

U.S. EPA Region 9

**STATE ENFORCEMENT PROGRAM REVIEW
of
Hawaii Department of Health**

Federal Fiscal Year 2005

September 26, 2006

TABLE OF CONTENTS

Executive Summary	3 - 5
Clean Air Act Review	6 - 20
Clean Water Act Review	21 - 35
Resource Conservation and Recovery Act Review	36 - 50

Executive Summary

Overall Picture

- In accordance with the guidelines of the State Program Review Framework, EPA Region 9 conducted reviews of Hawaii Department of Health's Air Stationary Source, Water NPDES, and RCRA Subtitle C programs during 2006, examining performance during Federal Fiscal Year 2005.
- All three program review teams commend Hawaii DOH for preparing complete and thorough inspection reports, and maintaining well organized files for completed inspections and enforcement cases.
- Hawaii Department of Health places a strong priority on returning facilities to compliance. Where violations were found, all three programs determined that HI DOH took effective action, whether formal or informal, to return facilities to compliance (including assessment of penalties as appropriate).
- Hawaii DOH met most of its inspection commitments during the review period. HDOH exceeded inspection targets for its air program (majors and synthetic minors); met its commitment for RCRA TSD inspections; exceeded its commitment for RCRA LQG inspections; and exceeded national averages in inspection of major permittees under NPDES.
- Hawaii Department of Health can improve its enforcement program by providing enhanced attention to timely, accurate and complete data reporting.
- We anticipate that fuller staffing in FY 2007 and recent assignment of an Attorney General will enable greater emphasis on formal enforcement actions and case conclusions. Specific recommendations for each program are included in the detailed reports.

Information Sources Included in the Review

- Information sources included in the review are described in detail in the program specific portions of this report. Sources included EPA national databases, inspection and enforcement files, program grants and work plans.

Inspection Implementation

- **CAA:** HDOH's Clean Air Branch conducted Full Compliance Evaluations at 100% of their major sources during the review period, significantly exceeding their target of one

FCE every 2 years. This exceeds the national average of 75.2%. The Clean Air Branch is to be commended for maintaining very well organized inspection and enforcement files, and for well written and complete reports. Reports were all completed within 30 days of inspection.

- **CWA:** HDOH's Clean Water Branch targets inspection of major permittees every year. During the review period, CWB conducted inspections of 15 of their 20 major facilities. While falling short of the 100% target, this 75% inspection rate exceeds the national average of 67.7%. However, CWB completed inspections of only 5 minor permittees (10.9%) versus 20% as targeted. As CWB faces recurring staff shortages, EPA recommends CWB consider securing its own contractor resources to assist with the inspection workload.
- **RCRA C:** HDOH inspected 100% of its Treatment, Storage and Disposal facilities, and inspected approximately 20% of its Large Quantity Generator universe, meeting these annual targets for the review year. However, it appears Hawaii fell short of the target to inspect 100% of LQGs over the last 5 years--only 50-60% of LQGs were inspected. In addition, Hawaii's 5-year inspection rate for Small Quantity Generators is also low compared to the national average (48% versus 85%). We believe these low 5-year rates may be attributable, in part, to disparities in reporting between EPA's databases, particularly where episodic or one-time generators may temporarily swell the universe. HDOH and EPA plan to work together in FY2007 to review and update the RCRAInfo.

Enforcement Activity

- **CAA:** HI resolved all 6 of the actions EPA reviewed, through administrative orders requiring injunctive relief, progress reports and penalties. We found these actions consistent with EPA's policies and HI's guidelines and procedures.
- **CWA:** During this review period, HI CWB managed a significant existing caseload. Due to staff limitations, HI relied heavily on informal enforcement (Notices of Apparent Violation letters), which can be expeditiously issued without significant investment of legal staff or management time. Increased staffing of the Enforcement Section by fall, 2006 plus conclusion of the Pflueger and HDOT cases should enable additional future formal enforcement actions where appropriate.
- **RCRA:** Hawaii inspectors discuss inspection results with facility representatives at the time of the inspection, and document violations in the reports. Return to compliance is confirmed by receiving documentation from the facility or by reinspection. The two formal enforcement actions reviewed during this period are on track for resolution in less than two years. During the review period, HDOH had no Attorney General assigned; one has since been assigned who is dedicated to completion of RCRA 'C' cases.

Commitments in Annual Agreements

- **CAA:** Commitments are documented in the Compliance Monitoring Strategy submitted by HDOH in April 2004, and approved by EPA in April 2005. HDOH successfully met these commitments.
- **CWA:** Requirements are set out in the annual CWA 106 grant workplan. CWB largely met its commitments regarding NPDES compliance and enforcement. CWB conducted pretreatment program oversight; prepared Quarterly Non-Compliance Reports and Watch List Reports; performed required data entry into PCS, and with one possible exception noted in the program report, largely met the commitment to take timely and appropriate action against violators. CWB fell short of its commitment for NPDES inspections.
- **RCRA:** The RCRA grant authorizes Hawaii to run the RCRA program. The associated grant workplan contains 2 commitments for enforcement and compliance (inspect 100% of TSDs annually, and inspect 5-10 LQGs annually). HDOH met both these commitments during this review.

Data Integrity

- **CAA:** Comparison of AFS data with the HDOH files reviewed onsite showed 100% accuracy. However, much of the data exceeded the 60 day reporting standard. Hawaii's new database is expected to eliminate many delays contributing to this timeliness issue.
- **CWA:** CWB was an active user of PCS and is a leading state partner in the migration over to the new ICIS-NPDES database. CWB's data entry into PCS has been both accurate and timely. With few exceptions, minimum data requirements are complete.
- **RCRA:** It has been HDOH's practice to enter data into RCRAInfo after enforcement action has concluded. As a result, certain information in the database has not been consistently accurate, up to date, or complete. EPA and Hawaii have discussed the importance continuing training of inspectors on management of the database, including the need to enter information as soon as it becomes available.

Hawaii Department of Health (HI DOH)
Air Enforcement Program State Review Framework

Final Report - September 6, 2006

Conducted by the
U.S. Environmental Protection Agency
Air Enforcement Office
Region IX
75 Hawthorne Street
San Francisco, CA 94105

Executive Summary

Inspection Implementation (Elements 1, 2 & 3)

CAA — The HI Clean Air Branch's (CAB) target for its 90 operating major sources is required to be no less than one Full Compliance Evaluation ("FCE") every 2 years. They significantly exceeded that commitment. During the FY 05 review period, CAB conducted an FCE at all of their major sources. Overall, Hawaii's coverage (100%) was better than the national average of 75.2%.

Enforcement Activity (Elements 4, 5, 6, 7 & 8)

CAA — CAB places a strong priority on returning facilities to compliance. All 6 of the enforcement actions we reviewed were resolved through administrative orders which required injunctive relief to restore compliance, progress reports and payment of an assessed penalty. All required either immediate compliance or compliance within 20 days. We found these to be consistent with EPA's HPV Policy and with the CAB enforcement guidelines and procedures.

Commitments in Annual Agreements (Element 9)

CAA — CAB submitted an adequate CMS Plan for FY 2004-05 on April 15, 2004, and EPA approved this plan on April 1, 2005. CAB agreed to target major sources for FCE's on a 2-year cycle and synthetic minors on a 5-year cycle. CAB successfully met these CMS commitments.

Data Integrity (Elements 10, 11 & 12)

CAA — Comparison of AFS data with the files reviewed onsite showed 100% accuracy, including dates, air programs, pollutants, action types, result codes, etc. However, we found that much of their FY05 data were reported to AFS later than the 60 day standard. Their new database is expected to eliminate many existing manual entry delays by capturing information directly as documents are generated or processed, and should alleviate the timeliness problem.

Compliance Monitoring Strategy Evaluation

CAA — Under the current Compliance and Enforcement Section Supervisor, CAB enforcement activity has increased. During the first six months of FY05, CAB issued 8 formal NOV's seeking a total of \$36,050 in penalties. During the second half of FY05, CAB issued 19 formal NOV's seeking \$118,100 in penalties. During the first half of FY06, CAB issued 11 formal NOV's seeking a total of \$598,600 in penalties. CAB management believes that their more assertive enforcement stance has increased awareness in the regulated community, resulting in improved compliance. EPA agrees that this is likely.

Background

Hawaii Air Pollution Control Program

Hawaii has relatively few air quality problems, due in part to its location in the Pacific Ocean amid consistently favorable wind patterns. Hawaii meets the National Ambient Air Quality Standards for all of the criteria pollutants, and has not had a designated nonattainment area since 1985. The City of Honolulu remains on the American Lung Association's list of cleanest cities for both ozone and particle pollution. The most significant air quality concerns in Hawaii are sulfur emissions from volcanoes and citizen complaints arising from sugar cane burning.

Hawaii's air pollution control program is implemented by the State Department of Health, Environmental Management Division, Clean Air Branch. The Clean Air Branch (CAB) is comprised of three sections: Engineering, Monitoring and Analysis, and Compliance and Enforcement.

