

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

New Mexico Environmental Department (NMED)

24 Recommendations

Clean Air Act Recommendations

Recommendation Title: Inspection reports now include enforcement history

Element: E1 Insp Universe

Finding: Not all Albuquerque Air Division inspection reports included enforcement history.

Status: Completed

Expected Completion Date: 09/29/2006

Responsible Agency: Local Action

Recommendation Narrative: The City of Albuquerque now requires each inspection report to include an enforcement history.

Recommendation Title: Convert to TEMPO, update majors universe.

Element: E1 Insp Universe, E11 Data Accurate

Finding: While NMED inspection coverage approximates the national average, it falls short of the national goal of 100%. NMED recognizes that it did not cover 100% of the AIRS/AFS majors universe and attributes this shortfall primarily to data issues (e.g., AIRS Junior/AFS uploading difficulties) and changes in facilities status (e.g., facility not in operation).

Status: Completed

Expected Completion Date: 09/29/2006

Responsible Agency:

Recommendation Narrative: NMED has completed the conversion to TEMPO. Side by side data comparisons indicate good correlation between TEMPO and AIRS/AFS. In addition, NMED has revised its majors universe (163) in TEMPO and AFS.

Recommendation Title: Verify SM80 universe.

Element: E1 Insp Universe, E11 Data Accurate

Finding: NMED noted that some facilities have been classified in AFS as either a major source or as an SM80 due to the type of permit issued to the facility. For efficiency purposes, NMED issues several types of General Construction Permits to address groups of sources that have similar operations, processes and emissions and are thus subject to similar requirements.

Status: Completed

Expected Completion Date: 09/29/2006

Responsible Agency: State Action

Recommendation Narrative: NMED should verify the universe of SM80s and EPA supports NMED's efforts to determine the actual classification of each General Construction Permittee based upon its potential to emit.

Recommendation Title: Include Title V ACC results in AFS

Element: E1 Insp Universe, E10 Data Timely, E12 Data Complete

Finding: For the review period, AFS does not reflect that NMED reported compliance results. NMED stated that compliance results were coded into AIRS Junior and believes that those results did not make it into AFS due to uploading difficulties.

Status: Completed

Expected Completion Date: 09/29/2006

Responsible Agency: State Action

Recommendation Narrative: Regarding Title V compliance certification, NMED has adopted procedures to ensure that each certification is assigned, reviewed and the results reported in TEMPO. This is verified by the Program Manager.

Recommendation Title: Verify effectiveness of TEMPO conversion, inspect remaining facilities.

Element: E1 Insp Universe, E11 Data Accurate

Finding: As of August 13, 2005, the number of sources in New Mexico with unknown compliance status was 89. NMED attributes this to a combination of factors including AIRS Junior uploading difficulties, inappropriate source classifications, and inspection scheduling issues (e.g., inspector vacancy). From subsequent discussions with NMED, there are only 6 of those 89 facilities that still show an unknown compliance status. All 6 have been scheduled for inspection by September, 30 2006.

Status: Completed

Expected Completion Date: 09/29/2006

Responsible Agency: State Action

Recommendation Narrative: EPA recommends that NMED monitor the facilities with unknown compliance status to verify the effectiveness of the TEMPO conversion and cleaning up the majors universe in accurately reflecting inspection coverage in AIRS/AFS. NMED plans to inspect the remaining 6 of 89 facilities with unknown compliance status by September 30, 2006.

Recommendation Title: Include enforcement history in inspection reports.

Element: E2 Violations ID'ed Appropriately

Finding: None of the inspection reports reviewed contained an enforcement history.

Status: Completed

Expected Completion Date: 09/29/2006

Responsible Agency: State Action

Recommendation Narrative: NMED has developed and implemented a new template for inspection reports that includes all necessary elements including enforcement history. On December 5, 2005, NMED provided additional training to its inspectors on the use of the template to ensure all the required information is included in the inspection report.

Recommendation Title: Establish HPV identification procedures. EPA schedule State HPV training.

