



Ref: 8ENF-PJ

Steven M. Pirner, P.E., Secretary
South Dakota Department of Environmental
and Natural Resources
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501-3138

Re: Final State Review Framework (SRF)
Evaluation Results for Fiscal Year (FY)
2006

Dear Mr. Pirner:

Enclosed you will find the final SRF report summarizing evaluation of South Dakota's Clean Air Act Stationary Source, Resource Conservation and Recovery Act Subtitle C, and National Pollutant Discharge Elimination System enforcement programs for federal FY 2006. On August 16, 2007, we forwarded a final draft of the report to you for review and comments were received from Kent Woodmansey in an e-mail message dated September 6, 2007. Those comments have been addressed in the final report, as appropriate, and a response to comments is enclosed. Some changes to the final draft report were also made in response to feedback received from EPA Headquarters (which reviewed all draft SRF reports) and the enclosed response to comments also summarizes changes made to the report as a result of those comments. We look forward to working with the South Dakota Department of Environmental and Natural Resources in utilizing the results of this evaluation to advance our shared objective of protection of public health and the environment in South Dakota.

If you have any questions regarding the SRF evaluation or the SRF in general, please contact me or have your staff contact the most knowledgeable person on my staff, Corbin Darling at (303) 312-6426. Any program-specific questions should be directed to the EPA program contacts identified in the report.

Sincerely,

Eddie A. Sierra
Deputy Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

Enclosures

1. Final SRF report
2. Response to comments

cc: Brian Gustafson, SDDENR

Jeanne Goodman, SDDENR
Vonni Kallemeyn, SDDENR
Kent Woodmansey, SDDENR
Kelli Buscher, SDDENR
Carrie Jacobson, SDDENR

bcc (w/o encl):

Art Palomares
Diane Sipe
Martin Hestmark
Sharon Kercher
Cindy Reynolds
Kelcey Land
Sandy Johnson
Jennifer Meints

Bcc (w/ encl.):

Albion Carlson
Philippe Pierre-Louis
Tim Russ

U.S. EPA Region 8 Review of South Dakota Department of Environment and
Natural Resources Compliance and Enforcement Programs
Federal Fiscal Year 2006

September 20, 2007
FINAL

EXECUTIVE SUMMARY

Background

The United States Environmental Protection Agency (EPA) Office of Enforcement and Compliance Assurance (OECA), all ten EPA Regions, the Environmental Council of States (ECOS) Compliance Committee, and other state representatives have jointly developed a method to assess state performance in the enforcement and compliance assurance program. This report reflects the review by EPA Region 8 of the South Dakota Department of Environment and Natural Resources (SDDENR) compliance and enforcement activities for the Clean Air Act (CAA) Stationary Sources program, the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) program, and the Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste program using the SRF and associated guidance. This review has been a collaborative effort between the Region and State and captures both successes of the state's program as well as any identified areas that need improvement. Future reviews will look at performance as a comparison to the level documented in this baseline review.

The purpose of the SRF assessment is to provide consistency in the level of core enforcement activity and thus in environmental protection and public health across the country. It provides a consistent tool for Regions to use in overseeing state enforcement programs, and provides the basis for a consistent mechanism for EPA Regions to provide flexibility to states which can demonstrate a core program that meets program standards.

The review consists of 12 core program elements and associated metrics. The 12 evaluation areas posed by this Framework are consistent with evaluation areas delineated in the 1986 guidance memorandum signed by Jim Barnes entitled "Revised Policy Framework for State/EPA Enforcement Agreements." Additionally, the Framework utilizes existing program guidance, such as national enforcement response policies, compliance monitoring policies, and civil penalty policies or similar state policies (where in use and consistent with national policy) to evaluate state performance and to help guide definitions of a minimum level of performance.

Process Followed in the Review

Region 8's evaluation of SDDENR's core enforcement programs was conducted by staff from the Region's Air, RCRA, and Water enforcement programs using the Framework described above. Part of the review consisted of analyzing FY 2006 data metric reports regarding SDDENR's compliance and enforcement programs which came from EPA's Online Tracking Information System (OTIS) SRF website. The data metric reports were pulled in February 2007 and forwarded by the EPA reviewers to the State contacts for each program. One exception is the NPDES data metric report which was not available for this review due to the change from PCS to ICIS-NPDES. The data metric reports used are attached. A subsequent preliminary analysis of the data metric report for each program was forwarded to the State for discussion.