The three sections within the Clean Air Branch each play a role in the enforcement program. The Engineering Section (comprised of thirteen staff engineers) writes permits, with an emphasis on appropriate and enforceable conditions and monitoring requirements, oversees source testing requirements and reports, and periodically observes source tests. The Monitoring and Analysis Section (comprised of eight staff environmental health specialists) is responsible for review of emissions monitoring data, major source inspections, identification of any violations, recommending enforcement actions, and compliance data entry for major and synthetic minor sources. The Compliance and Enforcement Section (comprised of seven staff environmental health specialists) is responsible for case development and enforcement, HPV determinations, HPV data entry, public complaint investigations and inspections of non-major sources.

Hawaii faces a unique challenge in administering an air pollution control program, as some of their emissions sources are located on several "neighbor" islands near Oahu (Hawaii's most populous island and the location of the HI DOH offices). The CAB has two staff place-based on the Island of Hawaii, one on Maui and one on Kauai. This can make it difficult to respond in a timely manner to public complaints or other urgent situations, particularly when one of the neighbor island staff is unavailable.

SRF File Review

On-Site Review Dates: 6/6/06 through 6/8/06, at the HI DOH CAB offices

Program Evaluated: Clean Air Act

Information Sources Included in the Review:

- HI inspection and enforcement file reviews
- management interviews
- review of EPA databases, including AFS
- review of HI DOH documents, including “Guidelines for the Exercise of Prosecutorial Discretion under the State of Hawaii Air Pollution Control Act (Draft 8/00)” (*“Enforcement Guidelines and Procedures”*)

Inspection Files Reviewed (all are Title V major sources):

1. Ameron International (AFS Plant ID # 1500900010)
2. Castle and Cooke (1500900033)
3. Conoco Phillips (1500300506)
4. Grace Pacific (1577700062)
5. Hawaii Electric (1500100014)
6. Hawaiian Electric, HECO (1500300500)
7. Jas W Glover (1500700009)
8. Kona Community Hospital (1500100068)
9. Pacific Rim (aka Hilo Coast Power Co.) (1500100022)
10. US Navy PWC [Bldg 149] (1500300021)

Enforcement Files Reviewed:

1. Chevron Products (1500300503)
2. Grace Pacific (1577700011)
3. Hawaiian Cement (1500300020)
4. Hawaiian Electric (1500300501)
5. Hawaiian Electric (1500300502)
6. Kalaeola Partners (1500300100)

(note: these six cases represent 75% of the AFS enforcement cases concluded in FY05)

Inspection and enforcement files were randomly selected by EPA reviewers. The enforcement and inspections files are kept together in the Honolulu office. There was no confidential business information identified in any of the reports.

EPA On-Site Evaluators:	Douglas McDaniel, Chief, R9 Air Enforcement	415-947-4106
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Primary HI DOH Contact:	Wilfred Nagamine, Manager, CAB	808-586-4200

SRF Elements

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

Hawaii's FY 05 facility universe was determined to be as follows:

94 Majors (90 operating and 4 closed)

11 Synthetic Minors¹ (7 operating "80% SM's"², 2 other SM's and 2 closed)

The Clean Air Branch's (CAB) target for its 90 operating major sources is required to be no less than one Full Compliance Evaluation ("FCE") every 2 years. They significantly exceeded that commitment. During the FY 05 review period, CAB conducted an FCE at all of their major sources. Overall, Hawaii's coverage (100%) was better than the national average of 75.2%.

For its SM's, the CAB target is one FCE every 5 years. CAB completed FCE's at all 9 (100%) of its operational SM's over a four year period. This exceeded the national average of 77.8% over 5 years.

In FY05 CAB reviewed 87 Title V compliance certificates, of their universe of 90 Title V operating majors, representing 96% of the cert reviews expected for FY05. The Title V certification records reported to AFS were found to be properly coded and otherwise complete for FY05. According to AFS, two facilities - Hawaiian Commercial Puunene Mill (1500900001) and C and C Sand Island (1500300058) - did not submit certifications to either CAB or EPA. The third cert, Northwest Demolition (1577700079), arrived late and was reviewed late - after the review period. We recommend that CAB pursue enforcement to obtain missing compliance certifications, or update AFS if the documents were received but not entered.

It should be noted that CAB claimed FCE's for all 90 major sources even though these three compliance certifications were not reviewed. In two cases they claimed credit for reviewing the prior year's certification. In the third (Hawaiian Commercial Puunene Mill (1500900001)) the source had not been issued its Title V permit (its operating status code should be "P instead of "O" - this error has since been fixed), consequently the compliance certification is not required..

A review of AFS shows that CAB did not have any facilities triggering "unknown compliance" status during the FY05 review period.

¹ A Synthetic Minor ("SM") is a facility that has accepted permit conditions (e.g., hours of operation, production limits) that keep its emissions below major source thresholds.

² Known as "80% Synthetic Minors" because they are permitted at 80% of the major source threshold.

Citation of information reviewed for this criterion: inspection and enforcement files, AFS database.

Recommendations:

- (i) CAB should either pursue enforcement to obtain missing Title V compliance certifications, if any, or update AFS if there was a data entry problem.

2. The degree to which inspection/evaluation reports document inspection findings, including accurate identification of violations.

Based on our file review, CAB inspectors prepared inspection reports for 100% (all 10 of the requested files) of the inspections they conducted.

The inspection files were well organized. Each facility file contains separate sub-folders for inspections, Title V compliance certifications, monitoring reports, correspondence and malfunction/deviation notifications. The contents of each sub-folder were filed chronologically. The inspection reports also contained discussions of recent testing, applicable permit requirements, reporting and past compliance concerns as well as photographs of the emissions units that were observed and any visible emissions evaluations (EPA Reference Method 9) that were performed.

All of the inspection and enforcement reports followed a template (different for the inspection and the enforcement reports). The files appeared to be complete and well-written. They documented findings, and where violations were mentioned, recommended potential enforcement.

The enforcement files were similarly well organized.

Citation of information reviewed for this criterion: inspection and enforcement files.

Recommendations: none.

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

All of the inspection reports were dated within 30 days of completion of the inspection, and clearly identified violations where appropriate. CAB has an internal goal of completing all inspection reports within ten business days.

Citation of information reviewed for this criterion: inspection files and AFS data.

Recommendations: none.

4) The degree to which significant violations and supporting information are accurately identified and reported to EPA national databases in a timely manner.

For the FY05 review period, CAB reported discovering 6 new HPV's at their 90 operating major sources:

- 1) Chevron Products (1500300503),*
- 2) Chevron USA (1500100050),
- 3) Hawaiian Cement (1500300020),*
- 4) Hawaiian Electric (1500300502),*
- 5) Kalaeola Partners (1500300100),*
- 6) West Oahu Aggregates (1577700040).

This discovery rate of 6.66%, is lower than the national average of 9.70%. Because our reviews found that CAB's files were complete and clearly identified when a facility was complying or violating, there is nothing to suggest that CAB's inspectors were unable to find or properly identify violations. EPA believes that this suggests a relatively high rate of compliance in Hawaii.

The four new HPV enforcement files we reviewed (marked with an asterisk above), demonstrated that CAB used the full range of techniques for discovering violations, including PCE, FCE, record review, and source test review.

One of the 10 inspection reports (Castle and Cooke 1500900033) documented a violation, but this violation did not qualify as an HPV. The two late compliance certifications mentioned in Element #1 above should have been reported as HPV's. As required by the HPV policy, CAB is considering enforcement action in these two cases.

CAB's 6 new reported HPV's were all addressed within the 270 day standard, and all addressed with penalties. However, we found that CAB's entry of those enforcement actions was not timely 66.6% of the time (4 of 6 actions were reported to AFS more than 60 days after resolution).

We reviewed AFS data on all 8 total HPV NOV's issued during FY 05. Six (75%) took from 63 to 580 days to be entered. The national AFS timeliness standard is 60 days. EPA believes reporting of enforcement information to AFS in a timely manner should be a higher priority.

Citation of information reviewed for this criterion: Enforcement files and AFS data.

Recommendations:

- (i) CAB should ensure that HPV's are reported to AFS within 60 days of determination and subsequent HPV actions are updated promptly.

5) The 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.

CAB places a strong priority on returning facilities to compliance. All 6 of the enforcement actions we reviewed were resolved through administrative orders which required injunctive relief to restore compliance, progress reports and payment of an assessed penalty. All 6 required either immediate compliance or compliance within 20 days. We found these to be consistent with both the EPA's HPV policy goals and with the CAB's own draft *Enforcement Guidelines and Procedures*. All 6 facilities we reviewed for enforcement complied with the NOV's issued.

Citation of information reviewed for this criterion: AFS database, enforcement files.

Recommendations: none.

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

There were 11 active HPV's during FY05. We found that 2 of the 11 were addressed after the 270 day time frame recommended in EPA's HPV Policy. This 18.2% unaddressed HPV rate is significantly better than the national average of 50.6%.

All of the enforcement files included a penalty calculation worksheet which identified any economic benefit and a breakdown of the gravity component of the penalty. For the relatively small violations, such as excessive fugitive dust or operating a conveyor without an operating permit, the penalties appeared appropriate to the violation size and severity. In the cases where violations were larger in size or scope (operating without proper fuel meters installed or opacity violations), the penalties increased and factored in economic benefit and gravity.

