

**U.S. Environmental Protection Agency
State Review Framework: Round 1 (Fiscal Years 2003 – 2007)
Recommendation Status**

Arkansas Department of Environmental Quality (ADEQ)

11 Recommendations

Clean Air Act Recommendations

Recommendation Title:

Recommendation Title: Enter correct code for ACCs reviewed.

Element: E1 Insp Universe, E11 Data Accurate

Finding: ADEQ attributes that apparent short fall on ACC reviews, as reflected in AFS, to coding errors (i.e., the SR code was not entered for all ACCs reviewed). ADEQ has corrected those omissions and AFS now reflects that the ACCs were reviewed.

Status: Completed

Expected Completion Date: 09/29/2006

Responsible Agency: State Action

Recommendation Narrative: The Region recommends that ADEQ enter the appropriate code for all ACCs reviewed. In addition the Region recommends that ADEQ examine existing administrative procedures to ensure that future ACCs reviewed are coded properly. ADEQ reported that it has completed these actions.

Recommendation Title: Include enforcement history and inspection type.

Element: E2 Violations ID'ed Appropriately

Finding: None of the inspection reports reviewed contained an enforcement history as required by the CMS. ADEQ noted that the enforcement history is a part of its pre-inspection review, and any inspection report for a facility with an open enforcement action addresses that action. The inspection reports do not indicate whether the review being done is an FCE or a partial compliance evaluation (PCE); however, on-site PCEs are not conducted in Arkansas according to ADEQ staff. FCEs reviewed met the criteria for FCE designation in the CMS Policy.

Status: Completed

Expected Completion Date: 09/29/2006

Responsible Agency: State Action

Recommendation Narrative: EPA supports ADEQ's determination to revise the inspection cover page to include enforcement history and to designate the inspection type (i.e., FCE or PCE).

Recommendation Title: Develop a penalty policy that includes gravity and economic benefit.

Element: E7 Penalty Calculations

Finding: Of the 18 enforcement files reviewed, 13 had penalties; none included calculation documentation and hence an assessment for economic benefit or gravity.

From the file review, it did not appear that the violations indicated an economic benefit

was appropriate. The ADEQ Air Division is developing a penalty policy that includes economic benefit and gravity components. ADEQ indicated that under this policy, it will document penalty calculations including economic benefit and gravity components.

Status: Completed

Expected Completion Date: 12/29/2006

Responsible Agency: State Action

Recommendation Narrative: The Region recommends and supports ADEQ's development and implementation of a State Penalty Policy that would include gravity and economic benefit components and be consistent with the HPV Policy. The Region also recommends and supports ADEQ's development of a mechanism to document in the case file or elsewhere that the Penalty Policy was followed in calculating the penalty. In addition, the Region recommends that a justification be included in ADEQ's penalty calculations for instances when the economic benefit is determined to be zero. ADEQ plans to provide the Region with the policy implementation date.

Clean Water Act Recommendations

Recommendation Title: All inspection reports should be in files.

Element: E1 Insp Universe

Finding: For the city of Rogers file, three of five inspection reports for inspections conducted over the period 3/05 - 8/05 were in the file. The other two inspection reports could not be located. Some of the 2005 inspection reports for the city of Searcy were not in the files at the time of the review.

Status: Completed

Expected Completion Date: 09/29/2006

Responsible Agency: State Action

Recommendation Narrative: ADEQ should develop a mechanism to insure that all inspection reports are maintained in the appropriate facility files.

Recommendation Title: Fill vacant positions, finalize EMS.

Element: E6 Timely & Appropriate Actions

Finding: ADEQ attributes the instances where appropriate enforcement escalation has not taken place to staff/manager turn over. During the 2005 review period, 3 enforcement staff left ADEQ. In addition the Branch Manager and first line supervisor both retired. The loss of these individuals occurred as ADEQ stormwater enforcement ramped up (see penalty chart in element 7). At the time of the review those management positions had not been permanently filled.

