and KDHE district inspectors. The purpose of an inspection is to assess the source's compliance with applicable state and federal air quality regulations and permit conditions. The same inspectors also investigate complaints. For example, a neighbor might call to report a visible plume caused by control equipment being non-functional. If the control equipment is required by a regulation or permit, then a noncompliance exists. Performance tests physically measure the emissions under controlled conditions from an emission point at a source or emission unit. Performance testing is usually conducted because a state rule, a federal rule, or a permit requires it to demonstrate compliance with an emission limit. Sometimes the test indicates that a facility is not in compliance with the applicable emission limit. BAR also reviews reports required by permits, state and federal regulations, and Consent Agreements and Final Orders of the Secretary (CAOs) or Administrative Orders (AOs). If the reports document that a noncompliance exists, then BAR must address the issue.

#### **B. Type of Response**

If a noncompliance is discovered, BAR will respond in one or more of the following ways:

1. Noncompliance Actions (these actions may be completed by either BAR staff or by district or local agency inspectors)
  - On-site review and discussion
  - Notice of Noncompliance (NON)
  - Follow-up inspections after issuance of NON

- Referral to K-State's Small Business Environmental Assistance Program (SBEAP) for assistance
- Referral to BAR compliance or permitting staff for assistance
- 2. Enforcement Responses
  - Administrative Order (AO)
  - Consent Agreement and Final Order of the Secretary (CAO)
- 3. Civil Enforcement
  - Referral to State Attorney General (AG) office for district court filing
  - Referral to AG office for emergency cease and desist orders (all referrals are by the KDHE Legal Office and Secretary of KDHE only)
- 4. Criminal Enforcement
  - Referral to AG office
  - Referral to federal criminal enforcement agencies (Department of Justice) (all referrals are by the KDHE Legal Office and Secretary of KDHE only)

#### **IV. DETERMINING THE PENALTY**

##### **A. The Base Penalty**

The first step in determining the proposed administrative penalty is to establish the base penalty. The base penalty is determined by using the table in Appendix A. This table lists various violations grouped by functional categories such as permitting, reporting, emissions, monitoring and record keeping. Where appropriate, each functional category is further subdivided into categories for small and large sources of air pollutants. Within each of these categories is a base penalty for a functional category of violations.

For the purposes of this policy, air pollution sources will be divided into two categories based on actual emissions from the source. Large emitters are those sources with actual emissions greater than 100 tons per year of oxides of nitrogen, sulfur dioxide, carbon monoxide, particulate matter, particulate matter with an aerodynamic diameter of 10 microns or less, and volatile organic compounds. Large emitters also include those sources with actual emissions greater than 10 tons per year of an individual hazardous air pollutant (HAP) or 25 tons per year of any combined HAPs. Small emitters are sources that have actual emissions below the above thresholds. Large emitters are much more likely to impact public health or the environment and the penalties for such sources should reflect this fact. The table in Appendix A has separate columns for large emitters and small emitters. A base penalty amount is established for large emitters and for small emitters in each of the functional categories of violations.

Facility specific and violation specific factors will affect the final proposed penalty amounts. Subsection B, Modifying the Base Penalty, will describe various factors related to the violations that are reviewed and may be taken into consideration for penalty amount determination. In addition, Subsection B addresses the gravity of these factors related to the violations for the purpose of appropriate and consistent modification of the base penalty amount.

The Penalty Calculation Worksheet contained in Appendix B will be used to develop the proposed penalty amount. The base penalty for a specific violation is entered into the Penalty Calculation Sheet and is the starting point for development of the proposed penalty amount.

## **B. Modifying The Base Penalty**

To promote equity, the system for penalty assessment must have enough flexibility to account for the unique and specific facts of each case, yet still produce consistent results to ensure similar violations among similar violators are treated with consistency. This is accomplished in this policy by identifying many of the legitimate differences between cases and providing guidelines for adjusting the base penalty amount when some of these conditions occur. This section of the policy will address how the administrative penalty development will take into consideration the factors related to facility and violation specific factors. The following factors regarding the facility will be evaluated for each case:

- The violator's full compliance history
- The violator's good faith efforts to comply, or negligence in complying
- Facility emission levels

The factors designed to measure the seriousness of the violations are as follows:

- Actual or potential harm to the public health or environment
- Number or duration of violations
- Importance to the success of a particular regulatory strategy

These factors are then evaluated and used to modify the base penalty amount obtained from the table in Appendix A. The base penalty amount can be increased or decreased as a result of the consideration of the factors listed above. Both groups of factors will be discussed in greater detail in the following subsections 1 and 2.

## **1. Facility-Specific Factors**

The evaluation of the facility-specific factors will be performed one time for all of the violations covered by a specific administrative action. Each of these factors described below will be evaluated as it applies to a specific case. In those cases where a factor is not relevant, the Penalty Calculation Worksheet should be marked to indicate non-relevancy. For all others evaluate the factor and document the result on the worksheet. The procedures and criteria to be used in evaluating each of the above factors are described below.

### **a. The Compliance History**

The first factor to be evaluated is the violator/facility's full compliance history. This factor rates the facility's past environmental compliance history, including past notices of noncompliance, administrative orders, penalties and civil or criminal actions. The primary focus of the compliance history evaluation will be for violations related to the air quality control program, but past enforcement actions in other environmental programs may be taken into consideration as well in the determination of the compliance history multiplier factor. The compliance history will be evaluated by conducting a file review within the Bureau of Air and Radiation, by accessing the departmental databases to review past administrative or civil actions against the company or facility, and by contacting compliance staff from other bureaus with the Division of Environment to determine whether current violations are being addressed. Criteria that will be evaluated will include:

- Existence of administrative, civil, or criminal environmental actions against the company or facility issued by KDHE or another governmental agency.
- The level of penalties that were assessed in past administrative, civil, or criminal actions against the company or facility.
- The number of notices of noncompliance issued to the company or facility in the past.
- Whether or not past agency actions were taken for similar violations as contained in the current proposed action.

In the evaluation of the above criteria, greater emphasis should be placed on actions or notices of noncompliance that have occurred within the past five years. Actions that are older than five years may not be indicative of current operating or management practices.

The base penalty amounts contained in the table in Appendix A were established for air pollution emission sources with a good compliance history. Companies or facilities with a history of noncompliance will have the base penalty adjusted upwards, up to 100%, depending upon the number and degree of the above factors that are established in the company or facility compliance history review.

**b. Violator's Good Faith Efforts to Comply**

The second set of factors to be evaluated is the violator's good faith efforts to comply, or negligence in complying with the Kansas Air Quality Control Statutes and Regulations. The following components should be evaluated when assessing this factor.

- The degree of control the violator had over the events constituting the violation.
- The foreseeability of the events constituting the violation.
- The level of sophistication within the industry in dealing with compliance issues or the accessibility of appropriate control technology (if this information is readily available).
- The extent to which the violator knew or should have known of the legal requirement which was violated.

Degree of cooperation: The degree of cooperation from the violator in remedying the violation is an appropriate factor to consider in adjusting the penalty. Cooperation by a violator includes activities such as promptly self-reporting noncompliance, instituting comprehensive corrective action after discovery of the violation, and cooperating during any investigation of the violation. In evaluating the degree of cooperation by a source, agency staff will review the timeliness of the response by the facility and the quality of the response.

The base penalty amounts in Appendix A were established assuming the source was not willful or negligent and cooperated with the agency to resolve the violations. If the evaluation of the facility shows signs of willfulness or negligence or the facility has not been cooperative in resolving violations, the base penalty amount will be increased. The base penalty amount can be increased up to 50%. For those cases where the facility has shown a very timely response along with a very high quality response, the base penalty amount can be decreased up to 50%.

**c. Facility Emission Levels**

As discussed earlier, air pollution sources are divided into two categories based on actual emissions from the source, large and small. Large emitters are much more likely to impact public health or the environment and the penalties for such sources should reflect this fact. A base penalty amount is established in Appendix A for large emitters and for small emitters in each of the functional categories of violations.

**2. Violation-Specific Factors**

The first three factors considered in modifying the base penalty amount focus on historical and current conditions related to the facility or company that is the subject of the enforcement action. The next group of factors that will be considered relate to the nature and severity of the violations. The evaluation of the actual violations will be performed on each separate violation and an appropriate adjustment made for each violation. Each of the factors described below will be evaluated as it applies to each violation. In those cases where a factor is not relevant to the violation, the penalty worksheet should be marked as such. For all other factors, the person doing the penalty calculation should complete the evaluation of the factor and document the result on the worksheet. The procedures and criteria to be used in evaluating each violation are described in further detail below.

**a. Actual or Potential Harm to Public Health or the Environment**

This factor evaluates whether, and to what extent, the violation actually resulted or was likely to result in the emission of pollutants that cause harm to the public health or the environment. The base penalty (Appendix A) establishes lower penalty amounts for potential emissions than actual emissions. These base penalty amounts are also based on the assumption that an actual release did not cause harm to the public health or the environment. In those cases where documented health or environmental effects occurred as a result of a release, the base penalty amount should be increased, up to 50% of the base penalty amount. The highest documented level of emission violation may be considered when evaluating this factor. If that high level is not representative of the violation time period, a more representative level may be used.

**b. Number and Duration of Violations**

Certain violations will normally be evaluated as discrete events. For these situations, each documented violation will be assessed a

penalty based on the base penalty (Appendix A). These violations involve events that are short in duration, or are discovered and documented during an inspection. Repeat occurrences would be dealt with as separate violations. Examples of such violations would be failure to submit a notice, or failure to monitor an emission at a particular point in time. Failure to perform such an action cannot readily be corrected by performing the action at a later date.

Other violations are considered to be continuing in nature. These violations exist until the source performs the required actions needed to bring the facility into compliance. Examples of continuing violations include, but are not limited to: operating without a required permit; failure to conduct a performance test when required; and emissions violations that are documented through continuous emissions monitoring systems; or through performance tests showing a facility out of compliance with an emission standard or limitation for a period of time.

The base penalty amounts contained in Appendix A were established for discrete violations that are addressed promptly. To determine the number of events that should be attributed to a continuing violation, the violations will be characterized by the type and severity of violation. In regard to type, each violation will be designed as: actual release, potential release, or programmatic. In regard to severity, each violation will be characterized as either major or minor. After characterizing the type and severity of a continuing violation, Table A will be used to determine the number of events that should be attributed to the violation. The source's efforts and timeliness in eliminating an emissions violation will be considered in determining the number of events that will be used for those continuous violations that are not treated as single events as single events in Table A.

<b>Table A. Characterizing Continuous Violations for Penalty Calculations</b>		
<b>Type of Violation</b>	<b>Severity of Violation</b>	<b>Number of Events</b>
Actual Release	Major	Up to daily
	Minor	Up to monthly
Potential Release	Major	Up to monthly
	Minor	Single event
Programmatic	Major	Up to monthly
	Minor	Up to monthly

**c. Importance to the Regulatory Strategy**

This factor focuses on the importance of the requirement to achieving the goals of the Kansas Air Quality Control Act and federal Clean Air Act and implementation regulations. For example, the New Source Performance Standard (NSPS) regulations contained in 40 CFR Part 60 may require owners and operators of new sources to conduct emissions testing and to report the test results within a certain time after startup. If a source owner or operator does not report the test results, KDHE would have no way of knowing whether that source is complying with the applicable NSPS emission limits. Non emission-related violations are considered to be programmatic in nature.

The base penalty amounts contained in Appendix A assume that all or most of the program requirements have not been met by the source. In cases where portions of the requirement have been met, reductions from the base penalty amount may be considered.

**C. Calculating the Economic Benefit of Noncompliance**

An important goal of this policy is the equitable treatment of the regulated community. One mechanism for promoting equitable treatment is to recover the economic benefit of noncompliance in an administrative penalty assessment. This approach prevents violators from benefiting from their noncompliance relative to parties who have complied with environmental requirements. In order to ensure that penalties recover any significant economic benefit of noncompliance, it is necessary to have reliable methods to calculate that benefit. The existence of reliable methods also strengthens KDHE's position in both litigation and negotiation of assessing civil penalties.

This section sets out guidelines for computing the economic benefit components. It first addresses costs that are delayed by noncompliance. Then it addresses costs that are avoided completely or in part by noncompliance. It also identifies issues to be considered when computing the economic benefit component for those violations where the benefit of noncompliance results from factors other than cost savings. The section concludes with a discussion of the circumstances where the economic benefit component may be mitigated.

**1. Delayed and Avoided Cost**

In many instances, the economic advantage to be derived from noncompliance is the ability to delay making the expenditures necessary to achieve compliance. For example, a facility that fails to

install a scrubber will eventually have spent the money needed to install the scrubber in order to achieve compliance. An economic advantage can also result from avoiding costs entirely. Avoided costs are associated with activities that should have taken place in the past, that will not or cannot be performed when the violation is discovered. This could be because conducting the activity would not be possible or would no longer serve any purpose. An example of avoided costs is the operations and maintenance expenses for an air pollution control device that was not installed when required by a regulation. The following items will be evaluated for each violation to determine whether a source has gained economic benefit through delayed or avoided costs during the period of time of the violation:

- Did the source avoid or delay capital outlay for air pollution control equipment, process changes needed to reduce air pollution, or air pollution monitoring equipment required by a permit or rule applicable to the facility or unit that is the subject of the violation?
- Did the source accrue any interest by avoiding or delaying capital for air pollution control or monitoring equipment that is applicable to the facility or unit that is the subject of the violation?
- Did the source avoid or delay maintenance or operating costs for existing air pollution control or monitoring equipment or required equipment that was not installed?
- Did the source avoid or delay contractual costs by failing to conduct or delaying performance tests or other required activities normally conducted by third parties?
- Did the source avoid operation and maintenance costs by disconnecting or failing to properly operate and maintain air pollution control or monitoring equipment?
- Did the entity receive revenue due to noncompliance?

If the answer is “yes” to any of the above questions, then BAR compliance staff will estimate the economic benefit gained from noncompliance. In the Kansas air quality program, the most likely cases where a source will realize significant economic benefit from noncompliance are in the Prevention of Significant Deterioration (PSD) program and implementing RACT rules in the Kansas City metropolitan area. In cases where the economic benefit of noncompliance is moderate, BAR compliance staff will use a simplified version of determining economic benefit where only capital expenditures, one-time non-depreciable expenditures, and periodic costs such as maintenance and operational costs will be evaluated to perform the calculation of economic benefit.

Capital expenditures include all depreciable investment outlays necessary to achieve compliance with the environmental regulations or

permit conditions. Depreciable capital investments are usually made for items that eventually wear out, such as buildings, equipment, or other long-lived assets. Examples of typical capital investments that would be evaluated are baghouses, scrubbers, or other air pollution control equipment. One-time, non-depreciable expenditures include delayed costs the facility would have made earlier in order to prevent the violation. Such costs are for items that need only be made one time and do not wear out. Examples of these costs may include purchasing land or setting up a data monitoring system. Periodic costs are those recurring costs that are associated with operating and maintaining required pollution control or monitoring equipment.

In those cases where substantial economic benefit has occurred, BAR compliance staff may use the BEN model prepared by the Environmental Protection Agency to reflect those financial conditions existing in Kansas. The calculated economic benefit of noncompliance may then be adjusted.

## **2. Adjustments to the Economic Benefit Calculation**

This policy will take into consideration the facility's proactive environmental status to adjust the economic benefit calculation portion of a proposed penalty. The intent is to encourage facility management to perform activities conducive to environmental protection that are above and beyond those required by federal, state, and local environmental, safety or public health regulations. Activities that meet these criteria would include, but are not limited to, pollution prevention expenditures, implementation of an environmental management system (EMS), and environmental related plant improvements and ISO 14,000 certifications. Expenditures for all environmental media and programs may be considered during the preparation of the AO or CAO, if KDHE has information available regarding such activities. In addition, such a program may be considered during settlement negotiations in the case where a facility can document expenditures for such activities after receipt of the administrative order. The policy allows for a consideration of up to a one-on-one reduction in the economic benefit calculation for those documented activities.

The agency person assigned to develop the penalty will contact K-State's Pollution Prevention Program to determine whether the facility has submitted applications for or received awards for pollution prevention or recycling activities at the facility.

The following factors will be afforded consideration by BAR compliance staff in evaluating whether an activity or expenditure

qualifies to be considered in reducing the economic benefit calculation:

- Was the improvement or change the adoption of an innovative pollution prevention technology that resulted in a significant environmental benefit?
- Facilities that have received grants from KDHE or other governmental agencies will not be able to consider the grant expenditures as dollars spent on proactive environmental projects.
- Was the improvement or change required in a federal, state or local air quality, safety, or public health regulations, such as a Maximum Achievable Control Technology (MACT) standard or Reasonably Available Control Technology (RACT) rule?
- Did the improvement or change result in a quantified and measurable reduction in the release of pollutant into the environment?

There are two additional circumstances where mitigating the economic benefit component of the proposed penalty may be appropriate. The first of these is when the economic benefit component involves an insignificant amount. Assessing the economic benefit component and subsequent negotiations will often represent a substantial commitment of resources. Such a commitment may not be warranted in the case where the magnitude of the economic benefit component is not likely to be significant, and because it is not likely to have substantial financial impact on the violator. For this reason, KDHE will use discretion not to seek the economic benefit where it is less than \$5,000.

Compelling public concerns may result in KDHE not seeking to recover the economic benefit component. This will be done only in cases where it is absolutely necessary to preserve the countervailing public interests. Such a settlement might be appropriate where the recovery would result in plant closings, bankruptcy, or their extreme financial burden, and there is an important public interest in allowing the facility to continue in business. Alternative payment plans, such as installment payments with interest, should be fully explored before resulting to this option. This exemption does not apply to institutions where there is a likelihood of a continual harmful noncompliance. The economic benefit component may also be mitigated in enforcement actions against nonprofit public entities, such as municipalities and publicly owned utilities, where profit motivations do not apply and assessment threatens to disrupt continued provision of essential public services.

After adjusting the economic benefit component for any above circumstances, the final economic benefit amount is added to the proposed base penalty on the Penalty Calculation Worksheet to reach the proposed

penalty amount. The proposed penalty amount may then be adjusted as described in the following section.

**V. CONCLUSION**

Treating similar cases in a similar fashion is central to the credibility of the enforcement effort and to the success of achieving the goal of equitable treatment of the regulated community. This document has established several mechanisms to promote such consistency. The document also sets out guidance on uniform approaches for applying adjustment factors to arrive at an initial amount prior to beginning settlement negotiations or an adjusted amount after negotiations have begun. Nevertheless, if KDHE is to promote consistency, it is essential that each case file contain a complete description of how each penalty was developed for a specific case. The Penalty Calculation Worksheet form is the primary means to accomplish this agenda. In those cases where economic benefit has been calculated, a worksheet summarizing calculations will be included in the case file. This policy is intended to serve only as guidance, with final decisions made by KDHE management during the process. During the process of developing enforcement actions and penalties, agency management may revise the proposed action at any time.

**VI. APPROVAL**

  
\_\_\_\_\_  
Director, Bureau of Air and Radiation

  
\_\_\_\_\_  
Date

Appendix A

Violation		Regulation Citation	Small Emitter	Large Emitter
<b>Emissions Violations:</b>				
Excess emissions in a non-attainment or maintenance area of the pollutant(s) for which the area is designated non-attainment or maintenance		Various	\$3,000	\$6,000
Excess emissions other than in a non-attainment or maintenance area, or of pollutants other than that for which the area is designated non-attainment or maintenance		Various	\$2,000	\$4,000
Exceeding the limitations in a permit, including operating, throughput, or materials limitations		N/A	\$3,000	N/A
Failure to install or operate or maintain required emissions control equipment		Various	\$3,000	\$6,000
Unauthorized open burning by an organization or failure to comply with conditions of an open burning approval		K.A.R. 28-19-645 K.A.R. 28-19-647	\$1,000	\$2,000
Unauthorized open burning by an individual or failure to comply with conditions of an open burning approval		K.A.R. 28-19-645 K.A.R. 28-19-647	\$500	N/A
<b>Permit/Application Violations:</b>				
Commencing construction, operation or modification of an emissions unit without timely obtaining a construction approval		K.A.R. 28-19-300	\$1,000	\$2,000
Commencing construction, operation or modification of an emissions unit without timely obtaining a construction permit		K.A.R. 28-19-300	\$1,500	\$3,000
Commencing construction, operation or modification of an emissions unit without timely obtaining a PSD permit		K.A.R. 28-19-350	N/A	\$6,000
Failure to submit a timely Class I operating permit application or renewal		K.A.R.28-19-500	N/A	\$5,000
Failure to submit a timely Class II operating permit application		K.A.R. 28-19-540	\$3,000	N/A
Submitting false information in a permit application		K.S.A. 65-3025	\$2,000	\$4,000

## Appendix A

Violation	Regulation Citation	Small Emitter	Large Emitter
<b>Reporting Violations:</b>			
Failure to submit a timely report or notification including compliance certifications, semiannual summary reports, excess emission reports, annual emissions inventory, etc.	Various	\$1,000	\$2,000
Incomplete report or notification	Various	\$500	\$1,000
Submittal of an incorrect compliance certification by failing to disclose an instance of noncompliance which is significant to the air program. Significant violations include substantial PSD, NSPS, MACT, etc. emission violations.	K.A.R. 28-19-512	N/A	\$10,000
Submittal of an incorrect compliance certification by failing to disclose an instance of noncompliance of which is moderately significant to the air program. Moderately significant violations include substantial NSPS, MACT, etc. record keeping, reporting or other documentation violations and moderate emission violations.	K.A.R. 28-19-512	N/A	\$5,000
Submittal of an incorrect compliance certification by failing to disclose an instance of noncompliance of which is less significant to the air program. Less significant violations include minor NSPS, MACT, etc. record keeping, reporting or other documentation violations and minor emission violations.	K.A.R. 28-19-512	N/A	\$2,500
<b>Record Keeping Violations:</b>			
Failure to maintain required records or maintaining records which are incomplete	Various	\$1,000	\$2,000
Falsification of records	Various	\$2,000	\$4,000
<b>Testing Violations:</b>			
Testing with an improper test method or procedure	Various	\$1,000	\$2,000
Failure to conduct a timely performance test	Various	\$2,000	\$4,000

## Appendix A

Violation	Regulation Citation	Small Emitter	Large Emitter
Failure to timely submit performance test protocol	Various	\$1,000	\$2,000
Falsification of test results	Various	\$3,000	\$6,000
<b>Monitoring/Title V Periodic Monitoring Violations:</b>			
Failure to install, operate or maintain monitoring equipment required by the Clean Air Act, its implementing regulations or a permit	Various	\$2,000	\$4,000
Failure to conduct monthly qualitative assessments as required by a Title V permit	Various	N/A	\$1,000
Failure to conduct Method 9 opacity testing as required by a Title V permit	Various	N/A	\$2,000
<b>Violations of Schedules of Compliance in Administrative Orders or Permits</b>			
Failure to meet work progress deadline	Various	\$2,000	\$4,000
Failure to timely submit required progress reports	Various	\$1,000	\$2,000
Failure to timely submit payment of civil penalties contained in Administrative Orders and Consent Agreements and Final Orders of the Secretary	Various	\$5,000	\$10,000
Failure to timely complete other requirements contained in Administrative Orders and Consent Agreements and Final Orders of the Secretary	Various	\$5,000	\$10,000
<b>Other SIP Rule Violations:</b>			
Emission-related violation	Various	\$2,000	\$4,000
Opacity violation	K.A.R. 28-19-650	\$1,000	\$2,000
Programmatic (non-emissions) violation	Various	\$1,000	\$2,000

**Appendix B**

**BUREAU OF AIR AND RADIATION  
PENALTY CALCULATION WORKSHEET**

Facility: \_\_\_\_\_ Source ID Number: \_\_\_\_\_  
Case No. \_\_\_\_\_ Preparer: \_\_\_\_\_

**A. Economic Benefit:**

Description of action that resulted in economic benefit (include dates of noncompliance):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Economic benefit calculated using: BEN Model  Other   
*If method other than BEN, attach calculation*

Preliminary economic benefit amount: \$ \_\_\_\_\_

Description of eligible proactive environmental activities performed by company:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Amount spent on proactive activities: \$ \_\_\_\_\_

Net economic benefit amount: \$ \_\_\_\_\_

**Violation Number 1:**

<b>VIOLATION:</b>	<b>BASE PENALTY AMOUNT</b>	<b>\$</b>
<b>Violation Specific Factors:</b>	<b>Adjustment:</b>	<b>Increase/Decrease:</b>
Actual or potential environmental harm	Increased up to 50%	\$
Importance to the regulatory strategy	Decreased up to 50%	\$
<b>Facility Specific Factors:</b>		
Facility compliance history	Increased up to 100%	\$
Negligence in complying with standards or good faith effort to comply	Increased up to 50%	\$
	Decreased up to 50%	
Number or duration of violation	From single event to daily for duration of violation per policy	multiply adjusted amount by _____
<b>ADJUSTED BASE PENALTY:</b>		

## Appendix B

Violation Number 2:

<b>VIOLATION:</b>	<b>BASE PENALTY AMOUNT:</b>	<b>\$</b>
<b>Violation Specific Factors:</b>	<b>Adjustment:</b>	<b>Increase/Decrease:</b>
Actual or potential environmental harm	Increased up to 50%	\$
Importance to the regulatory strategy	Decreased up to 50%	\$
<b>Facility Specific Factors:</b>		
Facility compliance history	Increased up to 100%	\$
Negligence in complying with standards good faith effort to comply	Increased up to 50%	\$
	Decreased up to 50%	
Number or duration of violation	From single event to daily for duration of violation per policy	multiply by _____
<b>ADJUSTED BASE PENALTY:</b>		

Violation Number 3:

<b>VIOLATION:</b>	<b>BASE PENALTY AMOUNT:</b>	<b>\$</b>
<b>Violation Specific Factors:</b>	<b>Adjustment:</b>	<b>Increase/Decrease:</b>
Actual or potential environmental harm	Increased up to 50%	\$
Importance to the regulatory strategy	Decreased up to 50%	\$
<b>Facility Specific Factors:</b>		
Facility compliance history	Increased up to 100%	\$
Negligence in complying with standards good faith effort to comply	Increased up to 50%	\$
	Decreased up to 50%	
Number or duration of violation	From single event to daily for duration of violation per policy	multiply by _____
<b>ADJUSTED BASE PENALTY:</b>		

Net economic Benefit amount:       \$ \_\_\_\_\_  
 Adjusted base penalty amount(s) +   \$ \_\_\_\_\_  
  
**Final proposed penalty amount**   \$ \_\_\_\_\_

# GRANT CONTRACT

between

**SECRETARY OF HEALTH AND ENVIRONMENT OF KANSAS**

and

**CITY OF WICHITA, PUBLIC WORKS DEPARTMENT, DIVISION OF ENVIRONMENTAL HEALTH**

## Section I – Purpose and Financial Summary

This contract is entered into between the Kansas Department of Health and Environment (KDHE) and the City of Wichita, Public Works Department, Division of Environmental Health (WDEH). The purpose of this contract is to establish a formal partnership between WDEH and the KDHE to implement the Kansas Air Quality Act in the City of Wichita and Sedgwick County. This contract authorizes WDEH to provide air quality protection services specified in this agreement and the Environmental Program Work Plan for FY 2011 (Appendix A), and defines the funding arrangements for such services which are to be provided. The contract period is from October 1, 2010 to September 30, 2011.

### Summary of Grant Expenditures by Fund

Federal 105 Grant <sup>1</sup> up to:	\$117,441.00
WDEH 40% Match up to:	\$78,294.00
Federal 103 Grant <sup>1</sup> up to:	\$36,380.00
State of Kansas Air Quality Fee Fund up to:	\$146,714.00
Total Grant not to exceed:	<hr/> \$378,829.00
Total KDHE Reimbursement not to exceed:	\$300,535.00

### Summary of Grant Expenditures by Activity

<b>Compliance and Enforcement, Asbestos, Planning, Public Education and Outreach, Emission Reduction Strategies, Ambient Air Monitoring, Local Priorities, and Program Maintenance</b>	<b>\$247,558.00</b>
<b>Match</b>	<b>\$78,294.00</b>
<b>Indirects</b>	<b>\$52,977.00</b>
<b>Total Grant not to exceed</b>	<b>\$378,829.00</b>

<sup>1</sup> From State of Kansas Allocation

## Section II – Requirements – WDEH Agrees:

1. To perform the duties and tasks specified in the contract and FY 2011 Work Plan, to implement the Kansas Air Quality Act and Kansas Air Quality Regulations, and to provide documentation of satisfactory completion of work.
2. To only use the Air Quality Fee Fund money for Title V permit program related activities, and to only use the Federal 103 and 105 money for air quality related activities associated with the Kansas Air Quality Act and FY 2011 Work Plan which may be amended under the provisions of Section IV.4.
3. To only use the Program Maintenance money for local air program purposes and other state or local activities not covered by the activity-specific allocations, including, but not limited to: reporting, complaint inspections, compliance assistance, and other functions necessary to carry out the monitoring, inspection, enforcement, outreach and other elements of the BOA air program or additional activity-specific allocations that may be assigned by the KDHE, other than indirect, or air quality complaints. EPA does not require participation in and funding of National Association of Clean Air Agencies (NACAA). WDEH participation in NACAA is discretionary and non-federal program maintenance funds may be used for said purposes.
4. To participate in the implementation of the Kansas Air Quality Act and provide documentation of satisfactory progress toward meeting the objectives in accordance with the FY 2011 Work Plan. WDEH shall submit to the KDHE quarterly progress reports as specified in the FY 2011 Work Plan, quarterly MBE/WBE verification on EPA Form 5700-52A – (5/96) for Federal 105 and 103 monies, quarterly Certified Expenditure Affidavit, and any other information that may be requested.
5. To obtain written approval in advance for the purchase of any item of equipment costing \$5,000.00 or more, and for any subcontract. All purchases with contract funds shall be the property of WDEH upon termination of this contract. The purchase shall not be segmented or otherwise structured to avoid the \$5,000.00 limit.
6. To retain financial aid and programmatic records, supporting documents and statistical records for five years from the date the final expenditure report is submitted. If litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the five-year period, the records must be retained until completion of the action and resolution of all issues that arise from it. Upon written request from the KDHE (or authorized representative) or Kansas Legislative Post Audit, WDEH will allow access to any payroll records, supported by time and attendance records for employees, documents, and records necessary to certify compliance with the KDHE grant awards, Kansas Legislative Appropriations, Kansas Statutes, and Federal grants and regulations.
7. If practical, to provide advanced notice to the KDHE of permit inspections and enforcement actions taken by WDEH that are based solely upon WDEH air quality regulations, and to coordinate such actions with the KDHE to make sure a regulated source is not unduly burdened by multiple permit inspections or enforcement actions for a single cause or set of causes.

8. To include in all statements, press releases, websites, program activities, bid solicitations, and other documents, under the provisions of Section 83 of 2005 House Bill 2482 the phrase "paid for (in part) by the Kansas Department of Health and Environment."
9. To obtain an audit in accordance with the Federal Single Audit Act of 1984, and OMB Circular No. A-133, Audits of State and Local Governments, and Other Nonprofit Organizations, and to submit complete copy of the single agency audit report to the KDHE within 12 months after the end of the WDEH' fiscal year.
10. To comply with the Age Discrimination Act of 1975, Section 501 of the Rehabilitation Act of 1973, Title IX of the Educational Amendments of 1972, Title IV of the Civil Rights Act of 1964 and further agrees not to exclude from participation in, or deny the benefits of services to any person on the basis of race, color, gender, sexual orientation, gender identity, religion, national origin, ancestry, age, military or veteran status or disability status; with the Recipient Certification requirements of the Drug-Free Workplace Act of 1988; and with the Federal Anti-Lobbying Act of 1990.
11. To comply with all EPA grant regulations located under Title 40 of the Code of Federal Regulations (CFR), Part 31, as published as of the date of this agreement, and to specifically adhere to the "Fair-Share" policy to solicit Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) when contracting for goods or services. The specific steps to comply with this requirement are stated in 40 CFR 31.36(e) as in effect on July 1, 2004 (See Appendix B).
12. WDEH and any prospective participants shall fully comply with Subpart C of 40 CFR Part 32, as published as of the date of the agreement, entitled "Responsibilities of Participants Regarding Transactions." Recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 40 CFR Part 32, entitled "Covered Transactions," includes a term or condition requiring the inclusion of a similar term or condition in a subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information required under 40 CFR 32.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment (See Appendix B).
13. WDEH shall ensure that all information received pertaining to enforcement actions either under consideration or in process shall be held confidential by its employees and any contractors, and shall not be shared with, or transmitted or communicated to any third party, and shall be bound by the Confidentiality Agreement (See Appendix C).
14. WDEH agrees that its employees will adhere to ethical standards as established in K.S.A. 46-215, *et seq*, and shall apply these standards to all aspects of performance during the term of this agreement.
  - a. The term "*making of a contract*" as used in K.S.A. 46-233 shall include all activities connected to the making of a contract, regulating, inspecting, enforcement or any other such activity as required in the official function and furtherance of duties and obligations set forth in this agreement.
  - b. For the purpose of this agreement the meaning of "*state employee*" shall be considered as those WDEH employees connected with the Air Quality Department.
  - c. Protection of "*privileged information*" shall include information disclosed from the KDHE – BOA to WDEH that is required to perform any action described in

sub-section (a.) above. Public or private disclosure of any such information is expressly prohibited.

15. WDEH agrees that all records are to be returned to KDHE within 60 days of termination of any Workplan activity or the entire contract.
16. WDEH agrees to attend the ETA (Eastern Technical Associates) Visible Emissions Lecture and Field training for Smoke School per agreement between KDHE and contractor.

**Section III – KDHE Agrees:**

1. To make payments, not to exceed \$146,714.00 from the Air Quality Fee Fund; not to exceed \$36,380.00 from the Federal 103 fund; and not to exceed \$117,441.00 from the Federal 105 funds to WDEH for conducting the KDHE Air Quality Program as authorized in the FY 2011 Work Plan (See Appendix A).
2. To the extent possible, the KDHE - BOA will seek input from WDEH on issues governed by this contract prior to making decisions or taking actions that will affect WDEH' Air Quality Program.
3. To provide regular updates on enforcement actions pertaining to sources in the City of Wichita and Sedgwick County, including but not limited to written acknowledgements that WDEH enforcement action recommendations have been received by the KDHE.
4. To work with WDEH and other local partners to: establish and annually update strategic goals, objectives and strategies for reducing emissions and improving air quality.
5. To provide WDEH with prior approval from the KDHE - BOA, an opportunity to shift workload and funds to other eligible air program activities if the targeted activities laid out in the FY 2011 Work Plan cannot be completed because they are demand driven or the KDHE is unable to refer work to WDEH as specified in this agreement.

**Section IV – Other Terms and Conditions - It is mutually agreed:**

1. WDEH will request reimbursement within 30 days of the end of each quarter. The KDHE shall provide reimbursement in accordance with the "Kansas Prompt Payment Act" (K.S.A. 75-6401 through 75-6407), upon receipt of satisfactory progress reports, MBE/WBE verification, and quarterly Certified Expenditure Affidavit.
2. That this agreement may be canceled by either party upon 30 days written notice to the other party, except that the KDHE may cancel this agreement without such notice in the event of loss of funding. Funding of this agreement is contingent upon the availability of funds in the Air Quality Fee Fund, receipt of federal funds from the U.S. Environmental Protection Agency (EPA), and availability of funds in the State Treasury. This contract, including Work Plan, may be amended in writing when duly executed by both parties. The contract is subject to a pro-rata reduction contingent upon the amount of reduction of federal grant dollars allocated to the KDHE - BOA.



**APPENDIX A**  
**LOCAL AGENCY WORK PLAN**  
**For**  
**CITY OF WICHITA, PUBLIC WORKS DEPARTMENT, DIVISION OF**  
**ENVIRONMENTAL HEALTH**  
**FY 2011**  
**Contract Period October 1, 2010 – September 30, 2011**

The Bureau of Air (BOA), on behalf of the Kansas Department of Health and Environment (KDHE), and the City of Wichita, Public Works Department, Division of Environmental Health (WDEH) hereby agrees to comply with the cooperative intent of the Clean Air Act within the City of Wichita and Sedgwick County as follows:

**I. Contacts**

<b>Issue/Activity</b>	<b>Primary State Contact</b>	<b>Phone #</b>	<b>Primary WDEH Contact</b>	<b>Phone #</b>
<b>General</b>				
General Administrative Duties	Rick Brunetti	785-296-1551	Randy Owen and Joe Pajor	316-268-8351
<b>Compliance and Enforcement</b>				
Administrative Issues; QA/QC	Vick Cooper	785-296-1561	Randy Owen	316-268-8353
Compliance and Enforcement	Russ Brichacek	785-296-1544	Randy Owen	316-268-8353
<b>Asbestos</b>				
Asbestos Inspections	Scott Bangert	785-296-1689	Randy Owen	316-268-8353
<b>Planning Activities</b>				
Air Planning Activities	Tom Gross	785-296-1692	Joe Pajor	316-268-8353
<b>Emission Reduction Strategies</b>				
Blue Skyways	Doug Watson	785-296-0910	Joe Pajor	316-268-8353
<b>Public Outreach</b>				
Public outreach	Kathleen Waters	785-296-1575	Joe Pajor	316-268-8353
<b>Monitoring</b>				
Administrative Issues	Tom Gross	785-296-1692	Randy Owen and Joe Pajor	316-268-8353
Network design/configuration	Doug Watson	785-296-0910	Randy Owen	316-268-8353
General Operation and Maintenance	Fred Diver	785-296-6289	Randy Owen	316-268-8353
Sample or data submission	Mike Martin	785-296-1571	Randy Owen	316-268-8353
Data Issues	Doug Watson	785-296-0910	Randy Owen	316-268-8353

**II. Compliance and Enforcement**

A. WDEH and BOA agree as follows:

1. The WDEH will conduct inspections and investigations and make weekly submittal of all supporting documents in accordance with procedures outlined in the following documents:
  - BOA, Air Quality Compliance and Enforcement Training Manual
  - Kansas Air Quality Regulations and Statutes

- Applicable CFR
2. The WDEH will provide initial enforcement investigation and the retrieval of support information and documentation, and will participate in monthly BOA/WDEH enforcement coordination calls.
  3. The WDEH inspection results will be documented on accepted and agreed upon inspection forms. A copy of the letter to the source discussing inspection results will be sent to BOA within fifteen business days of completion of inspection. Copies of inspection reports and letters will be mailed to BOA each Friday. Inspections/FCEs will be scheduled by WDEH with a goal of 25% of the inspections/FCEs completed per FY quarter. WDEH shall submit a list of sources recommended to be inspected to BOA by September 1<sup>st</sup> of each year.
  4. WDEH agrees to maintain a minimum of 2 qualified performance observers at all times.
  5. If noncompliance with regulations are observed and documented during an inspection, BOA will be notified in accordance with BOA enforcement policy. Notices of Noncompliance issued by WDEH will be tracked by both WDEH and BOA, with required follow up in accordance with BOA Enforcement Policy. BOA will review and determine if noncompliance documented is subject to EPAs High Priority Violator (HPV) policy. Departmental Orders and Consent Agreements will be determined and issued by BOA in accordance with BOA Enforcement Policy.
  6. Evaluation inspections will be completed within 90 days of notification of start up for Class I, NSPS, and MACT sources, and within 180 days of notification of start up on Class II and non-NSPS sources. Evaluation inspections will be documented on accepted and agreed upon forms, and a letter will be sent to the source within seven days of the completed inspection, and a copy will also be sent to BOA.
  7. WDEH is responsible for responding to complaints received from individuals, BOA, or other governmental agencies within 2 business days (depending on the urgency) of receipt of complaint during normal business hours. WDEH will contact the complainant by telephone or other appropriate methods. When necessary, on-site investigations will be conducted within two working days of receipt of complaint. Investigative reports will be submitted to BOA within seven days of completion of the investigation. Open Burning activities shall be pursuant to Kansas Open Burning Prohibition and Exception regulations.
  8. WDEH will provide quarterly updates on the Compliance and Enforcement activities performed.
  9. WDEH agrees to attend/participate in the monthly enforcement coordination calls.
  10. WDEH agrees to attend/participate in the semi-annual meetings in Topeka.
  11. At the end of the 4<sup>th</sup> Quarter, final contract payment will be reduced by \$1,500.00 for every inspection not completed. If the number of complaints is not received, no penalties will be imposed.