Citation of information reviewed for this criterion: enforcement files and AFS database.

Recommendations:

- (i) CAB should seek to address all its violations within the national HPV standard goal of 270 days or less.

7) The degree to which a state includes both gravity and economic benefit calculations for all penalties, appropriately using the BEN model or similar state model.

All of the enforcement action files included a penalty calculation worksheet which identified any economic benefit and a breakdown of the gravity component of the penalty. Attachments A and B to the draft *Enforcement Guidelines and Procedures* include economic benefit and gravity amounts for amount/toxicity of pollutant (\$500-3000), sensitivity of environment (\$100-1000), length of violation (\$400-2000), importance of regulatory scheme (\$750-1500), late/non-submittal of reports (this section includes penalties for many specific violations not in EPA's stationary source civil penalty policy) (\$750-1500), and size of violator (\$100-500).

Citation of information reviewed for this criterion: enforcement files, draft *Enforcement Guidelines and Procedures*.

Recommendations: none.

8) The degree to which final enforcement actions collect appropriate economic benefit and gravity penalties in accordance with applicable penalty policies.

CAB addressed all of the reviewed enforcement actions through orders which required injunctive relief to restore compliance, with progress reports and an assessed penalty. All assessed penalties included economic benefit and gravity amounts identified in their penalty calculation worksheets.

Citation of information reviewed for this criterion: enforcement files and AFS data.

Recommendations: none.

9) The degree to which enforcement commitments in PPA/PPG/categorical grants (written agreements to deliver a product/project at a specified time), if they exist, are met and any products or projects are completed.

EPA Region 9 has no Performance Partnership Agreements or State Enforcement Agreements with its state and local agencies. The Regional Administrator, Deputy and Division Directors hold annual meetings with the environmental commissioners and directors of these agencies to share priorities and strategies and to explore opportunities for partnership. One component of this partnership is the Compliance Monitoring Strategy (CMS) Plan that provides an agency's commitments for conducting FCE's (including inspections, Title V certification and source test reviews), identifying HPV's, and reporting such activities to AFS.

CAB submitted an adequate CMS Plan for FY 2004-05 on April 15, 2004, and EPA approved this plan on April 1, 2005. CAB committed to target majors on a 2-year cycle

and synthetic minors on a 5-year cycle. CAB successfully met all of their CMS commitments, except as otherwise outlined in this report.

In their CMS plan, CAB also committed to reporting FCE's only when they have reviewed all necessary reports and records, including Title V certifications, excess emission reports and other documents, physically visited the facility and reviewed facility records and operating logs, assessed control devices and reviewed stack tests. Our file review indicated that CAB had done all of these elements for their reported FCE's.

Citation of information reviewed for this criterion: CMS Plan

Recommendation:

- (i) CAB should continue implementing its CMS Plan to ensure that their compliance monitoring activities are effective, consistent with EPA policy and requirements, and are promptly reported to AFS.

10) The degree to which the Minimum Data Requirements are timely.

The national standard for AFS data timeliness is 60 days, per the 2005 "Information Collection Request" (ICR) approved by OMB on June 5, 2005. This standard has also been incorporated into EPA's AFS Business Rules and CMS plan documents.

We found that some FCE's took greater than 60 days (occasionally up to a year) before they were entered in AFS. We found 6 of 8 NOV's issued during FY 05 were reported to AFS later than the 60 day standard. We also found that Title V certification actions were often not timely, many taking over 120 days to be entered.

During our review, we discussed these timeliness issues with CAB. We found that their staff was not routinely running their own AFS reports in order to quality assure their data entry. All parties agreed that doing so monthly would help to improve data timeliness.

It should be noted that CAB is investing staff and funding into developing a new AFS-compatible database, which is intended to address all of the minimum data requirements ("MDR's"). Their staff indicated that timeliness will improve when the new system is finished and comes online. The new database is expected to eliminate many existing manual entry delays by capturing information directly as documents are generated or processed. Also, uploads to AFS should be more frequent and complete than is currently possible manually.

EPA has assisted with some Exchange Network grant funding, but the bulk of the costs are being borne by HI DOH itself. CAB has consulted with both Region 9 and the AFS help line, and are confident they understand and have included the necessary AFS MDR's. CAB also has had Datavision review their design on site in Hawaii and CAB intends to use the Universal Interface (UI) to ensure that upon completion the new CAB system will continue to be able to meet the AFS MDR's as EPA modernizes AFS.

At the conclusion of our review, we discussed the need for more frequent and timely entry by CAB of NOV's and other data into AFS. Region 9 provided on-site training in how to run AFS reports to use to quality assure timeliness and completeness of AFS data. Sample reports to check HPV's, NOV's, FCE's, CMS commitments, timeliness, etc. were all provided to CAB during this training and CAB agreed to use them to ensure more timely reporting immediately.

Citation of information reviewed for this criterion: AFS database.

Recommendations:

- (I) CAB should report all actions to AFS within 60 days of occurrence.
- (ii) CAB should review AFS reports monthly to help ensure that AFS is complete and current.

11) The degree to which the Minimum Data Requirements (MDR's) are accurate.

Notwithstanding the timeliness issues described in Element 10 above, comparison of AFS data with all of the files reviewed onsite showed 100% accuracy, including dates, air programs, pollutants, action types, etc.

Citation of information reviewed for this criterion: AFS data, inspection and enforcement files.

Recommendations: none. EPA commends CAB on the exemplary accuracy of their data.

12) The degree to which the Minimum Data Requirements (MDR's) are complete.

Comparison of AFS data with all of the files reviewed onsite showed that the data was 100% complete. A review of AFS did show, however, that one source test had a blank result code, which was immediately corrected by CAB. No other missing MDR's were found.

However, EPA's SRF site was not reflecting current or complete numbers during our review, due to a delayed refresh. Thus Region 9 used mostly AFS manual reports during our review. Later we found 25 majors being added to AFS by CAB. This is a significant issue. According to CAB most, but not all, of these 25 sources are new. These sources will be covered for targets under the FY06 -11 CMS plan but were not in the FY04/05 CMS plan, nor considered in this review. Consequently, the possibility exists that some of these sources were not receiving the required compliance monitoring. This oversight suggests a disconnect between the CAB permitting process and the compliance program. We expect this problem to be solved by the new database described in Element #10 above, as it will integrate permitting and compliance records.

Citation of information reviewed for this criterion: AFS data, inspection and enforcement files.

Recommendations: CAB should ensure that facilities receiving major source permits are accurately reflected in AFS.

Interviews: CAA Compliance Monitoring Strategy Evaluation

In addition to reviewing SRF Elements 1 through 12, Air Division decided to obtain additional information about Hawaii's enforcement program through interviews with the Clean Air Branch Manager, Compliance and Enforcement Section Supervisor, Monitoring and Analysis Section Supervisor, Engineering Section Supervisor, the Deputy HI Attorney General assigned to the CAB, and some non-supervisory personnel. The following summaries provide the key findings of and recommendations for the topics covered during the interviews.

The information provided in this section is intended to supplement Elements 1 through 12 in addressing the goals of OECA's CAA Compliance Monitoring Strategy evaluation process.

General

Discussion: Morale among CAB management and staff seems high. The current Compliance and Enforcement Section Supervisor was unanimously praised for her active enforcement stance, for streamlining the enforcement process and for effecting an improvement in staff morale.

There has also been an increased emphasis on accountability by HI DOH senior leadership. CAB is now required to submit quarterly enforcement reports documenting inspections, complaint responses, enforcement actions and penalties.

Resource concerns were expressed, in the context of the "onslaught" of federal regulations including New Source Review requirements, new MACT standards and the Regional Haze Program plan submittal requirements.

Inspections

Discussion: In FY05, CAB successfully met its internal goal of inspecting all major sources annually. Inspections are not targeted, because most sources are inspected annually. Inspection reports documenting violations contain recommendations for enforcement action.

Finding #A: Inspectors are provided adequate tools and safety equipment, including safety shoes, hard hats, eye and ear protection, vests, digital cameras, and cell phones.

Recommendation: none.

Finding #B: CAB relies on a variety of sources for inspector training. Inspectors receive training through WESTAR (Western States Air Resources Council), CARB (California Air Resources Board), NETI (National Enforcement Training Institute), and in-house (e.g. H₂S training).

Recommendation: none.

Enforcement

Discussion: After documenting a violation, in most cases CAB issues either a “formal” or an “informal” Notice of Violation to the source. Formal NOV’s are signed by the deputy AG; informal NOV’s are signed by the CAB Manager. In some other cases CAB issues field citations; these are limited by regulation to open burning, fugitive dust and crushers/screeners changing location without prior notification to the CAB. Field citations are signed by the CAB Manager, usually within 2 to 5 days of the violation.

Formal NOV’s are issued under the Hawaii Department of Health’s administrative penalty authority and include both an order to comply and a penalty. The penalty amount is sometimes adjusted during negotiations with the violator, but in most cases (9 of 9 in FY05) the full amount is paid. Judicial review of contested formal NOV’s occurs before the Administrative Law Judge assigned to DOH.

