

**U.S. EPA Region 6  
State Review Program Framework - Pilot Phase FY2004  
Review of the Oklahoma Department of Environmental Quality's Enforcement and  
Compliance Programs**

**EXECUTIVE SUMMARY**

**Overall Picture**

Oklahoma was authorized to administer the RCRA program in 1985, the Air NSPS program in 1982, and the NPDES program in 1996. The Oklahoma Department of Environmental Quality (ODEQ) has operated strong compliance and enforcement programs due in large part to their leadership and their experienced management team. Their ability to retain senior managers means they have a breadth of institutional knowledge and expertise that has resulted in clear direction and support in accomplishment of the national enforcement agenda. ODEQ management is also open to change and willing to discuss streamlining current compliance and enforcement processes, as well as building on a strong partnership with the Region.

We appreciate ODEQ's leadership in piloting the new State Program Review Framework. To accomplish this, ODEQ made the necessary resources, staff and management available to analyze and address concerns as they were identified during the review process. In some instances, ODEQ already had plans in motion effecting improvements. Of note, the ODEQ is implementing a new records management system where all ODEQ enforcement related files will be consolidated by media and will be managed by a professional record keeping staff.

**Inspection Implementation**

- ODEQ meets all the inspection criteria across the three media.

**Enforcement Activity**

- Our review underscores the value of ODEQ's new records management system particularly in the area of RCRA penalty documentation. ODEQ issues timely RCRA enforcement actions with penalties, and is in the process of improving access to penalty documentation.
- ODEQ recognizes that its air enforcement actions frequently exceed the 270 day time

## EVALUATION FORM

**Date:** 10/12-14/04

**Program Evaluated:** Oklahoma Department of Environmental Quality (ODEQ)  
CWA (NPDES)

**Information Sources Included in the Review:** PCS, State databases, Profile document, ODEQ PPA (Focus FY03), and Program Authorization documents

**EPA Evaluators:** Debra Berry, Vivian Hare, **Phone:** (214) 665-8058, (214) 665-6477  
William Puplampu, Charles Faultry, (214) 665-8591, (214) 665-2731,  
Jana Harvill (214) 665-8369

**State Contacts:** Shellie Chard-McClary, **Phone:** (405) 702-8154  
Jeff Brents (405) 702-8141

<b>Section 1: Review of State Inspection Implementation</b>
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1. **Degree to which state program has completed the universe of planned inspections/evaluations (covering core requirements and federal, state, and regional priorities).**

**Findings (including successful performance and areas for improvement):**

In FY2003, ODEQ had 96 major facilities. ODEQ inspected 98.9% of the universe of planned inspections, consistent with the protocols described in the *NPDES Compliance Inspection Manual*. This is well above the national average and is very close to the national goal of the frequency of planned inspections. In FY2003, there was one major facility that was not inspected because it ceased its operation and discharge. In addition to the core required inspections, ODEQ conducted 2,013 minor facilities and 224 storm water inspections.

A Permit Compliance System (PCS) data pull by EPA Headquarters initially indicated that ODEQ had 86.5% of inspection coverage for majors. This discrepancy, in part, is based on Headquarters not capturing facilities that were upgrades/downgrades in FY2003 and the actual facilities list that EPA and ODEQ agreed upon. The major universe in PCS does not track when upgrades/downgrades occur.

Twenty (20) files were reviewed which consisted of 12 major facilities, 4 minor facilities, and 4 Storm Water facilities. The inspection types reviewed included Compliance Evaluation Inspections (CEIs), Pretreatment Compliance Inspections (PCIs), and Storm Water inspections.

**Citation of information reviewed for this criterion:**

*NPDES Compliance Inspection Manual* (September 1994), *NPDES Compliance Inspection Strategy and Guidance*, ODEQ Program Authorization documents.

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

**Findings (including successful performance and areas for improvement):**

Results of the file review indicated that the files thoroughly and consistently documented inspection findings, including the accurate identification of violations. The reports indicated that the inspections were conducted according to proper procedures.

**Citation of information reviewed for this criterion:**

ODEQ's Program Authorization documents, Memorandum of Agreement (MOA) between ODEQ and EPA, dated 08/04/1997.