Element: E4 SNC Accuracy

Finding: During the review two cases (2 out of the 17 files reviewed) were noted where NMED did not identify the facility as an HPV when it had failed to submit a Title V permit application and/or submit an annual compliance certification. Of the seven (7) enforcement files reviewed, 0% of the violations that should have been identified as HPVs were identified as such in AIRS

Status: Completed

Expected Completion Date: 11/04/2007

Responsible Agency: State Action

Recommendation Narrative: NMED needed a procedure to ensure the consistent and timely identification of HPVs. Since the review, NMED has implemented new procedures whereby the inspector conducts a preliminary HPV determination and this determination is reviewed with the Program Manager. HPVs are then entered into TEMPO. Under this procedure, all inspections receive this HPV review. NMED has requested HPV training. Region 6 and NMED will determine the appropriate training format (e.g., web cast, meeting, etc.) and schedule by September 30, 2006.

Recommendation Title: HPV Training

Element: E4 SNC Accuracy

Finding: For FY 2004, the City of Albuquerque stated that it discovered no HPVs, hence there were no HPVs reported in AIRS/AFS for 2004. However, of the four inspection files reviewed, one file indicated a significant violation of the source's Title V compliance certification requirements. Based upon EPA's preliminary analysis, this violation should be identified as an HPV per the HPV Policy.

Status: Completed

Expected Completion Date: 03/15/2007

Responsible Agency: Regional Action

Recommendation Narrative: The City of Albuquerque requested HPV training to more adequately identify those facilities that are HPVs. EPA will schedule this training with the Air Quality Division. The Facility identified as being a HPV has since returned to compliance.

Recommendation Title: Document economic benefit in files.

Element: E7 Penalty Calculations, E8 Penalties Collected

Finding: The files reviewed did not document affirmative determinations that economic benefit was insignificant or inappropriate. City of Albuquerque officials indicated that in practice, the economic benefit component is not being included because situations have not occurred where the City of Albuquerque has had to utilize the BEN model. Additionally, City of Albuquerque officials have concerns with the utility of the BEN model.

Status: Completed

Expected Completion Date: 09/29/2006

Responsible Agency:

Recommendation Narrative: The City should adopt a methodology, consistent with the City of Albuquerque Stationary Source Penalty Policy and the national HPV Policy, for considering, incorporating and documenting economic benefit in penalty calculations. EPA recommends that this include documenting situations where the economic benefit portion of the penalty is considered insignificant or nonexistent. During the exit interview, Air Quality Division staff agreed to include a statement in the file to document instances where economic benefit was considered to be insignificant or nonexistent.

Recommendation Title: Include justification for zero economic benefit.

Element: E7 Penalty Calculations

Finding: Of the seven (7) enforcement files reviewed, none included an assessment for economic benefit. All 7 files indicated that the economic benefit was zero. The review of the files did not reveal any instance where it appeared that an economic benefit would have been appropriate for the violations cited.

Status: Completed

Expected Completion Date: 09/29/2006

Responsible Agency: State Action

Recommendation Narrative: The Region recommends and NMED now includes a justification in its penalty calculations for instances when the economic benefit is determined to be zero.

Recommendation Title: Complete conversion to TEMPO. Include missing data in AFS.

Element: E12 Data Complete

Finding: The review of the AFS/AIRS data requirements indicated that not all of the Minimum Data Requirements are reflected in AFS/AIRS. Stack test results data, Title V compliance certification review results data and compliance status data were missing. NMED indicated that these data were entered into AIRS Junior, but did not get uploaded into AFS.

Status: Completed

Expected Completion Date: 09/29/2006

Responsible Agency:

Recommendation Narrative: NMED has completed the conversion to TEMPO. This should improve data quality. Comparison between TEMPO and AFS indicates good correlation.

Clean Water Act Recommendations

Recommendation Title: Filing System

Element: E1 Insp Universe

Finding: No dedicated filing system for unpermitted facilities

Status: Completed

Expected Completion Date: 09/30/2007

Responsible Agency: Regional Action

Recommendation Narrative: The Region should ensure properly managed files by managing the files for unpermitted sources in the regions central filing system.

Recommendation Title: Inspection Report Completion

Element: E2 Violations ID'ed Appropriately

Finding: Not all inspection reports were complete.