Informal NOV’s are essentially warning letters; they state that the facility has been found to violate a regulation and is required to come into compliance, but they include no penalty or order. A violator may not be issued more than one informal NOV in a two year period for the same violation. During interviews, there did not appear to be a shared understanding of when informal NOV’s are to be issued in lieu of formal NOV’s.³

Finding #A: Informal NOV’s can be a valuable enforcement tool. However, there is no system in place to determine if sources come into compliance after receiving informal NOV’s, other than the next year’s planned inspection. Unless they are followed by an inspection or other means of ensuring compliance, informal NOV’s are not an effective deterrent to non-compliance, as word will spread among the regulated community that there is no negative consequence to ignoring the letter.

Recommendation: CAB should institute a process for assuring compliance after the issuance of informal NOV’s, such as follow-up inspections.

³ The draft *CAB Enforcement Guidelines and Procedures* states, on page 3: “Informal notices shall be issued for minor violations which can be handled informally. The informal notice should ensure that the violation will not persist.”

Finding #B: On June 10, 2004, the Hawaii Supreme Court held that a state agency issuing a NOV more than two years after discovery of a violation is unreasonable. As a result, there has been an increased emphasis on timeliness at Hawaii regulatory agencies. CAB staff provided data showing the length of time taken to issue Notices of Violation. In Federal FY03, the average time from the day a violation was noted until the NOV was issued was 597 days; in FY04 it was reduced to 395 days, and in FY05 it was down to 258 days.

Recommendation: CAB should continue its commendable efforts to issue enforcement actions in a more timely manner.

Finding #C: Overall, CAB enforcement activity has increased. During the first six months of FY05, CAB issued 8 formal NOV's seeking a total of \$36,050 in penalties. During the second half of FY05, CAB issued 19 formal NOV's seeking \$118,100 in penalties. During the first half of FY06, CAB issued 11 formal NOV's seeking a total of \$598,600 in penalties. CAB management believes that their more assertive enforcement stance has increased awareness in the regulated community, resulting in improved compliance. EPA agrees that this is likely.

Recommendation: none.

Finding #D: The Deputy Attorney General assigned to the CAB has provided good support to the program. He is physically present in the CAB offices at least two days a week.

Recommendation: none.

Settlements/Penalties

Finding #A: CAB operates under a draft enforcement and penalty policy ("Hawaii State Department of Health, Environmental Management Division, Clean Air Branch, Guidelines for the Exercise of Prosecutorial Discretion Under the State of Hawaii Air Pollution Control Act, Chapter 342B, H.R.S. (Draft 8/00).") The policy appears to be adequate and consistent with EPA guidance. However, it is still in draft; EPA was told that prior legal counsel did not want it to be formally adopted and therefore discoverable in court proceedings. EPA disagrees with this rationale and believes that the penalty policy should be formally adopted and available to the public.

Recommendation: EPA recommends that CAB finalize its draft penalty policy to establish consistency and ensure fairness when assessing penalties.

Outreach and Communication

Finding #A: HI DOH senior management has begun to ensure that press releases on enforcement actions are issued.

Recommendation: EPA supports the practice of publicizing enforcement actions. We believe it can be a deterrent and has educational benefit.

Finding #B: Several CAB supervisors indicated that EPA should do a better job of communicating with the public about air quality issues. They also felt that their program would benefit from more EPA visits and personal interaction, including more EPA facility inspections. None of the CAB supervisors could remember any EPA review or audit of any of their air programs, nor could they remember a state-directed review or audit.

Recommendation: As resources permit, EPA Region 9 should schedule joint inspections, as well as other site visits and meetings to discuss air enforcement program developments with CAB.

Hawaii Department of Health (HDOH)
Clean Water Act Enforcement Program State Review
Framework

Final Report - September 7, 2006

Conducted by the
U.S. Environmental Protection Agency
Clean Water Act Compliance Office

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Executive Summary

Inspection Implementation (Elements 1, 2 & 3)

CWA — The HI Clean Water Branch's (CWB) inspection target regarding major permittees is one inspection (Compliance Evaluation Inspection or equivalent) every year. During the review period, CWB conducted a CEI at 15 out of 20 of their major facilities. Overall, Hawaii's coverage of majors (75%) was better than the national average of 67.7%.

Enforcement Activity (Elements 4, 5, 6, 7 & 8)

CWA — Due to staffing limitations and workload CWB relies heavily upon informal enforcement, issuing Notice of Apparent Violation (NAV) letters which can be issued by CWB without review by either counsel or upper DOH management. During the review period CWB issued 41 NAVs, while at the same time managing a heavy existing caseload, with both of its staff engineers heavily invested in: two ongoing judicial cases in which they were a co-plaintiff with Region 9; a third judicial action in state court; as well as in the development of a significant third joint judicial action with Region 9.

CWB management reports that, as of October 2006, the Enforcement Section will be fully staffed. That plus the conclusion of the HDOT and Pflueger cases⁴ should free up resources to enable initiation of additional and future formal enforcement actions where appropriate. CWB should, as a first step, evaluate whether the Kahuku Shrimp Co, constitutes such a candidate, given that the review of this permittee's file indicated that CWB staff had previously identified several permit violations that had thus far only been addressed informally.

Commitments in Annual Agreements (Element 9)

CWA — CWB largely met its commitments regarding NPDES compliance and enforcement. Under compliance activities, the CWB was successful in: conducting all required NPDES inspections; conducting HI DOH's pretreatment program oversight activities; in preparing the Quarterly Non-Compliance Reports (QNCRs) and Watch List reports; and in performing required data entry into PCS. In terms of enforcement activities, with the possible exception of the Kahuku Shrimp Co., the CWB largely met the commitment to take timely and appropriate action against identified violators.

Data Integrity (Elements 10, 11 & 12)

CWA — CWB was an active user of PCS and is also a leading state partner in the migration over to the new ICIS-NPDES database. CWB's data entry into PCS has been

⁴ - Both of these cases will require oversight of each defendant's compliance with its respective consent decree, for which CWB is primarily responsible.

both accurate and timely. With few exceptions, all of the minimum data requirements are mostly complete.

Background

State Review Framework (SRF)

The SRF consists of twelve required elements and one optional element:

- 1) The degree to which a state program has completed the universe of planned inspections;
- 2) The degree to which inspection reports and compliance reviews document inspection findings, including accurate descriptions of what was observed to sufficiently identify violations;
- 3) The degree to which inspection reports are completed in a timely manner, including timely identification of violations;
- 4) The degree to which significant violations and supporting information are accurately identified and reported to EPA national databases in a timely manner;
- 5) The 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;
- 6) The degree to which a state takes timely and appropriate enforcement actions, in accordance with policy relating to specific media;
- 7) The degree to which a state includes both gravity and economic benefit calculations for all penalties, appropriately using the BEN model or similar state model;
- 8) The degree to which final enforcement actions collect appropriate economic benefit and gravity penalties in accordance with applicable penalty policies;
- 9) The degree to which enforcement commitments in PPA/PPG/categorical grants (written agreements to deliver a product/project at a specified time), if they exist, are met and any products or projects are completed;
- 10) The degree to which the minimum data requirements are timely;
- 11) The degree to which the minimum data requirements are accurate; and
- 12) The degree to which the minimum data requirements are complete.
- 13) The thirteenth element is discretionary and intended to ensure the review takes a measure of the full range of enforcement program activities and results. *DOH did not propose utilizing a thirteenth measure as part of this review.*

Hawaii Water Pollution Control Program

Hawaii's water pollution control program is implemented by the State Department of Health, Environmental Management Division, Clean Water Branch. The Clean Water Branch (CWB) is comprised of three sections: Engineering; Monitoring; and Enforcement, plus the Polluted Runoff Control Program (Non-Point source)

The three sections within the CWB each play a role in the enforcement program. The Engineering Section writes and issues NPDES permits, with an emphasis on appropriate and enforceable conditions and monitoring requirements, oversees source testing requirements and reports, and periodically observes source tests. The Monitoring Section is responsible for surveillance, routine inspections, and complaint investigations. The Enforcement Section is responsible for case development and enforcement, as well as inspections of permitted and unpermitted facilities.

SRF File Review

On-Site Review Dates: 6/19/06 through 6/21/06

Program Evaluated: Clean Water Act, NPDES Program

Information Sources Included in the Review:

- HI inspection and enforcement file reviews;
- management and staff interviews;
- review of EPA databases, including PCS-OTIS; and
- review of applicable documents, including:
 - “Memorandum of Agreement Regarding Clean Water Act Compliance Program Between the State of Hawaii, Department of Health and the Environmental Protection Agency, Region 9, 1992”; Y05 Clean Water Act Section 106 Grant Workplan;
 - “Administrative and Civil Penalty Policy, Clean Water And Wastewater Programs, Department of Health, State of Hawaii, revised March 15, 1999

Review Period:

Overall the review period encompassed Federal Fiscal Year 2005, or 10/1/04 to 9/30/05. However, in regard to inspections the Federal Inspection year of 7/1/04-6/30/05 was utilized for review purposes.