B. Inspection list

<u>Class I sources:</u>	<u>Frequency</u>
1730012 Westar Energy, Inc.	1
1730014 Westar Energy, Inc.	1
1730019 Cessna Aircraft Company-Mid-Continent	1
1730022 Hawker BeechCraft Corporation	1
1730023 Air Products Manufacturing Corp	1
1730029 Cargill, Inc.	1
1730045 ConocoPhillips Pipe Line Company	1
1730052 Learjet, Inc.	1
1730055 Boeing Integrated Defense Systems	1
1730058 York Unitary Products	1
1730059 CNH America, LLC	1
1730068 The Coleman Company, Inc.	1
1730070 OxyChem – Wichita plant	1
1730075 Cessna Aircraft Company – Pawnee plant	1
1730152 Nex-Tech Processing, Inc.	1
1730153 Coleman Co., Inc.	1
1730155 Chance Rides Mfg, Inc.	1
1730165 Globe Engineering Company, Inc.	1
1730173 Custom Cupboards, Inc.	1
1730225 City of Wichita-Dept. of Natural Resources	1
1730309 Spirit Aerosystems, Inc.	1
Total Sources =21	21

<u>Class II sources:</u>	<u>Frequency</u>
1730001 Cereal Food Processors	1
1730005 McConnell Air Force Base	1
1730008 Ferroloy, Inc.	1
1730034 CCGP, Inc.	1
1730036 APAC-Kansas, Inc., Shears Division	1
1730044 LaFarge North America, Inc.	1
1730062 DeBruce Grain, Inc.	1
1730069 Bartlett Grain Company, L.P.	1
1730078 Darling International, Inc.	1
1730097 Rich Mix Products, Inc. dba Quikrete	1
1730105 St. Francis Regional Medical Center	1
1730106 St. Joseph Medical Center	1
1730107 Wesley Medical Center	1
1730108 Wichita State University	1
1730109 Wilko Paint, Inc.	1
1730110 Robert J. Dole Veterans Administration Medical Center	1
1730130 CononcoPhillips – Wichita South	1
1730132 Valassis Manufacturing Company	1

1730135	Sedgwick County Public Works	1
1730139	SFB Plastics, Inc.	1
1730141	Magellan Pipeline, L.P.	1
1730146	ONEOK Field Services Company, LLC	1
1730147	Fiber Glass Systems, L.P.	1
1730154	Metal Finishing Company, Inc.	1
1730156	ONEOK Field Services Company, LLC	1
1730161	Clean Harbors Kansas, Inc.	1
1730163	Apex Engineering International, LLC	1
1730164	Apex Engineering (W. 2 <sup>nd</sup> )	1
1730168	EarthGrains Baking Companies, Inc.	1
1730184	Barton Solvents, Inc.	1
1730196	Kansas Plating Inc.	1
1730197	Hawker BeechCraft Services	1
1730199	Tamco, Inc.	1
1730232	Precision Pattern, Inc.	1
1730247	HOC Industries, Inc.	1
1730252	Sonaca NMF America, Inc.	1
1730270	Mulvane Municipal Power Plant	1
1730283	Marble Products	1
1730284	Kice Industries – North Facility	1
1730326	Capps Manufacturing, Inc.	1
Total Sources = 40		40

**B Sources:**

**Frequency**

1730201	Senior Aerospace	1
1730258	Raytheon Aircraft Company	1
1730281	Cessna Aircraft Company	1
1730292	Eastside Cleaners	1
1730294	Baltimore Cleaners	1
1730299	Discount Cleaners	1
1730301	Elite Cleaners	1
1730302	Morgan Cleaners	1
1730304	Lee's Derby Cleaners	1
1730305	Lee's Cleaners	1
1730306	College Hill Cleaners	1
1730308	Pleasant Valley Cleaners	1
1730313	Chrome Plus International, Inc.	1
		13

Total Inspections = 74

C. Quarterly Report Requirements

1 <sup>st</sup> Quarter (10/1 – 12/31/10)	2 <sup>nd</sup> Quarter (1/01 – 3/31/11)	3 <sup>rd</sup> Quarter (4/01 – 6/30/11)	4 <sup>th</sup> Quarter (7/01 – 9/30/11)

### III. Asbestos Inspections

#### A. WDEH & BOA agree as follows:

1. BOA staff will review written notifications of demolition projects located within Sedgwick County's jurisdiction. Notification forms for the demolition projects to be inspected will be mailed or faxed to WDEH by the end of the week that BOA approves the notification.
2. WDEH staff will perform up to 10 on-site inspections of notified demolition projects, landfills, and complaint investigations during FY 2011 (including one (1) inspection annually at each landfill in the county permitted for the disposal of friable asbestos containing materials). BOA will strive to ensure that WDEH has opportunity to conduct at least 10 inspections.
3. WDEH will conduct notified demolition inspections within 10 business days of the receipt of the notification from BOA.
4. WDEH is responsible for responding to complaints they receive regarding demolition activities in the county and may charge costs to Program Maintenance. On occasion, BOA will refer complaints to WDEH for appropriate response, which will be part of the 10 on-site inspections under the contract.
5. WDEH will contact complainant by telephone within 2 business days (depending on urgency) of complaint to obtain additional information. If the complaint is not resolved by telephone, on-site investigations will be conducted as soon as practical and within two business days of responding by telephone of the complaint.
6. WDEH will document inspection results on appropriate inspection forms provided by BOA and delivered or mailed to BOA within seven days of the completion of the inspection.
7. WDEH will notify BOA of violations of the regulations observed and documented during inspections, as soon as practical, and within 24 hours of the inspection. Violations may be documented with the collection of bulk samples of suspect ACBM and photographic evidence of violations. Bulk samples shall be properly transferred, using a chain-of-custody lab analysis form, to an accredited laboratory for analysis of asbestos content. Any collected photographic evidence shall be mounted to a photographic mounting page, with a narrative and provided to BOA.
8. WDEH will report to BOA as soon as practical, but within two business days, any unreported friable asbestos containing building materials observed during an inspection that is not listed on the notification. BOA will determine further action in regard to the friable ACBM. WDEH may be requested to assist BOA in the documenting of the friable ACBM.
9. A site is considered to be multiple facilities within one structure that are located at one site. This is considered one inspection.
10. If a site contains multiple structures, only those structures which BOA provides notifications to WDEH should be inspected for payment.

11. For multiple locations, BOA has contracted for up to 2 on-site inspections. BOA reserves the right to determine which sites are to be inspected for payment. If WDEH wishes to inspect more, this cost is expected to come from the Program Maintenance.

B. Quarterly Reporting Requirements

1 <sup>st</sup> Quarter (10/1 – 12/31/10)	2 <sup>nd</sup> Quarter (1/01 – 3/31/11)	3 <sup>rd</sup> Quarter (4/01 – 6/30/11)	4 <sup>th</sup> Quarter (7/01 – 9/30/11)

IV. Planning Activities

A. WDEH & BOA agrees as follows:

- WDEH will continue the Wichita Air Quality Task Force planning process.
- WDEH will implement a Public Education and Awareness Plan and the list of strategies from the Public Education & Awareness plan and will take the lead in implementing private and public sector emission reduction strategies through the Wichita Air Quality Task Force and report implementation progress. Priorities for implementation for FY 2011 shall be determined by WDEH with guidance from the Task Force.
- In conjunction with Air Quality Emission Reduction Strategies, the Air Quality Task Force identifies measures they can undertake to reduce air emissions.
- WDEH will develop a list of activities that the City of Wichita could initiate to reduce air emissions from City operations with input from other City departments. The list will be provided to all City departments and WDEH will coordinate with the other departments to implement some or all of the activities identified. Reducing energy consumption from city operations will help reduce air pollution and other emissions.
- Identify air quality partners within the four-county Metropolitan Statistical Area (MSA) and provide public outreach information to them.

B. Quarterly Reporting Requirements

1 <sup>st</sup> Quarter (10/1 – 12/31/10)	2 <sup>nd</sup> Quarter (1/01 – 3/31/11)	3 <sup>rd</sup> Quarter (4/01 – 6/30/11)	4 <sup>th</sup> Quarter (7/01 – 9/30/11)

V. Emission Reduction Strategies

A. WDEH & BOA agrees as follows:

- WDEH will provide leadership in the Wichita area for EPA's Blue Skyways Collaborative (I-35 corridor project) and establish a goal for

recruiting new partners, initiating mobile air pollutant reduction strategies and coordinating these activities through the KDHE and EPA contacts.

- WDEH will take the lead along with the KSU Small Business Environmental Assistance Program (SBEAP) in conducting a workshop/webinar focused on emissions reduction from mobile sources.
- WDEH will work toward the development of an idling reduction policy for the City of Wichita vehicle fleet and will work with other City departments to implement any approved policy during FY 2011.
- WDEH will contact four outlying public school districts in the City of Wichita to encourage them to commit to school bus idle reduction strategies similar to those that were recently implemented by the City of Wichita Public Schools.

**B. Quarterly Reporting Requirements**

<b>1<sup>st</sup> Quarter (10/1 – 12/31/10)</b>	<b>2<sup>nd</sup> Quarter (1/01 – 3/31/11)</b>	<b>3<sup>rd</sup> Quarter (4/01 – 6/30/11)</b>	<b>4<sup>th</sup> Quarter (7/01 – 9/30/11)</b>

**VI. Public Education, Outreach Activities**

**A. WDEH & BOA agree as follows:**

- The WDEH will work with BOA to provide outreach to inform government, commercial, and industrial sources about opportunities to improve air quality.
- The WDEH will continue to implement a local distribution strategy for air quality related educational materials and brochures including maintenance of AQ information on the City web site and encouraging the City to include the same information on its web site.
- The WDEH will give presentations on air quality at educational events.
- WDEH will continue a series of air quality related materials that will be aired on City Cable Channel 7 and radio shows. These educational spots will promote seasonal themes such as ozone and carbon monoxide awareness. Channel 7 provides information 24 hours a day, seven days a week, so these air quality educational materials will be presented to the public via Channel 7 for approximately 4400 minutes per year.
- WDEH will conduct a minimum of five voluntary vehicle emissions testing events during FY2011 ozone season. These events will be publicized through news media and other venues to encourage citizen participation. Vehicles tested in the events will be checked for tailpipe emissions and leaking gas caps. Vehicle owners will be given a copy of the testing results and will be provided with educational information that explains how they can help reduce air pollution in the urban area.
- The WDEH will continue to provide lawn and garden information where appropriate.

- WDEH will provide support for SBEAP's air quality related activities in Wichita as requested by the KDHE and SBEAP's local office.
- WDEH will implement a regional Air Quality awards program for business and the community sector to recognize air pollution reduction efforts.

B. Quarterly Reporting Requirements

1 <sup>st</sup> Quarter (10/1 – 12/31/10)	2 <sup>nd</sup> Quarter (1/01 – 3/31/11)	3 <sup>rd</sup> Quarter (4/01 – 6/30/11)	4 <sup>th</sup> Quarter (7/01 – 9/30/11)

VII. Ambient Air Monitoring

A. Requirements

1. WDEH will operate the National Air Monitoring Stations (NAMS), State/Local Air Monitoring Stations (SLAMS), and Special Purpose Monitors (SPM) and make timely submittal of all samples and data in accordance with procedures presented in the following documents:
  - 40 CFR Part 58,
  - State of Kansas Implementation Plan for Attainment and Maintenance of NAAQS, Sec. E – Monitoring Plan,
  - Kansas Ambient Air Monitoring Quality Assurance Program/Project Plans (QAPPs) and associated standard operating procedures (SOPs), and,
  - Instrument Operator's Manuals.
2. Additions, deletions, and changes in activities will be negotiated and set out in addenda to this Work Plan.
3. WDEH agrees to provide monitoring field support to BOA in responding to natural disasters or other emergency situations. This field support can only be provided with the concurrence of the Wichita City Manager. BOA agrees that the request for assistance will include an explanation of the duties that BOA would like WDEH to assist with and an approximation of the length of time the assistance would be required. If WDEH is unable to meet other contractual obligations due to providing this field monitoring support, BOA agrees to renegotiate those provisions.
4. Quarterly Reporting Requirement

1 <sup>st</sup> Quarter (10/1 – 12/31/10)	2 <sup>nd</sup> Quarter (1/01 – 3/31/11)	3 <sup>rd</sup> Quarter (4/01 – 6/30/11)	4 <sup>th</sup> Quarter (7/01 – 9/30/11)

B. General

1. Operation: WDEH will make regularly scheduled site visits, and additional site visits as necessary for maintenance, repairs, and QA/QC activities. Document all site visits and activities, and maintain required records and logs.
2. Maintenance: WDEH will perform minor repairs or secure repair service from manufacturer as needed, and coordinate more difficult problems with BOA field staff. Notify BOA by the next working day that an ambient air monitor is down due to equipment failure and provide estimated down time for repairs. Document all maintenance and repair activities, and maintain required records and logs.
3. Quarterly Reporting Requirement

1 <sup>st</sup> Quarter (10/1 – 12/31/10)	2 <sup>nd</sup> Quarter (1/01 – 3/31/11)	3 <sup>rd</sup> Quarter (4/01 – 6/30/11)	4 <sup>th</sup> Quarter (7/01 – 9/30/11)

C. Particulate Matter/PM<sub>10</sub>

1. WDEH will retrieve/change PM<sub>10</sub> filter elements on schedule. Submit PM<sub>10</sub> filters to BOA within 10 working days of the end of the month.
2. WDEH will biannually inspect PM<sub>10</sub> motors and change brushes (change motors as needed). Perform PM<sub>10</sub> calibrations and maintenance.
3. WDEH will perform annual orifice calibrations and support equipment calibrations. Perform NPAP audit as necessary.
4. Quarterly Reporting Requirement

1 <sup>st</sup> Quarter (10/1 – 12/31/10)	2 <sup>nd</sup> Quarter (1/01 – 3/31/11)	3 <sup>rd</sup> Quarter (4/01 – 6/30/11)	4 <sup>th</sup> Quarter (7/01 – 9/30/11)

D. Continuous PM<sub>10</sub>

1. WDEH will perform biweekly flow checks and perform diagnostic checks. Simultaneously replace filter element and clean inlet as necessary.
2. WDEH will perform leak check prior to hardware and software calibrations. Perform hardware and analog output calibration at least once every twelve months. Perform software calibration every six months. For samplers in small “doghouse” shelters, check air conditioning unit every six months.

3. Quarterly Reporting Requirements

1 <sup>st</sup> Quarter (10/1 – 12/31/10)	2 <sup>nd</sup> Quarter (1/01 – 3/31/11)	3 <sup>rd</sup> Quarter (4/01 – 6/30/11)	4 <sup>th</sup> Quarter (7/01 – 9/30/11)

E. PM<sub>2.5</sub> FRMs

1. WDEH will retrieve/change, prepare, and ship PM<sub>2.5</sub> filter elements (including field blanks) to contract laboratory on schedule. Collect field blank after every tenth routine sample. Download/record, review, and transmit required data from samplers.
2. WDEH will perform monthly verifications (temperature, pressure, leak check, flow rate). Change impactors after every five sampler runs. Perform annual calibrations.
3. Quarterly Reporting Requirements

1 <sup>st</sup> Quarter (10/1 – 12/31/10)	2 <sup>nd</sup> Quarter (1/01 – 3/31/11)	3 <sup>rd</sup> Quarter (4/01 – 6/30/11)	4 <sup>th</sup> Quarter (7/01 – 9/30/11)

F. PM<sub>2.5</sub> Speciation

1. WDEH will retrieve/change, prepare, and ship filter cassettes to laboratory on schedule. Submit field blanks and trip blanks to laboratory. Download/record, review, and transmit required data from speciation sampler.
2. WDEH will perform monthly verifications (date and time, temperature, pressure, leak check, flow chart) and annual calibrations.
3. Quarterly Reporting Requirements

1 <sup>st</sup> Quarter (10/1 – 12/31/10)	2 <sup>nd</sup> Quarter (1/01 – 3/31/11)	3 <sup>rd</sup> Quarter (4/01 – 6/30/11)	4 <sup>th</sup> Quarter (7/01 – 9/30/11)

G. Continuous Gaseous Monitors

1. WDEH will perform weekly maintenance. WDEH will check monitor reading vs. data logger reading quarterly or when coming back on line after downtime and report by the KDHE by voice telephone.
2. WDEH will assist BOA field staff in biannual calibrations. Perform NPAP audits as necessary.

3. Quarterly Reporting Requirements

1 <sup>st</sup> Quarter (10/1 – 12/31/10)	2 <sup>nd</sup> Quarter (1/01 – 3/31/11)	3 <sup>rd</sup> Quarter (4/01 – 6/30/11)	4 <sup>th</sup> Quarter (7/01 – 9/30/11)

H. Review and Submission of Data

1. WDEH will transmit PM<sub>2.5</sub> sampler data to BOA prior to the 7<sup>th</sup> of the following month. Submit data quality report by the 15<sup>th</sup> of the following month.
2. WDEH will quarterly: collect a minimum of 85% complete and valid samples and data from at least 90% of SLAMS and NAMS continuous pollutant monitors (including TEOMs). Collect a minimum of 75% complete and valid samples and data from at least 90% of SLAMS and NAMS particulate matter samplers (HiVol PM<sub>10</sub> and Sequential PM<sub>2.5</sub>).
3. Quarterly Reporting Requirements

1 <sup>st</sup> Quarter (10/1 – 12/31/10)	2 <sup>nd</sup> Quarter (1/01 – 3/31/11)	3 <sup>rd</sup> Quarter (4/01 – 6/30/11)	4 <sup>th</sup> Quarter (7/01 – 9/30/11)

I. Other Monitoring Projects Sumner County (Peck Community Center) PM<sub>2.5</sub>

1. WDEH will operate and maintain the existing PM<sub>2.5</sub> sampler at the Peck Community Center in Sumner County and the Colvin School monitor in the City of Wichita for FY 2011 or the duration of the monitoring site in the manner described above.
2. Quarterly Reporting Requirements

1 <sup>st</sup> Quarter (10/1 – 12/31/10)	2 <sup>nd</sup> Quarter (1/01 – 3/31/11)	3 <sup>rd</sup> Quarter (4/01 – 6/30/11)	4 <sup>th</sup> Quarter (7/01 – 9/30/11)

J. Payment Schedule

1. WDEH will provide quarterly updates on the progress of the Ambient Air Monitoring activities.
2. Schedule

Monitoring	Number
NO <sub>x</sub>	1
CO, O <sub>3</sub> , SO <sub>2</sub>	4
PM <sub>10</sub>	1
cPM <sub>10</sub>	4

PM <sub>2.5</sub> -- Regular	3
PM <sub>2.5</sub> -- Colo	1
Speciation 1/6	1
Peck PM <sub>2.5</sub>	1
Regular	
<b>Total</b>	<b>16</b>

3. Quarterly Reporting Requirements

1 <sup>st</sup> Quarter (10/1 – 12/31/10)	2 <sup>nd</sup> Quarter (1/01 – 3/31/11)	3 <sup>rd</sup> Quarter (4/01 – 6/30/11)	4 <sup>th</sup> Quarter (7/01 – 9/30/11)

IX. Local Priorities

A. Local Priority funding may be used to carry out air quality related tasks that are consistent with KDHE goals. This may include performing more of an activity that is in the agreement, such as complaint investigations, activities related to air emissions and pollution or outreach activities. It also could include performing other related tasks that the local agency believes are important to meet local goals.

B. Quarterly Reporting Requirements

1 <sup>st</sup> Quarter (10/1 – 12/31/10)	2 <sup>nd</sup> Quarter (1/01 – 3/31/11)	3 <sup>rd</sup> Quarter (4/01 – 6/30/11)	4 <sup>th</sup> Quarter (7/01 – 9/30/11)

X. Program Maintenance

A. WDEH & BOA agree that Program Maintenance to support activities related to the assistance of the state air program are: 1) not specifically covered by the activity specific allocations, including training, reporting, and other functions necessary to carry out the air compliance and enforcement, public education, planning, and other elements of the air program, 2) additions to specifically identified allocations that may be assigned by the KDHE other than indirect costs, including 3) complaint inspections and 4) compliance assistance.

B. Quarterly Reporting Requirements

1 <sup>st</sup> Quarter (10/1 – 12/31/10)	2 <sup>nd</sup> Quarter (1/01 – 3/31/11)	3 <sup>rd</sup> Quarter (4/01 – 6/30/11)	4 <sup>th</sup> Quarter (7/01 – 9/30/11)

**XI. Indirect Costs**

A. WDEH & BOA agree to an indirect costs associated with this contract of 21.4% of the total account reimbursed by BOA.

B. Quarterly Reporting Requirements

<b>1<sup>st</sup> Quarter (10/1 – 12/31/10)</b>	<b>2<sup>nd</sup> Quarter (1/01 – 3/31/11)</b>	<b>3<sup>rd</sup> Quarter (4/01 – 6/30/11)</b>	<b>4<sup>th</sup> Quarter (7/01 – 9/30/11)</b>

XII. The KDHE requires quarterly participation in meetings and conference calls to discuss issues that are related to the past and upcoming events with updates on the activities of each contract. *Scheduled Dates -TDB-*

## Appendix B

### Subject:

Grant Administration – Procurement Requirements  
Minority Business Enterprise (MBE), Woman Business Enterprise (WBE), Vendor  
Debarment

### Purpose:

To assist local government grantees in complying with Title 40 of the Code of Federal Regulations (CFR), Part 31 and 32 requirements for product or service procurement.

### Narrative:

The KDHE fully supports and requires compliance with all Federal and State legislation requiring fair and open competition for product or service procurement. As a requirement for continued grant funding all grantees agree to adhere to and abide by the regulations that pertain to this matter. This appendix is intended to be a resource to grantees so that they may easily locate the information and instructions they may need to comply with this regulation.

*NOTE: The following information is provided as a resource only and is in no way represented to be complete. Use of local or regional databases available from chambers of commerce or business alliances is strongly encouraged.*

- EPA Form 5700/52A (5/96) - Online:  
<http://www.epa.gov/ogd/forms/forms.htm>
- EPA Laws & Regulations – Online:  
<http://www.epa.gov/lawsregs/>
- Online database resources for identifying MBE/WBE:

**Kansas Department of Commerce/Kansas Department of Transportation**  
<http://www.ksdot.org/divadmin/civilrights/>

**Minority Business Development Agency – “Phoenix Database Online”:**  
<http://www.mbda.gov/>

- Excluded Parties List System at <http://epls.arnet.gov>

Supersedes EPA Form 5700-49, “Certification Regarding Debarment, Suspension, and Other Responsibility Matters.”

**GRANT CONTRACT**

**between**

**SECRETARY OF HEALTH AND ENVIRONMENT OF KANSAS**

**and**

**SHAWNEE COUNTY HEALTH AGENCY**

**Section I – Purpose and Financial Summary**

This contract is entered into between the Kansas Department of Health and Environment (KDHE) and the Shawnee County Health Agency (SCHA). The purpose of this contract is to establish a formal partnership between SCHA and the KDHE to implement a portion of the Kansas Air Quality Act in Shawnee County. This contract authorizes SCHA to provide air quality protection services specified in this agreement and the Environmental Program Work Plan for FY 2011 (Appendix A), and defines the funding arrangements for such services which are to be provided. The contract period is from October 1, 2010 to September 30, 2011.

**Summary of Grant Expenditures by Fund**

Federal 105 Grant <sup>1</sup> up to:	\$7,000.00
SCHA 40% Match up to:	\$4,667.00
State of Kansas Air Quality Fee Fund 2020 up to:	\$500.00
Total Grant not to exceed:	\$12,167.00
Total KDHE Reimbursement not to exceed:	\$7,500.00

**Summary of Grant Expenditures by Activity**

<b>Activity</b>	
<b>Compliance and Enforcement, Public Education and Outreach, Local Priorities, and Program Maintenance</b>	<b>\$6,178.00</b>
<b>Match</b>	<b>\$4,667.00</b>
<b>Indirect</b>	<b>\$1,322.00</b>
<b>Total Grant not to exceed</b>	<b>\$12,167.00</b>

<sup>1</sup> From State of Kansas Allocation

## Section II – Requirements – SCHA Agrees:

1. To perform the duties and tasks specified in the contract and FY 2011 Work Plan, to implement a portion of the Kansas Air Quality Act and Kansas Air Quality Regulations, and to provide documentation of satisfactory completion of work.
2. To not use the KDHE funds to supplant other SCHA funds and to provide matching funds from non-federal sources towards the successful completion of Section 105 purposes in an amount equal to 40% of funds expended for Section 105 purposes.
3. To only use the Air Quality Fee Fund money for Title V permit program related activities, and to only use the Federal 105 money for air quality related activities associated with the Kansas Air Quality Act and FY 2011 Work Plan, which may be amended under the provisions of Section IV.4.
4. To only use the Program Maintenance money for local air program purposes and other state or local activities not covered by the activity-specific allocations, including but not limited to: reporting, complaint investigation, compliance assistance, and other functions necessary to carry out the investigation, enforcement, outreach and other elements of the air program or additional activity-specific allocations that may be assigned by the KDHE, other than indirect, compliance assistance or air quality complaints. EPA does not require participation in and funding of the National Association of Clean Air Agencies (NACAA). SCHA participation in NACAA is discretionary and non-federal program maintenance funds may be used for said purpose.
5. To participate in the implementation of the Kansas Air Quality Act and provide documentation of satisfactory progress toward meeting the objectives in accordance with the FY 2011 Work Plan, as related to the Title V activities, and Federal 105 Air Pollution Control performance goals. SCHA shall submit to the KDHE quarterly progress reports as specified in the FY 2011 Work Plan, quarterly MBE/WBE verification on EPA Form 5700-52A – (5/96) for Federal 105 monies, quarterly Certified Expenditure Affidavit, and any other information that may be requested.
6. To obtain written approval in advance for the purchase of any item of equipment costing \$1,000.00 or more, and for any subcontract. All purchases with contract funds shall be the property of SCHA upon termination of this contract. The purchase shall not be segmented or otherwise structured to avoid the \$1,000.00 limit.
7. To retain financial aid and programmatic records, supporting documents and statistical records for five years from the date the final expenditure report is submitted. If litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the five-year period, the records must be retained until completion of the action and resolution of all issues that arise from it. Upon written request from the KDHE (or authorized representative) or Kansas Legislative Post Audit, SCHA will allow access to any payroll records, supported by time and attendance records for employees, documents, and records necessary to certify compliance with the KDHE grant awards, Kansas Legislative Appropriations, Kansas Statutes, and Federal grants and regulations.
8. If practical, to provide advanced notice to the KDHE of complaint investigation and enforcement actions taken by SCHA that are based solely upon SCHA air quality regulations, and to coordinate such actions with the KDHE to make sure a regulated source is not unduly burdened by multiple investigations or enforcement actions for a single cause or set of causes.

9. To include in all statements, press releases, websites, program activities, bid solicitations, and other documents, under the provisions of Section 83 of 2005 House Bill 2482 the phrase "paid for (in part) by the Kansas Department of Health and Environment."
10. To obtain an audit in accordance with the Federal Single Audit Act of 1984, and OMB Circular No. A-133, Audits of State and Local Governments, and Other Nonprofit Organizations, and to submit complete copy of the single agency audit report to the KDHE within 12 months after the end of the SCHA's fiscal year.
11. To comply with the Age Discrimination Act of 1975, Section 501 of the Rehabilitation Act of 1973, Title IX of the Educational Amendments of 1972, Title IV of the Civil Rights Act of 1964 and further agrees not to exclude from participation in, or deny the benefits of services to any person on the basis of race, color, gender, sexual orientation, gender identity, religion, national origin, ancestry, age, military or veteran status or disability status; with the Recipient Certification requirements of the Drug-Free Workplace Act of 1988; and with the Federal Anti-Lobbying Act of 1990.
12. To comply with all EPA grant regulations located under Title 40 of the Code of Federal Regulations (CFR), Part 31, as published as of the date of this agreement, and to specifically adhere to the "Fair-Share" policy to solicit Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) when contracting for goods or services. The specific steps to comply with this requirement are stated in 40 CFR 31.36(e) as in effect on July 1, 2004 (See Appendix B).
13. SCHA and any prospective participants shall fully comply with Subpart C of 40 CFR Part 32, as published as of the date of the agreement, entitled "Responsibilities of Participants Regarding Transactions." Recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 40 CFR Part 32, entitled "Covered Transactions," includes a term or condition requiring the inclusion of a similar term or condition in a subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information required under 40 CFR 32.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment (See Appendix B).
14. SCHA shall ensure that all information received pertaining to enforcement actions either under consideration or in process shall be held confidential by its employees and any contractors, and shall not be shared with, transmitted, or communicated to any third party, and shall be bound by the KDHE – BOA "Confidentiality Agreement" (See Appendix C).
15. SCHA agrees that its employees will adhere to ethical standards as established in K.S.A. 46-215, *et seq*, and the KDHE – BOA "Code of Ethics," (See Appendix D) and shall apply these standards to all aspects of performance during the term of this agreement.
  - a. The term "*making of a contract*" as used in K.S.A. 46-233 shall include all activities connected to the making of a contract, inspecting, enforcement, or any other such activity as required in the official function and furtherance of duties and obligations set forth in this agreement.
  - b. For the purpose of this agreement, the meaning of "*state employee*" shall be considered as those SCHA employees connected with the Air Quality Department.
  - c. Protection of "*privileged information*" shall include information disclosed from the KDHE – BOA to SCHA that is required to perform any action described in sub-section (a.) above. Public or private disclosure of any such information is expressly prohibited.

16. SCHAs agree that all records are to be returned to KDHE within 60 days of termination of any Workplan activity or the entire contract.

### **Section III – KDHE Agrees:**

1. To make payments, not to exceed \$500.00 from the Air Quality Fee Fund; and not to exceed \$7,000.00 from the Federal 105 funds to SCHAs for conducting the KDHE Air Quality Program as authorized in the FY 2011 Work Plan (See Appendix A).
2. To the extent possible, BOA will seek input from SCHAs on issues governed by this contract prior to making decisions or taking actions that will affect SCHAs Air Quality Program.
3. To provide regular updates on enforcement actions pertaining to sources in Shawnee County, including but not limited to written acknowledgements that SCHAs enforcement action recommendations have been received by the KDHE.
4. To work with SCHAs and other local partners: to establish and annually update strategic goals, objectives and strategies for reducing emissions and improving air quality.
5. To provide SCHAs, with prior approval from BOA, an opportunity to shift workload and funds to other eligible air program activities if the targeted activities laid out in the FY 2011 Work Plan cannot be completed because they are demand driven or BOA is unable to refer work to SCHAs as specified in this agreement.

### **Section IV – Other Terms and Conditions - It is mutually agreed:**

1. SCHAs will request reimbursement from the KDHE within 30 days of the end of each quarter. The KDHE shall provide reimbursement in accordance with the “Kansas Prompt Payment Act” (K.S.A. 75-6401 through 75-6407), upon receipt of satisfactory progress reports, MBE/WBE verification, and quarterly Certified Expenditure Affidavit.
2. That this agreement may be canceled by either party upon 30 days written notice to the other party, except that the KDHE may cancel this agreement without such notice in the event of loss of funding. Funding of this agreement is contingent upon the availability of funds in the Air Quality Fee Fund, receipt of federal funds from the U.S. Environmental Protection Agency (EPA), and availability of funds in the State Treasury. This contract, including Work Plan, may be amended in writing when duly executed by both parties. This contract is subjected to a pro-rata reduction contingent upon the amount of reduction of federal grants dollars to the KDHE - BOA.
3. All indirect costs incurred implementing the SCHAs component of this contract shall not exceed 21.4% of the following: the total Air Quality Fee Fund and Federal 105 monies authorized under this contract for compliance and enforcement, public education and outreach, plus program maintenance and local priorities, less local match.
4. That the provisions found in Contractual Provisions Appendix E (Form DA-146a), which is attached hereto, are hereby incorporated in this contract and made a part hereof.

**Section V – Approved**

Contract Administrators:

Kansas Department of Health and Environment – Linda Vandevord, 785-296-6423, 1000 SW Jackson, Ste. 310, Topeka, KS 66612-1366

Shawnee County Health Agency – Ed Kalas, 785-291-2456, North Annex, 1515 NW Saline, Suite 101, Topeka, KS 66618-2838

In WITNESS WHEREOF, the parties hereto have affixed their signatures.

By signing this agreement, the person below warrants that he or she has the authority to sign this document and to bind SCHA and the KDHE to its terms.

\_\_\_\_\_  
Michelle Buhler  
Chair  
Shawnee County Commission

Date: \_\_\_\_\_

\_\_\_\_\_  
Roderick L. Bremby  
Secretary  
Kansas Department of Health and  
Environment

Date: \_\_\_\_\_

**APPENDIX A  
LOCAL AGENCY WORK PLAN  
for  
Shawnee County Health Agency  
FY 2011**

**Contract Period October 1, 2010 – September 30, 2011**

The Bureau of Air (BOA), on behalf of the Kansas Department of Health and Environment (KDHE), and the Shawnee County Health Agency (SCHA) hereby agree to comply with the cooperative intent of the Clean Air Act within Shawnee County as follows:

**I. Contacts**

<b>Issue/Activity</b>	<b>Primary State Contact</b>	<b>Phone #</b>	<b>Primary SCHA Contact</b>	<b>Phone #</b>
<b>General</b>				
General Administrative Duties	Rick Brunetti	785-296-1551	Ed Kalas	785-291-2456
<b>Compliance and Enforcement</b>				
Administrative Issues; QA/QC	Vick Cooper	785-296-1561	Ed Kalas	785-291-2456
Compliance and Enforcement	Russ Brichacek	785-296-1544	Ed Kalas	785-291-2456
<b>Public Education &amp; Outreach</b>				
Public Education & Outreach	Kathleen Waters	785-296-1575	Ed Kalas	785-291-2456

**II. Compliance and Enforcement**

A. SCHA and BOA agree as follows:

1. The SCHA will conduct complaint investigations and make monthly submittal of all supporting documents in accordance with procedures outlined in the following documents:
  - BOA, Air Quality Compliance and Enforcement Training Manual
  - Kansas Air Quality Regulations and Statutes
  - Applicable CFR
2. If noncompliance with regulations are observed and documented during a complaint investigation, BOA will be notified in accordance with BOA enforcement policy. Notices of Noncompliance issued by SCHA will be tracked by both SCHA and BOA, with required follow up in accordance with BOA Enforcement Policy. BOA will review and determine if noncompliance documented is subject to EPAs High Priority Violator (HPV) policy. Departmental Orders and Consent Agreements will be determined and issued by BOA in accordance with BOA Enforcement Policy.

3. SCHA is responsible for responding to complaints received from individuals, BOA, or other governmental agencies within 2 business days (depending on the urgency) of receipt of complaint, during normal business hours. SCHA will contact the complainant by telephone or other appropriate methods. When necessary, on site investigation will be conducted within two working days of receipt of complaint. Investigative reports will be submitted to BOA within seven days of completion of the investigation. Open Burning activities shall be pursuant to Kansas Open Burning Prohibition and Exception regulations.
4. SCHA will provide quarterly updates on the Compliance and Enforcement activities performed.
5. SCHA agrees to attend/participate in the monthly enforcement coordination calls.
6. SCHA agrees to attend/participate in the semi-annual meetings in Topeka.

B. Quarterly Report Requirements

1 <sup>st</sup> Quarter (10/1 – 12/31/10)	2 <sup>nd</sup> Quarter (1/01 – 3/31/11)	3 <sup>rd</sup> Quarter (4/01 – 6/30/11)	4 <sup>th</sup> Quarter (7/01 – 9/30/11)

III. Public Education & Outreach

A. Local Air Quality Public Education, and Outreach Activities

1. SCHA & BOA agrees as follows:
  - SCHA will establish local partnerships to form a workgroup to develop an Ozone/Air Quality Awareness Plan.
  - SCHA will provide information on ozone and general air quality to the public at appropriate public events.
  - SCHA will lead efforts to eliminate residential open burning in the City limits of Topeka as part of the Ozone/Air Quality Awareness Plan to be generated.
  - SCHA will provide quarterly updates on the progress of the Public Outreach Activities including meeting and workgroup participation, publications created or provided/distributed, presentations given and comments on next steps (if any) for the activities listed.

B. Quarterly Reporting Requirements

1 <sup>st</sup> Quarter (10/1 – 12/31/10)	2 <sup>nd</sup> Quarter (1/01 – 3/31/11)	3 <sup>rd</sup> Quarter (4/01 – 6/30/11)	4 <sup>th</sup> Quarter (7/01 – 9/30/11)

IV. Local Priorities

A. Local Priority funding may be used to carry out air quality related tasks that are consistent with KDHE goals. This may include performing more of an activity that is in the agreement, such as complaint investigations, activities related to air emissions and pollution or outreach activities. It also could include performing other related tasks that the local agency believes are important to meet local goals

B. Quarterly Reporting Requirements

1 <sup>st</sup> Quarter (10/1 – 12/31/10)	2 <sup>nd</sup> Quarter (1/01 – 3/31/11)	3 <sup>rd</sup> Quarter (4/01 – 6/30/11)	4 <sup>th</sup> Quarter (7/01 – 9/30/11)

V. Program Maintenance

A. SCH A & BOA agree that Program Maintenance funds are to support activities related to the assistance of the state air program: 1) not specifically covered by the activity specific allocations, including training, reporting, and other functions necessary to carry out the air compliance and enforcement, and public education and outreach elements of the air program, 2) additions to specifically identified allocations that may be assigned by the KDHE other than indirect costs including compliance assistance and complaint investigations.

B. Quarterly Reporting Requirements

1 <sup>st</sup> Quarter (10/1 – 12/31/10)	2 <sup>nd</sup> Quarter (1/01 – 3/31/11)	3 <sup>rd</sup> Quarter (4/01 – 6/30/11)	4 <sup>th</sup> Quarter (7/01 – 9/30/11)

VI. Indirect Costs

A. SCH A & BOA agree to an indirect costs associated with this contract of 21.4% of the total account reimbursed by BOA.

B. Quarterly Reporting Requirements

1 <sup>st</sup> Quarter (10/1 – 12/31/10)	2 <sup>nd</sup> Quarter (1/01 – 3/31/11)	3 <sup>rd</sup> Quarter (4/01 – 6/30/11)	4 <sup>th</sup> Quarter (7/01 – 9/30/11)

- VII. The KDHE requires quarterly participation in meetings and conference calls to discuss issues that are related to the past and upcoming events with updates on the activities of each contract. *Scheduled Dates are:*

*TDB*

## Appendix B

### Subject:

Grant Administration – Procurement Requirements  
Minority Business Enterprise (MBE), Woman Business Enterprise (WBE), Vendor  
Debarment

### Purpose:

To assist local government grantees in complying with Title 40 of the Code of Federal Regulations (CFR), Part 31 and 32 requirements for product or service procurement.

### Narrative:

KDHE fully supports and requires compliance with all Federal and State legislation requiring fair and open competition for product or service procurement. As a requirement for continued grant funding all grantees agree to adhere to and abide by the regulations that pertain to this matter. This appendix is intended to be a resource to grantees so that they may easily locate the information and instructions they may need to comply with this regulation.