Status: Completed

Expected Completion Date: 09/29/2006

Responsible Agency: State Action

Recommendation Narrative: Region 6 supports and recommends that ADEQ continue its efforts to fill the vacant positions. Finalizing the EMS should provide guidelines for consistency in escalating enforcement actions. Such structure would be particularly helpful in dealing with the effects of turn over and training new staff. Although the current draft VRAC and ERG are designed to be general in order to apply to multiple program areas, the Region recommends that ADEQ consider some additional

mechanism(s) to help make the enforcement escalation process as consistent as possible. The Region offers to work with ADEQ in this and in finalizing the EMS

Recommendation Title: Submit Water Division Enforcement Strategy by 12/06.

Element: E7 Penalty Calculations

Finding: In most cases, the Water Division Enforcement Strategy penalty guidelines, however, would not yield penalties as large as those that the CWA settlement penalty policy would yield. It should be noted that the State's statutory maximum is a third of the federal statute. Nonetheless, the penalty guidelines may not support the calculation of sufficient economic benefit in all cases.

Status: Completed

Expected Completion Date: 12/29/2006

Responsible Agency: State Action

Recommendation Narrative: Region 6 supports ADEQ's movement toward consistency among its enforcement programs in penalty assessments. It is recommended that ADEQ examine additional methodologies for calculating penalty amounts including the computation for economic benefit like EPA's BEN model or some similar versions used by other States. The Region offers assistance to ADEQ in this. ADEQ plans to submit the Water Division Enforcement Strategy to EPA for approval by 12/06.

Resource Conservation and Recovery Act Recommendations

Recommendation Title: ADEQ corrected TSDf identification in RCRAInfo.

Element: E1 Insp Universe

Finding: Data metric 12.a.1 shows the Arkansas TSDf universe at 13, however, this is off by one. The actual universe is 12 and ADEQ has made the appropriate data corrections in RCRAInfo in August 2006.

Status: Completed

Expected Completion Date: 09/29/2006

Responsible Agency: State Action

Recommendation Narrative: ADEQ corrected TSDf identification in RCRAInfo.

Recommendation Title: EPA Region 6 is working with ADEQ in expanding LQG inspection coverage to meet this goal.

Element: E1 Insp Universe

Finding: In FY 2005, ADEQ inspected 32 out of 170 LQG's for an average of 19%.

Status: Completed

Expected Completion Date: 09/29/2006

Responsible Agency: State Action

Recommendation Narrative: EPA Region 6 is working with ADEQ in expanding LQG inspection coverage to meet this goal.

Recommendation Title: Include RTC documentation in file.

Element: E2 Violations ID'ed Appropriately

Finding: One facility inspection report identified a drum that needed a waste determination. The file, however, has no documentation as to whether a follow up

hazardous waste determination was made. RCRAInfo shows the facility to be in compliance.

Status: Completed

Expected Completion Date: 09/29/2006

Responsible Agency: State Action

Recommendation Narrative: ADEQ is ensuring that documentation is received and in the file to show that violations have been corrected prior to entering return-to-compliance data into RCRAInfo.

Recommendation Title: Properly code enforcement actions.

Element: E11 Data Accurate

Finding: The Framework review revealed that 11 proposed Consent Administrative Orders issued by ADEQ in FY2005 and coded into RCRAInfo as formal enforcement (211) do not appear to meet EPA's definition for formal enforcement action. Rather, they are considered to be informal enforcement actions by EPA because the proposed orders are not signed by the appropriate ADEQ authority and therefore, not yet binding upon the facility.

Status: Completed

Expected Completion Date: 10/02/2006

Responsible Agency: State Action

Recommendation Narrative: ADEQ has agreed, beginning October 1, 2006, to code their proposed unsigned orders as 126 in RCRAInfo, although they do not agree that their proposed unsigned orders are informal enforcement.

Recommendation Title: EPA Region 6 recommends that all penalty calculations be retained

Element: E7 Penalty Calculations

Finding: One file was missing the penalty calculations.

Status: Completed

Expected Completion Date: 09/29/2006

Responsible Agency: State Action

Recommendation Narrative: EPA Region 6 recommends that all penalty calculations be retained

Definition of Terms

Round 1 Elements:

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

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

Element 3: Degree to which Compliance Monitoring Reports are completed in a timely manner, including timely identification of violations.