Files Reviewed:

Majors –

- Chevron Refining (NPDES No. HI0000329);
- Kahuku Shrimp Co. (NPDES No. HI0021059);
- Hawaiian Electric Co., Waiiau Generating Station (NPDES No. HI0000604);
- East Honolulu Community Services (NPDES No. HI0020303);
- US Navy Pearl Harbor Naval Shipyard (NPDES No. HI0110230);

Minors -

- AES Hawaii (NPDES No. HI0021130);
- Hawaiian Cement, Halawa Quarry (NPDES No. HI0000558);
- Marisco Shipyard, Lil Perris Drydock (NPDES No. HI0021786);
- Marisco Shipyard, TDX Drydock (NPDES No. HI0021199);
- Pacific Shipyards International (NPDES No. HI0020753);

General Permit -

- Army Hawaii Family Housing LLC, Schofield Barracks Proj. (NPDES No. HIR10C121);
- Honolulu Resource Recovery Venture, H-Power (NPDES No. HIR70B771);
- Moana Pacific, KC Rainbow Development (NPDES No. HIR10B860);
- Ohana Military Communities LLC, Radford Terrace/Halsey Terrace Project (NPDES No. HIR10B810);
- Tesoro Hawaii Corp., Sand Island Terminal (NPDES No. HIR80A725);

EPA's guidance for selecting files to be reviewed recommends an approximate 50-50 split between facilities with inspections only and those with recent formal enforcement actions taken. However, beside the joint civil judicial actions in which DOH and EPA are co-plaintiffs (and which the reviewer decided had little merit in reviewing given the large amount of duplicative material), CWB had engaged in few formal enforcement cases during the review period. Consequently, the files for the two HI facilities for which formal action was either initiated or concluded during the review period were selected for review of enforcement-related information items. These two facilities were:

- Marisco Shipyard, TDX Drydock (NPDES No. HI0021199);
- Ohana Military Communities LLC, Radford Terrace/Halsey Terrace Project (NPDES No. HIR10B810);

The other 13 files listed above that were reviewed were thus of facilities that were inspected, but which had not received any formal enforcement during the review period. All files were selected by the EPA reviewer in consultation with CWB staff.

EPA On-Site Evaluator:

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R9 CWA Compliance Office
415-972-3499

Primary HI DOH Contact:

Michael Tsuji
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Clean Water Branch
808-586-4309

SRF Elements

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

Hawaii's FY 05 facility universe was determined to be as follows:

20 Major permittees⁵; and

46 Minor permittees

Over the past several years CWB has been hampered by staffing shortages and competing priorities (e.g. significant continuing enforcement actions), but has recently begun using contractor resources (provided by R9 as in-kind services via a return of a portion of the State's §106 grant award in exchange for EPA contractor assistance) to fill this gap. Such contractor assistance was utilized for inspections conducted during the review period.

The Clean Water Branch's (CWB) inspection target for its major permittees is one inspection (Compliance Evaluation Inspection or equivalent) every year. During the review period⁶, CWB conducted a CEI at 15 out of 20 of their major facilities. Overall, Hawaii's coverage (75%) was better than the national average of 67.7%. However, it still fell short of the 100% required level.

For its minor permittees, the CWB inspection target is once every 5 years, or on average 20% of the minors universe annually. CWB completed CEIs at only 5 (10.9%) of its minor permittees during the review period thus it did not meet its target.

In addition, during the review period CWB conducted inspections at 29 general permit enrollee facilities, as well as at an additional 22 unpermitted facilities and at four §401 water quality certification - related projects. The only target in effect during the review period pertaining to general permit enrollees was for CWB to inspect all enrollees discharging to the Nawiliwili Stream and Pearl Harbor Watersheds. In conducting the 51 inspections cited here, CWB met the former obligation, but not the latter.

⁵ - There are actually 21 majors in the official inventory. However, two of those are Phase 1 MS4 permittees (the Hawaii Dept. of Transportation and the City and County of Honolulu, NPDES Nos. HIS000001 and HIS000002, respectively). The agency does not require an annual inspection of such permittees, therefore for the purposes of this SRF these two permittees were not included in the universe evaluated for thoroughness of inspections coverage.

⁶ - The overall review period encompassed Federal Fiscal Year 2005, or 10/1/04-9/30/05. However, based upon direction for OECA staff received after the facility files had been selected and reviewed, in regard to inspections the Federal Inspection Year of 7/1/04-6/30/05 was utilized as the review period.

Recommendations:

- 1) The EPA contract is set to expire at the end of FY06, therefore in the future CWB will have to either fulfill the inspection function with in-house resources and/or let is own contract for similar support. Given its recurring resource limitations, EPA strongly recommends that CWB secure future access to contractor resources.
- 2) CWB should do a better job of targeting its general permit inspections to ensure that specific commitments (i.e. those set out in the annual §106 grant workplan) are met.

2. The degree to which inspection/evaluation reports document inspection findings, including accurate identification of violations.

Based on our file review, CWB maintains well organized compliance files. Each facility file contains separate sub-folders for the permit, inspection reports, and correspondence. The contents of each sub-folder were filed chronologically.

CWB inspectors generally prepare inspection reports for all of the inspections that are conducted (see comment at 3, below). CWB maintains facility, inspection and some enforcement information in an MS Access database, and uses this for writing of inspection reports. The inspection reports appeared to be complete and well-written. They documented findings, and where violations were mentioned, recommended potential enforcement. The reports also contain discussions of applicable permit and reporting requirements, past compliance concerns as well as photographs taken during the inspection. CWB includes an EPA Form 3560 for inspections conducted of NPDES majors and minors.

Separate enforcement files that were reviewed, containing confidential information relating to the matter under enforcement, were similarly well organized.

Based upon the file review it also appears that CWB does accurately identify potential violations.

Recommendations: None

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

Based upon the §106 grant workplan, CWB's target is to complete inspection reports within 90 days of the date of the inspection. All of the inspection reports from the review period were prepared promptly and clearly identified violations where appropriate.⁷

Recommendation:

Complete and issue any outstanding FY05 inspection reports as soon as possible. Strive to issue all inspection reports within 90 days of the date of the inspection, as is required under the §106 workplan.

4) The degree to which significant violations and supporting information are accurately identified and reported to EPA national databases in a timely manner.

For the FY05 review period, CWB reported a total of three NPDES-permitted facilities as having been in SNC:

City and County of Honolulu, Sand Island WWTP (NPDES HI0020117)
U.S. Navy Pearl Harbor Naval Shipyard (NPDES HI0110230) and
U.S. Navy Ft. Kamehameha (NPDES HI0110086)

These are long-standing violators, and each has appeared on SNC, Watch and Exceptions lists for long duration. CWB has always reported each respective status in a timely manner. CWB's SNC rate of 13.6% is less than the national average of 18.9%.

CWB does not presently use the single violation criterion to determine a violator as being in SNC. EPA will encourage CWB to consider this factor in evaluating discharger SNC status in the future.

No new significant violators were identified during the review period although, based upon a review of the applicable file it is apparent that CWB could potentially classify Kahuku Shrimp as being in SNC based upon the chronic violator criterion.

Recommendations:

- (i) CWB should ensure that it commences to use the single violation SNC criterion before the end of the current fiscal year.
- (ii) CWB should also evaluate whether to include Kahuku Shrimp as being in SNC as a chronic violator and, if so, take appropriate action.

⁷- There was a notable exception to this general finding in that several reports for inspections that were performed by EPA's contractors in Sept. 2005 had not been, as of the time of the on-site review, been finalised and issued. Draft reports had been prepared, but were awaiting comment/approval from, and final issuance by, CWB staff. As noted above, these particular inspections fell out the of the formal review period.

5) The 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.

CWB places a strong priority on returning facilities to compliance. Both of the formal enforcement actions we reviewed⁸ were resolved through administrative orders which each required injunctive relief to restore compliance, submit progress reports and make payment of an assessed penalty. Both required either immediate compliance or compliance within 20 days. We found these to be consistent with both applicable EPA policy and with the CWB's own Enforcement Guidelines and Procedures.

Recommendations: none.

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

During the FY05 review period CWB's Enforcement Section staff was working under a heavy existing caseload, with both of its staff engineers heavily invested in: ongoing judicial cases in which they were a co-plaintiff with Region 9 (Hawaii DOT, Pflueger); a third judicial action in state court (Oceanside 1250 Partners / Hokulia); as well as in the development of a significant third joint judicial action with Region 9 (City and County of Honolulu wastewater spills). Further, the section was short one EPS position for much of the year.

Consequently, CWB relies heavily upon informal enforcement, issuing Notice of Apparent Violation (NAV) letters which can be issued by CWB without review by either counsel or upper DOH management. NAVs require compliance and, depending upon the outcome can, if appropriate, be elevated to more formal enforcement action. In the FY05 review period CWB issued 41 NAVs.

In addition to the judicial actions referenced above, and the conclusion of the Marisco matter discussed at Item 5 above, in FY05 CWB did continue to prosecute four previously-issued formal actions [Notice of Findings of Violations and Order (NFVOs)].