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

**Findings (including successful performance and areas for improvement):**

The File reviews indicated that all inspection reports that were reviewed were completed in a timely manner.

**Citation of information reviewed for this criterion:**

ODEQ's Program documents, MOA and Enforcement Management System.

Section 2: Review of State Enforcement Activity
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4. **Degree to which significant violations are reported to EPA in a timely and accurate manner.**

**Findings (including successful performance and areas for improvement):**

EPA is made aware of significant violations via state submittal of copies of all ODEQ inspection reports and enforcement actions to EPA. During the regular meetings with EPA, ODEQ provides an updated list of formal enforcement actions that have been issued since the last meeting. In addition, EPA thoroughly reviews the state facilities appearing on the Quarterly Noncompliance Report (QNCR).

Of the twenty files selected for this review, seven files were evaluated for enforcement activity. ODEQ addresses and identifies all significant non-compliance violations (SNC)

using Federal criteria as outlined in the program authorization documents.

**Citation of information reviewed for this criterion:**

ODEQ program documents.

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

**Findings (including successful performance and areas for improvement):**

Of the twenty files selected for this review, seven files were evaluated for enforcement activity. Of the seven, three had assessed penalties with SEPs and four required compliance schedules. The four had formal enforcement actions with schedules. ODEQ addresses and identifies all significant non-compliance violations (SNC) using Federal criteria as outlined in the program authorization documents. Mechanisms used by ODEQ to return facilities to compliance are: (1) Notice of Violation (NOVs) that require a response/action, (2) Consent Orders that contain specific compliance schedules, and (3) Consent Orders with a compliance schedule, a penalty and an SEP.

Where the results of the inspection indicated that the discharger was in violation, the ODEQ initiated enforcement action within approximately thirty (30) days of the date of the inspection. When a schedule was required to correct the deficiencies, a consent order was issued.

**Citation of information reviewed for this criterion:**

ODEQ Program Documents, Focus Document 2003.

6. **Degree to which the state takes enforcement actions, in accordance with national enforcement response policies relating to specific media, in a timely and appropriate manner.**

**Findings (including successful performance and areas for improvement):**

Enforcement actions were initiated in a timely and appropriate manner for the facilities reviewed.

ODEQ's internal enforcement response policy requires a consent order to be pursued instead of an administrative order. ODEQ believes that greater environmental benefit and better state-industry relations are realized when a consent order is negotiated and agreed upon between the state and the violator. ODEQ applies pre-enforcement procedures that are consistent with the principles in EPA's National EMS and NPDES oversight criteria including the Significant Noncompliance (SNC) and Enforcement Response Guide (ERG). ODEQ screens instances of noncompliance by all major and minor permittees and within an average of 30 days from the identification of a violation, determines the appropriate initial response consistent with the EMS timely and

appropriate action criteria.

All inspections are followed up with a letter which could include corrective action.

**Citation of information reviewed for this criterion:**

ODEQ Program Documents.

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

**Findings (including successful performance and areas for improvement):**

The file review indicated all files that assessed a penalty did include the calculations which identified the gravity and economic benefit portions of the penalty.

The final Consent Orders that included penalties appropriately calculated the gravity and economic benefit components. Supplemental Environmental Projects (SEPs) were included as mitigation of the penalties. Out of the seven enforcement actions reviewed, three contained SEPs. SEP information was included as part of the enforcement file. This information included project description necessary for SEP appropriateness review. The SEPs were in line with state guidelines for SEPs.

**Citation of information reviewed for this criterion:**

ODEQ Program Documents (MOA).

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

**Findings (including successful performance and areas for improvement):**

Three enforcement actions with assessed penalties were reviewed. The file reviews indicated the final actions included penalties that appropriately calculated the gravity and economic benefit components. The total amount assessed was \$59,800, cash settlement was \$13,700. In addition, SEPs were included as mitigation of the penalties. Total SEPs amounted to \$72,200.