Status: Completed

Expected Completion Date: 09/30/2007

Responsible Agency: Regional Action

Recommendation Narrative: The problem of incomplete files is not major, but should still be addressed. The Region does have a process for reviewing and verifying inspection reports. This process should be also be used to ensure the completeness of the files, especially ensuring that the inspection date is clearly on the report so that the time lines can be calculated.

Recommendation Title: SNC Identification

Element: E3 Violations ID'ed Timely

Finding: SNC is not determined in a timely manner

Status: Completed

Expected Completion Date: 09/30/2007

Responsible Agency: Regional Action

Recommendation Narrative: The first recommendation is that violations found through inspections need to be identified sooner and a determination made if they should be considered SNC. Where these violations constitute repeat patterns of violations, there needs to be an escalated enforcement response. There should be documentation in the files.

Recommendation Title: Inspection Report Timeliness

Element: E3 Violations ID'ed Timely

Finding: Inspection reports from New Mexico DEQ are not received in a timely manner.

Status: Completed

Expected Completion Date: 09/30/2007

Responsible Agency: Regional Action

Recommendation Narrative: The second recommendation is that there needs to be an expedited process for the Region to get inspection reports from the NM DEQ inspectors. This could be either to have the Region's file room to have a process for identifying these reports and forwarding them quickly to the water enforcement branch, or formalizing the process of the NM DEQ sending copies simultaneously to the water enforcement branch.

Recommendation Title: Inspection Report Completion

Element: E3 Violations ID'ed Timely, E10 Data Timely

Finding: Inspection reports are sometimes not completed before the violations are reported.

Status: Completed

Expected Completion Date: 09/30/2007

Responsible Agency: Regional Action

Recommendation Narrative: The Region should ensure that inspection reports are actually completed in a timely manner and not just reported timely to the database.

Recommendation Title: SNC Identification

Element: E4 SNC Accuracy

Finding: There are some Single Event Violations that appear to be SNC and are not identified as such.

Status: Completed

Expected Completion Date: 09/30/2007

Responsible Agency: Regional Action

Recommendation Narrative: The Region should formalize a process for making an SNC determination for single event violators to ensure that they are properly identified in PCS and so there will be the appropriate enforcement response. There should be escalating enforcement in cases where there are repeat violations and non response to lower level enforcement actions.

Recommendation Title: Documenting Injunctive Relief

Element: E5 Return to Compliance

Finding: Lack of documentation of injunctive relief.

Status: Completed

Expected Completion Date: 09/30/2007

Responsible Agency: Regional Action

Recommendation Narrative: Another recommendation is that the enforcement actions need to be clear about the injunctive relief.

Recommendation Title: SNC Timeliness

Element: E6 Timely & Appropriate Actions

Finding: Not all SNCs are resolved in a timely manner.

Status: Completed

Expected Completion Date: 09/30/2007

Responsible Agency: Regional Action

Recommendation Narrative: The water program should have a process in place for ensuring that enforcement actions are resolved as soon as possible within the time line.

Recommendation Title: Penalty Documentation

Element: E7 Penalty Calculations

Finding: Lack of penalty documentation in the files

Status: Completed

Expected Completion Date: 09/30/2007

Responsible Agency: Regional Action

Recommendation Narrative: The Region needs to improve the documentation of the expedited settlement cases. The Region also needs to improve documentation of economic benefit and may require further training on the BEN model.

Recommendation Title: Penalty Documentation

Element: E8 Penalties Collected

Finding: No documentation of penalty collections in the files.

Status: Completed

Expected Completion Date: 09/30/2007

Responsible Agency: Regional Action

Recommendation Narrative: Documentation of decisions around penalty assessments and collections should be maintained in the files.

Recommendation Title: Data Linking

Element: E11 Data Accurate

Finding: Enforcement actions lack enforcement types

Status: Completed

Expected Completion Date: 09/30/2007

Responsible Agency: Regional Action

Recommendation Narrative: Region should enter enforcement type for all violations into the data system.

Recommendation Title: DMR Entry

Element: E12 Data Complete

Finding: DMR entry rate is below the national standard.

Status: Completed

Expected Completion Date: 09/30/2007

Responsible Agency: Regional Action

Recommendation Narrative: Region needs to ensure that they meet the national standard of 95% of major sources with permit limits in PCS.

Resource Conservation and Recovery Act Recommendations

None

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