None of the applicable governing documents⁹ specify what constitutes timely and appropriate enforcement. EPA acknowledges CWB's resource limitations and, although

⁸ - Although one objective of the review was to review files of enforcement matters concluded during the review period, only one case - that of Marisco Shipyard TDX (NPDES HI0021786) was actually concluded in FY05. The file for a case file that was initiated in FY05 - that of Ohana Military Communities LLC, Radford Terrace/Halsey Terrace Project (NPDES No. HIR10B810) - was also reviewed.

⁹ - "Memorandum of Agreement Regarding Clean Water Act Compliance Program Between the State of Hawaii, Department of Health and the Environmental Protection Agency, Region 9, 1992";

the use of informal enforcement (i.e. NAVs) is appropriate under many circumstances, it appears as if there are violations that should have resulted in the commencement of formal enforcement during the review period. For example, the file review for the Kahuku Shrimp Co. (NPDES No. HI0021059) indicated that CWB staff had identified several permit violations (both effluent limit and reporting) that appear could merit a formal action.

In regard to timely and appropriate enforcement action against SNC facilities, EPA policy establishes that "timely" would be an enforcement action within 5 months of the end of the quarter when a facility is listed in SNC, and "appropriate" would be an administrative order requiring a return to compliance or a referral that will lead to a court order or consent decree requiring a return to compliance. If timely and appropriate action is not taken, then the facility is additionally added to EPA's Watch List. Hawaii has had three facilities in SNC on a long-standing basis:

- City and County of Honolulu, Sand Island WWTP (NPDES HI0020117);
- U.S. Navy Pearl Harbor Naval Shipyard (NPDES HI0110230); and
- U.S. Navy Ft. Kamehameha (NPDES HI0110086)

Each of these facilities is now under formal enforcement (CCH Sand Island WWTP) or the violations are properly being addressed via the NPDES permit re-issuance process.

Recommendation:

CWB management reports that, as of October 2006, the Enforcement Section will be fully staffed. That plus the conclusion of the HDOT and Pflueger cases¹⁰ should free up resources to enable initiation of additional and future formal enforcement actions where appropriate. CWB should, as a first step, evaluate whether the Kahuku Shrimp Co, represents such a candidate.

7) The degree to which a state includes both gravity and economic benefit calculations for all penalties, appropriately using the BEN model or similar state model.

Both of the enforcement files reviewed¹¹ included a penalty calculation worksheet which identified both any economic benefit and a calculation of the gravity component of the penalty. CWB usually utilizes EPA's BEN model for this purpose. However, the file indicated, for the Ohana Military Communities LLC action, indicated an economic

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- FY05 Clean Water Act Section 106 Grant Workplan;
 - "Administrative and Civil Penalty Policy, Clean Water And Wastewater Programs, Department of Health, State of Hawaii, revised March 15, 1999"

¹⁰ - Both of these cases will require oversight of each defendant's compliance with its respective consent decree, for which CWB is primarily responsible.

¹¹ - Again, Marisco Shipyard TDX (NPDES HI0021786) and Ohana Military Communities LLC, Radford Terrace/Halsey Terrace Project (NPDES No. HIR10B810).

benefit of \$0 without any discussion or explanation. During an interview, the Enforcement Section Supervisor provided a verbal justification.

Recommendation:

The Ohana Military Communities LLC case file should be amended to include a justification for the recommended economic benefit of \$0. All cases files should include an appropriate calculation, and explanation of, the estimated economic benefit.

8) The degree to which final enforcement actions collect appropriate economic benefit and gravity penalties in accordance with applicable penalty policies.

The FY05 settlement with Marisco included a \$400,000 penalty which varied from the originally recommended penalty amount but, based upon the AG's recommending memo, appears to be appropriate, and also includes discussion and assessment of economic benefit and gravity.

Recommendations: none.

9) The degree to which enforcement commitments in PPA/PPG/categorical grants (written agreements to deliver a product/project at a specified time), if they exist, are met and any products or projects are completed.

Generally specific requirements are set out in the annual CWA §106 grant workplan and CWB usually meets its commitments to a large degree. During the review period, as discussed elsewhere in this report and with the limited exceptions cited below and elsewhere, CWB largely met its commitments regarding NPDES compliance and enforcement. Under compliance activities, the CWB was successful in: conducting all required NPDES inspections; conducting HI DOH's pretreatment program oversight activities; in preparing the Quarterly Non-Compliance Reports (QNCRs) and Watch List reports; and in performing required data entry into PCS. In terms of enforcement activities, the CWB largely met the commitment to take timely and appropriate action against identified violators in that, as discussed elsewhere in this report, it was heavily involved in prosecuting several significant ongoing cases and it mostly appropriately used its informal enforcement authorities to bring other violators into compliance.

However, the workplan also required that HI DOH develop and implement a storm water "non-filers" enforcement initiative and also take certain actions under the DMR QA Program. They were not able to report substantial progress on either of these items by the end of FY05.

Recommendation:

(i) CWB should fulfill all of its obligations under the annual 106 grant. In addition ,

- (ii) CWB should undertake and complete any unfulfilled commitments with respect to implementing a storm water "non-filers" enforcement initiative and also take action against non-respondents under the DMR QA Program.

10) The degree to which the Minimum Data Requirements are timely.

CWB is an active user of PCS and is also a leading state partner in the migration over to the new PCS-ICIS database. CWB's data entry into PCS is both accurate and timely.

Recommendations: None

11) The degree to which the Minimum Data Requirements (MDR's) are accurate.

CWB was active user of PCS and is also a leading state partner in the migration over to the new PCS-ICIS database. CWB's data entry into PCS was both accurate and timely.

Recommendations: None

12) The degree to which the Minimum Data Requirements (MDR's) are complete.

CWB was an active user of PCS and is also a leading state partner in the migration over to the new ICIS-NPDES database. All of the MDRs are mostly complete, with certain exceptions discussed as follows.

- Correct coding of effluent limits for NPDES majors (Metric 12.B): according to CWB staff two facilities that did not appear in the PCS-OTIS report (Hawaiian Electric CO's Shipman and Kahe Generating Stations, NPDES HI0000264 and HI0000019, respectively) have actually been coded. The permit for a third facility - CCH Wahiawa WWTP (HI0020109) has expired and will not be reissued.
- Correct coding of effluent limits for NPDES non-majors (Metric 12.C): CWB has not been entering non-major limit or measurement data into PCS to date, which is not yet required.
- Notices of Violations (Metric 12.F): According to staff and CWB records and as reported above CWB issued 41 NAVs (the CWB equivalent) during the FY05 review period. The data discrepancy (the OTIS data pull indicated that DOH had issued on 6 NOV/NAV's during the review period) is apparently attributable to a backlog of data entry to PCS regarding NAVs issued to general permit enrollees and unpermitted facilities into PCS.
- Formal Enforcement Actions (Metrics 12.H-I): To date CWB has not been entering this required information into either PCS or ICIS-NPDES.

Recommendations:

CWB should commence entry into ICIS-NPDES data related to:

- Coding of effluent limits for NPDES non-majors;
- Notices of Violations; and
- Formal Enforcement Actions.

**Hawaii Department of Health (HI DOH)
Enforcement Program State Review Framework**

Resource Conservation and Recovery Act Program

Final Report – September 7, 2006

**Conducted by the
U.S. Environmental Protection Agency
Waste Division
Region 9**

FORM A - EVALUATION FORM

Date: June 21, 2006

Program Evaluated: Resource Conservation and Recovery Act (RCRA)

Information Sources Included in the Review: See below.

EPA Evaluator: Matthew Reed
Phone: 415-972-3301

State Contact: Grace Simmons
Phone: 808-586-4235

Section 1: Review of State Inspection Implementation

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

Identification and Evaluation Information

RCRA Source Universe Information	Number of Sources in Universe
Universe of TSDs	1 (from OTIS)
Universe of LQGs	72 (from OTIS), 24 (from RCRAInfo)
Universe of SQGs	64 (from OTIS), 428 (from RCRAInfo)
Total Number of Sources	139 (from OTIS), 453 (from RCRAInfo)
Number of inspection files for review	5

Data Metrics

Metric a	Inspection coverage - Treatment, Storage and Disposal Facilities.	100%
Metric b	Annual Inspection coverage - Large Quantity Generators.	16%
Metric c	Five-year inspection coverage - Large Quantity Generators.	51%
Metric d	Inspection coverage - Small Quantity Generators.	22%

File Review Metric

Metric r	Reserved for PPA/PPG negotiated inspection plan targets.	5-10
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Findings (including successful performance and areas for improvement):

Inspection coverage of Treatment, Storage and Disposal (TSD) facilities - The

data metric of 100% accurately identifies the state's number of TSD inspections.