The file reviews indicated ODEQ successfully assessed and collected penalties. The inclusion of stipulated penalties in the Consent Orders is a good enforcement tool to deter future violations. Explanation for calculation of economic benefits are being documented. ODEQ keeps a state database that tracks the amount of all penalties requested, the penalty amount settled, cash penalty settlement, the SEP assessed, and the amount and the date the penalty payment was received.

**Citation of information reviewed for this criterion:**  
ODEQ Program Authorization documents.

Section 3: Review of Performance Partnership Agreement or State/EPA Agreement

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

**Findings (including successful performance and areas for improvement):**

The annual FOCUS document for FY03 required ODEQ to do a minimum of 92 CEIs or CSIs at major facilities, 23 PCIs, 5 pretreatment audits and 450 site visits or inspections to help wastewater facilities maintain compliance. Data from both EPA and the state database indicate that the focus document numbers were met.

**Citation of information reviewed for this criterion:**

Performance Partnership Agreement (FY2003 FOCUS document).

Section 4: Review of Database Integrity

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

**Findings (including successful performance and areas for improvement):**

PCS targets for timeliness vary by the type of data being entered into the system. PCS data elements related to inspections, enforcement actions, limit summaries and effluent violations were reviewed for 20 files. The results of the reviews indicate that ODEQ is successful in entering the minimum data requirements in a timely manner.

PCS is the primary data system that ODEQ uses to manage their NPDES program, including pretreatment and biosolids. The permit, enforcement and inspection data for all majors are entered into PCS. Oklahoma has additional Access or Excel databases they use to compliment PCS such as tracking inspections and enforcement actions for storm water and minor facilities. All of the files reviewed had the minimum data requirements entered timely.

**Citation of information reviewed for this criterion:**

PCS and ODEQ Program Authorization documents, specifically the Enforcement Management System (EMS).

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

**Findings (including successful performance and areas for improvement):**

Accuracy refers to the absence of erroneous data resulting from mistakes during any point in the data preparation, entry, or transmission process. The limit summaries for all files reviewed were 100% correct. No discrepancies were found when comparing the source documents (Discharge Monitoring Reports or DMRs) with PCS data on 99% of the data reviewed. Minor discrepancies were found in 1% of the data reviewed when comparing source documents (single event codes, enforcement actions, compliance schedules) to the data entered into PCS.

DMR data entry into PCS was excellent overall and all enforcement actions for the files reviewed were properly linked to violations noted in PCS.

**Citation of information reviewed for this criterion:**

ODEQ Program Authorization documents, specifically the EMS and the PCS Codes & Descriptions Table.

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

**Findings (including successful performance and areas for improvement):**

Completeness refers to the amount of data present in the database at a specific point in time. The majority of the data required to be in PCS for the files reviewed were more than 99% complete. Less than 1% of the data was deficient. It is noted that during the time frame of this review, ODEQ had numerous staffing changes in their Program Management Section (new Manager, new employees). New staff attended PCS training during FY03.

PCS data retrievals related to DMR data, inspections, enforcement actions, limits summaries and compliance schedules were complete when compared to the information in the files over 99% of the time.

**Citation of information reviewed for this criterion:**

ODEQ Program Authorization documents, specifically the EMS.

13. **Evaluation of compliance assistance and innovative projects.**

**Findings (including successful performance and areas for improvement):**

During FY03, ODEQ performed several compliance assistance activities. The activities included a Concrete Batch Plant outreach, Pretreatment outreach which included quarterly meetings, a Designated Storm Water Phase II Small MS4 Seminar to provide details on Phase II requirements to affected cities, Sanitary Sewer Overflows training (tracking and enforcement in Oklahoma), Biomonitoring Workshop, and training and test kits for fish kill investigations. In addition, technical assistance for storm water was provided routinely by six industrial district representatives and two full-time storm water representatives. The Municipal wastewater staff performed 300 on-site technical assistance visits, each of which was documented with a technical assistance memorandum. (Note: ODEQ compiled a notebook of compliance activities which is available upon request).