*NOTE: The following information is provided as a resource only and is in no way represented to be complete. Use of local or regional databases available from chambers of commerce or business alliances is strongly encouraged.*

- EPA Form 5700/52A (5/96) – Online:
- <http://www.epa.gov/ogd/forms/forms.htm>

EPA Laws & Regulations – Online:  
<http://www.epa.gov/lawsregs/>

- Online database resources for identifying MBE/WBE:

Kansas Department of Commerce/Kansas Department of Transportation  
<http://www.ksdot.org/divadmin/civilrights/>

Minority Business Development Agency – “Phoenix Database Online”:  
<http://www.mbda.gov/>

- Excluded Parties List System at <http://epls.arnet.gov>

Supersedes EPA Form 5700-49, “Certification Regarding Debarment, Suspension, and Other Responsibility Matters.”

**GRANT CONTRACT**

**between**

**SECRETARY OF HEALTH AND ENVIRONMENT OF KANSAS**

**and**

**MID-AMERICA REGIONAL COUNCIL**

**Section I – Purpose and Financial Summary**

This contract is entered into between the Kansas Department of Health and Environment (KDHE) and the Mid-America Regional Council (MARC). The purpose of this contract is to establish a formal partnership between MARC and the KDHE to implement the Kansas Air Quality Act in the Kansas City Metropolitan area. This contract authorizes MARC to provide air quality protection services specified in this agreement and the FY 2011 Work Plan (Appendix A), and defines the funding arrangements for such services which are to be provided. The contract period is from October 1, 2010 to September 30, 2011.

**Summary of Grant Expenditures by Fund**

Federal 105 Grant <sup>1</sup> up to:	\$41,049.00
State of Kansas Air Quality Fee Fund up to:	\$9,701.00
Total Grant not to exceed:	<u>\$50,750.00</u>
Total KDHE Reimbursement not to exceed:	\$50,750.00

**Section II – Requirements – MARC Agrees:**

1. To perform the duties and tasks specified in the contract and FY 2011 Work Plan (Appendix A), to implement the Kansas Air Quality Act and Kansas Air Quality Regulations, and to provide documentation of satisfactory completion of work.
2. To not use the KDHE funds to supplant other MARC funds.
3. To only use the Federal 105 money for air quality related activities associated with the Kansas Air Quality Act and FY 2011 Work Plan.
4. To participate in the implementation of the Kansas Air Quality Act and provide documentation of satisfactory progress toward meeting the objectives in accordance with the FY 2011 Work Plan and the 105 Air Pollution Control performance goals. MARC shall submit to the KDHE quarterly progress reports as specified in the FY 2011 Work Plan documenting successful completion of the program requirements/objectives, and quarterly MBE/WBE verification on EPA Form 5700-52A – (5/96) for Federal 105 monies, quarterly Certified Expenditure Affidavit, and any other information that may be requested.
5. To obtain written approval in advance for the purchase of any item of equipment costing \$5,000.00 or more, and for any subcontract. All purchases with contract funds shall be the property of MARC upon termination of this contract. The purchase shall not be segmented or otherwise structured to avoid the \$5,000.00 limit.

<sup>1</sup> From State of Kansas Allocation

6. To retain financial aid and programmatic records, supporting documents and statistical records for five years from the date the final expenditure report is submitted. If litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the five-year period, the records must be retained until completion of the action and resolution of all issues that arise from it. Upon written request from the KDHE (or authorized representative) or Kansas Legislative Post Audit, MARC will allow access to any payroll records, supported by time and attendance records for employees, documents, and records necessary to certify compliance with the KDHE grant awards, Kansas Legislative Appropriations, Kansas Statutes, and Federal grants and regulations.
7. To include in all statements, press releases, websites, program activities, bid solicitations, and other documents, under the provisions of Section 83 of 2005 House Bill 2482 the phrase "paid for (in part) by the Kansas Department of Health and Environment."
8. To obtain an audit in accordance with the Federal Single Audit Act of 1984, and OMB Circular No. A-133, Audits of State and Local Governments, and Other Nonprofit Organizations, and to submit one complete copy of the single agency audit report to the KDHE within 12 months after the end of the MARC's fiscal year.
9. To comply with the Age Discrimination Act of 1975, Section 501 of the Rehabilitation Act of 1973, Title IX of the Educational Amendments of 1972, Title IV of the Civil Rights Act of 1964 and further agrees not to exclude from participation in, or deny the benefits of services to any person on the basis of race, color, gender, sexual orientation, gender identity, religion, national origin, ancestry, age, military or veteran status or disability status; with the Recipient Certification requirements of the Drug-Free Workplace Act of 1988, and with the Federal Anti-Lobbying Act of 1990.
10. To comply with all EPA grant regulations located under Title 40 of the Code of Federal Regulations (CFR), Part 31, as published as of the date of this agreement, and to specifically adhere to the "Fair-Share" policy to solicit Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) when contracting for goods or services. The specific steps to comply with this requirement are stated in 40 CFR 31.36(e) as in effect on July 1, 2004 (See Appendix B).
11. MARC and any prospective participants shall fully comply with Subpart C of 40 CFR Part 32, as published as of the date of the agreement, entitled "Responsibilities of Participants Regarding Transactions." Recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 40 CFR Part 32, entitled "Covered Transactions," includes a term or condition requiring the inclusion of a similar term or condition in a subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information required under 40 CFR 32.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment (See Appendix B).

**Section III – KDHE Agrees:**

1. To make payments, and not to exceed \$9,701.00 from the Air Quality Fee Fund; and not to exceed \$41,049.00 from the Federal 105 funds to MARC for conducting the KDHE Air Quality Program as authorized in the FY 2011 Work Plan (See Appendix A).

**Section IV – Other Terms and Conditions - It is mutually agreed:**

1. MARC will request reimbursement from the KDHE within 30 days of the end of each quarter. The KDHE shall provide reimbursement in accordance with the “Kansas Prompt Payment Act” (K.S.A. 75-6401 through 75-6407), upon receipt of satisfactory progress reports, MBE/WBE verification, and quarterly Certified Expenditure Affidavit.
2. The KDHE may hold or deny payment in whole or in part if required work demonstrating successful completion of program requirements/objectives are not met as specified in the contract or Work Plan. The KDHE may subtract from any payment for the value of the KDHE services provided to MARC in completing or assisting with the completion of MARC’s obligations under this agreement.
3. That all revenues received from the delivery of services related to the KDHE contract awards shall be identified and reported. Such program income shall be retained by MARC to further the objectives of the contract.
4. That this agreement may be canceled by either party upon 30 days written notice to the other party, except that the KDHE may cancel this agreement without such notice in the event of loss of funding. Funding of this agreement is contingent upon the availability of funds in the Air Quality Fee Fund, receipt of federal funds from the U.S. Environmental Protection Agency (EPA), and availability of funds in the State Treasury. This contract, including Work Plan, may be amended in writing when duly executed by both parties. The contract is subject to a pro-rata reduction contingent upon the amount of reduction of federal grants dollars allocated to the KDHE/BOA.
5. That the provisions found in Contractual Provisions (Appendix C, Form DA-146a), which is attached hereto, are hereby incorporated in this contract and made a part hereof.

**Contract Administrators:**

Kansas Department of Health and Environment – Linda Vandevord, 785-296-6423, 1000 SW Jackson, Ste. 310, Topeka, KS 66612-1366

Mid-America Regional Council (MARC) – Amanda Graor, 816-474-4240, 300 Rivergate Center, 600 Broadway, Kansas City, MO 64105

In WITNESS WHEREOF, the parties hereto have affixed their signatures.

By signing this agreement, the person below warrants that he or she has the authority to sign this document and to bind MARC and the KDHE to its terms.

---

David A. Warm  
Executive Director  
Mid-America Regional Council  
Date: \_\_\_\_\_

---

Roderick L. Bremby  
Secretary  
Kansas Department of Health and  
Environment  
Date: \_\_\_\_\_

## Appendix A

### MARC WORK PLAN - FY 2011 Contract Period October 1, 2010 – September 30, 2011

The Bureau of Air (BOA), on behalf of the Kansas Department of Health and Environment (KDHE), and the Mid-American Regional Council (MARC) hereby agree to coordinate the following activities under this grant:

**I. Concerning Revisions to the State Implementation Plans and coordinate other air quality services in the Kansas City Metro Area.**

It is mutually agreed that MARC will carry out the provisions of the 1978 Memorandum of Understanding, included as Appendix D, between MARC and the States of Kansas and Missouri at no cost to the State of Kansas. MARC shall report on the results of its activities to the State of Kansas at least annually.

**II. Support Services for Regional Air Quality Public Education Program**

MARC will contract with the following vendors to implement elements of the Kansas City region air quality public education campaign. BOA will reimburse MARC for the cost of these services as described below.

**Service: Ozone Forecasting**

**Contractor: Weather Or Not, Inc. (WBE)**

**2011 Anticipated Cost of Services: \$8,000.00**

Weather or Not provides ozone forecasting from April 1 - October 31. Forecasts are distributed to the public via the MARC website, by email and fax to local TV, radio and print media outlets; and through a regional air quality phone information line. Ozone forecasting costs will be covered by the BOA/MARC sub-grant in an amount not to exceed \$8,000.

**Service: Strategic Planning and Implementation of 2011 Air Quality Public Education Campaign**

**Subcontractor: Parsons Brinckerhoff**

**2011 Anticipated Cost of Services: \$7,500.00**

Contractor will:

- Receive and prepare data for greenhouse gas emissions model
- Set up model using baseline land use scenario
  - Set up transportation analysis
  - Set up building energy analysis
  - Set up indicators
- Set up model for adaptive land use scenario
  - Set up transportation analysis

- Set up building energy analysis
- Review and update indicators
- Run model for the two scenarios
- Finalize analysis and scenario files
- Prepare scenario user guide

**Service: Strategic Planning and Implementation of a Comprehensive Update to the Regional Clean Air Action Plan and Public Education Strategies**

**Contractor: To be determined through RFP process**

**2011 Anticipated Cost of Service: \$30,000.00**

Contractor is anticipated to work with a regional working group in collaboration with MARC staff to update the Regional Clean Air Action Plan, including new public education and outreach strategies. This process will incorporate a wide range of stakeholders and will involve a large scale public event to be held in mid-late summer 2011 for outreach efforts around the new ozone standard and new voluntary commitments to air quality improvement.

### **III. Reimbursement**

Reimbursement shall be on a quarterly basis for contractual expenses incurred by MARC in implementing the elements of this Work Plan.

### **IV. Progress Reports**

Within 30 days of the end of each quarter, MARC will provide BOA with a status report on all contractor activities covered by this grant. While not part of the scope of work of this grant, MARC will also provide KDHE with a quarterly summary of activities carried out in support of the regional Clean Air Action Plan.

### **V. Meetings**

The KDHE requires quarterly participation in meetings and conference calls to discuss issues that are related to the past and upcoming events with updates on the activities of each contract. *Scheduled Dates are: TDB.*

## Appendix B

### Subject:

Grant Administration – Procurement Requirements  
Minority Business Enterprise (MBE), Woman Business Enterprise (WBE), Vendor  
Debarment

### Purpose:

To assist local government grantees in complying with Title 40 of the Code of Federal Regulations (CFR), Part 31 and 32 requirements for product or service procurement.

### Narrative:

KDHE fully supports and requires compliance with all Federal and State legislation requiring fair and open competition for product or service procurement. As a requirement for continued grant funding all grantees agree to adhere to and abide by the regulations that pertain to this matter. This appendix is intended to be a resource to grantees so that they may easily locate the information and instructions they may need to comply with this regulation.

*NOTE: The following information is provided as a resource only and is in no way represented to be complete. Use of local or regional databases available from chambers of commerce or business alliances is strongly encouraged.*

- EPA Form 5700/52A (5/96)– Online:

<http://www.epa.gov/ogd/forms/forms.htm>

- EPA Laws & Regulations – Online:  
<http://www.epa.gov/lawsregs/>

- Online database resources for identifying MBE/WBE:

Kansas Department of Commerce/Kansas Department of Transportation:  
<http://www.ksdot.org/divadmin/civilrights/>

Minority Business Development Agency – “Phoenix Database Online”:  
<http://www.mbda.gov/>

- Excluded Parties List System at <http://epls.arnet.gov>

Supersedes EPA Form 5700-49, “Certification Regarding Debarment, Suspension, and Other Responsibility Matters.”

# GRANT CONTRACT

between

SECRETARY OF THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

and

JOHNSON COUNTY ENVIRONMENTAL DEPARTMENT

## Section I – Purpose and Financial Summary

This contract is entered into between the Kansas Department of Health and Environment (KDHE) and the Johnson County Environmental Department (JCED). The purpose of this contract is to establish a formal partnership between JCED and the KDHE to implement the Kansas Air Quality Act in Johnson County. This contract authorizes JCED to provide air quality protection services specified in this agreement and the Environmental Program Work Plan for FY 2011 (Appendix A), and defines the funding arrangements for such services which are to be provided. The contract period is from October 1, 2010 to September 30, 2011.

### Summary of Grant Expenditures by Fund

Federal 105 Grant <sup>1</sup> up to:	\$88,186.00
JCED 40% Match up to:	\$58,791.00
State of Kansas Air Quality Fee Fund up to:	\$42,100.00
Total Grant not to exceed:	\$189,077.00
Total KDHE Reimbursement not to exceed:	\$130,286.00

### Summary of Grant Expenditures by Activity

Compliance and Enforcement, Inspections, Asbestos, Emission Reduction Strategies, Planning, Public Education and Outreach, Local Priorities, and Program Maintenance	\$107,320.00
Match	\$58,791.00
Indirects	\$22,966.00
Total Grant	\$189,077.00

<sup>1</sup> From State of Kansas Allocation

## Section II – Requirements – JCED Agrees:

1. To perform the duties and tasks specified in the contract and FY 2011 Work Plan, to implement the Kansas Air Quality Act and Kansas Air Quality Regulations, and to provide documentation of satisfactory completion of work.
2. To not use the KDHE funds to supplant other JCED funds and to provide matching funds from non-federal sources towards the successful completion of Section 105 purposes in an amount equal to 40% of funds expended for Section 105 purposes.
3. To only use the Air Quality Fee Fund money for Title V permit program related activities, and to only use the Federal 105 money for air quality related activities associated with the Kansas Air Quality Act and FY 2011 Work Plan which may be amended under the Provisions of Section IV.4.
4. To only use the Program Maintenance money for local air program purposes and other state or local activities not covered by the activity-specific allocations including, but not limited to: reporting, complaint inspections, compliance assistance, and other functions necessary to carry out the monitoring, inspection, enforcement, outreach and other elements of the air program or additional activity-specific allocations that may be assigned by the KDHE.
5. To participate in the implementation of the Kansas Air Quality Act and provide documentation of satisfactory progress toward meeting the objectives in accordance with the FY 2011 Work Plan, as related to the Title V activities and Federal 105 Air Pollution Control performance goals. JCED shall submit to the KDHE quarterly progress reports as specified in the FY 2011 Work Plan, quarterly MBE/WBE verification on EPA Form 5700-52A – (5/96) for Federal 105 monies, quarterly Certified Expenditure Affidavits, and any other information that may be requested.
6. To obtain written approval in advance for the purchase of any item of equipment costing \$5,000.00 or more, and for any subcontract. All purchases with contract funds shall be the property of JCED upon termination of this contract. The purchase shall not be segmented or otherwise structured to avoid the \$5,000.00 limit.
7. To retain financial aid and programmatic records, supporting documents and statistical records for five years from the date the final expenditure report is submitted. If litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the five-year period, the records must be retained until completion of the action and resolution of all issues that arise from it. Upon written request from the KDHE (or authorized representative) or Kansas Legislative Post Audit, JCED will allow access to any payroll records, supported by time and attendance records for employees, documents, and records necessary to certify compliance with the KDHE grant awards, Kansas Legislative Appropriations, Kansas Statutes, and Federal grants and regulations.
8. If practical, to provide advanced notice to the KDHE of permit inspections and enforcement actions taken by JCED that are based solely upon JCED air quality regulations, and to coordinate such actions with the KDHE to make sure a regulated source is not unduly burdened by multiple permit inspections or enforcement actions for a single cause or set of causes.
9. To include in all statements, press releases, websites, program activities, bid solicitations, and other documents, under the provisions of Section 83 of 2005 House Bill 2482 the phrase “paid for (in part) by the Kansas Department of Health and Environment.”
10. To obtain an audit in accordance with the Federal Single Audit Act of 1984, and OMB Circular No. A-133, Audits of State and Local Governments, and Other Nonprofit

- Organizations, and to submit complete copy of the single agency audit report to the KDHE within 12 months after the end of the JCED's fiscal year.
11. To comply with the Age Discrimination Act of 1975, Section 501 of the Rehabilitation Act of 1973, Title IX of the Educational Amendments of 1972, Title IV of the Civil Rights Act of 1964 and further agrees not to exclude from participation in, or deny the benefits of services to any person on the basis of race, color, gender, sexual orientation, gender identity, religion, national origin, ancestry, age, military or veteran status or disability status; with the Recipient Certification requirements of the Drug-Free Workplace Act of 1988; and with the Federal Anti-Lobbying Act of 1990.
  12. To comply with all EPA grant regulations located under Title 40 of the Code of Federal Regulations (CFR), Part 31, as published as of the date of this agreement, and to specifically adhere to the "Fair-Share" policy to solicit Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) when contracting for goods or services. The specific steps to comply with this requirement are stated in 40 CFR 31.36(e) as in effect on July 1, 2004 (See Appendix B).
  13. JCED and any prospective participants shall fully comply with Subpart C of 40 CFR Part 32, as published as of the date of the agreement, entitled "Responsibilities of Participants Regarding Transactions." Recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 40 CFR Part 32, entitled "Covered Transactions," includes a term or condition requiring the inclusion of a similar term or condition in a subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information required under 40 CFR 32.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment (See Appendix B).
  14. JCED shall ensure that all information received pertaining to enforcement actions either under consideration or in process shall be held confidential by its employees and any contractors, and shall not be shared with, or transmitted or communicated to any third party, and shall be bound by the Confidentiality Agreement (See Appendix C).
  15. JCED agrees that its employees will adhere to ethical standards as established in K.S.A. 46-215, *et seq*, and the KDHE – BOA "Code of Ethics," (See Appendix D) and shall apply these standards to all aspects of performance during the term of this agreement.
    - a) The term "*making of a contract*" as used in K.S.A. 46-233 shall include all activities connected to the making of a contract, issuing a permit, regulating, inspecting, enforcement or any other such activity as required in the official function and furtherance of duties and obligations set forth in this agreement.
    - b) For the purpose of this agreement, the meaning of "*state employee*" shall be considered as those JCED employees connected with the Air Quality Program.
    - c) Protection of "*privileged information*" shall include information disclosed from the KDHE – BOA to JCED that is required to perform any action described in subsection (a.) above. Public or private disclosure of any such information is expressly prohibited.
  16. JCED agrees that all records are to be returned to KDHE within 60 days of termination of any Workplan activity or the entire contract.
  17. JCED agrees to attend the ETA (Eastern Technical Associates) Visible Emissions Lecture and Field training for Smoke School per agreement between KDHE and contractor.

### **Section III – KDHE Agrees:**

1. To make payments, not to exceed \$42,100.00 from the Air Quality Fee Fund; and not to exceed \$88,186.00 from the Federal 105 funds to JCED for conducting the KDHE Air Quality Program as authorized in the FY 2011 Work Plan (See Appendix A).
2. To the extent possible, BOA will seek input from JCED on issues governed by this contract prior to making decisions or taking actions that will affect the JCED Air Quality Program.
3. To provide regular updates on enforcement actions pertaining to sources in Johnson County, including but not limited to written acknowledgements that JCED enforcement action recommendations have been received by the KDHE.
4. To work with JCED and other local partners to: establish and annually update strategic goals, objectives and strategies for reducing emissions and improving air quality.
5. To provide JCED with prior approval from the KDHE - BOA, an opportunity to shift workload and funds to other eligible air program activities if the targeted activities laid out in the FY 2011 Work Plan cannot be completed because they are demand driven or the KDHE - BOA is unable to refer work to JCED as specified in this agreement.

### **Section IV – Other Terms and Conditions - It is mutually agreed:**

1. JCED will request reimbursement from the KDHE within 30 days of the end of each quarter. The KDHE shall provide reimbursement in accordance with the "Kansas Prompt Payment Act" (K.S.A. 75-6401 through 75-6407), upon receipt of satisfactory progress reports, MBE/WBE verification, and quarterly Certified Expenditure Affidavit.
2. That this agreement may be canceled by either party upon 30 days written notice to the other party, except that the KDHE may cancel this agreement without such notice in the event of loss of funding. Funding of this agreement is contingent upon the availability of funds in the Air Quality Fee Fund, receipt of federal funds from the U.S. Environmental Protection Agency (EPA), and availability of funds in the State Treasury. This contract, including Work Plan, may be amended in writing when duly executed by both parties. The contract is subject to a pro-rata reduction contingent upon the amount of reduction of federal grant dollars allocated to the KDHE - BOA.
3. All indirect costs incurred implementing the JCED component of this contract shall not exceed 21.4% of the following: the total Air Quality Fee Fund and Federal 105 monies authorized under this contract for compliance and enforcement, emission reduction strategies, planning, public education and outreach, program maintenance and local priorities, less local match.
4. That the provisions found in Contractual Provisions Appendix E (Form DA-146a), which is attached hereto, are hereby incorporated in this contract and made a part hereof.

Contract Administrators:

Kansas Department of Health and Environment – Linda Vandevord, 785-296-6423, 1000 SW Jackson, Ste. 310, Topeka, KS 66612-1366

Johnson County Environmental Department- Pat Loriaux, 913-715-6900, 11811 S. Sunset, Suite 2700, Olathe, KS 66061

In WITNESS WHEREOF, the parties hereto have affixed their signatures.

By signing this agreement, the person below warrants that he or she has the authority to sign this document and to bind JCED and the KDHE to its terms.

\_\_\_\_\_  
Cindy Kemper  
Director  
Johnson County Environmental Department

Date: \_\_\_\_\_

\_\_\_\_\_  
Roderick L. Bremby  
Secretary  
Kansas Department of Health and  
Environment

Date: \_\_\_\_\_

**APPENDIX A  
LOCAL AGENCY WORK PLAN  
For  
JOHNSON COUNTY ENVIRONMENTAL DEPARTMENT  
FY 2011  
Contract Period October 1, 2009 – September 30, 2010**

The Bureau of Air (BOA), on behalf of the Kansas Department of Health and Environment (KDHE), and the Johnson County Environmental Department (JCED) hereby agree to comply with the cooperative intent of the Clean Air Act within Johnson County as follows:

**I. Contacts**

<b>Issue/Activity</b>	<b>Primary State Contact</b>	<b>Phone #</b>	<b>Primary JCED Contact</b>	<b>Phone #</b>
<b>General</b>				
General Administrative Duties	Rick Brunetti	785-296-1551	Cindy Kemper	913-715-6901
<b>Compliance and Enforcement</b>				
Administrative Issues; QA/QC	Vick Cooper	785-296-1561	Mike Boothe	913-715-6939
Compliance and Enforcement	Russ Brichacek	785-296-1544	Mike Boothe	913-715-6939
<b>Asbestos</b>				
Asbestos Inspections	Scott Bangert	785-296-1689	Mike Boothe	913-715-6939
<b>Planning</b>				
Planning	Tom Gross	785-296-1692	Cindy Kemper	913-715-6901
<b>Emission Reduction Strategies</b>				
Emission Reduction Strategies	Doug Watson	785-296-0910	Jennifer Logan	913-715-6926
<b>Public Education &amp; Outreach</b>				
Public Education & Outreach	Kathleen Waters	785-296-1575	Jennifer Logan	913-715-6926

**II. Compliance and Enforcement**

A. JCED and BOA agree as follows:

1. The JCED will conduct inspections and investigations and make weekly submittals of all supporting documents in accordance with procedures outlined in the following documents:
  - BOA, Air Quality Compliance and Enforcement Training Manual
  - Kansas Air Quality Regulations and Statutes
  - Applicable CFR
2. The JCED will provide initial enforcement investigation and the retrieval of support information and documentation, and will participate in monthly BOA/JCED enforcement coordination calls.
3. The JCED inspection results will be documented on accepted and agreed upon inspection forms. A copy of the letter to the source discussing inspection results will be sent to BOA within fifteen business days of completion of inspection. Copies of inspection reports and letters will be mailed to BOA each Friday. Inspections/FCEs will be scheduled by JCED with a goal of 25% of inspections/FCEs completed per FY quarter. JCED shall submit a list of sources recommended to be inspected to BOA by September 1<sup>st</sup> of each year.
4. If noncompliance with regulations are observed and documented during an inspection, BOA will be notified in accordance with BOA enforcement policy. Notices of Noncompliance issued by JCED will be tracked by

both JCED and BOA, with required follow up in accordance with BOA Enforcement Policy. BOA will review and determine if noncompliance documented is subject to EPA's High Priority Violator (HPV) policy. Departmental Orders and Consent Agreements will be determined and issued by BOA in accordance with BOA Enforcement Policy.

5. Evaluation inspections will be completed within 90 days of notification of start up for Class I, NSPS, MACT sources, and within 180 days of notification of start up on Class II and non-NSPS sources. Evaluation inspections will be documented on accepted and agreed upon forms, and a letter will be sent to the source within seven days of completed inspection and a copy will also be sent to BOA.
6. JCED is responsible for responding to complaints received from individuals, BOA, or other governmental agencies within 1 or 2 business days (depending on the urgency) of receipt of complaint, during normal business hours. JCED will make contact with complainant by telephone or other appropriate methods. When necessary, on-site investigations will be conducted within two working days of receipt of complaint. Investigative reports will be submitted to BOA within seven days of completion of the investigation. Open Burning activities shall be pursuant to Kansas Open Burning Prohibition and Exception regulations.
7. JCED will provide quarterly updates on the Compliance and Enforcement activities performed.
8. JCED agrees to attend/participate in the monthly enforcement coordination calls.
9. JCED agrees to attend/participate in the semi-annual meetings in Topeka.
10. At the end of the 4<sup>th</sup> Quarter, final contract payment will be reduced by \$1,500.00 for every inspection not completed.

B. Inspection list

<u>Class I sources:</u>		<u>Frequency</u>
0910010	SPX Cooling Technologies	1
0910055	Robbie Manufacturing, Inc.	1
0910057	AGC Flat Glass North America, Inc.	1
0910074	Packaging Products Corporation	1
0910084	Vita Craft Corporation	1
0910117	Deffenbaugh Industries, Inc.	1
0910174	Kansas City Power & Light – West Gardner plant	1
0910249	Airtex (Engineered Air)	1
		8

**Class II sources:****Frequency**

0910006	Magellan Pipeline Company, LP	1
0910014	ExxonMobile Lubricants	1
0910023	NIPS Pre-Cast, LLC	1
0910024	Concrete Materials	1
0910031	Bayer CropScience USA, LP	1
0910039	Vertis, Inc.	1
0910065	Gardner Energy Center	1
0910083	Nazdar	1
0910085	Dimension Graphics, Inc.	1
0910095	APAC-Kansas, Inc. – KC Division	1
0910127	Shawnee Mission Medical Center	1
0910129	Husqvarna Construction Products	1
0910133	Asphalt Sales Company, Inc.	1
0910149	Howell Mouldings	1
0910154	Marble Creations, Inc.	1
0910226	Quicksilver 2005, Inc.	1
0910245	Signature Landscape	1
		17

**B Sources:****Frequency**

0910139	Pride Cleaners (MACT)	1
0910141	Pride Cleaners (MACT)	1
0910202	Clean It (MACT)	1
0910127	deElliott Printing	1
		4

Summary: 8 Class I facilities (8 of 8)  
 17 Synthetic Minor facilities (17 of 24)  
 4 B Sources (3 MACT, one printer)  
 Total of 29 facility inspections  
 No Comprehensive inspections in Johnson County

**C. Quarterly Reporting Requirements**

<b>1<sup>st</sup> Quarter (10/1 – 12/31/10)</b>	<b>2<sup>nd</sup> Quarter (1/01 – 3/31/11)</b>	<b>3<sup>rd</sup> Quarter (4/01 – 6/30/11)</b>	<b>4<sup>th</sup> Quarter (7/01 – 9/30/11)</b>

### III. Asbestos Inspections

#### A. JCED & BOA agree as follows:

1. BOA staff will review written notifications of demolition projects located within Johnson County's jurisdiction. Notification forms for the demolition projects to be inspected will be mailed or faxed to JCED by the end of the week that BOA approves the notification.
2. JCED staff will perform up to 10 on-site inspections of notified demolition projects, landfills, and complaint investigations during FY 2011 (including one (1) inspection annually at each landfill in the county permitted for the disposal of friable asbestos containing materials). BOA will strive to ensure that JCED has opportunity to conduct at least 10 inspections.
3. JCED will conduct notified demolition inspections within 10 business days of the receipt of the notification from BOA.
4. JCED is responsible for responding to complaints they receive regarding demolition activities in the county and may charge costs to Program Maintenance. On occasion, BOA will refer complaints to JCED for appropriate response, which will be part of the 10 on-site inspections under the contract.
5. JCED will contact complainant by telephone within 2 business days (depending on urgency) of complaint to obtain additional information. If the complaint is not resolved by telephone, on-site investigations will be conducted as soon as practical and within two business days of responding by telephone of the complaint.
6. JCED will document inspection results on appropriate inspection forms provided by BOA and delivered or mailed to BOA within seven days of the completion of the inspection.
7. JCED will notify BOA of violations of the regulations observed and documented during inspections, as soon as practical, and within 24 hours of the inspection. Violations may be documented with the collection of bulk samples of suspect ACBM and photographic evidence of violations. Bulk samples shall be properly transferred, using a chain-of-custody lab analysis form, to an accredited laboratory for analysis of asbestos content. Any collected photographic evidence shall be mounted to a photographic mounting page, with a narrative and provided to BOA.
8. JCED will report to BOA as soon as practical, but within two business days, any unreported friable asbestos containing building materials observed during an inspection that is not listed on the notification. BOA will determine further action in regard to the friable ACBM. JCED may be requested to assist BOA in the documenting of the friable ACBM.
9. A site is considered to be multiple facilities within one structure that are located at one site. This is considered one inspection.
10. If a site contains multiple structures, only those structures which BOA provides notifications to JCED should be inspected for payment.
11. For multiple locations, BOA has contracted for up to 2 on-site inspections. BOA reserves the right to determine which sites are to be inspected for payment. If JCED wishes to inspect more, this cost is expected to come from the Program Maintenance.

B. Quarterly Reporting Requirements

1 <sup>st</sup> Quarter (10/1 – 12/31/10)	2 <sup>nd</sup> Quarter (1/01 – 3/31/11)	3 <sup>rd</sup> Quarter (4/01 – 6/30/11)	4 <sup>th</sup> Quarter (7/01 – 9/30/11)

IV. Planning

A. JCED & BOA agree that JCED is expected to participate in the following planning activities which are reimbursable under the FY 2011 Work Plan:

- Attending and participating in committee and other group meetings to develop, discuss, review and revise priorities, plans and strategies (both regulatory and voluntary) for improving air quality.
- Researching, developing and sharing data and other information needed to make meaningful and informed decisions to improve air quality.
- Developing and sharing tools or other methods for evaluating approaches or strategies for improving air quality.
- Determining how to fund air quality priorities, plans and strategies.

B. JCED & BOA agree that planning activities conducted through the following committees and groups are included under this Work Plan, but acknowledge that additional planning activities may be included as long as they support state air quality initiatives: MARC's Air Quality Forum; MARC's Congestion Mitigation/Air Quality Committee; KDHE's Clean Air Act Advisory Group; Kansas Small Business Environmental Assistance Program; EPA's Sustainable Skylines; CenSARA's Blue Skyways Collaborative; National Association of Clean Air Agencies; National Climate Registry; International Council for Local Environmental Initiatives; Greater Kansas City Chamber's Climate Partnership; Greater Kansas City Civic Council's Green Region Initiative; Johnson County's Sustainability Committee; Johnson County's Environmental Focus Group; Johnson County's Ozone Reduction Campaign.

C. Quarterly Reporting Requirements

1 <sup>st</sup> Quarter (10/1 – 12/31/10)	2 <sup>nd</sup> Quarter (1/01 – 3/31/11)	3 <sup>rd</sup> Quarter (4/01 – 6/30/11)	4 <sup>th</sup> Quarter (7/01 – 9/30/11)

V. Emission Reduction Strategies

A. JCED & BOA agree that JCED will place highest priority on implementing strategies targeted at reducing emissions from the following sources and that JCED's implementation efforts are reimbursable under the FY 2011 Work Plan:

- Diesel Fueled Engines (anti-idling, engine retrofits, engine replacements, alternative fuels, regulatory controls on rail and commercial warehousing operations)
- Gasoline Fueled Engines (anti-idling, yard care equipment & practices, commuter behavior, gas cap testing)

- Johnson County and Other Local Government Operations (fleet vehicles, employee commuter behavior, landscaping and care, painting and other solvent use, energy use)
- B. JCED & BOA acknowledge that the above list of emissions sources and associated strategies may be modified in support of state and local air quality initiatives and after consultation with BOA.
- C. Quarterly Reporting Requirements

1 <sup>st</sup> Quarter (10/1 – 12/31/10)	2 <sup>nd</sup> Quarter (1/01 – 3/31/11)	3 <sup>rd</sup> Quarter (4/01 – 6/30/11)	4 <sup>th</sup> Quarter (7/01 – 9/30/11)

## VI. Public Education & Outreach

- A. JCED & BOA agrees that the following public education & outreach activities are reimbursable under the FY 2011 Work Plan:
- Development and distribution of outreach materials and tools that encourage emissions reductions including web site information, brochures, flyers, fact sheets, letters, etc.
  - Targeted efforts to encourage businesses to standardize their estimation and tracking of emissions (e.g., Climate Registry).
  - Participation in groups and committees that develop and deliver public education on air quality issues including MARC's Public Education Committee, Clean Cities, and others.
  - Participation in public outreach events where air quality information is distributed such as Earthfest, Air Quality Awareness Week, Household Hazardous Waste Collection events and others.

B. Quarterly Reporting Requirements

1 <sup>st</sup> Quarter (10/1 – 12/31/10)	2 <sup>nd</sup> Quarter (1/01 – 3/31/11)	3 <sup>rd</sup> Quarter (4/01 – 6/30/11)	4 <sup>th</sup> Quarter (7/01 – 9/30/11)

## VII. Local Priorities

- A. Local Priority funding may be used to carry out air quality related tasks that are consistent with KDHE goals. This may include performing more of an activity that is in the agreement, such as complaint investigations, activities related to air emissions and pollution or outreach activities. It also could include performing other related tasks that the local agency believes are important to meet local goals.

B. Quarterly Reporting Requirements

1 <sup>st</sup> Quarter (10/1 – 12/31/10)	2 <sup>nd</sup> Quarter (1/01 – 3/31/11)	3 <sup>rd</sup> Quarter (4/01 – 6/30/11)	4 <sup>th</sup> Quarter (7/01 – 9/30/11)

**VIII. Program Maintenance**

A. JCED & BOA agree that Program Maintenance funds are to support activities related to the assistance of the state air program: 1) not specifically covered by the activity specific allocations, including training, reporting, and other functions necessary to carry out the air compliance and enforcement, public education, planning, and other elements of the air program, 2) additions to specifically identified allocations that may be assigned by BOA other than indirect costs, and 3) including complaint inspections and compliance assistance.

B. Quarterly Reporting Requirements

1 <sup>st</sup> Quarter (10/1 – 12/31/10)	2 <sup>nd</sup> Quarter (1/01 – 3/31/11)	3 <sup>rd</sup> Quarter (4/01 – 6/30/11)	4 <sup>th</sup> Quarter (7/01 – 9/30/11)

**IX. Indirect Costs**

A. JCED & BOA agree to an indirect costs associated with this contract of 21.4% of the total account reimbursed by BOA.

B. Quarterly Reporting Requirements

1 <sup>st</sup> Quarter (10/1 – 12/31/10)	2 <sup>nd</sup> Quarter (1/01 – 3/31/11)	3 <sup>rd</sup> Quarter (4/01 – 6/30/11)	4 <sup>th</sup> Quarter (7/01 – 9/30/11)

**X. State/Local Meetings**

The KDHE requires quarterly participation in meetings and conference calls to discuss issues that are related to the past and upcoming events with updates on the activities of each contract. *Scheduled Dates are:*

*TDB.*

## Appendix B

### Subject:

Grant Administration – Procurement Requirements  
Minority Business Enterprise (MBE), Woman Business Enterprise (WBE), Vendor  
Debarment

### Purpose:

To assist local government grantees in complying with Title 40 of the Code of Federal Regulations (CFR), Part 31 and 32 requirements for product or service procurement.

### Narrative:

The KDHE fully supports and requires compliance with all Federal and State legislation requiring fair and open competition for product or service procurement. As a requirement for continued grant funding all grantees agree to adhere to and abide by the regulations that pertain to this matter. This appendix is intended to be a resource to grantees so that they may easily locate the information and instructions they may need to comply with this regulation.

*NOTE: The following information is provided as a resource only and is in no way represented to be complete. Use of local or regional databases available from chambers of commerce or business alliances is strongly encouraged.*

- EPA Form 5700/52A (5/96) - Online  
<http://www.epa.gov/ogd/forms/forms.htm>
- EPA Laws & Regulations – Online:  
<http://www.epa.gov/lawsregs/>
- Online database resources for identifying MBE/WBE:

Kansas Department of Commerce/Kansas Department of Transportation  
<http://www.ksdot.org/divadmin/civilrights/>

Minority Business Development Agency – “Phoenix Database Online”:  
<http://www.mbda.gov/>

- Excluded Parties List System at <http://epls.arnet.gov>

Supersedes EPA Form 5700-49, “Certification Regarding Debarment, Suspension, and Other Responsibility Matters.”

**APPENDIX C**  
**CONFIDENTIALITY AGREEMENT BETWEEN KANSAS DEPARTMENT OF**  
**HEALTH AND ENVIRONMENT AND JOHNSON COUNTY ENVIRONMENTAL**  
**DEPARTMENT**

The Kansas Department of Health and Environment ("KDHE") is engaged in a contract for JCED.

The KDHE believes that information that may be exchanged during the contract period to which this Confidentiality Agreement pertains should not be subject to public disclosure. Some records or information are compiled for enforcement purposes, the production of which could reasonably be expected to interfere with the KDHE enforcement proceedings.

The KDHE and JCED agree that maintaining the confidentiality of all information documents will facilitate frank and productive discussion and the free exchange of information, necessary for the successful completion of said contract.

The KDHE and JCED have a common interest in maintaining air quality standards, and wish to work together to protect their common interest by communicating in confidence about claims, evidence, settlement strategies or any other subjects pertaining to the performance of and completion of the contract.

The KDHE and JCED (Parties) hereby agree as follows:

1. Confidentiality. Except as expressly provided herein, all discussions among and between the Parties, as well as all non-public documents prepared for or used during the term of this contract (collectively, "Contract Information"), shall be kept confidential and not disclosed to third persons. Contract Information includes: (a) any oral or written communications; (b) technical or financial information; (c) draft documents; (d) standardized forms or memorandum and (e) any other document or oral communication pertaining to the Parties' and performance of the contract, whether disclosed prior to or subsequent to the date of this Confidentiality Agreement.

2. Non-Waiver. By exchanging documents and communications with another party or parties, the Parties do not waive any privilege, immunity, or other basis for confidentiality that otherwise applies to these documents and communications, and such exchange will not render discoverable documents or information that is otherwise confidential, privileged, inadmissible or non-discoverable. The fact that a party references, discusses, or produces documents or information will not render otherwise discoverable documents or information confidential, privileged, non-discoverable or inadmissible.