Annual inspection coverage of large quantity generators (LQG) - The data metric of 19% of the LQG universe inspected annually is close to the national standard of inspecting 20% of all LQGs annually. Although the number of LQG inspections in OTIS is reported at 12, RCRAInfo shows a total of 16 for fiscal year 2005. This would bring the percentage of LQG inspections to 21.6%, just slightly above the national standard for the year. Additionally, the data in RCRAInfo and OTIS does not accurately reflect Hawaii's LQG and small quantity generator (SQG) universes. The actual number in both universes is smaller. One reason for the differences is that EPA databases include a large number of one time episodic or inactive LQGs. For example, there are 18 marine terminals in Hawaii that are listed as LQGs in RCRAInfo. However, the facilities only generate RCRA waste once every five years or more. There are also facilities that have gone out of business and failed to notify HDOH and thus are still inappropriately in the RCRA LQG data base. The actual number in the LQG universe is believed by HDOH to be less than 60. HDOH has committed to improving the accuracy of the LQG data and has already begun site inspections to verify facilities' LQG status.

Five-year inspection coverage of LQGs - The data metric of 51% of the LQG universe inspected over five years is low compared to the national standard of inspecting 100% of the LQGs over five years. According to OTIS, HDOH has conducted 37 inspections of LQGs over the past five years (FY 2001 - FY 2005). The actual number in the LQG universe is believed by HDOH to be less than 60, not the 72 indicated in OTIS. For FY 07 HDOH has committed to inspect any LQG facilities not inspected between FY 01 and FY 06.

Five-year inspection coverage of small quantity generators (SQG) - The data metric of 48% of the SQG universe inspected over five years is low compared to the national average of 85%. According to OTIS, HDOH has conducted 31 inspections of SQGs over the past five years. The SQG universe of 428 facilities reported in RCRAInfo is inflated by the presence of inactive or conditionally exempt facilities. The SQG universe of 64 facilities reported in OTIS is probably close to the actual number of SQG facilities. The large disparity between EPA's databases makes it difficult to determine the actual percentage of facilities inspected by HDOH.

There are several different reasons for the inaccurate numbers in EPA databases. One of the reasons is the presence of facilities that are episodic or one time generators. Many facilities notified EPA, received their EPA ID numbers, and generated waste only once. Their ID numbers remain in the database even though they are not generating hazardous waste. Additionally, many conditionally exempt SQG facilities, erring on the side of caution, may have reported that they were SQGs.

Hawaii Commitments - HDOH has a commitment to inspect 5 to 10 LQG facilities per year and the one active TSD every year. From 10/01/04 to 9/31/05, HDOH conducted 12-16 LQG inspections, which exceeds their commitment. In FY 07, HDOH has also committed to inspect any LQG facilities not inspected between FY 01 and FY 06.

Citation of information reviewed for this criterion: RCRAInfo/OTIS data compared to data provided by HDOH.

Recommendations if corrective action is needed: During fiscal year 2007, EPA Region 9 and HDOH will review and update the RCRAInfo LQG universe with HDOH providing verified and accurate numbers. HDOH will inspect any LQG facilities determined not been inspected in the last five years. EPA Region 9 and HDOH will also work to improve the accuracy of the SQG data in RCRAInfo.

Region 9 Comments: The universes of LQGs and SQGs are smaller than indicated in OTIS and RCRAInfo. During FY 07, HDOH and EPA Region 9 will be working to update the LQG and SQG data in RCRAInfo.

Additionally, the RCRA Information Management Office at Region 9 is working to determine the cause of the disparity between the RCRA generator information in RCRA and OTIS.

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

Identification and Evaluation Information

RCRA Source Universe Information	Number of Inspections from Universe
TSD Inspections	1
LQG Inspections	16
SQG Inspections	31
Total Number of Inspections	113
Number of inspection reports for review	34

File Review Metric

Metric a	Percentage of inspection reports that are adequately documented in files.	61%
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Findings (including successful performance and areas for improvement):

The majority of HDOH’s inspection reports were clear and concise. However 12 files lacked documentation. There were two reasons for this. First HDOH had mistakenly thought an inspected site that was found to be non-operating and/or closed should still be reported as a CEI inspection. Based on this belief, HDOH mistakenly reported four visits to facilities that were discovered to be closed as CEI inspections. Second, for eight inspections, the inspector had proceeded to issue information requests and letters of warning before completing the CEI inspection documentation. HDOH has corrected this process and will ensure that the CEI inspection documentation is completed as soon as possible upon returning from the facility inspection.

The 22 completed files adequately documented the inspection, identified violations, and included checklists and photographs of the facilities hazardous waste management practices. The one exception noted was a report which noted RCRA violations, yet in another portion of the report stated “No violations observed.”

HDOH should be commended for the thoroughness and preparation of the completed files.

Citation of information reviewed for this criterion: A list of Compliance Evaluation Inspections was taken from RCRAInfo. The corresponding files or Reports were reviewed.

Recommendations if corrective action is needed: HDOH should ensure that inspection and violation information is correctly reported in a timely manner.

HDOH should ensure that inspection documentation is prepared as soon as possible after the facility site inspection

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

Identification and Evaluation Information

RCRA Universe Information	Number of Sources in Universe
TSD Inspections	1
LQG Inspections	16
SQG Inspections	31
Total Number of Inspections	113

Number of inspection reports for review	34

File Review Metric

Metric a	Percentage of Inspection Reports with findings documented within a given time frame established by Region and state.	0%
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Findings (including successful performance and areas for improvement):

Out of the 34 files reviewed at HDOH, 22 had complete inspection reports. As mentioned above, 12 files did not have completed inspection reports. Four of these 12 files were associated with facilities that upon a site visit were found to be closed or non operating. The rest of the 12 files were associated with one inspector who mistakenly had proceeded with information requests and warning letter before properly documenting the CEI inspection. These 12 files will not be included in this analysis. Of the 22 reports that were completed, the average amount of time to complete the reports was 95 days. The agreement between HDOH and EPA is to have Reports complete within 45 days of inspection. HDOH indicated that part of the reason for the length of time to complete the reports was an unavoidable turnover of staff. HDOH also indicated that Request of Information (RFI) actions had not been entered into RCRAInfo. If this information had been entered into RCRAInfo there would have been a decrease in the number of cases that appeared to miss the 45 day target for completion of report.

Citation of information reviewed for this criterion: File review.

Recommendations if corrective action is needed: HDOH is committed to improve timeliness in completing its inspection reports. HDOH also has agreed to enter RFI actions into RCRAInfo.

Section 2: Review of State Enforcement Activity

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

Identification and Evaluation Information

RCRA Source Universe Information	Number of Sources in Universe
Number of Handlers in SNC	6
Number of Active TSDs & LQGs in SNC	2

Number of SNCs	6
Number of inspection files for review	2

File Review Metrics

Metric e	Number of SNC or secondary violation determinations that are reported in a timely manner.	0
Metric f	Number of SNC determinations that are accurately reported.	6

Findings (including successful performance and areas for improvement):

Two FY 05 compliance files with inspection reports with noting significant noncompliance (SNC) violations were reviewed. Notices of violations were not entered within the required 60 day time limit. This was due to the fact that HDOH was operating without a deputy Attorney General for most of the year. HDOH also expressed concerns with publicly releasing SNC information before a case is settled. EPA explained the reasons for entering SNC determination events as soon as the determination is made. HDOH has agreed to do this. Also it should be noted that one SNC determination required a complex EPA regulatory determination which delayed the completion of SNC determination. Once the information was provided to HDOH, the SNC was correctly entered.

All six SNCs in the two reviewed reports were correctly identified.

Citation of information reviewed for this criterion: Data from RCRAInfo/OTIS and file review.

Recommendations if corrective action is needed: HDOH should ensure the timely entry of SNC determinations into RCRAInfo.

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

Identification and Evaluation Information

RCRA Universe Information	Number of Enforcement Actions
State formal enforcement actions	3
State informal enforcement actions	19
Total number of enforcement actions	22
Number of enforcement files for review	2

File Review Metrics

Metric a	State enforcement actions that contain a compliance schedule of required actions or activities designed to return the source to compliance. This can be in the form of injunctive relief or other complying actions.	0
Metric b	Percentage of formal or informal enforcement responses that return sources to compliance.	75%

Findings (including successful performance and areas for improvement):

HDOH inspectors identify potential violations during the inspection and review potential violations with the facility representative at the end of the inspection. The inspection report documents the violations. The inspection reports indicate what the facility should do in order to return to compliance, and specify a time-frame by which compliance should be achieved. A facility’s return to compliance is documented by either receiving documentation from the facility and/or re-inspecting the facility.

Citation of information reviewed for this criterion: File review.

Recommendations if corrective action is needed: No improvement is required.

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

Identification and Evaluation Information

RCRA Source Universe Information	Number of Enforcement Actions
State formal enforcement actions	3
State informal enforcement actions	19
Total number of enforcement actions	22
Number of enforcement files for review	2

Data Metric

Metric a	Timely action taken to address SNC.	0
Metric b	No activity indicator.	0

File Review Metric

Metric c	Percentage of SNCs addressed or resolved appropriately.	N/A
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Findings (including successful performance and areas for improvement):

The two files reviewed had not completed the penalty process, but both cases

were on track and were projected to be completed within one to two years of the time of inspection. As noted, HDOH did not have a deputy Attorney General for most of FY 05. If the deputy Attorney General position had not been vacant it can be assumed that the cases would have been concluded in a timely manner. It should also be noted in FY 05 HDOH settled eight pre FY 05 cases for a total of \$1,030,000.in penalties. The OTIS report did not identify any final penalties in FY 05 because HDOH failed to enter the information into RCRAInfo.