The number and type of files reviewed was determined based on the protocol in the Implementation Guide, and was based on the number of facilities in the universe with activity during FY 2006, the number of inspections performed and the level of enforcement activity in each program. Fifteen CAA files were reviewed, fifteen RCRA files were reviewed, and twenty two NPDES files were reviewed. For each program, representative files were randomly selected. The file reviews occurred both on-site (at SDDENR offices) and off-site (at EPA offices). Information sources included in the review are listed in the program-specific portion of this report.

The review process has relied heavily on communication between EPA and the State which has occurred both before and during the review. Communications have occurred at management and staff levels and have included face-to-face meetings, conference calls, e-mails, and other written communications.

The report contains findings of the review for each program (including successful performance and areas for improvement), a discussion of information reviewed for each element and, if applicable, recommendations for corrective action. The State chose not to submit information for consideration under optional Element 13.

Summary of Findings

The Region's review of the State's enforcement and compliance assurance program in the CAA Stationary Sources, the CWA NPDES and the RCRA Subtitle C hazardous waste programs has concluded that program standards are generally met, however, there are some areas for improvement which have been identified. The following is a summary of key findings of the review for each review area.

Inspections

Inspection commitments identified for NPDES majors, minors, storm water, biosolids, CAFOs, and Industrial User (IU) were met or exceeded.

NPDES of inspection reports are generally being written on time and are generally complete. EPA performed one NPDES CAFO oversight inspection in FY06. Based on EPA's observations during the inspection and a review of the completed inspection report, EPA provided comments and recommendations regarding areas of improvement for future SDDENR

CAFO inspections and reports in the oversight report.

Overall, SDDENR CAA compliance monitoring reports and RCRA inspection reports are of very high quality and are consistently completed in a timely manner.

Enforcement

All NPDES enforcement actions reviewed contained appropriate injunctive relief. One of the three NPDES penalty actions shared with EPA included appropriately calculated economic benefit and gravity. EPA was unable to determine appropriateness of the remaining two penalties calculated, due to lack of information.

The penalty amount collected in the case addressed above was less than the proposed penalty. However, no documentation was included in the file on how this reduced penalty amount was reached. Without supporting documentation on how the penalty amount was reduced, EPA cannot determine whether or not the penalty amount collected was appropriate.

The gravity and economic benefit portions of CAA penalties also were not documented. In some cases, it was not clear how the initial penalty calculations were translated into the values in the final orders or decrees. In several instances, the state indicated that calculations had been performed but documentation was not made available to EPA staff.

In order for EPA to exercise its core oversight function and implement the SRF consistent with national SRF guidance, all information and documentation described in the SRF guidance must be made available by the State to EPA. This is particularly important given goal of national consistency that is the underpinning of the SRF. EPA generally expects to request penalty calculation documentation only during SRF/UEOS reviews, when conducting targeted oversight activities, and when asked by DENR to consult on penalty calculations. To the extent that DENR asserts attorney-client privilege associated with any documentation provided to EPA, EPA believes it can maintain that privilege through recognition of a "joint prosecution" or "common interests" privilege. Clearly identifying and marking all documents that the State believes are privileged at the time EPA acquires them will help ensure that the privilege is maintained. The State and EPA are currently discussing a resolution to this issue.

Annual Agreements

Thirteen annual commitments were required per the PPA for the NPDES enforcement program and nine of these commitments were completed. Of the nine PPA deliverables submitted, all were found to be timely and complete.

SDDENR has consistently met its CAA and RCRA PPA commitments in a timely manner.

Data Management

SDDENR did a good job of entering NPDES data in a timely manner. Due to the States recent conversion from PCS to ICIS-NPDES, a detailed review of data accuracy and

completeness was not completed.

Although there is more improvement needed, the Air program has been working cooperatively with EPA and has acquired knowledgeable staff dedicated to data issues. SDDENR should work to correct discrepancies between AFS database and the CMS and update and correct facility data in AFS.

SDDENR maintains a complete and accurate RCRAInfo database. Data entry is consistently timely and accurate.

Follow-up and Planned Oversight Activities

As discussed above, while program standards are generally met, there are some areas for improvement which have been identified in this report. The State is already taking steps to improve its programs and address identified problem areas. The Region will continue to work closely with the State to continuously improve its programs. Specific action plans developed to address problem areas identified in this report will be incorporated into the FY 2008 PPA and progress will be monitored by both the Region and OECA.