ODEQ conducts outreach activities on a regular basis. The frequency, topic, and location is determined based on needs. In recent years, the focus has been on industry sectors with expiring general permits or the issuing of a general permit for the first time and on other issues of concern. For the industry sectors, the Concrete Ready Mix Plants is a good example. Based on compliance issues, criminal enforcement against these facilities by law enforcement and the discovery of many unpermitted sites, letters were sent to all permitted facilities, and the Concrete Ready Mix Association. These letters invited the facilities to come to one of five meetings where the regulations would be explained and the conditions in the new general permit would be discussed. Any facility attending would then be granted a six month "immunity" period to come into compliance. Inspections were performed at the facilities and deficiencies identified. The facilities then had six months to submit a permit application or make up grades to facilities.

The state has streamlined the Pretreatment Compliance Inspection (PCI) form. This will be used in lieu of the standard PCI form. This is an effort by ODEQ to more effectively target Categorical Industrial Users (CIUs) in non-pretreatment cites. This is an innovative method to capture CIUs that otherwise may not be identified.

During FY2003, storm water inspections were primarily complaint driven. Currently, specially trained staff is assigned to implement and manage the general permit portion of the storm water program. The review of Notices of Intent (NOIs) and Notices of Termination (NOTs), as well as the issuance of storm water authorizations for construction and land disturbing activities or sector designated industrial facilities, is the responsibility of the Environmental Compliant and Local Services (ECLS), a division of ODEQ with oversight provided by the Water Quality Division. An inspection program



has been developed for trained inspectors to confirm the accuracy of submitted NOIs and NOTs.

**Citation of information reviewed for this criterion:**

Oklahoma Department of Environmental Quality Customer Services Handbook.

## EVALUATION FORM

**Date:** 10/05-07/04

**Program Evaluated:** Oklahoma Department of Environmental Quality (ODEQ)  
RCRA Enforcement

**Information Sources Included in the Review:** The National RCRAInfo Data System and information located in facility files for fiscal year (FY) 2003 inspections and enforcement actions.

**EPA Evaluators:** Katy Griffith, **Phone:** (214)665-8531, (214)665-3145  
Carol Peters-Wagnon

**State Contacts:** Jon Roberts **Phone:** (405)702-5184

<b>Section 1: Review of State Inspection Implementation</b>
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1. **Degree to which state program has completed the universe of planned inspections/evaluations (covering core requirements and federal, state, and regional priorities).**

**Findings (including successful performance and areas for improvement):**

ODEQ committed to conduct 80 Compliance Evaluation Inspections (CEI) in FY 2003. The State conducted 162 CEI's, therefore, they exceeded this commitment by 100 percent. The total number of inspections conducted in FY 2003 was 197. EPA reviewed 15 facility inspection reports from a random selection of the total 197 inspections. Seven of the 15 facilities that were reviewed noted that no violations were found at the facility.

**Citation of information reviewed for this criterion:**

RCRA State Projected Core Program Compliance Monitoring Activities - FY 2003.

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

**Findings (including successful performance and areas for improvement):**

ODEQ developed carbonless copies of inspection checklists for large quantity generators (LQG), small quantity generators (SQG) and conditionally exempt small quantity generators (CESQG). The use of multiple copies enables the state inspector to leave a copy of the inspection report documenting the findings including potential violations discovered during the inspection. The inspection checklists used at treatment, storage and disposal facilities (TSDF) were more detailed which required the inspectors to

complete their reports at the office. These checklists are thorough and facilitate consistent comprehensive inspections. All generator and TSDf inspection reports reviewed reflected the use of these checklists.

ODEQ instituted a policy of archiving files that have been inactive for 5 years. In one of the inspections conducted in 2003, the ODEQ inspector was unaware of 2 previous inspections conducted 7 years prior to FY 2003. The 2003 inspection resulted in a notice of violation (NOV) for the 8 violations that were discovered. However, 4 were repeat violations from the earlier inspections.

One facility listed in RCRAInfo as receiving a CEI inspection did not have an inspection report in the file. The inspector noted that the facility no longer existed and the area was now a parking lot. The appropriate RCRAInfo inspection type for this situation would be 'other' (OTH).

Three facilities had missing or incomplete inspection reports in their files. ODEQ was unable to locate the missing documents at the time of the file review.