3. Compelled Disclosure. Nothing in this Confidentiality Agreement shall be construed to prejudice or limit the right of any Party to disclose documents if compelled to do so by state law or under any applicable state or federal public information disclosure law; provided, however, that the Party required to disclose any Contract Information shall identify it as confidential and, if disclosed to a court, shall submit it under seal. Nothing in this Confidentiality Agreement shall be construed to preclude the Parties from using otherwise discoverable Contract Information in any future litigation.

4. Inadvertent Disclosure. Any disclosure by a Party that is inconsistent with this Confidentiality Agreement, whether such disclosure may have occurred prior to or following the execution of this Confidentiality Agreement, shall not waive the confidentiality of such documents or communications.

5. Subsequent Actions. Nothing in this Agreement shall prejudice or limit the right of the KDHE to take any action pursuant to any other statute or rule, both federal and state, to enforce the laws of the State to protect the public health, safety, or welfare of the environment.

6. Applicability. The requirements of this Confidentiality Agreement apply to the Parties and their affiliates, and their officers, directors, and employees, and any attorneys or consultants in possession of documents or information pertaining to the contract.

7. Termination. Any Party may terminate its participation in this Confidentiality Agreement by providing thirty days prior written notice to the other parties. However, the provisions of this agreement, including the confidentiality requirements of paragraph 1, shall survive termination of this Confidentiality Agreement and continue to apply to all documents and communications exchanged prior to or during the pendency of this Confidentiality Agreement. The termination of this Confidentiality Agreement shall be construed as termination of the contract to which it is attached and all payments for services will cease concurrent with the date of termination.

8. Modification of Agreement. All provisions of this Agreement may be modified by unanimous written consent of the Parties.

# GRANT CONTRACT

between

SECRETARY OF HEALTH AND ENVIRONMENT OF KANSAS

and

UNIFIED GOVERNMENT OF WYANDOTTE COUNTY –  
KANSAS CITY, KANSAS HEALTH DEPARTMENT

## Section I – Purpose and Financial Summary

This contract is entered into between the Kansas Department of Health and Environment, Bureau of Air (KDHE) and the Unified Government of Wyandotte County – Kansas City, Kansas Health Department, Department of Air Quality (DAQ). The purpose of this contract is to establish a formal partnership between DAQ and the KDHE to implement the Kansas Air Quality Act in Wyandotte County. This contract authorizes DAQ to provide air quality protection services specified in this agreement and the Environmental Program Work Plan for FY 2011, Appendix A, and defines the funding arrangements for such services which are to be provided. The contract period is from October 1, 2010 to September 30, 2011

### Summary of Grant Expenditures by Fund

Federal 105 Grant <sup>1</sup> up to:	\$222,144.00
DAQ 40% Match up to:	\$148,096.00
Federal 103 Grant <sup>1</sup> up to:	\$46,910.00
State of Kansas Air Quality Fee Fund up to:	\$296,898.00
Total Grant not to exceed:	\$714,048.00
Total KDHE Reimbursement not to exceed:	\$565,952.00

### Summary of Grant Expenditures

Permitting, Compliance and Enforcement, Performance Testing, RATA Inspections, Planning, Emission Reduction Strategies, Blue Skyways, Public Education and Outreach, Ambient Air Monitoring, Local Priorities, and Program Maintenance	\$466,188.00
Match	\$148,096.00
Indirects	\$99,764
Total Grant	\$714,048.00

<sup>1</sup> From State of Kansas Allocation

## Section II – Requirements – DAQ Agrees:

1. To perform the duties and tasks specified in the contract and FY 2011 Work Plan, to implement the Kansas Air Quality Act and Kansas Air Quality Regulations, and to provide documentation of satisfactory completion of work.
2. To not use the KDHE - BOA funds to supplant other DAQ funds and to provide matching funds from non-federal sources towards the successful completion of Section 105 purposes in an amount equal to 40% of funds expended for Section 105 purposes.
3. To only use the Air Quality Fee Fund money for Title V permit program related activities, and to only use the Federal 103 and 105 money for air quality related activities associated with the Kansas Air Quality Act and FY 2011 Work Plan, which may be amended under the provisions of Section IV.4.
4. To only use the Program Maintenance money for local air program purposes and other state or local activities not covered by the activity-specific allocations, including, but not limited to: reporting, complaint inspections, compliance assistance, and other functions necessary to carry out the permitting, monitoring, inspection, enforcement, outreach and other elements of the BOA air program or additional activity-specific allocations that may be assigned by the KDHE.
5. To participate in the implementation of the Kansas Air Quality Act and provide documentation of satisfactory progress toward meeting the objectives in accordance with the FY 2011 Work Plan, as related to the Title V activities, Federal 103 and 105 Air Pollution Control performance goals. DAQ shall submit to the KDHE quarterly progress reports as specified in the FY 2011 Work Plan, quarterly MBE/WBE verification on EPA Form 5700-52A – (5/96) for Federal 103 and 105 monies, quarterly Certified Expenditure Affidavit, and any other information that may be requested.
6. To obtain written approval in advance for the purchase of any item of equipment costing \$5,000.00 or more, and for any subcontract. All purchases with contract funds shall be the property of DAQ upon termination of this contract. The purchase shall not be segmented or otherwise structured to avoid the \$5,000.00 limit.
7. To retain financial aid and programmatic records, supporting documents and statistical records for five years from the date the final expenditure report is submitted. If litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the five-year period, the records must be retained until completion of the action and resolution of all issues that arise from it. Upon written request from the KDHE (or authorized representative) or Kansas Legislative Post Audit, DAQ will allow access to any payroll records, supported by time and attendance records for employees, documents, and records necessary to certify compliance with the KDHE grant awards, Kansas Legislative Appropriations, Kansas Statutes, and Federal grants and regulations.
8. If practical, to provide advanced notice to the KDHE of permit inspections and enforcement actions taken by DAQ that are based solely upon DAQ air quality regulations, and to coordinate such actions with KDHE.
9. To include in all statements, press releases, websites, program activities, bid solicitations, and other documents, under the provisions of Section 83 of 2005 House Bill 2482 the phrase “paid for (in part) by the Kansas Department of Health and Environment.”
10. To obtain an audit in accordance with the Federal Single Audit Act of 1984, and OMB Circular No. A-133, Audits of State and Local Governments, and Other Nonprofit

- Organizations, and to submit complete copy of the single agency audit report to the KDHE within 12 months after the end of the DAQ's fiscal year.
11. To comply with the Age Discrimination Act of 1975, Section 501 of the Rehabilitation Act of 1973, Title IX of the Educational Amendments of 1972, Title IV of the Civil Rights Act of 1964 and further agrees not to exclude from participation in, or deny the benefits of services to any person on the basis of race, color, gender, sexual orientation, gender identity, religion, national origin, ancestry, age, military or veteran status or disability status; with the Recipient Certification requirements of the Drug-Free Workplace Act of 1988, and with the Federal Anti-Lobbying Act of 1990.
  12. To comply with all EPA grant regulations located under Title 40 of the Code of Federal Regulations (CFR), Part 31, as published as of the date of this agreement, and to specifically adhere to the "Fair-Share" policy to solicit Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) when contracting for goods or services. The specific steps to comply with this requirement are stated in 40 CFR 31.36(e) as in effect on July 1, 2004 (See Appendix B).
  13. DAQ and any prospective participants shall fully comply with Subpart C of 40 CFR Part 32, as published as of the date of the agreement, entitled "Responsibilities of Participants Regarding Transactions." Recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 40 CFR Part 32, entitled "Covered Transactions," includes a term or condition requiring the inclusion of a similar term or condition in a subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information required under 40 CFR 32.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment (See Appendix B).
  14. DAQ shall ensure that all information received pertaining to enforcement actions either under consideration or in process shall be held confidential by its employees and any contractors, and shall not be shared with, transmitted, or communicated to any third party, and shall be bound by the Confidentiality Agreement (See Appendix C).
  15. DAQ agrees that its employees will adhere to the code of ethics established by the Unified Government Ordinance Number 0-25-98,1, Adopted May 21, 1998 as well as agreeing that its employees will adhere to ethical standards as established in K.S.A. 46-215, *et seq*, and the KDHE – BOA "Code of Ethics," (See Appendix D) and shall apply these standards to all aspects of performance during the term of this agreement.
    - a) The term "*making of a contract*" as used in K.S.A. 46-233 shall include all activities connected to the making of a contract, issuing a permit, regulating, inspecting, enforcement or any other such activity as required in the official function and furtherance of duties and obligations set forth in this agreement.
    - b) For the purpose of this agreement, the meaning of "*state employee*" shall be considered as those DAQ employees connected with the Air Quality Program.
    - c) Protection of "*privileged information*" shall include information disclosed from the KDHE – BOA to DAQ that is required to perform any action described in sub-section (a.) above. Public or private disclosure of any such information is expressly prohibited.
  16. DAQ agrees that all records are to be returned to KDHE within 60 days of termination of any Workplan activity or the entire contract.
  17. DAQ agrees to attend the ETA (Eastern Technical Associates) Visible Emissions Lecture and Field training for Smoke School per agreement between KDHE and contractor.

**Section III -- KDHE Agrees:**

1. To make payments, not to exceed \$296,898.00 from the Air Quality Fee Fund; not to exceed \$222,144.00 from the Federal 105 fund; and not to exceed \$46,910.00 from the Federal 103 funds to DAQ for conducting the KDHE Air Quality Program as authorized in the FY 2011 Work Plan (See Appendix A).
2. BOA will seek input from DAQ on issues governed by this contract prior to making decisions or taking actions that will affect the DAQ Air Quality Program.
3. To provide regular updates on enforcement actions pertaining to sources in Wyandotte County, including but not limited to written acknowledgements that DAQ enforcement action recommendations have been received by the KDHE.
4. To work with DAQ and other local partners to: establish and annually update strategic goals, objectives and strategies for reducing emissions and improving air quality.
5. To provide DAQ, with prior approval from BOA, an opportunity to shift workload and funds to other eligible air program activities if the targeted activities laid out in the FY 2011 Work Plan cannot be completed because they are demand driven or BOA is unable to refer work to DAQ as specified in this agreement.

**Section IV -- Other Terms and Conditions - It is mutually agreed:**

1. DAQ will request reimbursement within 30 days of the end of each quarter. The KDHE shall provide reimbursement in accordance with the "Kansas Prompt Payment Act" (K.S.A. 75-6401 through 75-6407), upon receipt of satisfactory progress reports, MBE/WBE verification, and quarterly Certified Expenditure Affidavit.
2. That this agreement may be canceled by either party upon 30 days written notice to the other party, except that KDHE may cancel this agreement without such notice in the event of loss of funding. Funding of this agreement is contingent upon the availability of funds in the Air Quality Fee Fund, receipt of federal funds from the U.S. Environmental Protection Agency (EPA), and availability of funds in the State Treasury. This Contract, including Work Plan, may be amended in writing when duly executed by both parties. The contract may be subjected to a pro-rata change contingent upon the federal grant dollars allocated to the KDHE - BOA.
3. All indirect costs incurred implementing the DAQ component of this contract shall not exceed 21.4% of the following: the Air Quality Fee Fund, Federal 103 and 105 monies authorized under this contract for Permitting, Compliance and Enforcement, Performance Testing, RATA Inspections, Planning, Emission Reduction Strategies, Blue Skyways, Public Education and Outreach, Ambient Air Monitoring, Program Maintenance and Local Priorities, less local match.
4. That the provisions found in Contractual Provisions Appendix E (Form DA-146a), which is attached hereto, are hereby incorporated in this contract and made a part hereof.

Contract Administrators:

Kansas Department of Health and Environment -- Linda Vandevord, 785-296-6423, 1000 SW Jackson, Ste. 310, Topeka, KS 66612-1366

Unified Government of Wyandotte County, Kansas City, Kansas Health Department -- Bruce Andersen, 913-573-6700, 619 Ann Avenue, Kansas City, KS 66101

In WITNESS WHEREOF, the parties hereto have affixed their signatures.

By signing this agreement, the person below warrants that he or she has the authority to sign this document and to bind DAQ and the KDHE to its terms.

---

Dennis M. Hays  
County Administrator  
Unified Government of Wyandotte County-  
Kansas City, Kansas Health Department

Date: \_\_\_\_\_

---

Roderick L. Bremby  
Secretary  
Kansas Department of Health and  
Environment

Date: \_\_\_\_\_

**APPENDIX A  
LOCAL AGENCY WORK PLAN  
for  
Unified Government of Wyandotte County, Kansas City, Kansas Health Department  
Department of Air Quality (DAQ)  
FY 2011  
Contract Period October 1, 2010 – September 30, 2011**

The Bureau of Air (BOA), on behalf of the Kansas Department of Health and Environment (KDHE), and the Unified Government of Wyandotte County, Kansas City, Kansas Health Department, Department of Air Quality (DAQ) hereby agree to comply with the cooperative intent of the Clean Air Act within Wyandotte County as follows:

**I. Contacts**

Issue/Activity	Primary State Contact	Phone #	Primary DAQ Contact	Phone #
<b>General</b>				
General Administrative Duties	Rick Brunetti	785-296-1551	Bruce Andersen	913-573-6700
<b>Permitting</b>				
Liaison for Permitting	Marian Massoth	785-296-1583	Andrew Beard	913-573-6700
<b>Compliance and Enforcement</b>				
Administrative Issues; QA/QC	Vick Cooper	785-296-1561	Bruce Andersen	913-573-6700
Compliance and Enforcement	Russ Brichacek	785-296-1544	Bruce Andersen	913-573-6700
Performance Testing and RATA	Russ Brichacek	785-296-1544	Katrin Ellefson	913-573-6700
<b>Planning</b>				
Planning Activities	Tom Gross	785-296-1692	Bruce Andersen	913-573-6700
<b>Emission Reduction Strategies</b>				
Emission Reduction Strategies	Doug Watson	785-296-0910	Katrin Ellefson/Justus Welker	913-573-6700
Blue Skyways	Doug Watson	785-296-0910	Rollin Sachs	913-573-6700
<b>Public Education and Outreach Activities</b>				
Public Outreach	Kathleen Waters	785-296-1575	Bruce Andersen	913-573-6700
<b>Monitoring</b>				
Administrative Issues	Tom Gross	785-296-1692	Bruce Andersen	913-573-6700
Network design/configuration	Doug Watson	785-296-0910	Rollin Sachs	913-573-6700
General Operation and Maintenance	Fred Diver	785-296-6289	Rollin Sachs	913-573-6700
Sample or data submission	Mike Martin	785-296-1571	Rollin Sachs	913-573-6700
Data Issues	Doug Watson	785-296-0910	Rollin Sachs	913-573-6700

## II. Air Permitting

### A. DAQ and BOA agree that DAQ will:

1. Issue air permits and make weekly submittal of all supporting documents in accordance with procedures outlined in the following documents:
  - Kansas Department of Health and Environment, Bureau of Air, Air Quality Permit Training Manual
  - Kansas Air Quality Regulations and Statutes
  - Applicable Code of Federal Regulations (CFRs)
2. Conduct an air permitting/approval program for sources of regulated pollutants within Wyandotte County except as provided in Section II.B.5. of Appendix A. of this contract Work Plan.
3. Maintain an approved internal application tracking, quality control, and concurrence plan for permitting activities and permitting documents.
4. Use BOA standard application forms and formats for permits except as otherwise agreed.
5. Provide each draft permit/approval or public hearing notice to BOA for placement on public notice in the Kansas Register, as appropriate.
6. Provide draft public notices to BOA no later than 10:00 a.m. on Wednesday of the week prior to the Thursday that the public notice will be placed in the Kansas Register.
7. Provide to BOA copies of the permit application and relevant supporting material with the draft public notice.
8. Provide facilities/equipment for and participate in any public hearings resulting from permitting/approval activities under this work plan. DAQ will not issue local only permits for facilities or activities for which "State" permits/approvals have been issued or are required to be issued.
9. Submit the final draft permit or approval to BOA for recommendations, objections and/or review.
10. Provide permit and approval status reports. The reports will include status of each open permit and approval application and number of permitting documents issued by type.
11. Adopt the following permit and approval issuance goals: Approvals for emergency generators; Natural Gas compressor facilities  $\leq$  240 total horsepower; 10 days from receipt of application, Other approvals 95%, 30 days from receipt of application, Complex permits 95%, 180 days from receipt of application, Other permits 95%, 60 days from receipt of application.

### B. DAQ and BOA agree that BOA will:

1. Identify a liaison contact.
2. Provide for review of permits/approvals to the extent necessary to support engineer professional development during those times a Licensed Professional Engineer is not employed by DAQ.
3. Provide tracking numbers and/or source ID#s as requested for permits and approvals.

4. Return construction and operating permit fees generated in DAQ on a quarterly basis to DAQ.
5. Conduct all permit related activities related to any application from BPU for all EGUs and jointly process all other permit applications from BPU.
6. BOA will take the lead on Wyandotte County permit applications when the Secretary of the KDHE deems it is in the best interest of the citizens of Kansas.

C. Reporting and Funding

DAQ will provide a report quarterly on the issuance of the following permits:

1. PSD
2. Class I Permit
3. Construction Permit
4. Class I Renewals; Class II; Major Modifications
5. All Other Permits, Registrants, and Approvals

### III. Compliance and Enforcement

A. DAQ and BOA agree as follows:

1. The DAQ will conduct inspections and investigations and make weekly submittal of all supporting documents in accordance with procedures in the following documents:
  - BOA, Air Quality Compliance and Enforcement Training Manual
  - Kansas Air Quality Regulations and Statutes
  - Applicable CFR
  - Air Quality Performance Test Guidelines for Compliance Determination in Kansas
  - Applicable Stack Testing Guidance Documents at:  
[http://www.kdhe.state.ks.us/air-permit/tech\\_guidance.html](http://www.kdhe.state.ks.us/air-permit/tech_guidance.html)
2. The DAQ will provide initial enforcement investigation and the retrieval of support information and documentation, and will participate in monthly BOA/DAQ enforcement coordination calls.
3. The DAQ inspection results will be documented on accepted and agreed upon inspection forms. A copy of the letter to the source discussing inspection results will be sent to BOA within fifteen business days of completion of inspection. Copies of inspection reports and letters will be mailed to BOA each Friday. Inspections/FCEs will be scheduled by DAQ with a goal of 25% inspections/FCEs completed per FY quarter. DAQ shall submit a list of sources recommended to be inspected to BOA by September 1st of each year.
4. If noncompliance is observed and documented during an inspection, BOA will be notified in accordance with BOA enforcement policy. Notices of Noncompliance issued by DAQ will be tracked by both DAQ and BOA, with required follow up in accordance with BOA Enforcement Policy.

BOA will review and determine if noncompliance documented is subject to EPA's High Priority Violator (HPV) policy. Departmental Orders and Consent Agreements will be determined and issued by BOA in accordance with BOA Enforcement Policy. DAQ has the right to take enforcement actions under Kansas City, Kansas Air Pollution Control Regulations. BOA reserves the right to have prior knowledge and copies of all documentation related to said enforcement.

5. Evaluation inspections will be completed, within 90 days of notification of start up for Class I, NSPS, MACT sources, and within 180 days of notification of start up for Class II and non-NSPS sources. Evaluation inspections will be documented on accepted and agreed upon forms, and a letter will be sent to the source within seven days of the completed inspection and a copy will also be sent to the KDHE.
6. DAQ is responsible for responding to complaints received from individuals, BOA, or other governmental agencies within 1 or 2 business days (depending on the urgency) of receipt of complaint, during normal business hours. DAQ will contact the complainant by telephone or other appropriate methods. When necessary, on-site investigations will be conducted within two working days of receipt of complaint. Investigative reports will be submitted to BOA within seven days of completion of the investigation. Open Burning activities shall be pursuant to Kansas Open Burning Prohibition and Exception regulations.
7. DAQ will observe Performance Testing and RATA activities in Wyandotte County when required in a permit or when requested by BOA staff. DAQ staff will be responsible for reviewing testing results and developing a written report of the findings, including operational parameters for the Inspection. Reports shall be submitted to BOA within 14 business days of activity.
8. All inspections of BPU facilities will be jointly conducted by BOA and DAQ.
9. DAQ agrees to attend/participate in the monthly enforcement coordination calls.
10. DAQ agrees to attend/participate in the semi-annual meetings in Topeka.
11. At the end of the 4<sup>th</sup> Quarter, final contract payment will be reduced by \$1,500.00 for every inspection not completed. No penalty will be imposed for complaint inspections not received.

B. Inspection list  
Inspection List for FY 2011

<u>Class I facilities:</u>		<u>Frequency</u>
2090001	CertainTeed Corp.	1
2090003	Forest View Landfill, LLC	1
2090008	BPU – Nearman Power Plant	1*
2090009	Griffin Wheel Company	1
2090010	Owens Corning	1
2090039	PQ Corporation	1

2090046	General Motor – Fairfax plant	1
2090048	BPU – Quindaro Power Plant	1*
2090049	BPU-Kaw Power Plant	1*
2090060	Magellan Pipeline Co., LP	1
209063	Sinclair Transportation Co.	1
209075	Conoco/Phillips Pipe Line-Terminal	1
20900194	Stericycle, Inc.	1
Total facilities = 13		13

**Class II facilities**

2090002	Lone Star Industries – Buzzi Unices	1
2090011	Procter & Gamble	1
2090012	VVF Kansas Services, LLC	1
2090014	LaFarge North American, Inc.	1
2090017	Cereal Food Processors, Inc.	1
2090018	J.M. Fahey Construction	1
2090023	Bartlett & Co. Grain	1
2090026	Kaw Valley Sand and Gravel	1
2090029	Darling International, Inc.	1
2090035	Asphalt Sales Co., Inc.	1
2090038	Rich Mix Products, Inc.	1
2090040	Bartlett Grain Company	1
2090041	Cargill, Inc.	1
2090044	Propet LLC	1
2090047	Pentair Water	1
2090055	Gages Fertilizer and Grain	1
2090062	Harcros Chemicals, Inc.	1
2090064	Magellan Pipeline Co., LP	1
2090065	Fuchs Lubricants Co.	1
2090066	Exide Corporation	1
2090076	Forbo Adhesives, LLC	1
2090077	Keebler Company	1
2090089	Ash Grove Co.-Cement Term.	1
2090094	Kaw Valley Sand and Gravel, Inc.	1
2090110	Caravan Ingredients, Inc.	1
2090115	Greystone Graphics	1
2090169	Kansas University Medical Ctr.	1
2090202	Barton Solvents, Inc.	1
2090206	Plastic Packaging Tech., LLC	1
2090212	ACH Foam Technologies LLC	1
2090229	Garsite/Progress LLC	1
2090232	Ashland Distribution Company	1
2090236	Peerless Conveyor & Manuf.	1
2090251	Mid-west Terminal Warehouse	1
2090270	Cross Oil Refining & Marketing	1
2090277	Kansas University Hospital	1
2090280	Bennett-Rogers Pipe Coating	1

2090284	L.G. Everist, Inc.	1
2090300	ACH Foam Technologies LLC	1
2090304	Royal adhesives and Sealants LLC	1
Total Facilities = 40		40

**B Sources**

2090033	KC Water Pollution Plant	1
2090069	Reconserve, Inc.	1
2090167	Erman Corporation	1
2090214	Dayton Superior Specialty Chemicals	1
2090240	Prehop 1 Hour Cleaners	1
2090286	Tinkled Pink Cleaners	1
2090288	Excel Cleaners	1
2090295	Rainbow Cleaners	1
Total Facilities = 8		8

\*Unified Government owned source inspections which will required accompanied by NEDO or BOA compliance staff.

Total Facilities in FFY 2011 = 61

Total Facility Inspections in FFY 2011 = 61

**C. Reporting and Funding**

1 <sup>st</sup> Quarter (10/1 - 12/31/10)	2 <sup>nd</sup> Quarter (1/01 - 3/31/11)	3 <sup>rd</sup> Quarter (4/01 - 6/30/11)	4 <sup>th</sup> Quarter (7/01 - 9/30/11)

**IV. Planning**

- A. DAQ and BOA agree that DAQ is expected to participate in the following planning activities which are reimbursable under the FY 2011 Work Plan:
1. Attending and participating in committee and other group meetings to develop, discuss, review and revise priorities, plans and strategies (both regulatory and voluntary) for improving air quality.
  2. Researching, developing and sharing data and other information needed to make meaningful and informed decisions to improve air quality.
  3. Developing and sharing tools or other methods for evaluating approaches or strategies for improving air quality.
  4. Determining how to fund air quality priorities, plans and strategies.
- B. DAQ and BOA agree that planning activities conducted through the following committees and groups are included under this Work Plan, but acknowledge that additional planning activities may be included as long as they support state and local air quality initiatives: MARC's Air Quality Forum; MARC's Congestion Mitigation/Air Quality Committee; KDHE's Clean Air Advisory Group; Kansas

Small Business Assistance Program; EPA's Sustainable Skylines; CenSARA's Blue Skyways Collaborative; National Association of Clean Air Agencies; National Climate Registry; Unified Government's Environmental Committees.

C. Quarterly Reporting Requirements

1 <sup>st</sup> Quarter (10/1 – 12/31/10)	2 <sup>nd</sup> Quarter (1/01 – 3/31/11)	3 <sup>rd</sup> Quarter (4/01 – 6/30/11)	4 <sup>th</sup> Quarter (7/01 – 9/30/11)

V. Emission Reduction Strategies

A. DAQ and BOA agree that DAQ will place highest priority on implementing strategies targeted at reducing emissions from the following sources and that DAQ's implementation efforts are reimbursable under the FY 2011 Work Plan:

1. Diesel fueled engine strategies including anti-idling, engine retrofits, engine replacements, alternative fuels.
2. Gasoline fueled engine strategies including anti-idling, yard care for clean air, gas cap testing, and engine maintenance.
3. DAQ will operate a bicycle check out program for UG employees to reduce travel in vehicles.
4. Wyandotte County (fleet vehicles, employee commuter behavior, landscaping and yard care, painting and other solvent use, energy use).

B. DAQ and BOA acknowledge that the above list of emissions sources and associated strategies may be modified in support of state and local air quality initiatives and after consultation with BOA.

C. Quarterly Reporting Requirements

1 <sup>st</sup> Quarter (10/1 – 12/31/10)	2 <sup>nd</sup> Quarter (1/01 – 3/31/11)	3 <sup>rd</sup> Quarter (4/01 – 6/30/11)	4 <sup>th</sup> Quarter (7/01 – 9/30/11)

VI. Public Education and Outreach

A. DAQ and BOA agree that the following public outreach activities are reimbursable under the FY 2011 Work Plan:

1. Development and distribution of outreach materials and tools that encourage emissions reductions including web site information, brochures, flyers, fact sheets, letters, etc.
2. Targeted efforts to encourage businesses to standardize their estimation and tracking of emissions.
3. Participation in groups and committees that develop and deliver public education on air quality issues including MARC's Public Education Committee and others.

4. Participation in public outreach events where air quality information is distributed such as Lawn & Garden Shows, Health Fairs, Household Hazardous Waste Collection events, Air Quality Awareness Week and others.
5. Partner with BPU to develop an educational ground-level ozone flyer for BPU to include with utility bills as part of the local distribution strategy.

B. Quarterly Reporting Requirements

1 <sup>st</sup> Quarter (10/1 – 12/31/10)	2 <sup>nd</sup> Quarter (1/01 – 3/31/11)	3 <sup>rd</sup> Quarter (4/01 – 6/30/11)	4 <sup>th</sup> Quarter (7/01 – 9/30/11)

VII. Ambient Air Monitoring

A. Requirements

1. The DAQ will operate the National Air Monitoring Stations (NAMS), State/Local Air Monitoring Stations (SLAMS), and Special Purpose Monitoring (SPM) and make timely submittal of all samples and data in accordance with procedures presented in the following documents:
  - 40 CFR Part 58;
  - State of Kansas Implementation Plan for Attainment and Maintenance of NAAQS, Sec. E – Monitoring Plan;
  - Kansas Ambient Air Monitoring Quality Assurance Program/Project Plans (QAPPs) and associated standard operating procedures (SOPs); and
  - Instrument Operator’s Manuals.
2. DAQ agrees to provide monitoring field support to BOA in responding to natural disasters or other emergent situations. If DAQ is unable to meet other contractual obligations due to providing this field monitoring support, BOA agrees to renegotiate those provisions.

B. General

1. Operation: DAQ will make regularly scheduled site visits, and additional site visits as necessary for maintenance, repairs, and QA/QC activities. Document all site visits and activities, and maintain required records and logs.
2. Maintenance: DAQ will perform minor repairs or secure repair service from manufacturer as needed. Coordinate more difficult problems with BOA field staff. Notify BOA by the next working day that an ambient air monitor is down due to equipment failure and provide estimated down time for repairs. Document all maintenance and repair activities, and maintain required records and logs.

- C. Particulate Matter/PM<sub>10</sub>
1. WYCO - DAQ will retrieve/change PM<sub>10</sub> filter elements on schedule. Submit PM<sub>10</sub> filters to BOA within ten working days of the end of the month.
  2. WYCO - DAQ will biannually inspect PM<sub>10</sub> motors and change brushes (change motors as needed). Perform PM<sub>10</sub> calibrations and maintenance.
  3. WYCO - DAQ will perform annual orifice calibrations and support equipment calibrations. Perform NPAP audit as necessary.
  4. DAQ will establish, operate and maintain two continuous PM<sub>10</sub> monitors to evaluate potential local health impacts associated with emissions from activities in the Kansas City, KS, rail yard. One sampler will be operated as a control in an area determined to be minimally impacted by diesel emissions (i.e., upwind site).
- D. PM<sub>2.5</sub> FRMs
1. DAQ will retrieve/change, prepare, and ship PM<sub>2.5</sub> filter elements (including field blanks) to contract laboratory on schedule. Collect field blank after every tenth routine sample. Download/record, review, and transmit required data from samplers.
  2. DAQ will perform monthly verifications (temperature, pressure, leak check, flow rate). Change impactors after every five sampler runs. Perform annual calibrations.
- E. Continuous PM<sub>2.5</sub>
- DAQ will perform maintenance as required. Run diagnostic checks every two weeks.
- F. PM<sub>2.5</sub> Speciation
1. DAQ will retrieve/change, prepare, and ship filter cassettes to laboratory on schedule. Submit field blanks and trip blanks to laboratory. Download/record, review, and transmit required data from speciation sampler.
  2. DAQ will perform monthly verifications (date and time, temperature, pressure, leak check, flow chart) and annual calibrations.
- G. Continuous Gaseous Monitors
1. DAQ will perform biweekly maintenance. DAQ will check monitor reading vs. data logger reading quarterly or when coming back on line after downtime and report to the KDHE by voice telephone.
  2. DAQ will assist BOA field staff in biannual calibrations. Perform NPAP audits as necessary.
- H. Review and Submission of Data
1. DAQ will transmit PM<sub>2.5</sub> sampler data to BOA prior to the seventh of the following month. Submit data quality report by the fifteenth of the following month.
  2. DAQ will quarterly: collect a minimum of 85% complete and valid samples and data from at least 90% of SLAMS and NAMS continuous

pollutant monitors (including TEOMs). Collect a minimum of 75% complete and valid samples and data from at least 90% of SLAMS and NAMS particulate matter samplers (HiVol PM<sub>10</sub> and Sequential PM<sub>2.5</sub>).

I. Johnson County Monitors  
 DAQ will operate and maintain the existing Johnson County monitors (O<sub>3</sub> and PM<sub>2.5</sub>) in the manner described above.

J. Reporting and Funding  
 1. DAQ will provide quarterly updates on the progress of the Ambient Air Monitoring activities.  
 2. Schedule, see \* below

Monitoring	Number
NO <sub>x</sub>	1
CO, O <sub>3</sub> , SO <sub>2</sub>	3
PM <sub>10</sub>	3
Rail Yard – PM <sub>10</sub>	2
PM <sub>2.5</sub> – Regular	2
PM <sub>2.5</sub> – Colo	1
cPM <sub>2.5</sub>	1
Speciation 1/3	1
<del>Johnson County</del>	
O <sub>3</sub>	1
PM <sub>2.5</sub> – Regular	2

\* \$4,500.00 is being added for additional monitoring sites for FY2011 or the duration of the monitoring site. Sites will be determined at a later date.

K. Quarterly Reporting Requirements

1 <sup>st</sup> Quarter (10/1 – 12/31/10)	2 <sup>nd</sup> Quarter (1/01 – 3/31/11)	3 <sup>rd</sup> Quarter (4/01 – 6/30/11)	4 <sup>th</sup> Quarter (7/01 – 9/30/11)

VIII. Local Priorities

A. Local Priority funding may be used to carry out air quality related tasks that are consistent with KDHE goals. This may include performing more of an activity that is in the agreement, such as complaint investigations, activities related to air emissions and pollution or outreach activities. It also could include performing other related tasks that the local agency believes are important to meet local goals.

B. Quarterly Reporting Requirements

1 <sup>st</sup> Quarter (10/1 – 12/31/10)	2 <sup>nd</sup> Quarter (1/01 – 3/31/11)	3 <sup>rd</sup> Quarter (4/01 – 6/30/10)	4 <sup>th</sup> Quarter (7/01 – 9/30/11)

**IX. Program Maintenance**

A. DAQ and BOA agree that Program Maintenance funds are to support activities related to the assistance of the state air program: 1) not specifically covered by the activity specific allocations, including training, reporting, and other functions necessary to carry out the permitting, air compliance and enforcement, ambient air monitoring, public education, planning, and other elements of the air program, 2) additions to specifically identified allocations that may be assigned by BOA other than indirect costs, and including 3) complaint inspections and 4) compliance assistance.

B. Quarterly Reporting Requirements

1 <sup>st</sup> Quarter (10/1 – 12/31/10)	2 <sup>nd</sup> Quarter (1/01 – 3/31/11)	3 <sup>rd</sup> Quarter (4/01 – 6/30/11)	4 <sup>th</sup> Quarter (7/01 – 9/30/11)

**X. Indirect Costs**

A. DAQ and BOA agree to an indirect costs associated with this contract of 21.4% of the total account reimbursed by BOA.

B. Quarterly Reporting Requirements

1 <sup>st</sup> Quarter (10/1 – 12/31/10)	2 <sup>nd</sup> Quarter (1/01 – 3/31/11)	3 <sup>rd</sup> Quarter (4/01 – 6/30/11)	4 <sup>th</sup> Quarter (7/01 – 9/30/11)

**XI. State/Local Meetings**

The KDHE requires quarterly participation in meetings and conference calls to discuss issues that are related to the past and upcoming events with updates on the activities of each contract. *Scheduled Dates are:*

*TDB.*

## Appendix B

### Subject:

Grant Administration – Procurement Requirements  
Minority Business Enterprise (MBE), Woman Business Enterprise (WBE), Vendor  
Debarment

### Purpose:

To assist local government grantees in complying with Title 40 of the Code of Federal Regulations (CFR), Part 31 and 32 requirements for product or service procurement.

### Narrative:

The KDHE fully supports and requires compliance with all Federal and State legislation requiring fair and open competition for product or service procurement. As a requirement for continued grant funding all grantees agree to adhere to and abide by the regulations that pertain to this matter. This appendix is intended to be a resource to grantees so that they may easily locate the information and instructions they may need to comply with this regulation.

*NOTE: The following information is provided as a resource only and is in no way represented to be complete. Use of local or regional databases available from chambers of commerce or business alliances is strongly encouraged.*

- EPA Form 5700/52A (5/96) - Online  
<http://www.epa.gov/ogd/forms/forms.htm>
- EPA Laws & Regulations – Online:  
<http://www.epa.gov/lawsregs>
- Online database resources for identifying MBE/WBE:

Kansas Department of Commerce/Kansas Department of Transportation  
<http://www.ksdot.org/divadmin/civilrights/>

Minority Business Development Agency – “Phoenix Database Online”:  
<http://www.mbda.gov/>

- Excluded Parties List System at <http://epls.arnet.gov>

Supersedes EPA Form 5700-49, “Certification Regarding Debarment, Suspension, and Other Responsibility Matters.”

# **State Review Framework**

Review of Kansas'  
National Pollutant Discharge Elimination System  
Compliance and Enforcement Program

Round 2 Report  
for Federal Fiscal Year 2010

U.S. Environmental Protection Agency, Region 7

Final Report  
November 14, 2011

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# **I. EXECUTIVE SUMMARY**

## **Major Issues**

**The SRF review of Kansas identified the following major issues:**

- Inspection reports did not consistently communicate noncompliance as a violation or set the expectation that noncompliance must be corrected.
- The state consistently accounts for gravity, but not an estimate of economic benefit, in its penalty calculations.
- The practice of overriding violation flags in the federal database was used more frequently than necessary, and sometimes inappropriately, to show major facilities as being in compliance.

## **Summary of Programs Reviewed**

### **I. Clean Water Act/National Pollutant Discharge Elimination System Program**

The SRF Round 2 Review for Federal Fiscal Year (FFY) 2010 in Kansas covered only the CWA/NPDES compliance and enforcement program. The EPA reviewed Kansas' Clean Air Act and Resource Conservation and Recovery Act programs under SRF Round 2 in 2010.

**The problems that necessitate state improvement and require recommendations and actions include:**

- Inconsistent communication of noncompliance as a violation in inspection reports and setting the expectation that noncompliance must be corrected;
- The manner of estimating and/or calculating economic benefit in penalty orders, or otherwise providing a rationale for its exclusion, which was an issue raised in the SRF Round 1;
- Inappropriate use of manual overrides in the federal database to show major facilities as being in compliance; and
- Gaps in entry of required data elements in the federal database, requiring state and EPA actions.

**Areas meeting SRF program requirements or with minor issues for correction include:**

- Quality of compliance monitoring reports;
- The need for more consistent articulation of Significant Non-Compliance;
- Completion of program workplan commitments, including inspections;
- Timely and appropriate use of enforcement actions;
- Use of enforcement actions that require a return to compliance; and
- Documenting receipt of penalty payment.

## **II. BACKGROUND INFORMATION** **ON STATE PROGRAM AND REVIEW PROCESS**

The State Review Framework (SRF) is a program designed to ensure that EPA conducts oversight of state and EPA direct implementation compliance and enforcement programs in a nationally consistent and efficient manner. Reviews look at 12 program elements covering data (completeness, timeliness, and quality); inspections (coverage and quality); identification of violations; enforcement actions (appropriateness and timeliness); and penalties (calculation, assessment, and collection).

Reviews are conducted in three phases: analyzing information from the national data systems; reviewing a limited set of state files; and development of findings and recommendations. Considerable consultation is built into the process to ensure that EPA and the state understand the causes of issues, and to seek agreement on identifying the actions needed to address problems.

The reports generated by the reviews are designed to capture the information and agreements developed during the review process in order to facilitate program improvements. The reports are designed to provide factual information and do not make determinations of program adequacy. EPA also uses the information in the reports to draw a “national picture” of enforcement and compliance, and to identify any issues that require a national response. Reports are not used to compare or rank state programs.

### **A. GENERAL PROGRAM OVERVIEW**

#### **A1. Agency Structure**

The Kansas Department of Health and Environment is responsible for implementing the NPDES program in Kansas. NPDES permitting is the responsibility of the KDHE Bureau of Water, located in KDHE’s central office in Topeka. The compliance monitoring and enforcement program is shared by the Bureau of Water and the Bureau of Environmental Field Services, which has a presence in six district offices located throughout the state.

#### **A2. Compliance/Enforcement Program Structure and Roles and Responsibilities**

Most compliance monitoring takes place at the district office level, where staff familiar with local facilities conduct inspections and respond to complaints. District offices handle most initial responses to noncompliance discovered via inspections and self-monitoring reports, although the central office sometimes initiates those responses as well. Formal enforcement, on the other hand, is a sole function of the Bureau of Water in the central office. The state Attorney General is the only other state governmental entity that is involved in the filing of enforcement actions in Kansas, but this only happens in the very rare occasion when enforcement litigation is referred from the administrative realm at KDHE to the judicial realm at the Attorney General.