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

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

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

Element 7: Degree to which a state includes both gravity and economic benefit calculations for all penalties, appropriate using BEN model of similar state model (where in use and consistent with national policy).

Element 8: The degree to which penalties in final enforcement actions include economic benefit and gravity in accordance with applicable penalty policies.

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

Element 10: Degree to which the Minimum Date Requirements are timely.

Element 11: Degree to which the Minimum Date Requirements are accurate.

Element 12: Degree to which the Minimum Date Requirements are complete.

Element 13: Optional evaluation element could include program areas such as compliance assistance, pollution prevention, innovation, incentive or self-disclosure programs, outcome

measures, environmental indicators, relationships with Attorney General or other legal offices, etc.

Finding: An observation of 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.

Status:

Working: The recommendation is in progress, it is expected to be completed, and it is on schedule to meet agreed upon completion date

Completed: The terms of recommendation have been implemented, the corrections have been agreed upon, and the work attributed to the recommendation was completed

Being Negotiated: The region and the state still have to determine the timeline and the procedures for implementing the recommendation, the timeline of recommendation cannot be determined by the completion of the final report

Long Term Resolution: The recommendation cannot be completed without legislative fix, policy change, or institutional arrangement that would have to go on to the future

Responsible Agency: The agency that administers the program. Mostly States, but is EPA where EPA directly implements the program.

List of Acronyms

A

ACS – Annual Commitment System
ASHERA – Asbestos Hazard and Emergency Response Act
AFS – Air Facilities System
AFS ICR - Air Facilities System – Information Collection Request
AST – Above Ground Storage Tank
ASDWA – Association of State Drinking Water Administrators

B

BIA – Bureau of Indian Affairs
BMP – Best Management Practices
BoP – Bureau of Prisons

C

CA – Compliance Assistance
CAA – Clean Air Act
CAC – Compliance Assistance Coordinator
CACDS – Compliance Assistance Conclusion Data Sheet
CAFO – Concentrated Animal Feeding Operations
CBP – Bureau of Customs and border Protection
CBI – Confidential Business Information
CCDS – Case Conclusion Data Sheet
CEC – Commission for Environmental Cooperation
CEI – Compliance Evaluation Inspection
CERCLA – Comprehensive Environmental Response, Compensation and Liability Act
CESQG – Conditionally-exempt Small Quantity Generator
CID – Criminal Investigation Division
CIPs – Compliance Incentive Programs
CMS - Compliance Monitoring Strategy
CSOs – Combined Sewer Overflows
CSS – Combined Sewer Systems
CWA – Clean Water Act
CFC – Chlorofluorocarbon

D

DMR – Discharge Monitoring Report

E

EA – Environmental Assessment
EIS – Environmental Impact Statement
EJ – Environmental Justice
EJAC – Environmental Justice Areas of Concern

EJSEAT – Environmental Justice Strategic Enforcement Assessment Tool
EMP – Environmental Management Practices
EMR – Environmental Management Reviews
EMS – Environmental Management System
EPA – Environmental Protection Agency
EPCRA – Emergency Planning and Community Right to Know Act
ERPs – Enforcement Response Policies
ERP – Environmental Results Program
ESD – Explanations of Significant Differences

F

FCE – Full Compliance Evaluation
FEMA – Federal Emergency Management Agency
FFEO – Federal Facilities Enforcement Office
FIFRA – Federal Insecticide Fungicide and Rodenticide Act
FRP – Facility Response Plan
FTE – Full Time Equivalent

G

GAO – Government Accounting Office
GME – Groundwater Monitoring Evaluation
GPRA – Government Performance and Results Act

H

HAP – Hazardous Air Pollutant
HPV – High Priority Violators
HQ - Headquarters
HUD – Housing and Urban Development

I

IAC – Innovative Action Council
ICDS – Inspection Conclusion Data Sheet
ICIS – Integrated Compliance Information System
ICIS – NPDES Integrated Compliance Information System – National Pollutant Discharge Elimination System
IG – Inspector General
INECE – International Network for Environmental Compliance and Enforcement
IU – Industrial users (non-domestic)
IPOD – ICIS Policy on Demand