**Citation of information reviewed for this criterion:**

State inspection reports for 28 facilities were reviewed.

**Actions:**

ODEQ is implementing a modification to its pre-inspection process whereby the inspectors will receive a report from RCRAInfo of all inspections and enforcement taken at the facility before the State inspector goes to a facility

ODEQ is implementing a systematic approach to assigning the appropriate inspection type in RCRAInfo so that the CEI "flag" indicates a full compliance evaluation conducted.

ODEQ is implementing a new system for records management. Under this new system, all ODEQ files will be maintained by media and managed by a professional recordkeeping staff.

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

**Findings (including successful performance and areas for improvement):**

The inspection reports were completed timely and were either given to the facility prior to leaving the site or mailed to the facility. In all cases, the time frame was met.

**Citation of information reviewed for this criterion:**

State inspection reports for 28 facilities were reviewed.

## Section 2: Review of State Enforcement Activity

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

#### **Findings (including successful performance and areas for improvement):**

EPA's review of the 5 facilities with significant non-compliance (SNC) violations noted that the violations were reported to EPA in a timely and accurate manner via the RCRAInfo data system. In 2 other facility inspection reports secondary violations were identified. One of these related to the instance of repeat violations mentioned above. Based upon the information reviewed, these appear to have warranted SNC designations.

#### **Citation of information reviewed for this criterion:**

The Hazardous Waste Civil Enforcement Response Policy, dated March 15, 1996 and the addendum dated April 18, 2003; The Hazardous Waste Civil Enforcement Response Policy (ERP), dated December 2003.

#### **Actions:**

ODEQ enforcement staff initiated a process for review that will ensure prior facility information is considered for SNC determinations.

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

#### **Findings (including successful performance and areas for improvement):**

Only 2 of the 21 enforcement actions reviewed did not have a specific time frame to return to compliance. Of the 2, one Final Order was not in the file and could not be found.

ODEQ is implementing a new system for records management. Under this new system, all ODEQ files will be maintained by media and managed by a professional recordkeeping staff.

ODEQ developed a carbonless document called a Notice to Comply (NTC). It is left with facilities that have only secondary violations and gives them 30 days to comply with the regulations. The document has 4 sections. Section 1 is facility information; section 2 describes the facility's operations and plant; Section 3 describes each waste stream generated along with its generation rates, EPA waste codes and disposition. The NTC appears to be a very efficient tool.

#### **Citation of information reviewed for this criterion:**

The Hazardous Waste Civil Enforcement Response Policy, dated March 15, 1996 and the addendum dated April 18, 2002; The Hazardous Waste Civil Enforcement Response Policy (ERP), dated December 2003.

6. **Degree to which the state takes enforcement actions, in accordance with national enforcement response policies relating to specific media, in a timely and appropriate manner.**

**Findings (including successful performance and areas for improvement):**

ODEQ issued formal enforcement actions to all facilities that had SNC violations. Based on the December 2003 ERP, ODEQ met the timely and appropriate criteria at 4 out of 5 SNC facilities.

**Citation of information reviewed for this criterion:**

The Hazardous Waste Civil Enforcement Response Policy, dated March 15, 1996 and the addendum dated April 18, 2002; and the Hazardous Waste Civil Enforcement Response Policy (ERP), dated December 2003.

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

**Findings (including successful performance and areas for improvement):**

ODEQ RCRA enforcement is not consistent in documenting application of its penalty guidance which covers economic benefit and gravity components. Two of the five penalty actions reviewed delineated gravity amounts on the penalty calculation worksheet for the proposed penalty. No penalty calculations could be found for the other three penalty actions.

**Citation of information reviewed for this criterion:**

The ODEQ Land Protection Division Hazardous Waste Penalty Guidance, dated October 2003; the Hazardous Waste Civil Enforcement Response Policy, dated March 15, 1996 and the addendum dated April 18, 2002; the Hazardous Waste Civil Enforcement Response Policy (ERP), dated December 2003 and the RCRA Civil Penalty Policy, dated June 2003.

**Actions:**

ODEQ is implementing a new system for records management. Under this new system, all ODEQ files will be maintained by media and managed by a professional recordkeeping staff.