KDHE is actively involved with numerous state agencies in the improvement and protection of

water quality. KDHE water quality initiatives are included in the State Water Plan administered by the Kansas Water Office; the Kansas Department of Parks, Wildlife, and Tourism shares monitoring data with KDHE and assists in fish kill investigation; stream obstructions associated with NPDES discharges are handled by the Kansas Department of Agriculture/Division of Water Resources; etc.

### *Enforcement Policy and Escalation Process*

The guidance that KDHE follows to assure compliance and conduct enforcement in the NPDES program is described in the Water Quality Guidance Memorandum, effective in 1997. The subject of the memorandum is Wastewater Enforcement Guidance, and it describes the enforcement tools available to all NPDES program areas. Staff from EPA and KDHE discussed the content of the guidance memo during the on-site review, and the following paragraphs summarize the guidance as it pertains to enforcement escalation.

The objective of the KDHE Bureau of Water under this guidance is to solve water quality problems and correct permit violations as quickly as reasonably possible and to do so first through cooperation rather than confrontation. The guidance also states that the strength of an appropriate enforcement tool depends on the severity of the violation, the potential for environmental or health impact, and the actions or inactions of the violator. As such, KDHE aims to proceed with the simplest appropriate approach to solving a problem and escalating if results are not achieved.

When the central or district office discovers a violation through inspection, DMR review, facility self-report, complaint, or other means, the initial response is usually a visit, inspection, or issuance of a warning via telephone or letter. If this approach proves ineffective, or the nature of the violation warrants a stronger initial response, KDHE will issue a directive or move directly to an administrative order. A directive is a firmly worded letter stating the problem and directing correction of the problem. KDHE uses directives in situations where the state's discretion suggests that an administrative order is not necessary to correct the problem. Directives can, however, serve as the basis for orders if problems are not corrected. An administrative order, as the strongest remedy in KDHE's toolbox, is used to legally require certain corrective actions, assess civil penalties, place a prohibition on system extensions, or some combination of all three. State administrative orders are consistent with the federal definition of formal enforcement.

In cases of noncompliance involving unique violations, possible criminal wrongdoing, or ineffectiveness of the above enforcement tools, the Wastewater Enforcement Guidance provides that KDHE may use its discretion to refer the case to the state Attorney General or the Regional Office of EPA. In FFY 2010, the state did not have any enforcement outcomes that relied on the route of referral.

Upon the state's discovery of noncompliance, the Wastewater Enforcement Guidance does not specify an appropriate allowance of time for returning to compliance before escalation to an administrative order is necessary. However, the guidance does specify that warning letters and directives will request or require correction of the problem within a definite time frame. Warning letters and directives, as well as violators' follow-up to them, are tracked by the district

or central office that issued it. Because there is no centralized tracking of issuance and follow-up to warning letters and directives, KDHE relies on discretion of the issuing office for escalation of problems that are not timely resolved through those means. All matters being escalated to formal enforcement go to the central office in Topeka, where administrative orders are drafted, issued, tracked for resolution, and if necessary, referred to the state Attorney General or EPA.

The Kansas Administrative Procedures Act provides that all administrative orders are subject to a hearing if requested by the recipient. Appeal to the court system is also available if the recipient of the order is not satisfied with the results of the administrative hearing. As a result of the hearing and appeals process, the state may use consent decrees, consent orders, and consent agreements to change the terms of administrative orders. Alternately, the consent process can be used to issue an initial formal enforcement action if prior discussion with the responsible party indicates that it is the best path forward.

To assist KDHE in selecting enforcement tools when the cooperative approach does not succeed, and to provide for assessment of penalties, the Wastewater Enforcement Guidance includes a general matrix describing the range of responses for serious versus significant violations of state rules, regulations, permit conditions, or other requirements. The general matrix gives a range of responses that applies to large entities or entities of any size in substantial violation and a separate range for small and middle-sized entities otherwise in substantial compliance. The range of responses include consideration of a penalty from a minimum of \$1000 for serious violations at small and middle-sized entities to a maximum allowed by Kansas law of \$10,000 per day per violation for significant violations at large entities in substantial violation. A penalty matrix establishes a formula for calculating a penalty that starts with a dollar amount from the general matrix and multiplies it by the following four factors: stream classification, environmental effect, willfulness and cooperation, and economic benefit. For each factor, a numeric value is selected from a table giving discrete values corresponding to descriptive criteria.

With regard to the economic benefit factor, the penalty matrix states that it should include the economic benefit, if any, of noncompliance. Types of economic benefit described in the matrix match those that EPA considers to be delayed and avoided costs, and the matrix states that the calculation should account for interest and the inflation rate during the period of noncompliance. These characteristics of penalty calculation are consistent with the financial principles underlying EPA's BEN model. Although KDHE – Bureau of Water does not utilize the BEN model or any similar financial model on a consistent basis, the state's penalty matrix outlines the economic benefit considerations that EPA expects to be included in a penalty calculation. During the program review, EPA assessed how well KDHE's penalty calculations do in fact account for these considerations, and Part IV of the report describes the findings.

### A3. Local Agencies Included/Excluded from the Review

Local agencies do not assume any NPDES program responsibilities in Kansas and were therefore not considered during the program review.

### A4. Resources

Resources available to KDHE to implement the entire NPDES program include 43.1 full-time equivalent staff that are funded by the Clean Water Act Section 106 grant to KDHE plus state matching and overmatch funds. 16.7 FTEs are allocated to permitting and grant management functions. The remaining 26.4 FTEs consist of 18 for compliance monitoring, mostly in the six district offices, 3.5 for enforcement, 1.5 for data management, and 3.4 for reporting.

#### A5. Staffing/Training

KDHE was under a hiring freeze at the time of review and the outlook for additional resources in the future is bleak. State budget cutbacks as well as EPA cutbacks in the §106 STAG portend fewer resources. EPA's workload model for the water quality programs indicates KDHE is staffed at 40-50% of the level needed to run the water quality programs in a manner that would reflect full implementation of all EPA guidance and policy as of 2000. EPA has added numerous additional expectations to state programs via policy and regulation since 2000, thus making the resource shortfall even more acute. To overcome the resource shortage, however, KDHE firmly believes it focuses its resources on those core program areas that bring about the most cost-effective protection and improvement of water quality. In balance, certain other program functions that KDHE views more as "paperwork" activities have a lower priority and are left incomplete.

New personnel in KDHE district offices must complete a regimented training program prior to independently conducting compliance monitoring activities. This program begins with a general employee orientation to cover basic policies and departmental functions. The second part consists of several phases of training that include field training, practice inspections under the tutelage of an experienced inspector, and oversight inspections to test the proficiency of the apprentice. The training is specific to the types of industrial and municipal wastewater treatment and agricultural operations that the new staff will be responsible for inspecting. New staff are also expected to read several manuals and complete safety training. New staff in the central office of KDHE complete a similar orientation and phased training under the wings of a mentor before performing all job functions independently.

#### A6. Data Reporting and Tracking Systems

KDHE is a batch user of the Permit Compliance System (PCS), which means it maintains its own databases for internal tracking of compliance monitoring and enforcement activities and uploads federally reportable data to PCS from its internal system in batches. The primary internal database is an Oracle system, used by central and district offices, that accounts for facility information, permit data, Discharge Monitoring Report (DMR) data, other self-reported monitoring information, inspection activities, and enforcement actions. Another database that KDHE uses is a Lotus Notes database for tracking enforcement action compliance schedules, permit compliance schedules, and regulated entities' compliance with the milestones in those schedules.

A third component of the KDHE tracking system, though not a database, is the DEEMERs system. About 120 wastewater permittees submit their DMR data to KDHE through the

DEEMERs electronic reporting system. DEEMERs consists of a program residing on the permittee's computer into which the permittee enters monitoring data and certifies to its authenticity before submitting an electronic file to KDHE. Through an automated process, the DEEMERs DMR data is loaded into the Oracle database for KDHE's tracking and evaluation. DEEMERs is also the source of all batched uploads of DMR data to PCS. Permittees who do not use DEEMERs submit their DMR data to KDHE in signed paper format via postal mail. Staff at KDHE manually key this hard-copy DMR data into the Oracle system, although it is not batched to PCS.

KDHE's existing data tracking systems allow the state to maintain all data elements necessary for KDHE to manage the Kansas NPDES program. A few families of PCS-required data, either partially or in their entirety, are not uploaded or directly entered into PCS. EPA reviewed completeness of data in PCS during this program review and includes findings on this matter in Part IV of this report. KDHE has argued that resource constraints preclude the state from completely bridging the gap in data entry. Because several data families cannot be batched in the same manner that DMR data is uploaded, they require a larger investment of staff time to manually enter and maintain in PCS.

Preparations are underway at KDHE to become a batch user of the Integrated Compliance Information System – NPDES (ICIS-NPDES) by FFY 2013. KDHE's transition away from PCS is part of EPA's nationwide plan to move all authorized states to ICIS-NPDES.

## **B. MAJOR STATE PRIORITIES AND ACCOMPLISHMENTS**

### **B1. Priorities**

KDHE does not have enforcement priorities that target specific sectors of the NPDES regulated universe. Rather, KDHE focuses its enforcement resources first on recalcitrant entities. Another priority is to address environmental insults that need immediate attention. The following discussion offers more details on how KDHE prioritizes its use of resources in conducting compliance monitoring and enforcement in particular NPDES program areas.

#### *Wastewater*

Inspectors of wastewater facilities use an inspection report format that is tailored to the type of treatment technology employed at the facility. Unique formats are used for waste stabilization lagoons, activated sludge plants, trickling filters, rotating biological contactors, quarry operations, concrete ready-mix and product plants and their associated facilities, and miscellaneous industrial facilities. Inspectors complete the applicable format, which includes a combination of checklists and narrative comment boxes, and accompany the report with a narrative cover page for transmitting the report to the facility. The cover page sometimes summarizes the major findings of the inspection. The detailed questions presented on each report format allow for a very comprehensive evaluation of the facility's operation and compliance status. Only occasionally do the state's inspections of traditional wastewater facilities make use of sample collection and analysis. However, the state has a separate program

within the Bureau of Environmental Field Services which conducts sample collection and analysis at permitted wastewater treatment facilities.

KDHE expends some of its enforcement resources on ensuring that corrective actions are taken in communities with serious collection system defects and high wet weather flows. Aligned with EPA's wet weather priorities, KDHE reminds municipal operators, via inspection reports and letters, that steps are expected to be taken to eliminate inflow and infiltration and sanitary sewer overflows. Some of the state's administrative orders address these issues as well. KDHE also reminds municipal operators verbally and in writing that all overflows from the collection system, including building back-ups, are required to be reported to the state in the same manner as other forms of noncompliance.

The general matrix in the KDHE's Wastewater Enforcement Guidance, discussed in Section A2 above, describes serious versus significant violations and the range of responses to each. The distinction between serious and significant violations in the matrix generally follows the criteria that EPA has established for Significant Non-Compliance. Violations described in the "significant" column have a corresponding range of responses that fit into the formal enforcement realm, which is also consistent with EPA's expected response to SNC. As EPA confirmed via discussion with the state, KDHE considers a major permittee's second appearance on the Quarterly Non-Compliance Report (QNCR) to warrant a formal enforcement action, though the state does not necessarily take such an action every time this occurs.

#### *Stormwater*

KDHE issued and enforces a rock quarry permit that contains the requirement that quarries develop and implement a Stormwater Pollution Prevention Plan. In the case of other industrial facilities that discharge both wastewater and stormwater, the individual NPDES wastewater permit contains the requirement that a SWPPP be developed and implemented. In addition, there may be limits on stormwater outfalls in the permit. KDHE issues individual Phase I Municipal Separate Storm Sewer System permits and a general permit for Phase II MS4s.

KDHE's compliance monitoring for construction stormwater consists mainly of investigations in response to complaints, although in response to special circumstances the state has actively targeted a very small number of construction stormwater inspections. Furthermore, sites where violations have been discovered and a directive or administrative order issued are usually re-inspected to determine the site's compliance status.

KDHE's compliance monitoring of industrial stormwater general permittees is in response to complaints. When industrial wastewater and rock quarry facilities are inspected, the inspector assesses compliance with all aspects of the permit. These permits contain SWPPP requirements at all facilities that would otherwise be required to obtain an industrial stormwater permit. These inspections are usually targeted inspections, although they may also be conducted in response to complaints.

Due to a lack of resources, KDHE has not conducted full inspections or audits of MS4 communities. The KDHE may respond to a specific complaint in an MS4 community by looking

at the community's Stormwater Management Program and program implementation for the subject program area. KDHE has not taken formal enforcement against any community for failure to comply with its MS4 permit requirements. Because no formal inspections or enforcement of the MS4 permits has occurred to date, the program review did not include a review of MS4 files.

### *Concentrated Animal Feeding Operations*

The NPDES compliance and enforcement program for CAFOs is implemented by both the KDHE Bureau of Environmental Field Services and Bureau of Water. The Bureau of Environmental Field Services is primarily responsible for performing inspections. Other activities include inspection follow-ups, tracking return to compliance, and monitoring permit compliance deadlines. The Bureau of Water is responsible for coordinating, reviewing and processing all enforcement actions and enforcement follow-up.

KDHE's *Livestock Waste Management FFY 10 & 11 Work Plan* defines the roles and responsibilities for both bureaus and it identifies all program priorities for the time period covered by the work plan. The work plan states that, "[KDHE] prioritizes livestock inspections by integrating surface water quality databases and livestock facility to designate a facility's 'risk' of impairing watersheds and streams." The work plan goes on to state that rankings are, "...based upon Kansas Animal units, facility history, study data from the Kansas Nutrient Reduction Plan and a facility's location within a high priority watershed as determined by the Total Maximum Daily Load (TMDL) process."

### *Pretreatment*

KDHE does not have an authorized Pretreatment Program but shares implementation of the program with EPA through a Memorandum of Understanding with the Region. Under this MOU and the state's Performance Partnership Grant (PPG) workplan commitments, the KDHE permits and monitors compliance at Significant Industrial Users located outside cities having approved pretreatment programs. Compliance monitoring for such SIUs includes conducting periodic inspections, reviewing semi-annual reports, and taking enforcement when necessary. Eighteen municipalities had approved pretreatment programs at the time of review, and KDHE reviews compliance reports received by those cities and conducts an audit or pretreatment compliance inspection of each municipality's program at a frequency established in the PPG workplan.

EPA randomly selected eight pretreatment industries and program cities for review under the SRF metrics. The findings from the review of these entities are incorporated into the entire NPDES enforcement program findings.

## B2. Accomplishments

A common aspect of all NPDES program areas is the use of a Compliance Monitoring Strategy to establish expectations for how many inspections KDHE and EPA will perform in a given fiscal year. EPA and KDHE negotiated a CMS at the beginning of FFY 2010, and the negotiated inspection commitments set benchmarks for measuring the state's performance under the

program review topics of inspection coverage and inspection-related commitments. The following notable accomplishments pertain to particular NPDES program areas.

### *Wastewater*

KDHE's approach to ensuring compliance at traditional wastewater permittees is to inspect majors every year, non-major mechanical facilities once every 30 months, and non-major lagoon facilities once every five years. Despite the flexibility that the CMS offers to reduce the inspection frequency at majors, KDHE has chosen to maintain an annual presence at those facilities in order to offer operators sufficient technical assistance to be prepared, with both equipment and expertise, to reduce nutrients from wastewater flows and ultimately to meet nutrient limits at some point in the future. Many facilities have compliance schedules in their permits requiring studies to evaluate the feasibility of meeting nutrient limits with existing treatment technology. KDHE also believes inspecting the major facilities annually provides the biggest environmental bang for the buck. The 55 major facilities constitute over two-thirds of the design wastewater flow in Kansas. Therefore, inspecting those 55 facilities annually ensures the vast majority of wastewater flows impacting the waters of the State are frequently reviewed.

### *Concentrated Animal Feeding Operations*

The NPDES CAFO universe in Kansas consists of approximately 445 facilities that are predominately beef operations followed by pork, dairy and poultry. KDHE's *Livestock Waste Management FFY 10 & 11 Work Plan*, discussed in Section B1 above, identifies the frequency at which CAFOs are inspected. State statutes require that a subset of large swine operations be inspected annually, and this was the case in FFY 2010. All remaining large CAFOs are to be inspected once every 2.5 years, unless directed otherwise by the Bureau of Water, and are targeted based on the prioritization process discussed above.

## **C. PROCESS FOR SRF REVIEW**

The following is a summary of the key inputs, milestones, and channels of communication that guided the SRF Round 2 review of Kansas' NPDES compliance and enforcement program. Issuance of this report is the culmination of the on-site review and the entire SRF process.

### **C1. Review Period**

The review covered the state's NPDES compliance and enforcement program as it operated in FFY 2010. File reviews and discussions with KDHE focused on compliance monitoring and enforcement activities that occurred during the period from October 1, 2009, through September 30, 2010. File reviews also covered some inspection and enforcement activities that were conducted outside of this period if they were associated with the inspection and enforcement sequence of interest for a particular facility.

### **C2. Key Dates**

Following are the major milestones in the EPA review of Kansas' NPDES compliance and enforcement program for FFY 2010:

- 2/22/2011—EPA sent an opening letter to KDHE to initiate the SRF review and transmit the Official Data Set (ODS). The ODS formed the basis of EPA's analysis of the state's compliance and enforcement data and activities in FFY 2010, as contained in PCS.
- 2/25/2011—KDHE submitted a written response to the ODS via email. The response indicated that several data elements were incomplete or incorrect and provided corrected data where applicable. In order to proceed with the review, it was also necessary to obtain replacement data for several elements, particularly those concerning enforcement counts. KDHE responded with all necessary replacement data within 5 business days. The corrected ODS, with state discrepancies, can be found in Appendix B.
- 3/25/2011—EPA sent a final file selection list to the KDHE central office via email, to ensure that KDHE had three weeks to pull the selected files prior to the on-site review.
- 3/30/2011—EPA sent a letter to KDHE transmitting the file selection list and initial findings from the Preliminary Data Analysis (PDA) using the ODS. The PDA is discussed in Appendices D and E of this report, while the file selection process is discussed in Appendix F.
- 4/18-21/2011—EPA's teams for the SRF review and permits program review conducted a joint on-site review in Topeka, Kansas, at the KDHE central office. During the on-site review, EPA reviewed facility files, discussed programmatic matters with KDHE staff and management, and held an exit conference to report preliminary findings.
- 7/16/2011—EPA sent a draft report to KDHE, offering the state 50 days to review, comment, and suggest action items in response to the report's recommendations.
- 8/30/2011—KDHE submitted a written response to the draft report, which is included as Appendix H.

### C3. Communication with the State

Throughout the preparation, execution, and follow-up for the SRF review, all communication was channeled between the EPA Region 7 Water Enforcement Branch and the KDHE Bureau of Water in Topeka. Several telephone conversations in advance of the on-site review allowed KDHE and EPA to ask and answer questions about the scope and process for the review. Programmatic discussions during the on-site review enabled EPA to answer questions about the content of facility files and to gain a thorough understanding of how the state processes information and makes decisions regarding compliance and enforcement.

An exit briefing on preliminary findings was held on the final day of the on-site review. This briefing covered not only the SRF compliance and enforcement review but also the NPDES permitting program review that EPA conducted concurrently. In attendance were most members of the EPA SRF review team; members of the separate permitting review team; management from the EPA Water, Wetlands and Pesticides Division; and management from the KDHE Division of Environment and Bureau of Water.

Communication between EPA and KDHE following the on-site review focused on the content of the draft report and negotiation of action items to address EPA's draft recommendations for state

improvement. The state's response to the report is incorporated into the findings in Part IV and appears in its entirety in Appendix H.

#### C4. List State and Regional Lead Contacts for Review

The Water Enforcement Branch at EPA Region 7 was responsible for conducting the review. Michael Boeglin, under the direction of Diane Huffman, was the coordinator and lead reviewer. Other program reviewers included Howard Bunch, Paul Marshall, Linda McKenzie, Cynthia Sans, and Stephen Pollard. The SRF Coordinator for EPA Region 7 is Kevin Barthol. Mike Tate, the chief of the Technical Services Section in the Bureau of Water, served as the primary point of contact for KDHE. Ed Dillingham, a unit chief in the Technical Services Section, was also present throughout the on-site SRF review.

### III. STATUS OF RECOMMENDATIONS FROM PREVIOUS REVIEWS

During the first SRF review of Kansas’s NPDES compliance and enforcement program, covering FFY 2006, EPA Region 7 and KDHE identified a number of actions to be taken to address issues found during the review. The table below shows the completion status of recommended actions at the time of the current SRF review. Note that the two incomplete items were revisited during the current review and were the topic of multiple conversations and correspondence between EPA and KDHE during the intervening years. KDHE provides further perspective on the incomplete items in the state response to corresponding Findings in Part IV of this report.

Element	Media	Due Date	Status	Finding	Recommendation
Timely & Appropriate Actions	CWA	3/15/2011	Not Completed in Round 1 - Identified in Round 2	KDHE is placing schedules of compliance in permits when systems are in violation. KDHE interpreted permit schedules of compliance as a state based enforcement tool. Ensure that enforcement actions meet the federal definition of enforcement.	Apply enforcement tools in a manner consistent with federal regulations and the KDHE Water Quality Guidance Memorandum.
Data Complete	CWA	4/30/2010	Marked “Complete” in SRF Tracker, though not executed due to KDHE resource constraints	Not all WENDB data elements are being entered into PCS by the state, particularly schedules of compliance. While KDHE tracks schedules of compliance through use of a different database, EPA would like to see this information entered into PCS.	KDHE should work towards entering all of the Water Enforcement National Data Base (WENDB) data elements according to the minimum requirements for Major and Minor facilities, including schedules of compliance.
Insp Universe	CWA	4/30/2010	Marked “Complete” in SRF Tracker, though not executed due to KDHE resource constraints	KDHE has not inspected or audited MS4 communities; although the annual reports, required by the MS4 permits to be submitted to KDHE annually, are reviewed to determine if the permittee is implementing the program.	The state needs to audit Phase I and Phase II MS4 communities, to the extent possible, in an effort to assess and improve compliance with program requirements.
Other	CWA	8/31/2010	Marked “Complete” in SRF Tracker, though EPA agreed to withhold this expectation	KDHE does not have an authorized pretreatment program, although KDHE implements the pretreatment program through an MOU with the Region. KDHE should continue to evaluate seeking authorization for the Pretreatment Program and work with the Region on the requirements to do so	KDHE should continue to evaluate seeking authorization for the Pretreatment Program

Element	Media	Due Date	Status	Finding	Recommendation
Penalty Calculations, Penalties Collected	CWA	3/15/2011	Not Completed in Round 1 - Identified in Round 2	Rationale for the penalty, including economic benefit and gravity, was not available during the review timeframe. Penalty calculations provided after the review indicate that KDHE has a rationale for collecting the penalty, but the narratives did not provide rationale for the selected parameters. Based on the penalty narratives provided, KDHE appears to assess different parameters than EPA when considering economic benefit	Document rationale for penalties sought, including economic benefit.
Data Accurate	CWA	4/30/2010	Completed	The state does not have a Standard Operating Procedure (SOP) for assuring the quality of Discharge Monitoring Report (DMR) data that is received via DEEMERS.	The state needs an SOP for management of DMR oversight in the state's Oracle Database Management System (DBMS). KDHE and EPA discussed how data was reviewed, but KDHE did not provide a written data quality assurance protocol.

## IV. FINDINGS

Findings represent the region’s conclusions regarding the issues identified. Findings are based on the initial findings identified during the data or file review, as well as from follow-up conversations or additional information collected to determine the severity and root causes of the issue. There are four types of findings:

<b>Finding</b>	<b>Description</b>
<b>Good Practices</b>	This describes activities, processes, or policies that the SRF data metrics and/or the file reviews show are being implemented exceptionally well and which the state is expected to maintain at a high level of performance. Additionally, the report may single out specific innovative and noteworthy activities, processes, or policies that have the potential to be replicated by other states and can be highlighted as a practice for other states to emulate. No further action is required by either EPA or the state.
<b>Meets SRF Program Requirements</b>	This indicates that no issues were identified under this element.
<b>Areas for State* Attention</b>  <b>*Or, EPA Region’s attention where program is directly implemented.</b>	<p>This describes activities, processes, or policies that the SRF data metrics and/or file reviews show are being implemented with minor deficiencies. The state needs to pay attention to these issues in order to strengthen performance, but they are not significant enough to require the region to identify and track state actions to correct.</p> <p>This can describe a situation where a state is implementing either EPA or state policy in a manner that requires self-correction to resolve concerns identified during the review. These are single or infrequent instances that do not constitute a pattern of deficiencies or a significant problem. These are minor issues that the state should self correct without additional EPA oversight. However, the state is expected to improve and maintain a high level of performance.</p>
<b>Areas for State * Improvement – Recommendations Required</b>  <b>*Or, EPA Region’s attention where program is directly implemented.</b>	This describes activities, processes, or policies that the metrics and/or the file reviews show are being implemented by the state that have significant problems that need to be addressed and that require follow-up EPA oversight. This can describe a situation where a state is implementing either EPA or state policy in a manner requiring EPA attention. For example, these would be areas where the metrics indicate that the state is not meeting its commitments, there is a pattern of incorrect implementation in updating compliance data in the data systems, there are incomplete or incorrect inspection reports, and/or there is ineffective enforcement response. These would be significant issues and not merely random occurrences. Recommendations are required for these problems, and they must have well-defined timelines and milestones for completion. Recommendations will be monitored in the SRF Tracker.

The series of tables below present the findings, organized by SRF element, for the Kansas Clean Water Act NPDES program.

<b>Element 1 — Data Completeness: Degree to which the Minimum Data Requirements are complete.</b>		
<b>1-1</b>	<b>This finding is a(n)</b>	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
	<b>Finding</b>	Overrides of RNC and SNC were used more frequently than necessary, and sometimes inappropriately, to show major facilities as being in compliance.
	<b>Explanation</b>	<p>Reviewers examined 5 of the 10 major facilities that were flagged for one or more manual RNC/SNC overrides in FFY 2010 and found 3 types of circumstances in which the state has used overrides. First, 3 of the 5 facilities involved the use of a “C” for compliance override to compensate for circumstances that were within the control of KDHE. These circumstances include late batching of DMR data to PCS, resulting in automatic generation of “D” for DMR non-receipt (JoCo Nelson and Parsons); and an incorrect season number in PCS generating an illegitimate “N” for data not present (Salina), in which case the state should correct the faulty season data in PCS to prevent recurrent generation of “N” in future years. In the second type of circumstance, 3 of the 5 facilities reviewed (JoCo Nelson, Parsons, and McPherson) involved the use of a “C” when no automatic RNC/SNC code was present. Upon discussing the rationale for use of “C” in these cases, the KDHE explained that data entry personnel had routinely made use of “C” codes in previous years to ensure that facilities did not appear to be in noncompliance when no reason seemed to exist for them to be in violation, even if no RNC/SNC status flag was generated automatically for a given quarter. KDHE largely discontinued this practice prior to FFY 2010, according to the state. The 3 facilities for which use of “C” in FFY 2010 was unjustified are carry-overs from an earlier, more widespread practice. The third type of circumstance was the use of “C” to override SNC effluent exceedances that triggered automatic “E” codes (Chisholm Creek Utility Authority, Parsons, and McPherson). KDHE explained that data entry personnel have occasionally overridden “E” codes if the facility did not appear on the QNCR for effluent exceedances. In these three cases, however, the facility’s DMRs revealed legitimate SNC effluent limitation exceedances.</p> <p>It is important that the state do its best to prevent circumstances, such as late data batching and erroneous PCS data, so that illegitimate RNC/SNC codes will not be generated, thus precluding the need for manual overrides. The most recent data in PCS, for FFY 2011, shows that the state continues to use overrides as much if not more extensively than in FFY 2010, raising the importance of resolving this issue. Judicious use of overrides is essential to maintain the integrity of publicly viewable data.</p>
	<b>Metric(s) and Quantitative Value(s)</b>	1b4 – Major individual permits: manual RNC/SNC override rate (1 FY); Value: 68.4%. There is no numeric goal or national average for this data metric.
	<b>State Response</b>	KDHE has instituted procedures for timelier uploading of the DMR data to PCS to avoid the “DMR Not Received” designations. KDHE will use more care when determining the correct status of the compliance overrides.

	<b>Recommendation(s)</b>	KDHE will use more care when determining the correct compliance status of facilities relative to RNC/SNC flag designations in the database and will use manual overrides only for illegitimate RNC/SNC flags caused by data in PCS not accurately reflecting actual DMR data or untimely uploading of DMR data by the state. EPA will verify that judicious use of manual overrides has improved during FFY 2012 by checking the database at mid-year, specifically by April 15, 2012, and at the end of year, by October 15, 2012.
<b>1-2</b>	<b>This finding is a(n)</b>	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input checked="" type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	<b>Finding</b>	Formal enforcement action data is not consistently batched or entered into PCS, but absence of this data is the result of a communication oversight by EPA.
	<b>Explanation</b>	Formal enforcement actions were issued to 1 major and 2 non-major P.L. 92-500 facilities in FFY 2010, but no enforcement action data was present in PCS for those facilities. The facilities with missing data are Atchison, which received an amendment to its order in FFY 2010, and Alma and Walnut (the P.L. 92-500 non-majors). Enforcement action data for these categories of facilities is required in PCS and ICIS-NPDES. See the state response and recommendation below.
	<b>Metric(s) and Quantitative Value(s)</b>	1f2 – Formal actions: number of actions at major facilities. Kansas metric of 0, with state correction of 1. There is no numeric goal or national average for this data metric. 1f3 – Formal actions: number of actions at non-major facilities. Kansas metric of 6, with state correction of 21. There is no numeric goal or national average for this data metric.
	<b>State Response</b>	By agreement in the Work Plan with EPA R7, KDHE provides the region a copy of each Formal Enforcement Action (FEA), and a copy of the FEA closure letters. The Region loads the information into PCS, if desired. Any data found in PCS as result of this review was placed in PCS by EPA R7. This is not a deficiency in the KDHE program but is part of a work-sharing initiative between Kansas and EPA Region 7.
	<b>Recommendation(s)</b>	EPA will enter formal enforcement action data for KDHE through FFY 2012, which is the duration of the PPG workplan performance period, and will continue doing so until ICIS-NPDES is ready for KDHE to upload the state's enforcement data families. By the time that milestone is reached, currently projected for November 2012, EPA and KDHE will renegotiate the responsibilities for entry of whatever enforcement action data is at that time required in the national database.
<b>1-3</b>	<b>This finding is a(n)</b>	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
	<b>Finding</b>	Compliance schedule data for permit schedules of compliance and enforcement action schedules is not batched or entered into PCS.

	<b>Explanation</b>	Reviewers found 4 instances in which the PCS record for a facility lacked data regarding a permit compliance schedule (Atchison and MGP Ingredients) or an enforcement action compliance schedule (Atchison and Walnut), whereas this data is required in the national database for majors and P.L. 92-500s. EPA acknowledges that KDHE has systematically not batched this family of data for several years, as KDHE tracks it outside of the state's primary internal database from which data is batched to PCS. EPA recently agreed with the state's request to withhold the expectation for entry of this data until KDHE begins to batch its data to ICIS-NPDES in early FFY 2013. The rationale is that, in the meantime, the state needs to commit its limited resources to the ICIS-NPDES transition process. Once the transition is complete, however, EPA expects this missing data to be included with the data families batched to ICIS-NPDES.
	<b>Metric(s) and Quantitative Value(s)</b>	1a – Active facility universe: NPDES major and non-major individual permits; Value is irrelevant for this finding. 1f – Formal actions at majors and non-majors; Value is irrelevant for this finding.
	<b>State Response</b>	By agreement in the Work Plan with EPA R7, KDHE provides the region a copy of each issued permit. The Region loads the information into PCS, if desired. Any data found in PCS as result of this review was placed in PCS by EPA R7. This is not a deficiency in the KDHE program but is part of a work-sharing initiative between Kansas and EPA Region 7.
	<b>Recommendation(s)</b>	By November 30, 2012, EPA and KDHE will negotiate, via the new PPG workplan for FFY 2013, how the responsibilities for data entry requirements at that time will be met, including the extent of requirements for permit and enforcement action compliance schedule data. Regarding the FFY 2010 and FFY 2011-2012 workplans, EPA disagrees that any work-sharing agreement was discussed or memorialized concerning entry of any permit information in PCS.

<b>Element 2 — Data Accuracy: Degree to which data reported in the national system is accurately entered and maintained.</b>		
2-1	<b>This finding is a(n)</b>	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
	<b>Finding</b>	Violations are not linked to formal enforcement actions against major facilities.
	<b>Explanation</b>	The state issued a formal enforcement action against 1 major facility in FFY 2010, which was neither batched/entered into PCS nor linked to the violation type codes. Because these data constitute Water Enforcement National Database Elements, the state needs to begin entering and linking violation type codes for formal enforcement actions against majors once the state begins to batch enforcement data to ICIS-NPDES, currently scheduled for FFY 2013 or later.
	<b>Metric(s) and Quantitative Value(s)</b>	2a – Actions linked to violations (major facilities); Value: 0. The national goal is >=80%. There is no national average for this data metric.

	<b>State Response</b>	We are unequipped from a resource perspective to try to link any violation –be it from a DMR, compliance schedule, bypass report, etc. to each administrative order. The information serves no useful purpose in KDHE’s NPDES implementation. Orders are written to ensure compliance with state and federal laws and regulations and it is unnecessary to link every possible violation to that order.
	<b>Recommendation(s)</b>	By November 30, 2012, EPA and KDHE will negotiate, via the new PPG workplan for FFY 2013, how data entry requirements at that time for violation linkages to formal enforcement actions will be met.

**Element 3 — Timeliness of Data Entry: Degree to which the Minimum Data Requirements are timely.**

<b>3-1</b>	<b>Finding</b>	EPA did not evaluate this metric for Kansas in FFY 2010. Element 3 of the SRF evaluates the degree to which the state batched/entered Minimum Data Requirements into PCS in a timely manner. To evaluate this metric, EPA Headquarters must ‘freeze’ the official data set for the review year in advance of EPA Region 7 pulling the live data against which the frozen data is compared. In this case, EPA Region 7 had to pull the live data before EPA Headquarters could make the frozen data set available, which precludes any analysis for this metric.

**Element 4 — Completion of Commitments: Degree to which all enforcement/compliance commitments in relevant agreements are met and any products or projects are completed.**

<b>4-1</b>	<b>This finding is a(n)</b>	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input checked="" type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	<b>Finding</b>	KDHE completed all except two negotiated tasks in the 2010 PPG workplan.
	<b>Explanation</b>	All tasks in the 2010 PPG workplan were completed as negotiated except two. One was a commitment to enter required WENDB elements into PCS. KDHE batched and/or entered all WENDB families of data except pretreatment inspections and compliance schedule data for major and P.L. 92-500 non-major facilities. The absence of compliance schedule data is addressed as Data Completeness Finding 1-3. The expectation for pretreatment inspection data, like compliance schedule data, is held in abeyance until the state begins to batch data to ICIS-NPDES, currently planned in 2013. The other task was a commitment to follow-up on recommendations made during the FFY 2006 Kansas CWA NPDES program review. KDHE did not respond to the draft or final program review report until 17 months after transmittal of the final report. That response did not acknowledge or address two of the underlying

		programmatic deficiencies found during the review. EPA then further clarified in writing what was needed in a state response, but KDHE offered no further communication on the matter.
	<b>Metric(s) and Quantitative Value(s)</b>	
	<b>State Response</b>	<p>KDHE did not make a commitment in the 2010 PPG to enter required WENDB elements into PCS but agreed with EPA to continue to load the PCS elements that KDHE currently loads. Similarly, KDHE has not committed to load any data elements to ICIS-NPDES that KDHE does not currently gather as needed to administer the NPDES program. KDHE did respond to the draft SRF 1 program review but was unaware that it was supposed to send a second response to the final SRF 1 program review. KDHE responded to the two programmatic deficiencies EPA identified in the review. Apparently, EPA did not accept the response and reworded the deficiency expecting another KDHE response. KDHE did not have the resources to continue the debate and chose not to respond a second time. We do not believe this element is a deficiency in the Kansas program since EPA agreed to the current status of data entry.</p> <p>In regard to the entry of Pretreatment WENDB elements, it was our understanding or misunderstanding that the Pretreatment WENDB elements were being entered by Paul Marshall at EPA. As a result of the SRF audit in April, it is our understanding that Paul will develop a form that KDHE staff will complete and return to him and he will ensure the data will be entered into the system.</p>
	<b>Recommendation(s)</b>	None required. EPA agrees that the communication of pretreatment inspection data between KDHE and EPA will ensure that this family of data is entered into the national database.

**Element 5 — Inspection Coverage: Degree to which state completed the universe of planned inspections/compliance evaluations.**

		<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input checked="" type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
<b>5-1</b>	<b>This finding is a(n)</b>	
	<b>Finding</b>	The state completed most but not all of the compliance monitoring activities negotiated in the KDHE/EPA Compliance Monitoring Strategy.
	<b>Explanation</b>	KDHE agreed via the FFY 2010 CMS to inspect or audit 47 major facilities, 220 non-major facilities, 3 pretreatment program cities, 12 pretreatment industries outside program cities, 2 CSO cities, and 91 CAFO facilities. Verification of the state's accomplishments reveals that KDHE met or exceeded all of these inspection commitments except: 1) the 2 CSO inspections; and 2) 12 of the 220 non-major inspections. For the first of these, reviewers examined the file for 1 CSO city

		(Atchison) and found that KDHE indeed conducted a compliance inspection during FFY 2010 but did not evaluate the City's compliance with the CSO component of its permit and its Long-Term Control Plan (LTCP). EPA understands that the state followed the same protocol during the other inspection of a CSO city. In order to claim credit for conducting a CSO inspection, KDHE must evaluate compliance with the 9 minimum control measures, the CSO component of the permit, and the LTCP. For the second of the two exceptions, the shortfall in number of completed non-major inspections was minor and does not represent a systematic problem.
	<b>Metric(s) and Quantitative Value(s)</b>	5a – Inspection coverage: NPDES majors; Value = 52, or 100% when including EPA inspections. The national goal is 100% and the national average is 56.90%. 5b1 – Inspection coverage: NPDES non-major individual permits; Value = 208. There is no national goal or national average for this metric.
	<b>State Response</b>	KDHE did not include the CSO inspection when it conducted the regular NPDES inspection at Atchison since EPA had recently completed such a CSO inspection at Atchison. Since Kansas has only three CSO cities, two of which were (and still are) negotiating CSO removal and upgrades at this time, KDHE central office staff will conduct the CSO inspections as needed. These may be desktop reviews of reports submitted by the cities.
	<b>Recommendation(s)</b>	None required, although EPA suggests that KDHE not entirely eliminate field verification of self-reported CSO program information.

**Element 6 — Quality of Inspection or Compliance Evaluation Reports: Degree to which inspection or compliance evaluation reports properly document observations, are completed in a timely manner, and include accurate description of observations.**

<b>6-1</b>	<b>This finding is a(n)</b>	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	<b>Finding</b>	Inspection reports consistently contained the most important items necessary to document observations and to facilitate a compliance determination.
	<b>Explanation</b>	EPA reviewed 45 inspection reports, all of which contained most if not all of the items on the NPDES Inspection File Evaluation Checklist. The 55% of reports that were not complete according to Metric 6b lacked only one to a few minor items from the checklist, such as phone number of the facility or time of day of inspection. Inspection reports also consistently contained sufficient documentation of observations to allow a KDHE reviewer to make a compliance determination. The various standardized checklists that KDHE utilizes for specific types of wastewater, CAFO, and stormwater inspections prompt inspectors to provide an excellent breadth of detailed compliance information pertinent to the type of facility being evaluated.
	<b>Metric(s) and Quantitative Value(s)</b>	6b – % of inspection reports reviewed that are complete; Value: 45% 6c – % of inspection reports reviewed that provide sufficient documentation to lead to

		an accurate compliance determination; Value: 100%
	<b>State Response</b>	EPA indicates that 55% of the inspection reports were not complete because they did not include “a few minor items from the checklist, such as phone number of the facility or time of day of inspection”. KDHE does not believe this information vital and can be considered optional.
	<b>Recommendation(s)</b>	None required.