L

LBP – Lead-based Paint
LDAR - Leak Detection and Repair
LEA – Local Education Authority
LGEAN – Local Government Environmental Assistance Network
LQG – Large Quantity Generator

M

MACT – Maximum Achievable Control Technology
MDR – Minimum Data Requirements
MOA – Memorandum of Agreement
MS4 – Municipal Separate Storm Sewer System

N

NAAQS – National Ambient Air Quality Standards
NEIC – National Enforcement Investigations Center
NEJAC – National Environmental Justice Advisory Council
NEPA – National Environmental Policy Act
NESHAP – National Emissions Standards for hazardous Air Pollutants
NETI – National Enforcement Training Institute
NOV – Notice of Violation
NO_x – Nitrogen Oxide
NPDES – National Pollutant Discharge Elimination System
NPL – National Priorities List
NPM – National Program Manager
NRC – National Response Center
NSPS – New Source Performance Standards
NSR – New Source Review
NTP – National Training Plan

O

OAM – Operation and Maintenance
OAP – Office of Administration and Policy
OC – Office of Compliance
OCE – Office of Civil Enforcement
OCEFT – Office of Criminal Enforcement, Forensics and Training
OCFO – Office of Chief Financial Officer
OCIR – Office of Congressional and Intergovernmental Relations
ODS – Ozone Depleting Substances
OECA- Office of Compliance and Assurance
OEJ – Office of Environmental Justice
OGD – Office of Grants and Disbarment
OIG – Office of the Inspector General
OMB – Office of Management and Budget
OPP – Office of Pesticide Programs
OPPTS – Office of Prevention, Pesticides, and Toxic Substances
OSWER – Office of Solid Waste and Emergency Response
OTIS – Online Tracking Information System

P

PBT – Persistent Bio-accumulative Toxics
PCB – Polychlorinated Biphenyls

PCE – Partial Compliance Evaluation
PCS – Permit Compliance System
PEI – Production Establishment Inspections
PFA – Preliminary Financial Assessments
PM10 – Particulate Matter
POTW – Publically Operated Treatment Works
PPA – Performance Partnership Agreement
PPG – Performance Partnership Grants
PRP – Potentially Responsible Party
PSD – Prevention of Significant Deterioration
PWS – Public Water System
PWSS – Public Water System Supervision

R

RCRA – Resource Conservation Recovery Act
RCRAInfo – Resource Conservation and Recovery Act Information
RECAP – Regional Enforcement and Compliance Assurance Program
RMP – Risk Management Plan
ROD – Record of Decision
RR+P – Renovation, Repair and Painting

S

SAAP – Special Appropriations Act Projects
SAC – Special Agent-in-Charge
SCAP – Superfund Comprehensive Accomplishment Planning
SDWA – Safe Drinking Water Act
SDWIS/ODS – Safe Drinking Water Information System/ Operational Data System
SEC – Securities and Exchange Commission
SEE – Senior Environmental Employment
SEP – Supplemental Environmental Project
SGTM – State Grant Template Measures
SITS – Strategy Implementation Teams
SLPD – Special Litigation and Projects Division
SNCs – Significant Noncompliance
SOC – Significant Operational Compliance
SO2 – Sulfur Dioxide
SPCC – Spill Prevention Control and Countermeasures
SQG – Small Quantity Generator
SRF – State Review Framework
SSO – Sanitary Sewer Overflows
STAG - -State and Tribal Assistance Grant
SWPPP – Stormwater Pollution Prevention Plan

T

TSCA – Toxic Substance Control Act
TSD - Treatment, Storage and Disposal

TSDf – Treatment, Storage and Disposal Facility
TSS – Total Suspended Solids
TVA – Tennessee Valley Authority

U

UIC – Underground Injection Control
UNICOR – trade name of Federal Prison Industries
UST – Underground Storage Tank

V

VOC – Volatile Organic Compounds

W

WW – Wet Weather