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

**Findings (including successful performance and areas for improvement):**

ODEQ RCRA enforcement is not consistent in documenting application of its penalty guidance which covers penalty mitigation. EPA reviewed 2 penalty calculation sheets, however, there was no documentation for penalty mitigation and no documentation as to collecting gravity and economic benefit components.

**Citation of information reviewed for this criterion:**

The ODEQ Land Protection Division Hazardous Waste Penalty Guidance, dated October 2003; the Hazardous Waste Civil Enforcement Response Policy, dated March 15, 1996 and the addendum dated April 18, 2002; the Hazardous Waste Civil Enforcement Response Policy (ERP), dated December 2003 and the RCRA Civil Penalty Policy, dated June 2003.

**Actions:**

ODEQ is implementing a new system for records management. Under this new system, all ODEQ files will be maintained by media and managed by a professional recordkeeping staff.

Section 3: Review of Performance Partnership Agreement or State/EPA Agreement

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

**Findings (including successful performance and areas for improvement):**

All enforcement related commitments are met.

**Citation of information reviewed for this criterion:**

Goal V of ODEQ's PPA and the 1994 Enforcement Memorandum of Understanding between ODEQ and EPA

Section 4: Review of Database Integrity

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

**Findings (including successful performance and areas for improvement):**

ODEQ met the timely Minimum Data Requirements for all 29 files that were reviewed.

**Citation of information reviewed for this criterion:**

RCRAInfo Data System.

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

**Findings (including successful performance and areas for improvement):**

Overall, 13 out of 29 files reviewed had at least one data error of one kind or another in RCRAInfo (e.g., inspection date/type, enforcement date). Data errors were communicated to ODEQ RCRA staff at the time of the file review and corrected by their staff while the region was present.

**Citation of information reviewed for this criterion:**

RCRAInfo Data System and ODEQ's 29 files that were reviewed.

**Actions:**

ODEQ examined the data errors to determine the additional QA/QC measures that are warranted and is developing a process for implementation.

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

**Findings (including successful performance and areas for improvement):**

ODEQ met the Minimum Data Requirements for completeness.

**Citation of information reviewed for this criterion:**

RCRAInfo Data System

Section 5: Optional
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13. **Evaluation of compliance assistance and innovative projects.**

**Findings (including successful performance and areas for improvement):**

ODEQ provided a summary of recent customer assistance program/pollution prevention activities. These included specific efforts to the regulated community managing hazardous waste. Many of the activities (e.g., seminars, on-site visits, etc.) were measured in terms of impact. The Pollution Prevention, Waste Management, and Environmental Compliance at DEQ reached 45 facilities and resulted in a reduction of 6000 tons of solid waste. Other efforts included compliance assistance to the used oil sector and integrating pollution prevention concepts to minimize household hazardous waste.

**Citation of information reviewed for this criterion:**

## EVALUATION FORM

**Date:** 09/27-30/04

**Program Evaluated:** Oklahoma Department of Environmental Quality (ODEQ)  
Clean Air Act Enforcement

**Information Sources Included in the Review:** The review encompassed two data sources: AFS, AIRs and state database data, and state enforcement files. 24 air enforcement files were reviewed. These files included FCEs and PCEs with no enforcement action, non-HPVs, HPVs, and SM-80 sources. The review of each file included review of the CMR (inspection report), enforcement case time line, notice of violations, consent orders, and penalty calculations.

**EPA Evaluators:** David Garcia, Anupa Ahuja,           **Phone:** (214)665-7220, (214)665-2761

**State Contacts:** Gary Kurtz, Doyle McWhirter           **Phone:** (405)702-4150, (405)702-4151

<b><i>Section 1: Review of State Inspection Implementation</i></b>
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1. **Degree to which state program has completed the universe of planned inspections/evaluations (covering core requirements and federal, state, and regional priorities).**

**Findings (including successful performance and areas for improvement):**

ODEQ completed 97% of the universe of planned inspections. This is well above the national average and is very close to the national goal of the frequency of planned inspections. An AIRs data pull initially indicated that ODEQ had 88% of Title V major sources inspected once in two years. However, AFS/AIRs is dynamic and can not capture the historical number of Title V major sources at the beginning of a CMS Plan cycle. A more accurate way to assess the State's performance is to use historical data on the number of Title V major sources available to the Agency in the biennial submission of the State CMS Inspection Plan. Using this data and AFS/AIRs data on inspections conducted in FY2002 and FY2003, the Agency calculated that ODEQ completed 97% of the universe of planned inspections for major Title V sources. ODEQ is also on target for meeting the national goal for the completion of FCEs of SM-80s, however, a full five year period has not elapsed since the adoption of the CMS policy.