**Element 7 — Identification of Alleged Violations: Degree to which compliance determinations are accurately made and promptly reported in the national database based upon compliance monitoring report observations and other compliance monitoring information.**

<b>7-1</b>	<b>This finding is a(n)</b>	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
	<b>Finding</b>	The state did not consistently label noncompliance as a violation and set the expectation that noncompliance must be corrected.
	<b>Explanation</b>	<p>Among files that did not involve formal enforcement but did involve noncompliance, reviewers found 8 of 14 facility files in which problems were identified and KDHE used a written letter, usually as an inspection report cover letter, to communicate noncompliance and to request correction of the violation within a specified period of time. For the other 6 of 14 files, KDHE communicated sufficient written information to inform a determination of compliance in 5 cases but did not explicitly draw attention to the presence of a violation(s) that must be corrected within a specified period of time, while in another case (Udall) repeated noncompliance with the DMR submission requirement was not addressed in writing. The 5 of 6 written messages of noncompliance include the following:</p> <ul style="list-style-type: none"> <li>- Atchison – some of the problems were adequately described without a clear message that they were violations needing correction within a specified period of time;</li> <li>- Salina – no clear articulation of noncompliance and need for correction regarding bypasses and bypass reporting;</li> <li>- Westar Lawrence – solids in stream were not treated as a violation needing assurance that it will not recur;</li> <li>- K-DOT 69 – the second inspection report did not request corrective actions; and</li> <li>- B&amp;B Readimix – inspection report cover letter did not request correction actions.</li> </ul> <p>EPA reviewers found that CAFO inspection reports consistently state clearly whether</p>

		the facility is or is not in compliance and, if found to be in noncompliance, request correction of the violations that are detailed in the same report. Other NPDES program areas in Kansas would benefit from this practice or could use a heading to unequivocally communicate a compliance determination, such as “Letter of Warning” or “Notice of Violation,” which puts the facility on notice that there is an expectation for corrective action. The KDHE Southeast District Office generated the only two informal enforcement actions reviewed by EPA, and other district offices should give more consideration to appropriate use of this tool. EPA notes that informal enforcement can retain a polite tone without necessarily needing to mention potential formal enforcement.
	<b>Metric(s) and Quantitative Value(s)</b>	7e - % of inspection reports or facility files reviewed that led to accurate compliance determinations; Value: 93% 6c - % of inspection reports reviewed that provide sufficient documentation to lead to an accurate compliance determination; Value: 100% 8b - % of SEVs at majors that are accurately identified as SNC or non-SNC; Value: 50%
	<b>State Response</b>	KDHE central office staff met with the Bureau of Environmental Field Services (BEFS) in August 2011 and discussed with them proper inspection procedures to appropriately label noncompliance items and to clearly express the expectation that noncompliance must be corrected by a set deadline. SNC determinations and the appropriate responses are made by central office staff not by the field staff and therefore, EPA should not expect this determination to be part of the BEFS inspection.
	<b>Recommendation(s)</b>	KDHE will implement revised inspection procedures by December 31, 2011, to improve the labeling of noncompliance and to clearly express the expectation that noncompliance must be corrected by a set deadline. By September 30, 2012, KDHE will report to EPA on what specific changes to inspection procedures have been successfully implemented through FFY 2012.

**Element 8 — Identification of SNC and HPV: Degree to which the state accurately identifies significant noncompliance/high priority violations and enters information into the national system in a timely manner.**

<b>8-1</b>	<b>This finding is a(n)</b>	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input checked="" type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	<b>Finding</b>	The state did not consistently communicate SNC violations as such or report SNC Single Event Violations to the national database.
	<b>Explanation</b>	Reviewers examined 2 inspection reports at majors that revealed violations (Atchison and Salina). The Atchison report appropriately referred to one of the several identified deficiencies as a “serious” violation, as it would rise to the level Significant Non-Compliance described in the NPDES Enforcement Management System (EPA, 1989). In contrast, the Salina report did not do the same for bypassing and bypass reporting. In addition, KDHE does not report SEVs that are SNC to PCS. States are required by the QNCR guidance to report SNC-SEVs at majors to the national database. EPA expects that KDHE may be able to reevaluate its capability to batch

		this information to ICIS-NPDES once the state has made the transition to ICIS-NPDES and has instituted its own new internal database.
	<b>Metric(s) and Quantitative Value(s)</b>	8b - % of SEVs at majors that are accurately identified as SNC or non-SNC; Value: 50%
	<b>State Response</b>	SNC determinations and the appropriate responses are made by central office staff. KDHE will re-evaluate its resource availability and the capability to batch load Single Event Violations to ICIS-NPDES as part of the transition to ICIS-NPDES.
	<b>Recommendation(s)</b>	None required.

**Element 9 — Enforcement Actions Promote Return to Compliance: Degree to which enforcement actions include required corrective action (i.e., injunctive relief or other complying actions) that will return facilities to compliance in a specific time frame.**

<b>9-1</b>	<b>This finding is a(n)</b>	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	<b>Finding</b>	Most enforcement actions required correction of violations identified by the state, and a combination of state information maintained in facility files and a separate database showed whether facilities had in fact returned to compliance.
	<b>Explanation</b>	Reviewers identified 13 facilities that were the subject of one or more formal or informal enforcement actions. 10 of 13 formal enforcement actions required correction of underlying violations (see Appendix G), 4 of 13 had evidence in the facility file to show whether the facility had completed the actions required or requested by KDHE to be performed, and evidence to this effect for the balance of the 13 facilities was maintained in a Lotus Notes database used to track completion of corrective actions pursuant to enforcement actions.
	<b>Metric(s) and Quantitative Value(s)</b>	9c - % of enforcement responses that have returned or will return a source with non-SNC violations to compliance; Value: 80% regarding the presence of requirements to return to compliance.
	<b>State Response</b>	See Appendix H for the original finding and the state response to that language.

	<b>Recommendation(s)</b>	None required.
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**Element 10 — Timely and Appropriate Action: Degree to which state takes timely and appropriate enforcement actions in accordance with policy relating to specific media.**

10-1	<b>This finding is a(n)</b>	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	<b>Finding</b>	The state took enforcement actions that were timely and appropriate remedies to the noncompliance being addressed.
	<b>Explanation</b>	<p>All 15 formal and informal enforcement actions reviewed were appropriate remedies to the noncompliance being addressed, and 14 of the 15 actions were taken in a timely manner. See Appendix G for more details on the analysis.</p> <p>Reviewers also examined the files for 3 facilities (Udall, Walnut, and MGP Ingredients) that had permits with compliance schedules for correcting deficiencies stemming from the previous permit term. Although the noncompliance addressed by the compliance schedules could also be addressed through enforcement, EPA acknowledges that KDHE used an approach to correcting deficiencies that was an efficient use of department resources.</p> <p>EPA reminds KDHE that acceptable use of compliance schedules in permits was a legitimate issue raised in SRF Round 1 that was not resolved prior to the current Round 2 review. To EPA’s knowledge, KDHE has not repeated its use of the problematic compliance schedules since the Round 1 issue was first raised by Region 7 and should not do so in the future. The state is reminded to remain consistent with federal requirements in all future uses of permit compliance schedules.</p>
	<b>Metric(s) and Quantitative Value(s)</b>	<p>10b - % of enforcement responses reviewed that appropriately address SNC violations; Value: N/A, as no SNC violations were addressed at the major facilities reviewed.</p> <p>10c - % of enforcement responses reviewed that appropriately address non-SNC violations; Value: N/A, as no SNC violations were addressed at the major facilities reviewed.</p> <p>10d - % of enforcement responses reviewed that appropriately address non-SNC violations; Value: 100%</p> <p>10e - % enforcement responses for non-SNC violations where a response was taken in a timely manner; Value: 93%</p>
	<b>State Response</b>	See Appendix H for the original finding and the state response to that language.

	<b>Recommendation(s)</b>	None required.
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**Element 11 — Penalty Calculation Method: Degree to which state documents in its files that initial penalty calculation includes both gravity and economic benefit calculations, appropriately using the BEN model or other method that produces results consistent with national policy.**

	<b>11-1 This finding is a(n)</b>	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
	<b>Finding</b>	The state consistently accounts for gravity but no estimate of economic benefit in its penalty calculations.
	<b>Explanation</b>	<p>Note that the following finding was not addressed in Round 1 of the SRF and is being revisited in Round 2.</p> <p>The EPA reviewed 11 enforcement files that assessed actual or stipulated penalties, all of which accounted for gravity of the violations. Only 4 of the 11 actions with a penalty assessment accounted for economic benefit of noncompliance. The violations addressed by all 4 cases that accounted for economic benefit were failure to obtain or retain operator certification or operation/discharge without a permit. In all 4 cases, KDHE documented its use of discretion to omit a calculation of economic benefit, as the benefit was related to paperwork or certification costs and was justifiably much smaller than the other penalty components. The 7 cases not counted, in contrast, involved noncompliance in which the violator would have gained a finite and non-negligible economic benefit from not installing capital equipment, neglecting operation and maintenance, etc. In those 7 cases, as with the 4 cases that are counted, KDHE noted on the penalty calculation worksheet that the economic benefit was not significant or was minor and therefore was not calculated; however, the notations were generic and similar, if not identical, from one case to another and did not include reasonable justification for such claims. As a minimum corrective step, a reasonable and realistic—if only rough—estimate of the actual economic benefit should be provided and explained to justify the use of discretion to omit a thorough calculation of this penalty factor, and only then can it be omitted if in fact the estimate is significantly less than the other penalty components.</p> <p>Under national program expectations, EPA expects penalty cases nationwide to conform to a minimum standard of recouping economic benefit in order to ensure a level playing field from state to state. KDHE may continue to assume away economic benefit as negligible only if an appropriate and reasonable justification can illustrate why the remainder of the calculated penalty will be at least as large as any estimate of benefit.</p>
	<b>Metric(s) and Quantitative Value(s)</b>	11a - % of penalty calculations that consider and include where appropriate gravity and economic benefit; Value: 36%.
	<b>State Response</b>	The KDHE always considers gravity and economic benefit when determining the appropriate penalty during enforcement actions. However, in many cases, at the time

		the order is written, economic benefit is difficult to determine since KDHE does not know the extent of the upgrade the permittee will need or want to implement to come into compliance with the permit. Since KDHE-BOW deals mostly with cities, CAFOs and small businesses that do not post the type of financial data used in BEN or similar models, it is not efficient or effective to use these models. Also, rough estimates are easily challenged in the hearing process especially when many entities are able to get government loans and grants for the upgrades. KDHE has found that unless the economic benefit can be readily identified such as based upon not paying permit fees or not conducting appropriate testing, the penalty phase of hearings goes much smoother resulting in the hearing officer more likely to affirm the KDHE proposed penalty. KDHE does not agree that this is a deficiency in the Kansas program since Kansas does consider economic benefit as a factor in each enforcement case and uses it when KDHE judges its use to be meaningful, appropriate and clearly calculable.
	<b>Recommendation(s)</b>	By December 31, 2011, KDHE will change the rationale it documents for considering but not including an estimate for economic benefit in each case. In cases when the benefit obtained by the violator is too uncertain to calculate at the time the case is filed, as suggested by the state, KDHE should indicate such on the penalty worksheet or indicate that the gravity portion of penalty will account for more than the economic benefit gained.

**Element 12 — Final Penalty Assessment and Collection: Degree to which differences between initial and final penalty are documented in the file along with a demonstration in the file that the final penalty was collected.**

		<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
<b>12-1</b>	<b>This finding is a(n)</b>	
	<b>Finding</b>	Most enforcement records contained documentation showing any differences between initial calculated and final assessed penalties, and records contained proof that the assessed penalty had been paid.
	<b>Explanation</b>	<p>EPA reviewed 9 final penalties in administrative or consent orders in which the final penalty differed from the initial calculated penalty. The files for 8 of the 9 cases included documentation of some sort showing how the penalty amount had been reduced. Most reductions, explained in the body of the order, were made on the basis of holding half (or some other portion) of the penalty in abeyance, to account for demonstrated financial difficulty of the respondent, or to expedite settlement. The 1 case not counted was Nelson Poultry.</p> <p>All 9 penalty orders reviewed by EPA, in which payment of the penalty was due, were accompanied in the file by documentation showing that the penalty had been paid.</p>
	<b>Metric(s) and Quantitative Value(s)</b>	<p>12a - % of penalties reviewed that document the difference and rationale between the initial and final assessed penalty; Value: 89%</p> <p>12b - % of enforcement actions with penalties that document collection of penalties; Value: 100%</p>
	<b>State Response</b>	The finding is accurate.

	<b>Recommendation(s)</b>	None required.
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## V. ELEMENT 13 SUBMISSION

Kansas did not submit any information to EPA for consideration under Element 13 of the SRF Process. Element 13 is an optional opportunity for the state to give EPA information about achievements in compliance assistance, pollution prevention, innovation, self disclosure programs, outcome measures, etc. to educate EPA about the scope of the state's program.

## APPENDIX A: OFFICIAL DATA PULL

FFY 2010 Official Data Set for Kansas NPDES Compliance and Enforcement Review													
Metric	Metric Description	Measure Type	Metric Type (state/EPA)	National Goal	National Average	Kansas Metric	Count	Universe	Not Counted	State Discrepancy (Yes/No)	State Correction	State Data Source	Discrepancy Explanation
1A1	Active facility universe: NPDES major individual permits (Current)	Data Quality	Combined			55	NA	NA	NA				
1A2	Active facility universe: NPDES major general permits (Current)	Data Quality	Combined			0	NA	NA	NA				
1A3	Active facility universe: NPDES non-major individual permits (Current)	Data Quality	Combined			1,180	NA	NA	NA				
1A4	Active facility universe: NPDES non-major general permits (Current)	Data Quality	Combined			53	NA	NA	NA				
1B1	Major individual permits: correctly coded limits (Current)	Goal	Combined	>=; 95%	93.1%	85.5%	47	55	8				
1B2	Major individual permits: DMR entry rate based on MRs expected (Forms/Forms) (1 Qtr)	Goal	Combined	>=; 95%	0 / 0	0 / 0	0	0	0				

**FFY 2010 Official Data Set for Kansas NPDES Compliance and Enforcement Review**

Metric	Metric Description	Measure Type	Metric Type (state/EPA)	National Goal	National Average	Kansas Metric	Count	Uni-verse	Not Counted	State Discrepancy (Yes/No)	State Correction	State Data Source	Discrepancy Explanation
1B3	Major individual permits: DMR entry rate based on DMRs expected (Permits/Permits) (1 Qtr)	Goal	Combined	>=; 95%	0 / 0	0 / 0	0	0	0				
1B4	Major individual permits: manual RNC/SNC override rate (1 FY)	Data Quality	Combined			68.4%	13	19	6				
1C1	Non-major individual permits: correctly coded limits (Current)	Informational Only	Combined			2.3%	27	1,180	1,153				
1C2	Non-major individual permits: DMR entry rate based on DMRs expected (Forms/Forms) (1 Qtr)	Informational Only	Combined			0 / 0	0	0	0				
1C3	Non-major individual permits: DMR entry rate based on DMRs expected (Permits/Permits) (1 Qtr)	Informational Only	Combined			0 / 0	0	0	0				

**FFY 2010 Official Data Set for Kansas NPDES Compliance and Enforcement Review**

Metric	Metric Description	Measure Type	Metric Type (state/EPA)	National Goal	National Average	Kansas Metric	Count	Universe	Not Counted	State Discrepancy (Yes/No)	State Correction	State Data Source	Discrepancy Explanation
1D1	Violations at non-majors: noncompliance rate (1 FY)	Informational Only	Combined			0.6%	7	1,180	1,173				
1D2	Violations at non-majors: noncompliance rate in the annual noncompliance report (ANCR)(1 CY)	Informational Only	Combined			0 / 0	0	0	0				
1D3	Violations at non-majors: DMR non-receipt (3 FY)	Informational Only	Combined			10	NA	NA	NA				
1E1-S	Informal actions: number of major facilities (1 FY)	Data Quality	State			0	NA	NA	NA				
1E1-E	Informal actions: number of major facilities (1 FY)	Data Quality	EPA			0	NA	NA	NA				
1E2-S	Informal actions: number of actions at major facilities (1 FY)	Data Quality	State			0	NA	NA	NA				
1E2-E	Informal actions: number of actions at major facilities (1 FY)	Data Quality	EPA			0	NA	NA	NA				

**FFY 2010 Official Data Set for Kansas NPDES Compliance and Enforcement Review**

Metric	Metric Description	Measure Type	Metric Type (state/EPA)	National Goal	National Average	Kansas Metric	Count	Universe	Not Counted	State Discrepancy (Yes/No)	State Correction	State Data Source	Discrepancy Explanation
1E3-S	Informal actions: number of non-major facilities (1 FY)	Data Quality	State			0	NA	NA	NA				
1E3-E	Informal actions: number of non-major facilities (1 FY)	Data Quality	EPA			0	NA	NA	NA				
1E4-S	Informal actions: number of actions at non-major facilities (1 FY)	Data Quality	State			0	NA	NA	NA				
1E4-E	Informal actions: number of actions at non-major facilities (1 FY)	Data Quality	EPA			0	NA	NA	NA				
1F1-S	Formal actions: number of major facilities (1 FY)	Data Quality	State			0	NA	NA	NA				
1F1-E	Formal actions: number of major facilities (1 FY)	Data Quality	EPA			0	NA	NA	NA				
1F2-S	Formal actions: number of actions at major facilities (1 FY)	Data Quality	State			0	NA	NA	NA				
1F2-E	Formal actions: number of actions at major facilities (1 FY)	Data Quality	EPA			0	NA	NA	NA				

**FFY 2010 Official Data Set for Kansas NPDES Compliance and Enforcement Review**

Metric	Metric Description	Measure Type	Metric Type (state/EPA)	National Goal	National Average	Kansas Metric	Count	Universe	Not Counted	State Discrepancy (Yes/No)	State Correction	State Data Source	Discrepancy Explanation
1F3-S	Formal actions: number of non-major facilities (1 FY)	Data Quality	State			6	NA	NA	NA				
1F3-E	Formal actions: number of non-major facilities (1 FY)	Data Quality	EPA			2	NA	NA	NA				
1F4-S	Formal actions: number of actions at non-major facilities (1 FY)	Data Quality	State			6	NA	NA	NA				
1F4-E	Formal actions: number of actions at non-major facilities (1 FY)	Data Quality	EPA			2	NA	NA	NA				
1G1-S	Penalties: total number of penalties (1 FY)	Data Quality	State			1	NA	NA	NA				
1G1-E	Penalties: total number of penalties (1 FY)	Data Quality	EPA			0	NA	NA	NA				
1G2-S	Penalties: total penalties (1 FY)	Data Quality	State			\$40,000	NA	NA	NA				
1G2-E	Penalties: total penalties (1 FY)	Data Quality	EPA			\$0	NA	NA	NA				

**FFY 2010 Official Data Set for Kansas NPDES Compliance and Enforcement Review**

Metric	Metric Description	Measure Type	Metric Type (state/EPA)	National Goal	National Average	Kansas Metric	Count	Universe	Not Counted	State Discrepancy (Yes/No)	State Correction	State Data Source	Discrepancy Explanation
1G3-S	Penalties: total collected pursuant to civil judicial actions (3 FY)	Data Quality	State			\$0	NA	NA	NA				
1G3-E	Penalties: total collected pursuant to civil judicial actions (3 FY)	Data Quality	EPA			\$0	NA	NA	NA				
1G4-S	Penalties: total collected pursuant to administrative actions (3 FY)	Informational Only	State			\$117,108	NA	NA	NA				
1G4-E	Penalties: total collected pursuant to administrative actions (3 FY)	Informational Only	EPA			\$0	NA	NA	NA				
1G5-S	No activity indicator - total number of penalties (1 FY)	Data Quality	State			\$40,000	NA	NA	NA				
1G5-E	No activity indicator - total number of penalties (1 FY)	Data Quality	EPA			\$0	NA	NA	NA				
2A0-S	Actions linked to violations: major facilities (1 FY)	Data Quality	State	>=; 80%		0 / 0	0	0	0				
2A0-E	Actions linked to violations: major facilities (1 FY)	Data Quality	EPA	>=; 80%		0 / 0	0	0	0				
5A0-S	Inspection coverage: NPDES majors (1 FY)	Goal	State	100%	56.9%	90.9%	50	55	5				

**FFY 2010 Official Data Set for Kansas NPDES Compliance and Enforcement Review**

Metric	Metric Description	Measure Type	Metric Type (state/EPA)	National Goal	National Average	Kansas Metric	Count	Uni-verse	Not Counted	State Discrepancy (Yes/No)	State Correction	State Data Source	Discrepancy Explanation
5A0-E	Inspection coverage: NPDES majors (1 FY)	Goal	EPA	100%	5.1%	27.3%	15	55	40				
5A0-C	Inspection coverage: NPDES majors (1 FY)	Goal	Combined	100%	59.9%	98.2%	54	55	1				
5B1-S	Inspection coverage: NPDES non-major individual permits (1 FY)	Goal	State			17.0%	201	1,180	979				
5B1-E	Inspection coverage: NPDES non-major individual permits (1 FY)	Goal	EPA			0.9%	11	1,180	1,169				
5B1-C	Inspection coverage: NPDES non-major individual permits (1 FY)	Goal	Combined			17.6%	208	1,180	972				
5B2-S	Inspection coverage: NPDES non-major general permits (1 FY)	Goal	State			13.2%	7	53	46				
5B2-E	Inspection coverage: NPDES non-major general permits (1 FY)	Goal	EPA			0.0%	0	53	53				

**FFY 2010 Official Data Set for Kansas NPDES Compliance and Enforcement Review**

Metric	Metric Description	Measure Type	Metric Type (state/EPA)	National Goal	National Average	Kansas Metric	Count	Uni-verse	Not Counted	State Discrepancy (Yes/No)	State Correction	State Data Source	Discrepancy Explanation
5B2-C	Inspection coverage: NPDES non-major general permits (1 FY)	Goal	Combined			13.2%	7	53	46				
5C0-S	Inspection coverage: NPDES other (not 5a or 5b) (1 FY)	Informational Only	State			0.0%	0	92	92				
5C0-E	Inspection coverage: NPDES other (not 5a or 5b) (1 FY)	Informational Only	EPA			0.0%	0	92	92				
5C0-C	Inspection coverage: NPDES other (not 5a or 5b) (1 FY)	Informational Only	Combined			0.0%	0	92	92				
7A1-C	Single-event violations majors (1 FY) at	Review Indicator	Combined			0	NA	NA	NA				
7A2-C	Single-event violations at non-majors (1 FY)	Informational Only	Combined			0	NA	NA	NA				
7B0-C	Facilities with unresolved compliance schedule violations (at end of FY)	Data Quality	Combined		24.9%	0 / 0	0	0	0				

**FFY 2010 Official Data Set for Kansas NPDES Compliance and Enforcement Review**

Metric	Metric Description	Measure Type	Metric Type (state/EPA)	National Goal	National Average	Kansas Metric	Count	Uni-verse	Not Counted	State Discrepancy (Yes/No)	State Correction	State Data Source	Discrepancy Explanation
7C0-C	Facilities with unresolved permit schedule violations (at end of FY)	Data Quality	Combined		23.3%	0 / 0	0	0	0				
7D0-C	Percentage major facilities with DMR violations (1 FY)	Data Quality	Combined		52.8%	47.3%	26	55	29				
8A1-C	Major facilities in SNC (1 FY)	Review Indicator	Combined			10	NA	NA	NA				
8A2-C	SNC rate: percent majors in SNC (1 FY)	Review Indicator	Combined		24.9%	18.2%	10	55	45				
10A0-C	Major facilities without timely action (1 FY)	Goal	Combined	< 2%	18.4%	5.5%	3	55	52				

## **APPENDIX B: PDA TRANSMITTAL LETTER**

Appendices B, C, and D provide the results of the Preliminary Data Analysis (PDA). The Preliminary Data Analysis forms the initial structure for the SRF report, and it helps ensure that the data metrics are adequately analyzed prior to the on-site review.

This is a critical component of the SRF process because it allows the reviewers to be prepared and knowledgeable about potential problem areas before the on-site review. In addition, it gives the region focus during the file reviews and/or basis for requesting supplemental files based on potential concerns raised by the data metric results.

This section, Appendix B, contains the letter transmitting the results of the Preliminary Data Analysis to the state. This letter identifies areas in which the data review suggests the need for further examination and discussion during the review process.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7  
901 NORTH 5TH STREET  
KANSAS CITY, KANSAS 66101

MAR 30 2011

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Article No.: 7004 2510 0006 9718 1724

Mr. Karl Mueidener  
Director, Bureau of Water  
Kansas Department of Health and Environment  
1000 SW Jackson, Suite 420  
Topeka, Kansas 66612-1367

Re: NPDES Program Review Materials

Dear Karl:

On February 22, 2011, the U.S. Environmental Protection Agency (EPA) Region 7 sent an opening letter to the Kansas Department of Health and Environment (KDHE) to initiate a review of Kansas' National Pollutant Discharge Elimination System (NPDES) permitting and enforcement programs. The letter included a proposed agenda for review of the two programs and indicated that EPA Region 7 and KDHE had agreed to conduct the review April 18-21, 2011, in Topeka. The letter also transmitted the Official Data Set (ODS) for the State Review Framework round two (SRF/2) enforcement review. The purpose of this letter is to transmit the list of files selected for the permitting and enforcement reviews and to provide the preliminary analysis of the ODS.

Enclosures 1 and 2 are file lists that EPA Region 7 selected for enforcement and permitting, respectively. An additional component of the review will be Clean Water Act Section 503 annual biosolids reports for a number of mechanical facilities, which are listed in Enclosure 3. The team of permitting, enforcement, and biosolids reviewers worked collaboratively to develop a list of facilities that satisfies the criteria for review while minimizing the number of facilities for which KDHE needs to pull files. My staff transmitted the lists via email in advance of this letter to provide ample time for you to gather the files prior to April 18. Enclosure 4 is an explanation of the file selection process for the SRF/2 enforcement review, and it explains focus areas for the on-site file review.

Enclosure 5 is a File Component Checklist to assist KDHE in pulling all relevant components of each facility file that EPA has selected for the enforcement review. I hope that this checklist will clarify what EPA expects to be available for each facility while serving as an aid to the staff pulling the files. Please note that the findings from the review will be based on what is accessible to the EPA reviewers for examination during their time in Topeka.



Enclosure 5 is a File Component Checklist to assist KDHE in pulling all relevant components of each facility file that EPA has selected for the enforcement review. I hope that this checklist will clarify what EPA expects to be available for each facility while serving as an aid to the staff pulling the files. Please note that the findings from the review will be based on what is accessible to the EPA reviewers for examination during their time in Topeka.

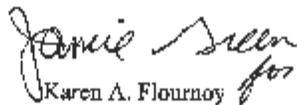
Regarding the SRF/2 review, EPA Region 7 discussed the quality of data in the ODS via email and phone with Mike Tate and Ed Dillingham and subsequently obtained corrected data from KDHE for several data elements. As the next step in the process, EPA Region 7 analyzed the data against established goals and commitments using SRF/2 metrics. Enclosed with this letter are two documents describing the results of the analysis. Enclosure 6 contains background and highlights from the analysis of state data metrics. Enclosure 7 is a spreadsheet showing complete results of the data metrics analysis with data corrections that were identified by EPA and KDHE.

Please note that the preliminary findings in Enclosures 6 and 7 are based only on the data metrics results. Final findings for the ultimate SRF/2 enforcement report may be significantly different based upon the results of the file review and ongoing discussions with you and your staff. If you have any questions about the process that we intend to use, please contact Mike Boeglin at 913-551-7252.

All information and material used in this review may be subject to federal and/or state disclosure laws. While EPA intends to use this information only for discussions with KDHE, it may be necessary to release information in response to a properly submitted request.

We look forward to visiting with you for the on-site review. Please direct any questions to Mr. Boeglin or to Donna Porter at 913-551-7929.

Sincerely,



Karen A. Flournoy  
Acting Director  
Water, Wetlands and Pesticides Division

Enclosures

1. File list for enforcement review
2. File list for permitting review
3. File list for biosolids report review
4. File selection process explanation for enforcement review
5. File component checklist for enforcement review
6. Preliminary data analysis results summary for Kansas' data metrics
7. Complete data metrics - preliminary data analysis worksheet

## **APPENDIX C: PRELIMINARY DATA ANALYSIS CHART**

This section provides the results of the Preliminary Data Analysis (PDA). The Preliminary Data Analysis forms the initial structure for the SRF report and helps ensure that the data metrics are adequately analyzed prior to the on-site review. This is a critical component of the SRF process because it allows the reviewers to be prepared and knowledgeable about potential problem areas before initiating the on-site portion of the review. In addition, it gives the region focus during the file reviews and/or basis for requesting supplemental files based on potential concerns raised by the data metrics results.

The PDA reviews each data metric and evaluates state performance against the national goal or average, if appropriate. The PDA chart in this section of the SRF report only includes metrics where potential concerns or areas of exemplary performance are identified. (The full PDA worksheet in Appendix D contains every metric: positive, neutral, or negative.) Initial Findings indicate the observed results. Initial Findings are preliminary observations. They are used as a basis for further investigation that takes place during the file review and through dialogue with the state. Final Findings are developed only after evaluating Initial Findings against file review results, where appropriate, and after dialogue with the state has occurred. Through this process, Initial Findings may be confirmed, modified, or determined not to be supported. Findings are presented in Section IV of this report.

### **Clean Water Act**

<b>Original Data Pulled from Online Tracking Information System (OTIS)</b>							<b>EPA Preliminary Analysis</b>
<b>Metric</b>	<b>Metric Description</b>	<b>Metric Type</b>	<b>Agency</b>	<b>National Goal</b>	<b>National Average</b>	<b>Kansas Metric</b>	<b>Initial Findings</b>
1b1	Major individual permits: correctly coded limits (Current)	Goal	Combined	>=; 95%	93.10%	85.50%	All of these identified permits were reissued since the start of FFY2010 and (with one exception) lack limit start dates that postdate the effective date. More discussion with KDHE needed.
1b4	Major individual permits: manual RNC/SNC override rate (1 FY)	Data Quality	Combined			68.40%	Most cases of manual override were due to SNC, primarily DMR non-receipt, rather than RNC. Discussion and file review are needed.
1e1	Informal actions: number of major facilities (1 FY)	Data Quality	State			0	To the extent that KDHE has issued LOWs or NOVs to majors, the state has not been tracking this information or entering it into PCS, as it is required for majors.
1e2	Informal actions: number of actions at major facilities (1 FY)	Data Quality	State			0	To the extent that KDHE has issued LOWs or NOVs to majors, the state has not been tracking this information or entering it into PCS, as it is required for majors.
1e3	Informal actions: number of non-major facilities (1 FY)	Data Quality	State			0	Consists of LOWs and NOVs, which are required in PCS only for P.L. 92-500 facilities. KDHE did not track or enter this information into PCS, to the extent that such actions were taken.

1e4	Informal actions: number of actions at non-major facilities (1 FY)	Data Quality	State			0	Consists of LOWs and NOVs, which are required in PCS only for P.L. 92-500 facilities. KDHE did not track or enter this information into PCS, to the extent that such actions were taken.
1f1	Formal actions: number of major facilities (1 FY)	Data Quality	State			0	KDHE did not enter this formal action record into PCS.
1f2	Formal actions: number of actions at major facilities (1 FY)	Data Quality	State			0	KDHE did not enter this formal action record into PCS.
1f3	Formal actions: number of non-major facilities (1 FY)	Data Quality	State			6	Any of the 15 formal actions not entered for non-majors that were at P.L. 92-500 minors is required data.
1f4	Formal actions: number of actions at non-major facilities (1 FY)	Data Quality	State			6	Any of the 15 formal actions not entered for non-majors that were at P.L. 92-500 minors is required data.
7a1	Single-event violations at majors (1 FY)	Review Indicator	Combined			0	EPA and the state need to discuss whether the state tracks SEVs internally, and file review needs to examine whether SEVs are being adequately identified.
7b	Facilities with unresolved compliance schedule violations (at end of FY)	Data Quality	Combined		24.90%	0 / 0	EPA and KDHE need to discuss how many enforcement action compliance schedules are open for majors and how the state tracks them, given that the state has not batched them to PCS. File reviews needed.
7c	Facilities with unresolved permit schedule violations (at end of FY)	Data Quality	Combined		23.30%	0 / 0	EPA and KDHE need to discuss how many permit compliance schedules are open for majors and how the state tracks them, given that the state has not batched them to PCS. File reviews needed.
7d	Percentage major facilities with DMR violations (1 FY)	Data Quality	Combined		52.80%	47.30%	File review should focus on the nature of DMR violations and how the state is responding to them.
8a1	Major facilities in SNC (1 FY)	Review Indicator	Combined			10	The number of majors in SNC dropped from 10 to 1 with the data refresh that followed this OTIS pull, while the number of manual overrides (1b4) dropped from 13 to 9. Discussion needed.
8a2	SNC rate: percent majors in SNC (1 FY)	Review Indicator	Combined		24.90%	18.20%	A low SNC rate is desirable, but discussion is needed to understand why SNC and RNC flags are overridden as they are.
10a	Major facilities without timely action (1 FY)	Goal	Combined	< 2%	18.40%	5.50%	Discussion needed about justification for reducing the number of facilities without timely action.

## APPENDIX D: PDA WORKSHEET (with State and EPA Comments)

Metric	Metric Description	Measure Type	Metric Type	National Goal	National Average	Kansas Metric	Count	Universe	Not Counted	State Discrepancy (Y/N)	State Correction	State Data Source	Discrepancy Explanation	Evaluation	Initial Findings
1A1	Active facility universe: NPDES major individual permits (Current)	Data Quality	Combined			55	NA	NA	NA	No	56	KDHE's Oracle Database	PCS Problem with starting permits in the middle of a permit term	Appears acceptable	1 major is missing from this list: Wichita Mid-Continent Plant 5.
1A2	Active facility universe: NPDES major general permits (Current)	Data Quality	Combined			0	NA	NA	NA	No				Not reviewed	
1A3	Active facility universe: NPDES non-major individual permits (Current)	Data Quality	Combined			1,180	NA	NA	NA	Yes	1,473	Workplan and KDHE Database	Not all CAFOs loaded to PCS	Minor issue	EPA and KDHE need to discuss how the state has determined which CAFO permits are not entered into PCS.
1A4	Active facility universe: NPDES non-major general permits (Current)	Data Quality	Combined			53	NA	NA	NA	Yes	163	KDHE Database	unknown	Appears acceptable	This universe consists of concrete and sand & gravel plants.
1B1	Major individual permits: correctly coded limits (Current)	Goal	Combined	>=: 95%	93.10%	85.50%	47	55	8	Yes	100%	KDHE database	Unknown	Potential concern	All of these identified permits were reissued since the start of FFY2010 and (with one exception) lack limit start dates that postdate the effective date. More discussion with KDHE needed.

Metric	Metric Description	Measure Type	Metric Type	National Goal	National Average	Kansas Metric	Count	Universe	Not Counted	State Discrepancy (Y/N)	State Correction	State Data Source	Discrepancy Explanation	Evaluation	Initial Findings
1B2	Major individual permits: DMR entry rate based on MRs expected (Forms/Forms) (1 Qtr)	Goal	Combined	>=: 95%	92.60%	93.00%	226	243	17	Yes	100%	Paper and EDMRs review of data provided	PCS to SRF problem	Minor issue	12 of 55 majors had one or more DMRs not in PCS for the 4th quarter; however, because 1b3 shows that 100% of majors had at least one DMR in PCS during the same period, this does not rise to a potential concern but should be discussed with the state.
1B3	Major individual permits: DMR entry rate based on DMRs expected (Permits/Permits) (1 Qtr)	Goal	Combined	>=: 95%	96.00%	100.00 %	54	54	0	No				Appears acceptable	
1B4	Major individual permits: manual RNC/SNC override rate (1 FY)	Data Quality	Combined			68.40%	13	19	6	Don't know				Potential concern	Most cases of manual override were due to SNC, primarily DMR non-receipt, rather than RNC. Discussion and file review are needed.
1C1	Non-major individual permits: correctly coded limits (Current)	Informational Only	Combined			2.30%	27	1,180	1,153	Not Applicable			Not loaded to PCS	Appears acceptable	KDHE has not loaded limits into PCS for most of its non-majors.

Metric	Metric Description	Measure Type	Metric Type	National Goal	National Average	Kansas Metric	Count	Universe	Not Counted	State Discrepancy (Y/N)	State Correction	State Data Source	Discrepancy Explanation	Evaluation	Initial Findings
1C2	Non-major individual permits: DMR entry rate based on DMRs expected (Forms/Forms) (1 Qtr)	Informational Only	Combined			61.70%	142	230	88	Not Applicable			Not loaded to PCS	Minor issue	Among the non-majors with DMRs being entered into PCS, it is not clear why some are missing their data.
1C3	Non-major individual permits: DMR entry rate based on DMRs expected (Permits/Permits) (1 Qtr)	Informational Only	Combined			82.10%	32	39	7	Not Applicable			Not loaded to PCS	Minor issue	Among the non-majors with DMRs being entered into PCS, it is not clear why some are missing their data.
1D1	Violations at non-majors: noncompliance rate (1 FY)	Informational Only	Combined			0.60%	7	1,180	1,173	Yes	Unknown		Not Tracked this way	Appears acceptable	Noncompliance rate is very low because KDHE does not use PCS to screen non-majors.
1D2	Violations at non-majors: noncompliance rate in the annual noncompliance report (ANCR)(1 CY)	Informational Only	Combined			0 / 0	0	0	0	Yes	162	KDHE database	Not loaded to PCS	Not reviewed	EPA has not yet requested the ANCR from the state for FFY 2010.
1D3	Violations at non-majors: DMR non-receipt (3 FY)	Informational Only	Combined			10	NA	NA	NA	Yes	0	KDHE database	Not Loaded to PCS	Minor issue	It appears that PCS is expecting but has not received DMR data for 10 nonmajors. Discussion needed.

Metric	Metric Description	Measure Type	Metric Type	National Goal	National Average	Kansas Metric	Count	Universe	Not Counted	State Discrepancy (Y/N)	State Correction	State Data Source	Discrepancy Explanation	Evaluation	Initial Findings
1e1	Informal actions: number of major facilities (1 FY)	Data Quality	State			0	NA	NA	NA	Yes	Unknown		Not tracked	Potential concern	To the extent that KDHE has issued LOWs or NOVs to majors, the state has not been tracking this information or entering it into PCS, as it is required for majors.
1e2	Informal actions: number of actions at major facilities (1 FY)	Data Quality	State			0	NA	NA	NA	Yes	Unknown		Not tracked	Potential concern	To the extent that KDHE has issued LOWs or NOVs to majors, the state has not been tracking this information or entering it into PCS, as it is required for majors.
1e3	Informal actions: number of non-major facilities (1 FY)	Data Quality	State			0	NA	NA	NA	Yes	Unknown		Not tracked	Potential concern	Consists of LOWs and NOVs, which are required in PCS only for P.L. 92-500 facilities. KDHE did not track or enter this information into PCS, to the extent that such actions were taken.
1e4	Informal actions: number of actions at non-major facilities (1 FY)	Data Quality	State			0	NA	NA	NA	Yes	Unknown		Not tracked	Potential concern	Consists of LOWs and NOVs, which are required in PCS only for P.L. 92-500 facilities. KDHE did not track or enter this information into PCS, to the extent that such actions were taken.