Citation of information reviewed for this criterion: Data from OTIS and file review.

Recommendations if corrective action is needed: HDOH committed to ensuring that settlements are not delayed, and to entering penalty amounts promptly into RCRAInfo. Note that a major contributing factor to the delay in settlements has been the back log of cases at Hawaii’s AG office. This problem has been addressed by the hiring of a new deputy Attorney General who is dedicated to working on the completion of RCRA “C” cases.

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

Identification and Evaluation Information

RCRA Source Universe Information	Number of Enforcement Actions
State formal enforcement actions	3
State informal enforcement actions	N/A
Total number of enforcement actions	3
Number of enforcement files for review	0 (Cases were from previous years and were not included in the limited file review)

File Review Metric

Metric a	Percentage of formal enforcement actions that include calculation for gravity and economic benefit.	100%
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Findings (including successful performance and areas for improvement):

HDOH’s penalties are calculated on a gravity basis. Economic benefit is either calculated using BEN, or a formula that the state uses that is in conformance with BEN.

Citation of information reviewed for this criterion: Discussions with HDOH RCRA “C” Section Chief.

Recommendations if corrective action is needed: No improvement is required.

8. **Degree to which final enforcement actions (settlements or judicial results) collect appropriate (i.e., litigation risk, ability to pay, SEPs, injunctive relief) economic benefit and gravity portions of a penalty.**

Identification and Evaluation Information

RCRA Source Universe Information	Number of Enforcement Actions
State formal enforcement actions	3
State informal enforcement actions	19
Total number of enforcement actions	22
Number of enforcement files for review	0

Findings (including successful performance and areas for improvement):

As described previously, HDOH lacked a deputy Attorney General for much of FY05 causing a slowdown in case settlements in FY 05. There were no FY 05 cases that reached conclusion in FY 05. Past EPA program reviews have determined that HDOH cases had appropriate penalties associated with them.

Citation of information reviewed for this criterion: Data from OTIS and file review.

Recommendations if corrective action is needed: HDOH collects appropriate penalties on its formal cases that settle. No improvement is necessary.

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

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

Identification and Evaluation Information

RCRA Source Universe Information	Number of Agreements
Performance Partnership Agreements	
Performance Partnership Grants	
PPA/PPGs	
Categorical Grants (SEAs)	

Other applicable agreements (enforcement agreements, etc)	3011 Grant and work plan
Total number of agreements	
Number of agreements reviewed	1

File Review Metric

Metric a	State agreements (PPA/PPG/SEA, etc.) contain enforcement and compliance commitments that are met.	100%
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Findings (including successful performance and areas for improvement):

The Grant authorizes HDOH to administer the RCRA program in Hawaii. The work plan associated with the Grant has two compliance commitments. The first is that HDOH inspects all active TSD facilities every year. The second grant commitment is that HDOH inspects at least 5-10 LQGs each year. In FY 05 HDOH inspected 12-16 LQGs and the only Hawaii TSD.

Citation of information reviewed for this criterion: File review.

Recommendations if corrective action is needed: HDOH is meeting all of its inspection commitments. No improvement is necessary.

Section 4: Review of Database Integrity

10. Degree to which the minimum data requirements are timely.

Identification and Evaluation Information

RCRA Source Universe Information	Number of Sources in Universe
TSD Inspections	1
LQG Inspections	13 (from OTIS) 17 (from RCRAInfo)
SQG Inspections	14 (from OTIS) 17 (from RCRAInfo)
Total Number of Inspections	52 (from OTIS) 54 (from RCRAInfo)
Number of inspection files for review	5

Findings (including successful performance and areas for improvement):

HDOH enters information regarding the inspection, inspection report, violations, and enforcement actions into RCRAInfo. It has been the practice of HDOH to only enter the information after an enforcement action has been concluded, which tends to make tracking of cases and case progress very difficult. Additionally, the return to compliance information is inconsistently input and settlement data is not entered regularly. After discussions with EPA, HDOH has agreed to input

information on compliance activity as it occurs and not at the conclusion of the case. HDOH has already begun this practice.

Citation of information reviewed for this criterion: File review, RCRAInfo/OTIS.

Recommendations if corrective action is needed: HDOH has committed to entering all information in to RCRAInfo in a timely manner.

HDOH inspectors will continue to receive training on the RCRAInfo database.

EPA and HDOH will review that status of RCRAinfo data entry during the FY 07 midyear review.

11. Degree to which the minimum data requirements are accurate.

Identification and Evaluation Information

RCRA Source Universe Information	Number of Sources in Universe
TSD Inspections	1
LQG Inspections	16
SQG Inspections	31
Total Number of Inspections	113
Number of inspection files for review	5

Data Metrics

Metric a	Response to RCRAInfo data errors from Integrated Error Correction Process (IECP) averages less than 60 days.	Not available
Metric b	Violation/noncompliance data are accurate.	64%

File Review Metric

Metric c	Facility Universe Data and Overall Uploads from States/Locals Produce Accurate Data	100%
Metric d	Accuracy of data reporting	64%

Findings (including successful performance and areas for improvement): EPA and HDOH discussed the appropriate time to enter the SNC determination event into in RCRAInfo. HDOH expressed concerns that entering the SNC determination into RCRAInfo prior to a facility being informed of possible enforcement action. HDOH also has concerns with publicly releasing SNC information before a case is settled. EPA explained the reasons for entering SNC determination events as soon as the determination is made. HDOH has agreed to

do this.

Additionally, there were four inspections mistakenly entered into RCRAInfo as CEI inspections. As discussed previously, these inspections were of facilities that upon inspection were determined to be closed and/or non operational. HDOH thought these inspections should be entered as CEI inspections. The entries have all been corrected and HDOH now understands that these types of inspections are not considered CEI inspections.

In some cases, once a facility had returned to compliance, HDOH did not enter this information into RCRAInfo. HDOH indicated that this was an oversight and will ensure that this data is promptly entered into RCRAInfo.

Citation of information reviewed for this criterion: Data from RCRAInfo/OTIS and file review.

Recommendations if corrective action is needed: HDOH agreed to input SNC information into RCRAInfo as soon as the determination is made. If HDOH sees an actual negative impact on the case progress, we will have further discussions and re-assess the situation. Until then, HDOH will make timely entries of SNCs into RCRAInfo.

HDOH agrees that no CEI will be reported in RCRAInfo for inspections that determine a facility is closed and/or no longer in operation. HDOH has also agreed to improve RCRAInfo data entry of return to compliance dates, settlement dates, and penalty amounts.

12. Degree to which the minimum data requirements are complete, unless otherwise negotiated by the region and state or prescribed by a national initiative.

Identification and Evaluation Information

RCRA Source Universe Information	Number of Sources in Universe
TSD Inspections	1
LQG Inspections	16
SQG Inspections	31
Total Number of Inspections	113
Number of inspection files for review	5

Findings (including successful performance and areas for improvement):

The inspection count number of 113 shown in OTIS is low compared to the 155 inspections reported by HDOH. One reason for the difference is the fact that HDOH inspects a large number of CESG facilities, which are not reported into

RCRAInfo.

OTIS data indicates 57 facilities were in violation. HDOH reported 74 facilities in violation. The reason for the difference is that HDOH count includes CESQG's that do not have EPA ID numbers as well as Tips and Complaints investigations that result in facilities being determined to be in violation of RCRA requirements.

OTIS reports indicate 8 Notices of Violation were issued. The actual number is 6. HDOH data entry error resulted in the triplicate entry of one Notice of Violation. HDOH has corrected the error and will work to improve data entry quality control.

The SNC count of 6 reported in OTIS is an accurate count for FY05.

The number of formal actions (4) recorded in OTIS is accurate.

The OTIS reports HDOH issued no penalties in FY 05. HDOH actually issued 4 formal penalty actions with approximately \$268,200.00 in proposed penalties. HDOH failed to enter this data into RCRAInfo. HDOH has now correctly entered this data into RCRAInfo. HDOH has also indicated that it recognizes the need to improve its data entry effort.

Citation of information reviewed for this criterion: RCRAInfo/OTIS data compared with file review and information verified by HDOH.

Recommendations if corrective action is needed: HDOH must improve its data entry effort. HDOH recognized the need to improve and is committed to doing so. EPA and HDOH will review HDOH RCRA data entry at the FY 07 mid year review.

Region 9 General Comments:

Overall HDOH implements an aggressive and effective RCRA enforcement program. The overall quality of the state's inspection program is good. In FY 05, even though there were more staff vacancies than normal, HDOH maintained an effective compliance program. Data management is the only area in need of significant improvement. HDOH recognizes this and is committed to improving its performance in this area. HDOH will ensure its staff has the appropriate training and will implement improved data entry procedures. HDOH is also committed to improved management oversight of the data entry effort.