**Citation of information reviewed for this criterion:**

AIRs, CMS policy, ODEQ FY2002 CMS Plan



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

**Findings (including successful performance and areas for improvement):**

The file review indicated that the files thoroughly and consistently documented inspection findings, including the accurate identification of violations. In 2002, ODEQ developed and implemented a Inspection Report Guidance Document. This document required all of the inspection reports to contain sections as detailed in EPA's CMS policy. Since the implementation of the Inspection Report Guidance document, inspection reports have become more consistent in format. Some reports did leave out some required sections, such as enforcement history and excess emissions. The omissions make it unclear if these areas were investigated as a part of the inspection or not.

**Citation of information reviewed for this criterion:**

ODEQ Inspection Report Guidance Document, CMS policy

**Actions:**

Following the exit interview, ODEQ developed and implemented an "Evaluation Report Completeness Checklist" that must be filled out in the peer review process and attached to the inspection report to insure consistent application of ODEQ's Inspection Report Guidance.

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

**Findings (including successful performance and areas for improvement):**

For the 2003 review period the relevant ODEQ guidance for this criterion was being revised and was ultimately issued as the FY 2004 Performance Management Process (PMP). We agreed with ODEQ that this would be the appropriate standard for performance. The file review indicated that inspection reports are completed in a timely manner, consistent with ODEQ's PMP. This document states that inspection reports must be submitted for peer review within 4 weeks of the inspection date.

**Citation of information reviewed for this criterion:**

CMS policy, ODEQ FY2004 PMP

Section 2: Review of State Enforcement Activity

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

**Findings (including successful performance and areas for improvement):**

The file review did not provide indication on the timely and accurate reporting of significant violations to EPA. ODEQ reports new significant violations to EPA on the bi-monthly HPV call. These calls are on-going and do provide timely and accurate reporting on new significant violations identified.

**Citation of information reviewed for this criterion:**

HPV policy

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

**Findings (including successful performance and areas for improvement):**

All of the files reviewed required complying action to return the facilities to compliance in a specific time frame.

**Citation of information reviewed for this criterion:**

HPV policy

6. **Degree to which the state takes enforcement actions, in accordance with national enforcement response policies relating to specific media, in a timely and appropriate manner.**

**Findings (including successful performance and areas for improvement):**

The file review indicated that most Notice of Violations (NOVs) actions did take place in a timely and appropriate manner. However, there were cases in which Day Zero was calculated incorrectly. Therefore the resulting NOV action did exceed national enforcement response policy time-lines. "Addressing enforcement actions", defined by the HPV policy, regularly exceed national enforcement response policy time-lines (Day 270).

**Citation of information reviewed for this criterion:**

HPV policy, interviews with Gary Kurtz, Environmental Programs Manager, Enforcement Section, Air Quality Division, ODEQ and Doyle McWhirter, Environmental Programs Manager, Compliance Section, Air Quality Division, ODEQ.

**Actions:**

ODEQ believes it is an appropriate goal to address violations with an enforcement action within 270 days. As such, ODEQ will make every effort to meet the goal of issuing enforcement actions within 270 days. Additionally, it recognizes that the issuance of an Administrative Order can be used to both address violations and stop the 270-day clock. Nevertheless, ODEQ's internal enforcement response policy requires a consent order to be pursued instead of an administrative order and it will continue to follow that policy. ODEQ believes consent orders can achieve compliance in a timely manner and that greater environmental benefit and better state-industry relations are realized when a consent order is negotiated and agreed upon between the state and the violator. ODEQ

understands the consequences for not meeting the 270 day enforcement action policy and is also aware of EPA's authority to address violations independently.