Metric	Metric Description	Measure Type	Metric Type	National Goal	National Average	Kansas Metric	Count	Universe	Not Counted	State Discrepancy (Y/N)	State Correction	State Data Source	Discrepancy Explanation	Evaluation	Initial Findings
1f1	Formal actions: number of major facilities (1 FY)	Data Quality	State			0	NA	NA	NA	Yes	1	Enforcement Tracking	Unknown	Potential concern	KDHE did not enter this formal action record into PCS.
1f2	Formal actions: number of actions at major facilities (1 FY)	Data Quality	State			0	NA	NA	NA	Yes	1	Enforcement Tracking	Unknown	Potential concern	KDHE did not enter this formal action record into PCS.
1f3	Formal actions: number of non-major facilities (1 FY)	Data Quality	State			6	NA	NA	NA	Yes	21	Enforcement Tracking	Unknown	Potential concern	Any of the 15 formal actions not entered for non-majors that were at P.L. 92-500 minors is required data.
1f4	Formal actions: number of actions at non-major facilities (1 FY)	Data Quality	State			6	NA	NA	NA	Yes	21	Enforcement Tracking	Unknown	Potential concern	Any of the 15 formal actions not entered for non-majors that were at P.L. 92-500 minors is required data.
1g1	Penalties: total number of penalties (1 FY)	Data Quality	State			1	NA	NA	NA	Yes	15	Enforcement Tracking	Unknown	Appears acceptable	KDHE issues penalty orders in the administrative arena. EPA is obtaining a list of these actions from the state.
1g2	Penalties: total penalties (1 FY)	Data Quality	State			\$40,000	NA	NA	NA	Yes	\$115,913	Enforcement Tracking	Unknown	Appears acceptable	KDHE issues penalty orders in the administrative arena. EPA is obtaining a list of these actions from the state.
1g3	Penalties: total collected pursuant to civil judicial actions (3 FY)	Data Quality	State			\$0	NA	NA	NA	No				Appears acceptable	KDHE did not issue penalty orders in the judicial arena during FFY 2010.

Metric	Metric Description	Measure Type	Metric Type	National Goal	National Average	Kansas Metric	Count	Universe	Not Counted	State Discrepancy (Y/N)	State Correction	State Data Source	Discrepancy Explanation	Evaluation	Initial Findings
1q4	Penalties: total collected pursuant to administrative actions (3 FY)	Informational Only	State			\$117,108	NA	NA	NA	Yes	\$150,786	Enforcement Tracking	Unknown	Appears acceptable	Indicates the state's long-term efforts to collect penalties.
1q5	No activity indicator - total number of penalties (1 FY)	Data Quality	State			\$40,000	NA	NA	NA	Not Applicable				Appears acceptable	
2a	Actions linked to violations: major facilities (1 FY)	Data Quality	State	>= 80%		0 / 0	0	0	0	Yes	Unknown		Do not formally track	Inconclusive	KDHE did not batch into PCS one enforcement action against a major, which has the linkage requirement.
5a	Inspection coverage: NPDES majors (1 FY)	Goal	State	100%	56.90%	90.90%	50	55	5	Yes	92.70%	KDHE database	None	Appears acceptable	KDHE's CMS commitment for majors was 47 inspections.
5b1	Inspection coverage: NPDES non-major individual permits (1 FY)	Goal	State			17.00%	201	1,180	979	Yes	624/1473 equals 42.4%	KDHE database	CAFO inspections aren't loaded to PCS	Appears Acceptable	KDHE's CMS commitment for minors and CAFOs was 220 + 90; EPA's record shows completion of 208 + 399, or 607.
5b2	Inspection coverage: NPDES non-major general permits (1 FY)	Goal	State			13.20%	7	53	46	Yes	31/163 equals 19.0%	KDHE database	Unknown	Inconclusive	The state's inspection commitments for non-stormwater general permittees are addressed under metric 4. Those listed here are concrete & ready-mix facilities.

Metric	Metric Description	Measure Type	Metric Type	National Goal	National Average	Kansas Metric	Count	Universe	Not Counted	State Discrepancy (Y/N)	State Correction	State Data Source	Discrepancy Explanation	Evaluation	Initial Findings
5c	Inspection coverage: NPDES other (not 5a or 5b) (1 FY)	Informational Only	State			0.00%	0	92	92	Yes	12/56 Pretreatment only = 21.4%	KDHE database	Not loaded to PCS	Inconclusive	The state's inspection commitments for stormwater and pretreatment permittees are addressed under metric 4.
7a1	Single-event violations at majors (1 FY)	Review Indicator	Combined			0	NA	NA	NA	Yes	Unknown		Not Tracked	Potential concern	EPA and the state need to discuss whether the state tracks SEVs internally, and file review needs to examine whether SEVs are being adequately identified.
7a2	Single-event violations at non-majors (1 FY)	Informational Only	Combined			0	NA	NA	NA	Yes	Unknown		Not Tracked	Appears acceptable	The state does not need to enter this information in PCS, but it does need to track SEVs internally.
7b	Facilities with unresolved compliance schedule violations (at end of FY)	Data Quality	Combined		24.90%	0 / 0	0	0	0	Yes	1	Enforcement Tracking	Unknown	Potential concern	EPA and KDHE need to discuss how many enforcement action compliance schedules are open for majors and how the state tracks them, given that the state has not batched them to PCS. File reviews needed.

Metric	Metric Description	Measure Type	Metric Type	National Goal	National Average	Kansas Metric	Count	Universe	Not Counted	State Discrepancy (Y/N)	State Correction	State Data Source	Discrepancy Explanation	Evaluation	Initial Findings
7c	Facilities with unresolved permit schedule violations (at end of FY)	Data Quality	Combined		23.30%	0 / 0	0	0	0	Yes	Still Working	SOC Tracking	All Minors - Not Loaded to PCS	Potential concern	EPA and KDHE need to discuss how many permit compliance schedules are open for majors and how the state tracks them, given that the state has not batched them to PCS. File reviews needed.
7d	Percentage major facilities with DMR violations (1 FY)	Data Quality	Combined		52.80%	47.30%	26	55	29	No				Potential Concern	File review should focus on the nature of DMR violations and how the state is responding to them.
8a1	Major facilities in SNC (1 FY)	Review Indicator	Combined			10	NA	NA	NA	Yes	6	KDHE database	Unknown	Potential concern	The number of majors in SNC dropped from 10 to 1 with the data refresh that followed this OTIS pull, while the number of manual overrides (1b4) dropped from 13 to 9. Discussion needed.
8a2	SNC rate: percent majors in SNC (1 FY)	Review Indicator	Combined		24.90%	18.20%	10	55	45	Yes	6 of 55 = 10.9	KDHE database	DMR non-receipts not correct	Potential concern	A low SNC rate is desirable, but discussion is needed to understand why SNC and RNC flags are overridden as they are.

Metric	Metric Description	Measure Type	Metric Type	National Goal	National Average	Kansas Metric	Count	Universe	Not Counted	State Discrepancy (Y/N)	State Correction	State Data Source	Discrepancy Explanation	Evaluation	Initial Findings
10a	Major facilities without timely action (1 FY)	Goal	Combined	< 2%	18.40%	5.50%	3	55	52	Yes	1	KDHE database	JoCo MB under construction & Olathe-Harold PCS data entry errors	Potential concern	Discussion needed about justification for reducing the number of facilities without timely action.

## **APPENDIX E: FILE SELECTION**

Files to be reviewed are selected according to a standard protocol (available here: [http://www.epa-otis.gov/srf/docs/fileselectionprotocol\\_10.pdf](http://www.epa-otis.gov/srf/docs/fileselectionprotocol_10.pdf)) and using a web-based file selection tool when sufficient state data is available in the national database (available here: [http://www.epa-otis.gov/cgi-bin/test/srf/srf\\_fileselection.cgi](http://www.epa-otis.gov/cgi-bin/test/srf/srf_fileselection.cgi)). The protocol and tool are designed to provide consistency and transparency in the process. The description of the file selection process in section A below is intended to help the state understand the selection results in the table in section B.

### **A. File Selection Process**

EPA Region 7 followed the SRF File Selection Protocol to select 47 files for the on-site review. This includes 43 regulated entities that were chosen to be representative of the universe of NPDES entities in Kansas that were the subject of compliance monitoring or enforcement activity in Federal Fiscal Year (FFY) 2010. The remaining 4 files were chosen as supplemental files to help EPA better understand whether any potential areas of concern identified via the Preliminary Data Analysis are substantiated. All 47 files are listed in Enclosure 2.

The 43 representative files were chosen to provide a cross-section of permit types and, within each permit type, to represent entities that were subject to an inspection or an enforcement action. Altogether, 31 files were selected as representative inspections, audits, or investigations, and 12 as representative formal enforcement activities. Regulated entities were also chosen to represent the variety of compliance history information in the national program database and to ensure roughly even representation of KDHE's six district offices.

EPA attempted to use random selection as much as possible to select particular entities within each representative category. For inspections at core program major and minor facilities, EPA used the Online Tracking Information System (OTIS) SRF File Selection Tool for random, representative selections. For inspections and investigations at CAFO and stormwater entities, as well as all enforcement actions, EPA relied on records pulled by KDHE from its internal databases due to incomplete data in the Permit Compliance System (PCS). Most file selections from KDHE data sets were random, while others were more targeted to ensure that selections from small sample sizes proportionately represent the district offices performing the activities. Samples of pretreatment industries were drawn using random selection.

For each representative file, EPA plans to review all compliance monitoring and enforcement information that is present in KDHE's records and relevant to FFY 2010. Even though the time period of interest is FFY 2010, any activity associated with the activity for which an entity was selected will be reviewed as well if it is part of the same compliance monitoring and enforcement chain of events, regardless of whether the associated activity is dated prior to or subsequent to this period of interest. For example, if a file selected for representative enforcement has an inspection record associated with it and is dated FFY 2009, both activities will be reviewed (and vice-versa when a selected inspection has an associated enforcement record).

The 4 supplemental files were selected after EPA determined that the representative selections might, by themselves, be insufficient to fully understand the nature of two potential concerns identified in the Preliminary Data Analysis. File review for supplemental files will focus on the potential concerns for which they were selected.

## B. File Selection Table

<u>Permit #</u>	<u>Facility Name</u>	<u>District Office</u>	<u>Selection Rationale</u>
<b>Core Program - Majors, SSOs, CSOs</b>			
KS0039128	Atchison, City of	NE	Representative Inspection
KS0050733	Coffeyville, City of	SE	Representative Inspection
KS0038491	Great Bend, City of	NW	Representative Inspection
KS0001635	MGP Ingredients, Inc.	NE	Representative Inspection
KS0038474	Salina, City of	NC	Representative Inspection
KS0020869	Wellington, City of	SC	Representative Inspection
<b>Core Program - Minors</b>			
KS0081329	Abengoa	SC	Representative Enforcement
KSJ000273	Coolidge, City of	SW	Representative Enforcement
KS0098744	Fairview, City	NE	Representative Enforcement
KS0096440	Hiawatha, City of	NE	Representative Enforcement
KS0031453	Ransom, City of	NW	Representative Enforcement
KS0083887	Walnut, City of	SE	Representative Enforcement
KS0081230	Cherokee, City of	SE	Representative Inspection
KS0098809	Scouler Elevator Groundwater R	NC	Representative Inspection
KSJ000334	Paradise, City of	NW	Representative Inspection
KS0029131	Udall, City of	SC	Representative Inspection
KS0079821	Westar Energy - Lawrence Energy	NE	Representative Inspection
<b>Pretreatment</b>			
	Bunting Magnetics	SC	Representative SIU Inspection
	Sapa Inc.	SE	Representative SIU Inspection
	Dayton Superior Corporation	SE	Representative SIU Inspection
	Full Vision	SC	Representative SIU Inspection
	Agco Corp - Sunflower Mfg.	NC	Representative SIU Inspection
	Alexander Manufacturing Co.	SE	Representative SIU Inspection
KS0080837	Chanute, City of	SE	Representative audit
KS0046728	Emporia, City of	SE	Representative PCI
<b>CAFOs</b>			
MOG010548	Nelson Poultry	NC	Representative Enforcement
MOG010629	Phillips Dairy	NE	Representative Enforcement
MOG010160	Prairie Pork Coolidge	NW	Representative Enforcement
KS0116459	Premium Feeders, Inc.	NC	Representative Inspection
KS0115291	Bartlett Cattle Company, L.P.	SW	Representative Inspection
KS0115568	Sunflower Pork, Inc. (West Facility)	SE	Representative Inspection
KS0095281	Fanshier Pork	NW	Representative Inspection
KS0092363	Goetz & Sons Feedlot	SC	Representative Inspection
<b>SW industrial</b>			
	Wichita Concrete Pipe Co.	SC	Representative Enforcement
KSG110048	Concrete Materials Co., Plant #2	SC	Representative Enforcement
KSG110049	Concrete Materials Co., Plant #3	SC	Representative Enforcement
KSG110132	Meier's Ready-Mix - Junction City	NC	Representative Inspection
KSG110067	B & B Redimix, Inc. - Phillipsburg	NW	Representative Inspection
KSG110061	Concrete Industries - Scott City	SW	Representative Inspection
<b>SW construction</b>			

<b>Permit #</b>	<b>Facility Name</b>	<b>District Office</b>	<b>Selection Rationale</b>
	Dollar General Store	SE	Representative Investigation
	First Student Bus Parking South	SC	Representative Investigation
	KDOT 69-46 K-8251-07 (Hwy 69)	NE	Representative Investigation
	Salina Aquatic Center	NC	Representative Investigation
<b>Supplemental Files</b>			
KS0036196	McPherson, City of	NC	Supplemental Major
KS0089176	Chisholm Creek Utility Authority	SC	Supplemental Major
KS0055492	JOCO Nelson Complex	NE	Supplemental Major
KS0097560	Parsons, City of	SE	Supplemental Major

## **APPENDIX F: FILE REVIEW SUMMARIES**

This appendix to the report includes a summary of findings for each of the forty-seven facility files reviewed by EPA. Each summary discusses the following: 1) the state's compliance monitoring and/or enforcement activities at the facility that were the reason for selection; 2) the documents in the file that EPA reviewed; and 3) EPA's findings from the review. The summaries are organized by NPDES permit type. The summaries in the final section of the appendix—Section 5—describe facilities that were reviewed for potential concerns associated with particular metrics. One of the facilities in Section 5 is also discussed in Section 1.

### **1. Wastewater Facilities**

#### *Direct Dischargers—Majors*

##### City of Atchison (KS0039128)

EPA selected this facility as a representative inspection based on the KDHE inspection of the City's WWTF on 4/29/2010. Reviewers evaluated the report for this inspection as well as the record of violations that have occurred at the facility.

The KDHE inspection report cover letter and checklist identified four categories of problems at the WWTF: insufficient sludge handling, three lift station pumps being out of operation, pretreatment issues associated with Atchison Castings, and BOD permit exceedances in August 2009. KDHE requested reports from the City on steps taken to address the first three of these problems and a date by which the response must be received. The cover letter identified the most serious of these violations, sludge handling, and stated that it has been an ongoing problem in the state's previous three inspection reports. A recurrent violation of this nature merits a stronger response from the state than just an ordinary cover letter. A letter of warning or notice of violation would be appropriate in this scenario, if not also formal enforcement. Any violations (or potential violations) should be identified with their permit or regulatory citations to establish the basis for requiring corrective action, and the narrative report should articulate the consequent compliance status with a strongly worded headline to draw the facility's attention to its non-compliant status. The report for the 4/29/2010 inspection contained all of the items on the EPA's NPDES Inspection File Evaluation Checklist and was transmitted to the facility in 27 days.

A review of PCS data suggests E. coli permit exceedances during all four quarters of FFY 2010, including the six months prior to the KDHE inspection. The City's permit, however, requires monitoring only for E. coli through 7/1/2013, at which time final limits first take effect. The discrepancy between violation data in PCS and permit requirements is a result of permit limit data that was batched to PCS erroneously. KDHE needs to correct the limit data for E. coli to remove the record of false violations in PCS and the publicly viewable federal databases.

KDHE claimed credit in the FFY 2010 Compliance Monitoring Strategy for conducting a compliance evaluation inspection of the WWTF and a Combined Sewer Overflow inspection at the City. The 4/29/2010 inspection covered only the first of these two items, however, and no other records in the state's file addressed an inspection of the CSO control program. Future CMS commitments should ideally be matched by provisions to inspect CSO control program components or, alternately, not include a CSO inspection commitment.

### City of Coffeyville (KS0050733)

This facility was selected as a representative inspection based on a state inspection conducted 5/18/2010. Reviewers evaluated the report for this inspection as well as the record of violations that have occurred at the facility. The KDHE inspection report was transmitted to the facility 3 days following inspection. The report contained all items on the NPDES Inspection File Evaluation Checklist and included very thorough narrative discussing the inspector's observations. Included in that discussion were two fecal coliform exceedances that occurred in 2009. KDHE found the facility to be in compliance with its permit.

### City of Great Bend (KS0038491)

EPA selected this facility as a representative inspection based on a state inspection conducted 3/23/2010. Reviewers evaluated the report for this inspection and the compliance record at the facility as reflected in the state's files. The KDHE inspection report contained all items on the NPDES Inspection File Evaluation Checklist and was transmitted to the facility 6 days following inspection. The report stated that the facility was in compliance with its permit.

### MGP Ingredients (KS0001635)

EPA selected this facility as a representative inspection based on a state inspection conducted 8/31/2010. Reviewers evaluated the report for this inspection as well as the record of violations that have occurred at the facility. The KDHE inspection report contained all items on the NPDES Inspection File Evaluation Checklist and was transmitted to the facility 2 days following inspection. The report stated that the facility was in compliance with its permit.

The facility's NPDES permit contains a compliance schedule requiring construction of a new cooling tower using City water as a make-up water source, in order to eliminate chronic toxicity and discoloration issues that had occurred. Because the facility was having difficulty complying with chronic toxicity limits from its previous permit, the compliance schedule inserted in the 10/1/2010 NPDES permit should have been placed in an enforcement order rather than the reissued permit, pursuant to federal regulation at 40 CFR 122.47(a).

### City of Salina (KS0038474)

This facility was selected as a representative inspection based on a state inspection conducted 9/16/2010. Reviewers evaluated the report for this inspection and the compliance record at the facility as reflected in the state's files.

The KDHE inspection report found one deficiency, and the report cover letter required the facility to provide a response. The reader cannot determine, however, if the deficiency rose to the level of a permit or regulatory violation, as any discussion of an associated permit or regulatory citation was lacking from the report. KDHE transmitted the inspection report to the facility 11 days following inspection, and the report contained all the items on the NPDES Inspection File Evaluation Checklist.

The state's inspection file for the City shows that multiple bypasses at the facility had occurred but were not reported to the State. While the inspection report states correctly that bypass reporting is

required, it should also articulate that bypassing and failure to report bypasses are significant violations.

City of Wellington (KS0020869)

EPA selected this facility as a representative inspection based on a state inspection conducted 11/5/2009. EPA evaluated the report for this inspection and the compliance record at the facility as reflected in the state's files. The KDHE inspection report contained all items on the NPDES Inspection File Evaluation Checklist and was transmitted to the facility on the same day as the inspection. The report stated that the facility was in compliance with its permit.

*Direct Dischargers—Non-majors*

Abengoa (KS0081329)

This file was selected as a representative facility that received an enforcement action during the FFY 2009 review period. The facility has an extensive history of violations from 2006 onward, with state enforcement actions, consisting of an administrative penalty and compliance orders, in 2006, 2009 and 2010. Reviewers examined the 2009 and 2010 orders because they pertain to the same or very similar violations. EPA also reviewed two related inspections from 2009 and 2010.

The 2006 enforcement action was based on inadequate freeboard and industrial wastewater runoff. The order required a system to treat effluent from pond and maintain freeboard and proposed a penalty of \$40,000, of which a negotiated penalty of \$30,000 was paid. The 2009 order proposed a penalty of \$10,000, which was paid without appeal. The alleged violations were a spill into an unnamed tributary, high BOD, and failure to report the spill. The spill was attributed to a "mash" tank which was part of the ethanol production process. Finally, the 2010 order alleged a fish kill (that apparently had occurred prior to the 2009 order) and documented discharges from 2 storm water ditches into a city lake. The fish kill was apparently caused by high BOD causing low dissolved oxygen in the lake. The 2010 order proposed a penalty of \$46,912.94, which has been appealed by the company and which, as of the date of the file review, has not been resolved.

A more detailed review of the state's facility file revealed a history of stormwater runoff and citizen's complaints related to this runoff from 2007 onward. The citizen complaints included complaints in 2007, 2008 and 2009 of putrid odors caused by runoff from the facility. In September 2008, the facility began discussions with other POTWs to give more capacity to the facility lagoons during wet weather events. In November 2008, the facility began hauling wastewater to the City of Wichita's POTW. Over the next months, wastewaters were also hauled to the cities of Maize, Goddard, and Park City's POTWs. Due to the high BOD in the wastewaters, these other POTWs raised concerns over their ability to continue receiving the wastewaters. In July 2010, the KDHE permitting section made a referral for enforcement that resulted in the proposed 2010 order.

*Overall thoughts/ Summary:* To date, the state's enforcement actions have not resulted in underlying changes to the facility's operations to result in compliance. From 2006 onward, the facility has continued to have discharges from stormwater ditches at the facility that are characterized by high BOD. The fish kills in 2009 and WET violations in 2010 were not reported in ICIS/PCS. The 2010 enforcement action addressed a May 2009 fish kill but was not initiated within 180 days of receipt of information documenting the violation. To date, there is no evidence that the facility has taken actions which will result in long-term compliance.

### City of Coolidge (KSJ000273)

This facility was selected as a representative enforcement action. KDHE issued an administrative order to the City of Coolidge on 7/15/2010 for failure to retain a certified wastewater treatment plant operator. There were no inspections or other compliance monitoring activities in FFY 2010; therefore, EPA reviewed only the order and associated documentation.

An undated memorandum in the file indicated that the City hired a certified operator, which fulfilled all the requirements of the order. The order was an appropriate state response to the noncompliance. The order and associated records did not indicate when KDHE discovered the noncompliance, which precludes reviewers from determining timeliness of the order. The order also required a \$1000 penalty to be held in abeyance until July 2012. The state's calculation of the penalty accounted for gravity and stated that economic benefit for noncompliance is not significant and was therefore not calculated.

### City of Fairview (KS0098744)

This facility was selected as a representative enforcement action. The state inspected this facility in June 2010. Reviewers examined both the enforcement action and inspection. An administrative order was issued on 7/15/2010, which cited the city for failure to have a licensed operator, with the penalty held in abeyance if the city hired the operator by a date certain. In summary, the state's enforcement action quickly followed the inspection and addressed the violations observed during the inspection.

### City of Hiawatha (KS0096440)

EPA selected Hiawatha as a representative enforcement action. KDHE issued an administrative order to the City on 10/29/2009 for ammonia exceedances in May through July of 2009. This order was preceded by a warning letter from the state on 9/7/2009. There were no inspections or other compliance monitoring activities in FFY 2010. EPA reviewed the warning letter, the order, and documentation associated with the order.

KDHE's warning letter dated 9/7/2009, which has the effect of a Letter of Warning without being labeled as such, required the City to submit an explanation for the permit limit violations and a plan to come back into compliance with ammonia limits. Less than two months later, on 10/29/2009, KDHE issued an administrative order to address the same violations. The order required a plan to specify how the City will consistently meet permit limits, to study the problem of excessive inflow and infiltration (I/I) into the collection system, and to recommend activities to eliminate I/I. The ammonia compliance plan and hiring of an engineer to study I/I were required to be complete within 75 days of order issuance. Pursuant to the "Opportunity for Hearing" provisions of the order, the City responded approximately one month later with an alternative schedule and alternative required actions. The most recent document in the file, dated 1/21/2011, shows that KDHE and the City continued to negotiate a consent order to address I/I reduction efforts approximately one year following issuance of the administrative order.

The evaluation of KDHE's enforcement sequence suggests that the warning letter followed by administrative order constituted a timely and appropriate response to noncompliance that, when properly executed by the City, will return the permittee to compliance.

### City of Ransom (KS0031453)

This facility was selected as a representative enforcement action. This enforcement action was not based on an inspection, but rather the administrative lapse of the license for the facility operator. This resulted in an administrative order by the state with penalty held in abeyance if the operator obtained a renewed license. In summary, the state's enforcement action addressed the known violations at the facility (i.e. lapsed license).

### City of Walnut (KS0083887)

This facility was selected as a representative enforcement action. The state conducted two inspections upon which an enforcement action was taken in 2010, and EPA reviewed all three records. The first inspection took place on 12/1/2009, with the second inspection taking place on 5/18/2010. The first inspection documented permit limit violations (failure to have licensed operator), while the second inspection documented more serious operations and maintenance (O&M) concerns. In early 2010, the state issued a proposed order for a penalty of \$5,608, plus injunctive relief, which only addressed the violations observed in the initial 2009 inspection. This was superseded by a negotiated settlement in June 2010 which required payment of a \$1,500 penalty, plus stipulated penalties if limited injunctive relief was not accomplished. The June 2010 settlement did not require injunctive relief to address the O&M issues found in the May 2010 inspection. Separately, the state has approved upgrade plans for the POTW. However, the required upgrade was not subject to the stipulated penalty provisions of the June 2010 settlement for injunctive relief.

*Overall thoughts/ Summary:* In combination, the state's approved upgrade and settlement will likely address the compliance issues found at the Walnut POTW. However, the upgrade is not subject to an enforceable schedule and is not subject to the stipulated penalty provisions of the June 2010 settlement. In the short term, O&M issues at the plant have not been addressed.

### City of Cherokee (KS0081230)

This facility was selected as a representative inspection. KDHE inspected the City's WWTF on 10/2/2009. The report for this inspection and the City's DMR data were the only documents reviewed by EPA. The KDHE transmitted the inspection report to the facility 11 days following inspection, and the report contained all the items on the NPDES Inspection File Evaluation Checklist. The report discussed evidence of a bypass that had very recently occurred but that was not reported verbally or in writing by the facility. The report provided the permit citation relevant to this finding and discussed the failure to report the bypass as a deficiency, which has the effect of making a compliance determination.

### Scoular Elevator (KS0098809)

EPA selected this facility as a representative inspection. Scoular Elevator was inspected by KDHE on 12/17/2009. EPA reviewed the inspection report and the facility's DMR data. The KDHE inspection report contained most of the items on the NPDES Inspection File Evaluation Checklist, but it did not identify any facility representatives who participated in the inspection and it did not describe the field activities conducted. EPA recommends some narrative to describe these elements. KDHE did not discover any violations and transmitted the report to the facility 4 days following inspection.

### City of Paradise (KSJ000334)

This facility was selected as a representative enforcement action. However, the facility is a non-discharging facility. The previous state inspection was 1/18/2009. The inspection report adequately documented its findings, and no violations were documented.

### City of Udall (KS0029131)

This facility was selected as a representative inspection. On 1/5/2010 KDHE conducted an inspection of this facility. On 1/5/2010 KDHE transmitted a cover letter and the findings of the inspection to the facility. The inspection report contained all of the items on the NPDES Inspection File Evaluation Checklist. The letter states the east and west fence lines were damaged and in need of repair. The letter also reminds Udall that 10 hours of training are required every two years to maintain operator certification. On 2/17/2010 Udall sent a letter to KDHE saying the repairs to the east and west fences had been made. On 2/22/2010 KDHE sent a letter to Udall saying the deficiency had been satisfactorily addressed.

The DMR record for Udall shows that there were two quarters—i.e. April through June 2010 and October through December 2010—in which the City failed to sample and did not submit a blank DMR to the state until several months after the due date. For the first quarter of 2010, January through March, the City likewise did not submit a timely DMR; however, unlike the case of the subsequent two quarters, KDHE sent a notice letter to the City to reiterate the requirement to monitor and report. Because the City followed the same pattern of noncompliance in three consecutive quarters, KDHE should have responded in some fashion, and more firmly, immediately following each of the latter two quarters of delinquent reporting.

The permit issued to Udall with the effective date 1/1/2011 contains a schedule of compliance requiring that, within 90 days of the effective date of the permit, Udall must have a certified operator. The operator certification requirement stems from previous permit cycle(s) and should not be placed in a permit schedule to ensure compliance, in accordance with federal regulation at 40 CFR 122.47(a). There is no further documentation in the file regarding operator training.

### Westar Energy- Lawrence (KS0079821)

This facility was selected as a representative inspection. On 12/21/2009 KDHE conducted an inspection of this facility. On 1/6/2010 KDHE transmitted a cover letter and the findings of the inspection to the facility. The cover letter states coal fines were observed near and downstream from outfall 002x and states, “Please check and monitor all sources of fines in the area and work to control those sources. Please note the permit requires there be no turbidity or color producing substances at this outfall. Please feel free to contact me should you have any questions or comments regarding this report.” The letter does not identify the presence of coal solids as a violation of water quality standards, as it should have, and it does not require the permittee to provide a response to KDHE.

## **2. Pretreatment Facilities**

### Bunting Magnetics

This file was reviewed as a representative Significant Industrial User inspection. KDHE conducted an inspection of the facility on 10/1/2009 to determine the applicability of a Categorical pretreatment standard, as the facility was not permitted. The inspector concluded that the facility needed to apply for a pretreatment permit. KDHE transmitted an inspection report 13 days after the inspection. The report contained most of the elements on the NPDES Inspection File Evaluation Checklist. No violations were recorded in the file for this facility during FFY 2010.

#### Sapa, Inc.

This facility was selected as a representative Significant Industrial User inspection. KDHE inspected the facility on 10/6/2009. The facility was in the process of shutting down and closing operations. The inspector did not take any samples at the facility, as the regulated industrial process had been removed. KDHE transmitted an inspection report 15 days after the inspection, and the report contained most of the items on the NPDES Inspection File Evaluation Checklist. No violations were recorded in the file for this facility during FFY 2010.

#### Dayton Superior Corporation

This facility was selected as a representative Significant Industrial User inspection. EPA reviewed the state's report for the 10/6/2009 inspection and a Notice of Violation dated 8/3/2010. The inspection report contained all of the items on the NPDES Inspection File Evaluation Checklist and was transmitted to the facility 24 days following the inspection. The purpose of the NOV was to notify the facility that it did not submit a semi-annual report by the due date. Because the report was not more than 30 days late, the violation did not rise to the level of Significant Non-Compliance. Therefore, the NOV was an appropriate course of action for the state and was issued 6 days after the report's due date had elapsed.

#### Full Vision

This file was reviewed as a representative Significant Industrial User inspection. KDHE conducted an inspection of the facility on 10/1/2009 to determine the applicability of a Categorical pretreatment standard, as the facility was not permitted. The inspector concluded that the facility needed to apply for a pretreatment permit. KDHE transmitted an inspection report 13 days after the inspection. The report contained most of the elements on the NPDES Inspection File Evaluation Checklist. No violations were recorded in the file for this facility during FFY 2010.

#### Agco Corp – Sunflower Manufacturing

This facility was selected as a representative Significant Industrial User inspection. KDHE conducted a routine inspection of the facility on 7/16/2010. KDHE transmitted an inspection report 7 days after the inspection, and the report contained most of the items on the NPDES Inspection File Evaluation Checklist. No violations were recorded in the file for this facility during FFY 2010.

#### Alexander Manufacturing Co.

This facility was selected as a representative Significant Industrial User inspection. KDHE conducted a routine inspection of the facility on 10/6/2009. The KDHE inspection report contained most of the items on the NPDES Inspection File Evaluation Checklist. No violations were recorded in the file for this facility during FFY 2010.

### City of Chanute

EPA selected Chanute as a pretreatment city at which KDHE performed a representative pretreatment audit in FFY 2010. The audit took place on 3/18/2010. KDHE transmitted an audit report to the City 30 days later, and the report contained all of the items on the NPDES Inspection File Evaluation Checklist. KDHE has not uploaded all of the required Water Enforcement National Database elements to PCS for this pretreatment city.

### City of Emporia

EPA selected Emporia as a pretreatment city at which KDHE performed a representative pretreatment inspection in FFY 2010. The inspection took place on 12/17/2009. KDHE transmitted an inspection report to the City 30 days later, and the report contained all of the items on the NPDES Inspection File Evaluation Checklist. KDHE has not uploaded all of the required Water Enforcement National Database elements to PCS for this pretreatment city.

## **3. Concentrated Animal Feeding Operations (CAFOs)**

### Fanshier Pork (KS0095281)

This file was selected as a representative facility that received an inspection during the FFY 2010 review period. The specific inspection occurred on 5/26/2010 and was the only inspection reviewed. This inspection was a non-sampling CAFO inspection that included the Confined Animal Feeding Facility Inspection checklist (2-page checklist). Photos were included with this inspection report. The report did not contain all the components on the NPDES Inspection File Evaluation Checklist. Very little explanatory narrative was included in this report. The inspection format contains the following sections: Operational Questions, Site conditions at the time of Inspection, Non Compliance Explanation/Supplemental Information, General Inspection Comments, and Compliance/NonCompliance Determination. The inspection was completed on 5/26/2010 and the written report was mailed out on 6/4/2010 (9 days later). The facility was determined to be in compliance.

### Sunflower Pork, Inc. (KS0115568)

This file was selected as a representative facility that received an inspection during the FFY 2010 review period. The specific inspection occurred on 7/8/2010 and was the only inspection reviewed. This inspection was a non-sampling CAFO inspection that included the Confined Animal Feeding Facility Inspection checklist (2-page checklist). The report did not contain all the components on the NPDES Inspection File Evaluation Checklist. Very little explanatory narrative was included in this report. Photos (two) were included with this inspection report. The facility was determined to be out of compliance, and the report included a non-compliance warning with a statement that a follow-up inspection would be scheduled several months later to determine whether the facility returned to compliance. The inspection was completed on 7/8/2010 and the report transmitted on 7/21/2010 (completed within 13 days). EPA could not locate any information in the file to indicate that the violations were corrected.

### Premium Feeders, Inc. (KS0116459)

This file was selected as a representative facility that received an inspection during the FFY 2010 review period. The specific inspection occurred on 12/11/2009 and was the only inspection reviewed. This inspection was a non-sampling CAFO inspection that included the Confined Animal Feeding Facility Inspection checklist. The report did not contain all the components on the NPDES Inspection File Evaluation Checklist. This report did provide some narrative write-up summarizing non-compliance items. The facility was found to be out of compliance. EPA notes that no formal or informal enforcement was taken. Many violations were noted in the report and transmittal letter; however, no other action was taken. Also, the facility responded to the inspection but the response did not show that issues had been addressed. Photos were provided with the checklist. The inspection was completed on 12/11/2009 and transmitted to the facility on 12/21/2009 (10 days later).

#### Goetz and Sons Feedlot (KS0092363)

This file was selected as a representative facility that received an inspection during the FFY 2010 review period. The specific inspection occurred on 5/17/2010. This inspection was a non-sampling CAFO inspection that included the Confined Animal Feeding Facility Inspection checklist. 10 photos were included as part of the inspection. The report did not contain all the components on the NPDES Inspection File Evaluation Checklist. The facility was found to be not in compliance. Limited narrative was provided with this report. The inspection report is dated 5/20/2010 and was transmitted to the facility the same day. The inspection report was completed and transmitted within 3 days following inspection. The EPA reviewer could not locate any information in the file to indicate that the violations had been addressed.

#### Bartlett Cattle Company, L.P. (Bartlett III) (KS0115291)

This file was selected as a representative facility that received an inspection during the FFY 2010 review period. The specific inspection occurred on 7/27/2010 (although checklist and photos list 8/26/2010 as the inspection date). This inspection was a non-sampling CAFO inspection that included the Confined Animal Feeding Facility Checklist. The report did not contain all the components on the NPDES Inspection File Evaluation Checklist. 6 photos were included with this inspection. Very little narrative was provided in this report. The facility was found to be not in compliance, but the report cover letter did not require the facility to report back to the state on follow-up actions.

#### Phillips Dairy

This file was selected as a representative facility that received an enforcement action during the FFY 2010 review period. KDHE completed 2 inspections at this facility during the review period, both of which EPA reviewed as part of the evidence supporting enforcement. The first inspection was completed on 2/11/2010 and the second (follow-up) was completed on 6/16/2010. EPA noted no signature was on the 2/11/2010 report. The reviewer was unable to determine if the inspection reports had ever been transmitted. These inspections were non-sampling CAFO inspections that included the Confined Animal Feeding Facility Checklist. The reports did not contain all the components on the NPDES Inspection File Evaluation Checklist. These inspections led to KDHE issuing an Administrative Order (ACO) on 7/15/2010 and subsequent Consent Agreement Final Order (CAFO) filed on 12/14/2010. Both gravity and economic benefit were considered in the penalty calculation, but the penalty worksheet explained why economic benefit was not likely to be a positive sum and was therefore excluded. The facility paid a fine of \$2,500 and \$7,500 was held in

abeyance. A copy of the penalty payment check was located in the file.

#### Prairie Pork, Coolidge (KS0095001)

This file was selected as a representative facility that received an enforcement action during the FFY 2010 review period. KDHE initially investigated this facility on 5/26/2010, and EPA reviewed the corresponding report as part of the evidence supporting enforcement. The 5/26/2010 inspection was a sampling CAFO inspection that included the Confined Animal Feeding Facility Inspection checklist. 10 photos were included as part of the inspection. The report did not contain all the components on the NPDES Inspection File Evaluation Checklist. This inspection noted discharges had occurred at the facility, failure to report discharges, failure to implement operation and maintenance controls, failure to sample and failure to submit a Nutrient Management Plan. EPA noted that the inspection checklist for this facility was more detailed than the checklist used for Nelson Poultry (above). The only reference to the inspection transmittal is a letter from the facility indicating they received it, as no inspection transmittal letter was found in the file. The KDHE Northwest District Office referred this case to the Bureau of Water for enforcement action on 6/8/2010. An Administrative Order was issued on 9/23/2010 to require corrective actions by the facility. As of the date of the review, the Consent Agreement/Final Order had not been filed. The initial penalty was \$5,000, which was reduced to \$2,500. Both gravity and economic benefit were considered in the penalty calculation, but \$0 was ultimately used for economic benefit due to the state's reasoning why it was not likely to be a positive sum. The remaining \$2,500 was held in abeyance subject to respondent complying with the terms of the Consent Agreement. EPA notes that there was a hand-written note in the file indicating the penalty was paid on 4/5/2011.

#### Nelson Poultry Farms, Inc.

This file was selected as a representative facility that received an enforcement action during the FFY 2010 review period. EPA reviewed 2 of the recent inspections that occurred at this facility, as they provided evidence leading up to the enforcement action. The first inspection was completed on 2/10/2009 and the second inspection was completed on 9/29/2009. This facility was determined to be "out of compliance" after the 9/29/2009 inspection. These inspections were CAFO inspections that included the Confined Animal Feeding Facility Inspection checklist. 7 photos were included with the 9/29/2009 inspection. The report did not contain all the components on the NPDES Inspection File Evaluation Checklist. On 11/24/2009 KDHE issued an Administrative Order to Nelson Poultry for failure to submit a Nutrient Management Plan for multiple facilities and failure to submit an Engineering analysis. On 2/11/2010 KDHE issued a Consent Agreement Final Order resolving issues from the Administrative Order. KDHE considered both gravity and economic benefit in the penalty calculation but determined the appropriate economic benefit amount to be \$0. The initial penalty was \$7,500, which was reduced to \$3,750.

## **4. Stormwater Sites**

### *Construction Stormwater*

#### Dollar General Store (No permit number)

This facility was selected as a representative inspection. On 8/17/2010 an email was sent from the KDHE Southeast District Office (SEDO) to Topeka stating that SEDO staff had been near the site while on duty for another program and had not noticed the site and its apparent lack of sediment

controls. The central office sent an email to SEDO stormwater staff and requested an inspection and informed SEDO that there was no Notice of Intent (NOI) on file for the site. On 8/17/2010 the SEDO inspected the site. The report for the KDHE inspection on 8/17/2010 was complete, except it did not include a phone number. The inspector measured the site and determined it was less than an acre. SEDO visited the site again on 8/23/2010. A report documenting the findings of the second inspection was alluded to in email correspondence included in the file but was not in the file. Reports from the inspections were not transmitted to the site owner. KDHE determined the site was less than an acre and therefore did not trigger the duty to apply for a NPDES construction stormwater permit. KDHE decided not to follow up with this site after determining it did not need a permit and that, based on inspection, the impact of the site was very minimal.

#### Salina Aquatic Center (KSR106030)

This facility was selected as a representative inspection. On 5/21/2010 the KDHE Northeast District Office (NEDO) inspected the site based on a complaint to the KDHE from an EPA On-Scene Coordinator who had been in the area and observed the site. The inspection was complete and the report and a cover letter were transmitted to the permittee on 5/27/2010. The letter states the site was not in compliance at the time of the inspection but does not require the permittee to respond to KDHE describing corrective action taken to address the noncompliance. On 7/1/2010 the permittee (City of Salina) responded to KDHE saying they will address the problems observed by KDHE at all their projects city-wide but the City did not address the specific BMP problems observed during the 5/21/2010 inspection. KDHE made a site visit on 7/6/2010 and on 7/7/2010 sent a letter to the City of Salina saying the 7/1/2010 correspondence from the City did not address the specific deficiencies noted during the 5/21 inspection and that the City must respond to KDHE by 8/5/2010 and describe actions taken to return the site to compliance. The 7/7 letter from KDHE included the photos and their descriptive captions from the 7/6 site visit. The 7/6 visit did not appear to be a formal inspection, but the photo log and cover letter sent to the city contained nearly all the components of an inspection report with the exception of the time the inspection was conducted and the phone number of the permittee. On 8/5/2010 the City sent a response to KDHE describing improvements to the site and included photos of the improvements. On 8/9/2010 KDHE sent an email to the City stating most of the deficiencies had been addressed but the pictures only documented one of the BMP improvements and the inspection logs described in the letter were not attached to the correspondence. On 9/19/2010 the City sent an email to KDHE documenting the BMP improvements that had been made to the site. On 8/20/2010 KDHE sent a letter to the City of Salina saying the city had not proven that all of the site inspections had been conducted. This was the last item in the file.

#### First Student Bus Parking (S-AR94-0820; no federal number)

This facility was selected as a representative inspection. On 8/26/2010 the KDHE Bureau of Water received a NOI for this site and a revised NOI was received on 9/8/2010. On 9/8/2010 an email was sent from the KDHE - SEDO to the City of Wichita stating staff from SEDO had performed an inspection near the subject site and noticed it lacked controls. SEDO asked the City of Wichita to verify there was a SWPPP for the site. On 9/8/2010 a City inspector visited the site and did not find noncompliance with the city construction ordinance but did make suggestions for updating the SWPPP. On 9/8/2010 SEDO sent an email to the City and copied the KDHE Topeka office stating that KDHE had not yet issued authorization to discharge to First Student Bus because of problems with the SWPPP and that construction activity should not have started until authorization had been received from KDHE. SEDO further states that KDHE personnel had driven by the site and noticed

it was almost completely graded, the construction entrance was deficient and there were no controls along the drainage channel. On 9/8/2010 the City of Wichita sent another email to SEDO and copied the KDHE Topeka office stating the runoff from the site will go to a non-discharging basin and the city won't address the site further because all city-required paperwork had been completed by the site. On 9/8/2010 SEDO sent another email to Topeka stating that the pictures taken of the site on 9/8 indicate there were no BMPs other than a weed patch. There were no ditch checks or silt fence. On 9/17/2010 the KDHE Topeka office sent a conditional authorization to First Student and says the site will be referred to enforcement for commencing construction without first receiving authorization to discharge from KDHE. Note that there was no formal inspection of the site by KDHE and an inspection report was not sent to the facility. The 9/17/2010 conditional authorization letter from KDHE to First Student Bus does include a description of site conditions on 9/8/2010. An undated note in the file states that KDHE elected not to pursue enforcement for discharge without a permit because there were too many conditional words in KDHE's 9/17/2010 letter to the facility.

KDOT U.S. Hwy 69 (S-M028-0218; no federal number)

This facility was selected as a representative inspection. On 5/18/2010 an email was sent from the KDHE Topeka Office to the Northeast District Office (NEDO) requesting an inspection of the site because staff from the Topeka office had driven by the site on 5/16 and noticed issues. The Topeka office requested the inspection be coordinated with KDOT "with no more than a day or two of notice to KDOT staff." Notice of the inspection was given to KDOT on 5/20. On 5/21/2010 KDHE inspected the site. The inspection report was complete, except it did not contain the time of the inspection. A letter and photos from the inspection were transmitted to KDOT on 6/23/10, 33 days after the inspection. KDHE requested a response from KDOT by 7/17/2010. On 7/15/2010 KDOT responded to KDHE's inspection with a letter and attachments. No subsequent documents in the file comment on the adequacy of KDOT's 7/15/2010 submittal in response to KDHE's 6/23 warning letter. The final item in the file is an 11/18/2010 cover letter and photos from the KDHE Topeka office to KDOT regarding a 9/18/2010 inspection of the site. This letter, sent 53 days after the 9/18 inspection, states some items looked good but there were still problems with stabilization. The letter and photos combined comprise a complete inspection report with the exception of the time the inspection occurred. Only a couple of the deficiencies noted on 9/18 correspond to deficiencies observed during the 5/21 inspection, so it is not possible to know if all earlier items were addressed. Furthermore, the 11/18 letter does not require a response but only states, "Feel free to contact me if you would like to discuss any of the above issues."

*Industrial Stormwater*

Wichita Concrete Pipe Company (KSG110199)

This facility was selected as a representative enforcement action. On 12/14/2009 KDHE issued an administrative order to Wichita Concrete Pipe Co. The AO states KDHE received a complaint from a citizen on 7/16/2009 saying runoff from the plant was causing grass to die. The AO further states that KDHE toured the facility on 7/22/2009 and concluded the facility was operating without a permit. The Order requires the facility to discontinue discharge within 30 days, file a NOI within 30 days, develop a SWPPP within 60 days, and pay a penalty of \$7,500. A CAFO dated 7/13/2010 states all complying actions were completed and the Respondent will pay a penalty of \$3,750 with \$3,750 held in abeyance. The penalty payment of \$3,750 was received 12/14/2009. The permit was issued 5/20/2010. The file does not contain an inspection report nor is there any indication that a

report was transmitted to the Respondent. Only the AO describes KDHE's 7/22/2009 site visit. The enforcement action was appropriate and timely, with approximately 150 days from site visit to AO, and it adequately addressed the violation. The penalty calculation does not account for economic benefit; it states that economic benefit is insignificant and therefore is not included. The cost of applying for a permit would be very small, making this a reasonable assumption by the state. The AO states the penalty will be reduced by half with the other half held in abeyance if the Respondent takes all complying actions and maintains compliance.

#### Concrete Materials Co., Plant #2 (KSG110048)

This facility was selected as a representative enforcement action. EPA reviewed a state administrative order as well as an inspection that preceded enforcement. On 10/30/2009 KDHE sent a letter transmitting the findings from a 9/2/2009 inspection of the facility. The inspection report contained all of the items on the NPDES Inspection File Evaluation Checklist and was transmitted 58 days after the inspection. The letter requires follow-up from the facility, including submittal of an updated SWPPP and complete construction of a settling basin. The facility did not respond to the inspection transmittal, and subsequent records in the file pertain to issuance of the AO.

On 2/22/2010 KDHE issued an administrative order to Concrete Materials Co. Plant #2. The violations cited in the Order were continued failure to update the SWPPP and the requirement to build a basin. The Order pleads a penalty of \$5,000. There is a note in the file stating payment of the \$5,000 penalty was received by the KDHE 11/10/2010. The penalty calculation does not include economic benefit because the benefit was stated to be insignificant and thus was not calculated. Considering that the economic value of updating a SWPPP and constructing a basin is not negligible, however, this assumption should be backed by a reasonable justification. There is no documentation in the file documenting submittal of an updated SWPPP or completion of a basin.

#### Concrete Materials Co., Plant #3 (KSG110049)

This facility was selected as a representative enforcement action. EPA reviewed a state administrative order and an inspection preceding enforcement. On 4/29/2009 KDHE sent a letter transmitting the findings of a 2/4/2009 inspection of the facility. The inspection report contained all of the items on the NPDES Inspection File Evaluation Checklist and was transmitted 64 days after the inspection. The letter requires follow-up from the facility by 6/1/2009. The facility did not respond to the inspection transmittal, resulting in the issuance of the AO.

On 6/29/2009 KDHE issued an administrative order to Concrete Materials Co. Plant #3. The Order required containment of all wastewater (stormwater) and payment of a \$10,000 penalty. The file contains a CAFO dated 11/3/2009 that states the complying actions were completed and penalty will be collected in the amount of \$5,000. The CAFO states the penalty will be reduced by half with the other half held in abeyance if the Respondent takes all complying actions and maintains compliance. A note in the file states a penalty in the amount of \$5,000 was received by KDHE 11/9/2009. The penalty calculation does not include economic benefit because the benefit was stated to be insignificant and thus was not included in the penalty calculation. The economic value of implementing BMPs to contain wastewater, however, is not negligible and warrants a reasonable justification in the file to make an assumption that economic benefit is insignificant.

#### Meier's Ready Mix, Inc. (KSG110132)

This facility was selected as a representative inspection. On 7/29/2010 KDHE conducted an inspection of this facility. On 8/2/2010 KDHE transmitted the findings of the inspection and included a cover letter. The inspection report contained all of the items on the NPDES Inspection File Evaluation Checklist and did not identify any violations. A memo to the file dated 4/18/2011 states the facility shut down in September 2010 and is being abandoned. The memo suggests the permit should be terminated and the file closed.

B & B Redimix, Inc. (KSG110067)

This facility was selected as a representative inspection. On 12/09/2009 KDHE conducted an inspection of this facility. On 12/10/2009 KDHE transmitted a cover letter and the findings of the inspection to the facility. The inspection report contained all of the items on the NPDES Inspection File Evaluation Checklist with the exception of the time the inspection was conducted. The inspection checklist states the quarterly site inspection reports and monthly chemical additive logs were not available for review, as required by the permit, but will be reviewed during the next KDHE inspection of the facility. The transmittal letter does not require a response to KDHE.

Concrete Industries (KSG110061)

This facility was selected as a representative inspection. On 11/12/2009 KDHE conducted an inspection of this facility. On 12/17/2009 KDHE transmitted a cover letter and the findings of the inspection to the facility. The inspection report contained all of the items on the NPDES Inspection File Evaluation Checklist and was transmitted 35 days after the inspection. The inspection revealed some deficiencies with the operation of the facility: 1) The facility had changed name and ownership, but KDHE was only aware of a change of the owner's address; 2) The 2008 DMR had not been submitted; 3) Whereas the SWPPP was available onsite, the site manager was not familiar with it and the requirement to conduct quarterly and annual inspections; and 4) The inspector noted that all reports required by the SWPPP must be kept onsite for three years. The inspector noted that the originals may be at the company headquarters in Dodge City but at least a copy must remain onsite. The cover letter transmitting the inspection report describes the deficiencies observed during the inspection; but instead of requiring a response from the facility, the letter encourages the permittee to review all of the report findings. Correspondence dated 9/16/2010 from Concrete Industries to KDHE states the facility has adopted the SWPPP used by the former site owners and feels this will bring the facility into compliance.

## **5. Facilities Reviewed for Potential Concerns under Particular Data Metrics**

City of McPherson (KS0036196)

This facility was selected as a supplemental file to review potential concerns about manual overrides and DMR violations. EPA compared data from PCS to DMR data and found that the two data sources matched. OTIS shows the second quarter with exceedances that would have met Significant Non Compliance (SNC); however, the SNC "E" code had been overridden with a "C" by the KDHE. The third quarter has a "C" manual override, indicating a manual change to compliant status, even though there were no exceedances, and the DMR data had been submitted timely. EPA staff talked to KDHE about these two inappropriate uses of the "C" manual overrides and were told that manual overrides were used in FFYs 2008 and 2009, but KDHE indicated that it was starting to back off from that practice in FFY 2010. KDHE also mentioned that it frequently compared PCS status flags to the QNCR, and when the QNCR did not have an "E", the state overrode the facility SNC status

with a “C.”

EPA was able to validate the accuracy of the state’s PCS data, which matched the facility’s DMRs when there was a true exceedance. This facility had all of its WENDBs present in PCS, and the FFY 2010 inspection conducted by KDHE was accurately reflected in PCS.

City of Parsons (KS0097560)

This facility was selected as a supplemental file to review potential concerns about manual overrides and DMR violations. EPA compared the state’s PCS data to DMR data and found that the two data sources matched. OTIS shows exceedances for the second and third quarters of FFY 2010. The first quarter has a “C” manual override followed by an “R” (resolved) for second quarter, even though there were exceedances that would have met the SNC definition. PCS generated the “R” for second quarter and the KDHE probably meant to do a manual override for second quarter; however, because a manual override was done on first quarter, PCS processed the “R” as a normal PCS function, thereby giving the “R” status for second quarter. KDHE’s inappropriate use of “C” in the first quarter, therefore, probably led to an unwarranted automatic “R” in the second quarter. KDHE did another manual override for third quarter even though the exceedances met the definition of SNC, and the status should have been an “E”, which PCS would have generated. The fourth quarter also had a manual override of “C” even though there was a “D” for DMR Non Receipt. EPA raised this issue with KDHE, and the state indicated that data was received on time from the facility. The problem was that the individual who batches the data to PCS does not always submit the data when received but sometimes holds it until after all RNCs have run in PCS, at which time the window for batching DMR data closes and a DMR Non Receipt violation can be generated.

For this facility, the above analysis revealed that KDHE inappropriately used manual overrides for two of the four quarters in FFY 2010 and appropriately used an override in another quarter for a preventable data error.

When there was a true exceedance on the facility’s DMR, EPA found matching state data in PCS. This facility had all of its WENDBs present in PCS, and the FFY 2010 inspection conducted by KDHE was accurately reflected in PCS.

Chisholm Creek Utility Authority (KS0089176)

The EPA selected this facility as a supplemental file to review potential concerns about manual overrides and DMR violations. There were minor exceedances in second and third quarter which did not meet the SNC definition and which did not have any manual overrides. There was a manual override in fourth quarter even though there was an exceedance that would have met the SNC definition. EPA asked KDHE about this manual override and was told that the state had compared the QNCR to PCS data. Because the QNCR did not show this facility as SNC for any exceedance, KDHE chose to enter a manual override for the fourth quarter, which is an inappropriate use of that code.

All of the WENDBs were present in PCS for this facility and the FFY 2010 inspection conducted by KDHE was accurately reflected in PCS. EPA compared the state’s PCS data to DMR data and found that the two data sources matched.

Johnson County Nelson Complex (KS0055492)

This facility was selected as a supplemental file to review potential concerns about manual overrides. This facility's OTIS record shows all four quarters in 2010 with a "C" for manual compliance override. However, the third and fourth quarters originally had a "D" code generated via PCS RNC runs. EPA understands that KDHE staff batching data to PCS held the DMR data until RNC ran for each of the third and fourth quarters, resulting in generation of an unwarranted DMR Non Receipt violation (i.e. "D" code). Therefore, it was appropriate but avoidable for KDHE to use two manual overrides in FFY 2010, while the overrides for the first and second quarters appear to be unjustified. From what EPA was able to glean from the file, all DMRs were received timely and there were no exceedances, matching the state's PCS data.

EPA compared the state's PCS data to DMR data, and the two data sources matched. All of the WENDBs were present in PCS for this facility, and the FFY 2010 inspection conducted by KDHE was accurately reflected in PCS.

#### City of Salina (KS0038474)

This facility had two manual overrides in the third and fourth quarters. EPA reviewers asked KDHE for an explanation, and the initial response was that perhaps they had entered an incorrect pollutant identification number in PCS; however, upon further review, KDHE found that Salina's status flag had been changed based on a SNC flag report that EPA Region 7 had sent to KDHE in February 2011. That report showed an N for both third and fourth quarters. EPA investigated the data to determine why the "Ns" were showing up and thereby prompting KDHE to override them with "Cs," but no D20 (a PCS violation indicator that results in generation of "N") could be found for the second quarter. EPA did, however, find two D20s in July and August 2010 for the parameter 00310 – BOD 5-Day. Further investigation by EPA found that different season numbers were present in PCS for the same parameter in different quarters. The incorrect season number appeared to be the one used in July and August (fourth quarter), which could explain the D20 violations in that quarter. Previous DMR submissions for 00310 were under season number 1 for earlier months, but July and August had a season number of 2, thereby generating D20 violations. As the underlying impetus for KDHE's use of a manual override in the fourth quarter, this season number discrepancy should be corrected by the state to prevent recurrence of this problem in subsequent years.

## **APPENDIX G: FILE REVIEW ANALYSIS**

This section presents the initial observations of the region regarding program performance against file metrics. Initial findings are developed by the region at the conclusion of the file review process. The initial finding is a statement of fact about the observed performance, and should describe whether the performance indicates a practice to be highlighted or a potential issue, along with some explanation about the nature of good practice or the potential issue. The File Review Metrics Analysis Form in the report only includes metrics where potential concerns or areas of exemplary performance are identified.

Initial findings indicate the observed results. They are preliminary observations and are used as a basis for further investigation. These findings are developed only after evaluating them against the PDA results where appropriate, and talking to the state. Through this process, initial findings may be confirmed, modified, or determined not to be supported. Findings are presented in Section IV of this report.

The quantitative metrics developed from the file reviews are initial indicators of performance based on available information and are used by the reviewers to identify areas for further investigation. Because of the limited sample size, statistical comparisons among programs or across states cannot be made.

## Clean Water Act Program for FFY 2010 review period

CWA Metric #	CWA File Review Metric Description:	Metric Value	Initial Findings
2b	% of files reviewed where data is accurately reflected in the national data system.	95%	18 out of 19 files that EPA reviewed had the required data accurately entered in PCS. This metric does not consider missing single event violations and compliance schedules, which are treated by metrics for Data Completeness – i.e. metrics 1a through 1g and metrics 7 and 8. Initial findings for data completeness are found in Appendix D. Instances of inaccurate or missing data that reviewers identified, and which are treated by metric 2b, included pretreatment data required to be loaded to PCS, as directed by the PCS Policy Statement.
4a	% of planned inspections completed (outside of core program areas).	100%	The state committed to inspecting a specified number of facilities across various NPDES and pretreatment categories during FFY 2010, as memorialized in the PPG Workplan and Compliance Monitoring Strategy. A summary of all NPDES completed inspections relative to planned inspections is documented in the explanation for Finding 5-1 in Part IV of the report. Although metric 5 pertains to core program major and minor inspection commitments, the state met all of its inspection commitments outside of the core program areas. Therefore, no further finding to this effect is made in the report, and the analysis for all inspection commitments is confined to one location in Finding 5-1.
4b	Delineate the commitments for the FY under review and describe what was accomplished. This should include commitments in PPAs, PPGs, grant agreements, MOAs, or other relevant agreements. The commitments should be broken out and identified. The types of commitments to include would be for inspections, pretreatment reviews, DMR entry, compliance data entry, follow-up on SRF recommendations, etc.	N/A	The state satisfied all except two of the compliance and enforcement commitments for FFY 2010, not inspection-related, as specified in the FFY 2010 PPG Workplan. One exception was a commitment to enter required WENDB elements into PCS. The other task was a commitment to follow up on recommendations made during the FFY 2006 Kansas CWA NPDES program review. Further explanation is found in Finding 4-1.
6a	# of inspection reports reviewed.	45	EPA reviewed 45 inspection reports during the file review process.
6b	% of inspection reports reviewed that are complete.	45%	20 of 44 inspection reports contained all components on EPA's NPDES Inspection File Evaluation Checklist. Of the 24 reports that did not contain all components on the checklist, most were missing only time of day of inspection and/or telephone number of the facility.
6c	% of inspection reports reviewed that provide sufficient documentation to lead to an accurate compliance determination.	100%	44 of 44 inspection reports provided sufficient documentation to lead to an accurate compliance determination.
6d	% of inspection reports reviewed that are timely.	80%	EPA evaluated this metric for 41 inspection reports. Duration from date of inspection to date of report transmittal was the measure used for this metric. 33 of 41 reports were completed within 30 days of the inspection, which is the goal timeframe used by EPA and applied as a benchmark across all states unless states set a different goal in written internal operating procedures. KDHE does not have such an alternate written goal. The average duration from inspection to report transmittal was 20 days.
7e	% of inspection reports or facility files reviewed that led to accurate compliance determinations.	93%	40 of 43 inspection reports led to an accurate compliance determination. 3 reports were not counted because they identified one or more problems or potential problems without explicitly associating the observation with permit or regulatory requirements, and they did not articulate the observation as a deficiency or violation in the report or report cover letter. Those reports were for inspections at Atchison, Salina, and Westar Lawrence Energy Center.

CWA Metric #	CWA File Review Metric Description:	Metric Value	Initial Findings
8b	% of single event violation(s) at majors that are accurately identified as SNC or non-SNC, as determined by reviewing inspection reports and other material in state files.	50%	KDHE did not enter SEVs in PCS in FFY 2010. EPA reviewed compliance monitoring files for 6 major facilities, 2 of which had single event violations (SEVs) identified in the inspection report. Both of those SEVs, at Atchison and Salina, would rise to the level of Significant Non-Compliance (SNC). Insufficient solids handling at Atchison was appropriately identified in the inspection report cover letter as a "serious" violation. Bypassing and the failure to report bypasses, which was documented for Salina, was not identified as SNC or even characterized as a clear violation.
8c	% of single event violation(s) identified as SNC that are reported timely.	0%	KDHE did not enter SEVs in PCS in FFY 2010. Therefore, EPA could not assess the timeliness of reporting SEVs that are SNC.
9a	# of formal/informal enforcement responses reviewed	15	EPA reviewed 13 formal administrative orders or consent orders and 2 informal enforcement actions. The 2 informal actions include a "noncompliance notice" serving as an inspection report cover letter (Sunflower Pork) and a Notice of Violation (Dayton Superior).
9b	% of enforcement responses that have returned or will return a source in SNC to compliance.	N/A	None of the enforcement actions addressed SNC violations at major facilities.
9c	% of enforcement responses that have returned or will return a source with non-SNC violations to compliance.	80%	2 of 2 informal enforcement actions and 10 of 13 formal enforcement actions that EPA reviewed pertaining to non-SNC violations resulted in the facility returning to compliance or required the source to take actions that will return it to compliance. The 3 formal actions not counted include a consent order at a municipal minor that did not address a violation discovered prior to issuance of the order (Walnut) and 2 administrative orders at an industrial minor that did not address WET test violations or the underlying cause of problematic discharges and spills (Abengoa). In most of the cases that were counted, the violator was required by KDHE to conduct corrective actions, but for only 4 of the 12 facilities subject to such requirements did the file contain proof of some sort that the facility had in fact completed the actions determined by KDHE to be necessary.
10b	% of reviewed enforcement responses to address SNC that are taken in a timely manner.	N/A	None of the enforcement actions addressed SNC violations at major facilities.
10c	% of enforcement responses-reviewed that address SNC that are appropriate to the violations.	N/A	None of the enforcement actions addressed SNC violations at major facilities.
10d	% of enforcement responses reviewed that appropriately address non-SNC violations.	100%	All 15 formal and informal enforcement actions reviewed by EPA were appropriate responses to non-SNC violations according to state and EPA guidance.

CWA Metric #	CWA File Review Metric Description:	Metric Value	Initial Findings
10e	% enforcement responses for non-SNC violations where a response was taken in a timely manner.	93%	14 of the 15 formal and informal enforcement actions reviewed were timely responses to non-SNC violations according to state and EPA guidance. The one action not counted was the 2010 order issued to Abengoa, which addressed a May 2009 fish kill more than one year after it occurred.
11a	% of penalty calculations that consider and include where appropriate gravity and economic benefit.	36%	EPA reviewed 11 enforcement files that assessed actual or stipulated penalties, all of which accounted for gravity of the violations. Only 4 of the 11 actions with a penalty assessment accounted for economic benefit of noncompliance. The violations addressed by all 4 cases that accounted for economic benefit were failure to obtain or retain operator certification or operation/discharge without a permit. In all 4 cases, KDHE documented its use of discretion to omit a calculation of economic benefit, as the benefit was related to paperwork or certification costs and was justifiably much smaller than the other penalty components. The 7 cases not counted, in contrast, involved noncompliance in which the violator would have gained a finite and non-negligible economic benefit from not installing capital equipment, neglecting operation and maintenance, etc. In those 7 cases, as with the 4 cases that are counted, KDHE noted on the penalty calculation worksheet that the economic benefit was not significant or was minor and therefore was not calculated; however, the notations were generic and similar, if not identical, from one case to another and did not include reasonable justification for such claims. No estimates of the actual economic benefit, at a minimum, were provided to justify the use of discretion to omit this penalty factor.
12a	% of penalties reviewed that document the difference and rationale between the initial and final assessed penalty.	89%	EPA reviewed 9 final penalties in administrative or consent orders in which the final penalty differed from the initial calculated penalty. The files for 8 of the 9 cases included documentation of some sort showing how the penalty amount had been reduced. The 1 case not counted was Nelson Poultry.
12b	% of enforcement actions with penalties that document collection of penalties.	100%	9 enforcement actions were reviewed that involve a final assessed penalty (i.e. final penalty was due at time of review and not held in abeyance). For all 9 cases, the file included documentation showing that the penalties had in fact been collected. This evidence was in the form of copies of deposits and memos to the file.

## **APPENDIX H: CORRESPONDENCE**

KDHE responded to the draft SRF report in writing on 8/30/2011. As an enclosure to the letter, KDHE submitted a marked up copy of the draft report with edits throughout, including comments in the “State Response” box for each Finding in Part IV of the report. EPA accepted nearly all of the state’s edits verbatim, which are part of this final report. The KDHE letter dated 8/30/2011 is included below.

Regarding the “State Response” language pertaining to Part IV – Findings, EPA has included on pages H-4 through H-7 each of the original findings from Part IV of the draft report with the corresponding state response. Because EPA revised the Finding and Finding Type upon considering the state response in multiple instances, all of the original findings, finding types, and corresponding state responses are memorialized below to retain a complete record of the communication that occurred.

August 30, 2011

Ms. Karen Flounoy, Acting Director  
Water, Wetlands, and Pesticides Division  
USEPA Region 7  
901 N. 5<sup>th</sup> St.  
Kansas City, KS 66101

RE: State Review Framework (SRF) Comments

Dear Ms. Flounoy:

Attached you will find the Bureau of Water (BOW) comments on the State Review Framework (SRF) document dated July 16, 2011. The attachment addresses EPA's specific comments within the body of EPA's document. This letter provides more general comments and observations on the SRF process and its interrelation (or lack of interrelation) with the National Pollutant Discharge Elimination System program. Those general observations follow:

1. There is a lack of acknowledgement that KDHE and EPA view the "Enforcement Program" differently. KDHE has made their position abundantly clear – enforcement is an important program tool, albeit one that we generally utilize after other efforts to gain compliance have failed. We continue to maintain that stance and believe EPA should acknowledge KDHE's underlying enforcement philosophy in this document. EPA on the other hand seems to view enforcement as a standalone program that serves as a centerpiece of EPA's activities. Perhaps this perspective is due to EPA's organizational structure where enforcement is driven by a free standing Office of Enforcement and Compliance Assurance (OECA), while other water program activities are driven primarily by the Office of Water, the Office of Wetlands, Oceans, and Watersheds, and the Office of Science and Technology. As a small population state with limited resources, KDHE is forced to more tightly knit those activities together to the point where the same staff may be operating in multiple "programs". Through this integrated effort, KDHE strives to use the most cost effective and environmentally protective tools available to improve and protect water quality and do so in a manner that garners public support.
2. The SRF has essentially turned into a graded file review – how well does KDHE document and properly file paperwork. There is no overarching discussion regarding effectiveness, particularly as it relates to other water quality programs – NPDES permitting, total maximum daily loads, nonpoint source, biosolids, and pretreatment. Again, EPA views "enforcement" as a standalone program. KDHE views it as one of many tools used to attain improved surface water quality.
3. The document refers to "guidance", "policy", or "strategy" 30 times. Granted many instances refer to KDHE policies, but the review treats state and federal guidance, policy, and strategy as if they were law or regulation by giving what are essentially passing or failing grades based on adherence to those non-enforceable documents. OECA has issued an abundance of policy and guidance without regard to implementation practicality or state resource limitations. Therefore it is not reasonable to evaluate state programs against non-enforceable policies and guidance.

4. We appreciate EPA mentioning the results of workload modeling and the shortage of resources needed to implement enforcement activities in a manner that would encompass all of EPA's desired policy and guidance goals in effect in 2000. We were, however, taken aback by the following statement on Page 5 of the review:

*"KDHE was under a hiring freeze at the time of review and estimates that more than twice as many staff are needed to implement an effective NPDES program in the state, relative to actual staffing levels."*

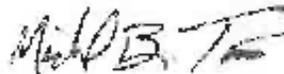
The statement could be read to imply KDHE is running an *ineffective* NPDES program. That is certainly not the belief within KDHE, nor does it appear to jive with the conclusions of the NPDES Permitting review done concurrently with the SRF review. EPA's workload model for the water quality programs does indicate KDHE is staffed at 40-50% of the level needed to run the water quality programs in a manner that would reflect full implementation of all EPA guidance and policy as in effect in 2000. To overcome the resource shortage, however, KDHE firmly believes it focuses its resources in those core program areas that bring about the most cost-effective protection and improvement of water quality. We acknowledge certain "bell and whistle" activities implemented largely by policy and guidance are given low priority and may be left incomplete.

As noted previously, the Workload Model was completed in 2000 – prior to numerous additional EPA policies and rules that require additional manpower. Resource intensive activities such as those contained in the Compliance Monitoring Strategy, the ICIS/NPDES Policy, CAFO Rules, Pesticide Permits, etc. have been imposed since 2000 without additional resources commensurate to the implementation workload. Thus, the resource gap is even wider than previously noted. Also, for clarification KDHE has been under recurring hiring freezes and budget reductions since 2008 which have resulted in numerous position vacancies. The reference to there being under a hiring freeze at the time of the review could lead some to believe the freeze has been a recent occurrence.

As with any review of a Bureau of Water activity, we welcome constructive comments. It is clear from the SRF Review, however, EPA expects significantly more than can be done within the state's resources. EPA is aware of other water quality activities within the Bureau of Water. Like enforcement, the Bureau believes those activities are operating at near maximum efficiency for the resources available. It is unlikely either the state or federal budgets will allow for additional resources in the future. With that in mind, we welcome a discussion with EPA on how best to utilize those limited resources across all water quality program activities to achieve true environmental protection.

We look forward to working with R7 to move the entire NPDES program forward in a positive manner and within the resource constraints both agencies face.

Sincerely,



for Karl W. Mueldener, PE, Director  
Bureau of Water

c Mike Boeglin, EPA

Finding 1-1 (Area for State Improvement – Recommendation Required): Overrides of RNC and SNC were used more frequently than necessary, and sometimes inappropriately, to show major facilities as being in compliance.

*State Response:* KDHE has instituted procedures for timelier uploading of the DMR data to PCS to avoid the “DMR Not Received” designations. KDHE will use more care when determining the correct status of the compliance overrides.

Finding 1-2 (Area for State Improvement – Recommendation Required): Formal enforcement action data is not consistently batched or entered into PCS.

*State Response:* By agreement in the Work Plan with EPA R7, KDHE provides the region a copy of each Formal Enforcement Action (FEA), and a copy of the FEA closure letters. The Region loads the information into PCS, if desired. Any data found in PCS as result of this review was placed in PCS by EPA R7. This is not a deficiency in the KDHE program but is part of a work-sharing initiative between Kansas and EPA Region 7.

Finding 1-3 (Area for State Improvement – Recommendation Required): Compliance schedule data for permit schedules of compliance and enforcement action schedules is not batched or entered into PCS.

*State Response:* By agreement in the Work Plan with EPA R7, KDHE provides the region a copy of each issued permit. The Region loads the information into PCS, if desired. Any data found in PCS as result of this review was placed in PCS by EPA R7. This is not a deficiency in the KDHE program but is part of a work-sharing initiative between Kansas and EPA Region 7.

Finding 2-1 (Area for State Improvement – Recommendation Required): Violations are not linked to formal enforcement actions against major facilities.

*State Response:* We are unequipped from a resource perspective to try to link any violation –be it from a DMR, compliance schedule, bypass report, etc. to each administrative order. The information serves no useful purpose in KDHE’s NPDES implementation. Orders are written to ensure compliance with state and federal laws and regulations and it is unnecessary to link every possible violation to that order.

Finding 4-1 (Area for State Attention): KDHE completed all except two negotiated tasks in the 2010 PPG workplan.

*State Response:* KDHE did not make a commitment in the 2010 PPG to enter required WENDB elements into PCS but agreed with EPA to continue to load the PCS elements that KDHE currently loads. Similarly, KDHE has not committed to load any data elements to ICIS-NPDES that KDHE does not currently gather as needed to administer the NPDES program. KDHE did respond to the draft SRF 1 program review but was unaware that it was supposed to send a second response to the final SRF 1 program review. KDHE responded to the two programmatic deficiencies EPA identified in the review. Apparently, EPA did not accept the response and reworded the deficiency expecting another KDHE response. KDHE did not have the resources to continue the debate and chose not to respond a second time. We do not believe this element is a deficiency in the Kansas program since EPA agreed to

the current status of data entry.

In regard to the entry of Pretreatment WENDB elements, it was our understanding or misunderstanding that the Pretreatment WENDB elements were being entered by Paul Marshall at EPA. As a result of the SRF audit in April, it is our understanding that Paul will develop a form that KDHE staff will complete and return to him and he will ensure the data will be entered into the system.

Finding 5-1 (Area for State Attention): The state completed most but not all of the compliance monitoring activities negotiated in the KDHE/EPA Compliance Monitoring Strategy.

*State Response:* KDHE did not include the CSO inspection when it conducted the regular NPDES inspection at Atchison since EPA had recently completed such a CSO inspection at Atchison. Since Kansas has only three CSO cities, two of which were (and still are) negotiating CSO removal and upgrades at this time, KDHE central office staff will conduct the CSO inspections as needed. These may be desktop reviews of reports submitted by the cities.

Finding 6-1 (Meets SRF Program Requirements): Inspection reports consistently contained the most important items necessary to document observations and to facilitate a compliance determination.

*State Response:* EPA indicates that 55% of the inspection reports were not complete because they did not include “a few minor items from the checklist, such as phone number of the facility or time of day of inspection”. KDHE does not believe this information vital and can be considered optional.

Finding 7-1 (Area for State Improvement – Recommendation Required): The state did not consistently label noncompliance as a violation and set the expectation that noncompliance must be corrected.

*State Response:* KDHE central office staff met with the Bureau of Environmental Field Services (BEFS) in August 2011 and discussed with them proper inspection procedures to appropriately label noncompliance items and to clearly express the expectation that noncompliance must be corrected by a set deadline. SNC determinations and the appropriate responses are made by central office staff not by the field staff and therefore, EPA should not expect this determination to be part of the BEFS inspection.

Finding 8-1 (Area for State Attention): The state did not consistently communicate SNC violations as such or report SNC Single Event Violations to the national database.

*State Response:* SNC determinations and the appropriate responses are made by central office staff. KDHE will re-evaluate its resource availability and the capability to batch load Single Event Violations to ICIS-NPDES as part of the transition to ICIS-NPDES.

Finding 9-1 (Area for State Improvement – Recommendation Required): Most enforcement actions required correction of violations identified by the state, but many files did not contain evidence to show whether facilities had in fact returned to compliance.

*State Response:* So far as the Lotus Notes database is concerned, KDHE copied the Notes database schedule of compliance status for the facilities requested and provided them to EPA staff while they were on-site. However, when KDHE staff retrieved the files for return to the file room, they noticed that the folders containing these reports were apparently not reviewed. During the four days that EPA staff was on-site at KDHE, no EPA staff person requested these files. This is not a deficiency in the Kansas program since the information was provided to EPA as requested.

The separated files are for program management purposes and were not intended to address program audit reviews. A single comprehensive file would not be workable from a program administrative standpoint. When EPA selected files for review, KDHE simply pulled the files. We don't have time to review and track issues through files to make sure they are fully documented. Again, we expected that if EPA was looking for something that was not in the file they would have asked staff at the time of the review and we would have located the requested material. During the audit, no such requests were made by EPA reviewers.

**Finding 10-1 (Area for State Improvement – Recommendation Required):** Compliance schedules in permits are continuing to be used inappropriately to correct noncompliance with conditions from previous permits.

*State Response:* 40 CFR 122.47(a) states: “The permit may, when appropriate, specify a schedule of compliance leading to compliance with CWA and regulations. (1) Time for compliance. Any schedules of compliance under this section shall require compliance as soon as possible, but not later than the applicable statutory deadline under the CWA.”

However, the regulation is silent on what actions the regulating authority should take when a facility has been in compliance with the CWA and later, after the statutory deadline is past, goes out of compliance. If the statutory deadline is past, it is not feasible to require the permittee to comply with paragraph (1). 40 CFR 122.47 makes no reference to formal or any other type of enforcement action. Therefore, in this case, KDHE would conclude that the regulating authority would have to revert back to a combination of the above cited EPA regulations and provide a schedule of compliance leading to compliance with the CWA and regulations as soon as possible. It would then appear that KDHE's use of any form of communications which will lead to compliance as soon as possible satisfies the applicable requirements of 40 CFR 122.47(a). Since 40 CFR 122.47 makes no reference to “formal enforcement action” and is silent on what action to take when a violation occurs beyond a statutory deadline, it would appear that EPA has exceeded its authority in requiring formal enforcement action as the only remedy for responding to such violations. Therefore, KDHE does not agree with EPA's conclusion that the use of compliance schedules in permits instead of formal enforcement action is a deficiency in the state's enforcement program.

However, if KDHE were to use only formal enforcement actions as suggested by EPA Region 7 to resolve all of the violations as proposed by the region, KDHE, because of resource constraints, would be able to enforce on only the most serious violations, leaving all other violations unresolved. KDHE is not willing to allow enforcement of its water pollution control statutes, regulations and permits to be hampered by forced use of tools which decrease the effectiveness and efficiency of the program thereby potentially endangering the public health and environment of the state.

Finding 11-1 (Area for State Improvement – Recommendation Required): The state consistently accounts for gravity but no estimate of economic benefit in its penalty calculations.

*State Response:* The KDHE always considers gravity and economic benefit when determining the appropriate penalty during enforcement actions. However, in many cases, at the time the order is written, economic benefit is difficult to determine since KDHE does not know the extent of the upgrade the permittee will need or want to implement to come into compliance with the permit. Since KDHE-BOW deals mostly with cities, CAFOs and small businesses that do not post the type of financial data used in BEN or similar models, it is not efficient or effective to use these models. Also, rough estimates are easily challenged in the hearing process especially when many entities are able to get government loans and grants for the upgrades. KDHE has found that unless the economic benefit can be readily identified such as based upon not paying permit fees or not conducting appropriate testing, the penalty phase of hearings goes much smoother resulting in the hearing officer more likely to affirm the KDHE proposed penalty. KDHE does not agree that this is a deficiency in the Kansas program since Kansas does consider economic benefit as a factor in each enforcement case and uses it when KDHE judges its use to be meaningful, appropriate and clearly calculable.

Finding 12-1 (Meets SRF Program Requirements): Most enforcement records contained documentation showing any differences between initial calculated and final assessed penalties, and records contained proof that the assessed penalty had been paid.

*State Response:* The finding is accurate.