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

**Findings (including successful performance and areas for improvement):**

In the initial review, most files that assessed a penalty did not include the calculations which identified the gravity and economic benefit portions of the penalty. Upon later investigation, it was discovered that some legal files were inadvertently not pulled, possibly because they were labeled as non-HPV. Analysis of these legal files indicated that most files that assessed a penalty did include calculations that identified the gravity and economic benefit portions of the penalty. In some cases, it was unclear why the economic benefit was considered zero or insignificant. In a few instances where counts were added or dropped, it was unclear which counts were included in penalty calculations.

**Citation of information reviewed for this criterion:**

HPV policy, EPA Penalty Policy, ODEQ penalty policy

**Actions:**

ODEQ is implementing a system to ensure all files clearly document which counts are included in penalty calculations, and why the economic benefit portion of the penalty was considered insignificant.

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

**Findings (including successful performance and areas for improvement):**

The file review indicated penalties were collected for all files reviewed. Documentation was clear and included copies of checks.

**Citation of information reviewed for this criterion:**

HPV policy

Section 3: Review of Performance Partnership Agreement or State/EPA Agreement

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

**Findings (including successful performance and areas for improvement):**

Enforcement commitments in the Performance Partnership Grant Agreements with the State are reviewed at mid-year and end-of-year. FY 2004 EOY review indicated that the State has met their commitments and that the Agency had no issues with the State's performance on enforcement commitments.

**Citation of information reviewed for this criterion:**

PPG

Section 4: Review of Database Integrity

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

**Findings (including successful performance and areas for improvement):**

The review of the AFS/AIRs data requirements indicated that the Minimum Data Requirements are entered into AFS/AIRs in a timely manner.

**Citation of information reviewed for this criterion:**

AFS/AIRs

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

**Findings (including successful performance and areas for improvement):**

The review of the AFS/AIRs data requirements indicated that the Minimum Data Requirements entered into AFS/AIRs are accurate.

**Citation of information reviewed for this criterion:**

AFS/AIRs

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

**Findings (including successful performance and areas for improvement):**

The review of the AFS/AIRs data requirements indicated that the Minimum Data Requirements entered into AFS/AIRs are complete.

**Citation of information reviewed for this criterion:**

AFS/AIRs

13. **Evaluation of compliance assistance and innovative projects.**

**Findings (including successful performance and areas for improvement):**

***Portable Analyzer Testing***

ODEQ has developed a standard protocol for testing portable engine analyzers. All facilities must comply with the developed standard protocol, or other alternative protocol which must be approved prior to use. ODEQ worked with industry to develop the standardized protocol. As a result, there is significant increased compliance by affected facilities. The number of facilities affected by this compliance assistance project is estimated to be between 400 and 500.

***Web-based Standard Forms***

ODEQ has developed several web-based forms and documents to assist in compliance assurance efforts. They include ACC forms, excess emissions reports, demonstration of cause forms, and a document entitled "Calculation of Flashing Losses/VOC Emissions from Hydrocarbon Storage Tanks." Since the development and implementation of the ACC forms, certification of compliance with the standard conditions of the permit has increased from less than 50% to 100%. Excess emissions reports are now consistent in format and contain each element required by the applicable rule. The standardization of calculation of flashing losses from hydrocarbon storage tanks was a collaborative development effort with industry and has increased the number of identifications of Title V major sources, minor sources, and emissions violations of permits.

### **Data Integrity**

- Data across the NPDES, RCRA, and air enforcement programs are maintained with a high degree of integrity. It is timely and thorough. ODEQ updates its QA/QC procedures and provides the staff training needed to sustain data integrity.

### **Optional Areas**

- ODEQ provided outreach and assistance to numerous sectors including the Concrete Batch Plants. Many facets of this effort to address specific environmental and compliance concerns should be noted. ODEQ engaged the trade organization to tailor outreach and provided multiple seminars and on-site assistance to facilities in advance of issuing the general permit. The ODEQ measured the effectiveness of this program in terms of facility compliance responses.