Based on the results of this review, EPA plans to conduct baseline oversight activities and some targeted oversight activities for the FY 2007 and FY 2008 review periods. Minimum/baseline oversight activities which will occur each year will include: 1) review and documentation (through End of Year Report) of progress towards meeting grant commitments, 2) routine communications and information sharing with state (to discuss, for example, HPVs, SNC, QNCR, etc.), 3) Watch List review and follow-up, 4) Data Metrics review, 5) Follow-up on open action items/recommendations from previous reviews, and 6) other oversight activities required by national program guidance (e.g. oversight inspections, etc.).

Additionally, program-specific targeted oversight activities will be discussed with each program and incorporated into the PPA. Targeted oversight may include: 1) Targeted program improvement plans to address problems identified during the review, 2) more frequent communications and information sharing with state, 3) an increased number of oversight inspections, 4) targeted after-the-fact and real time review of files (e.g. proposed penalties, settlement documents, etc.).

Also based on the results of this review, EPA plans to conduct subsequent SRF reviews on a three year cycle with the next review occurring during FY 2010 (for the FY 2009 review period). Should baseline or targeted oversight activities demonstrate that program performance has declined such that program standards are generally no longer met, or, there are significant deficiencies in key areas, then an SRF review may be conducted for the next performance period. The SRF process and guidance is currently undergoing evaluation by EPA, the Environmental Council of States (ECOS), individual states, and other organizations and that evaluation may result in revisions to the national SRF guidance. SRF guidance revisions may result in changes to the guidance regarding the frequency of SRF reviews.

PROGRAM-SPECIFIC REVIEW RESULTS

EPA Review of the South Dakota Department of Environment and Natural Resources (SDDENR) NPDES Enforcement Program FY 2006

EPA Evaluator: Jennifer Meints
(303) 312-6334
US EPA Region 8, Water Enforcement Unit

State Contacts: Kent Woodmansey
(605) 773-3351

Kelli Buscher
(605) 773-3351

Introduction:

The NPDES evaluation included the review of six (6) formal enforcement action case files, and sixteen (16) inspection files generated during federal fiscal year 2006 (FY06). Case and inspection file reviews covered major and minor dischargers, Concentrated Animal Feeding Operations (CAFOs), storm water (SW), and Industrial Users (IU). In addition, Region 8 also used pulls from the Permits Compliance System (PCS) and ICIS-NPDES, and information from SDDENR's CAFO and SW databases. Due to the State's conversion from PCS to ICIS-NPDES and the fact that data metric reports were not available from ICIS-NPDES, those data metric reports are not part of this review.

EPA Region 8 used the following documents in preparation for this evaluation: FY 2006 South Dakota and EPA Performance Partnership Agreement (PPA), FY2006 South Dakota NPDES Compliance Inspection and Monitoring Plan, Cooperative Enforcement Agreement between the South Dakota Department of Environment and Natural Resources and the U.S. EPA, NPDES Memorandum of Agreement Between SDDENR and U.S. EPA Region VIII, SDDENR Division of Environmental Regulation Point Source Control Program Enforcement Management System (EMS), EPA National Enforcement Response Guide, EPA Region 8's Enforcement Response Guide, EPA's Interim Clean Water Act Settlement Penalty Policy (March 1, 1995), EPA's draft Supplemental Guidance to the Interim Clean Water Act Settlement Penalty Policy (March 1, 1995) for Violations of the Construction Storm Water Requirements, and the SDDENR Penalty Policy Calculation Guidance.

FY06 case and inspection files were randomly selected and reviewed by EPA Region 8 from September 25 through September 29, 2006. SDDENR staff members assisting Region 8 during this review were: Jeanne Goodman, Kelli Buscher, and Kent Woodmansey. The files reviewed are as follows:

Facility Name	Permit #	File Type
Meyer Lamb Feeders		Formal Enforcement – CAFO Inspection - CAFO
Vernon Amick and Sons		Formal Enforcement - CAFO
Prairie Gold Dairy		Formal Enforcement - CAFO Inspection - CAFO
Darwin Hazel		Formal Enforcement – CAFO Inspection - CAFO
Glencoe Campground and Resort		Formal Enforcement – SW
Sturgis County Line Campground		Formal Enforcement – SW Inspection – SW
Rural West River/Lyman Jones Pipeline		Inspection – SW
Mid States Printing, Inc.		Inspection – SW
Merlyn Drake Farm		Inspection – SW
City of Aberdeen	SD0020702	Inspection – Major
City of Vermillion	SD0020061	Inspection – Major
City of Spearfish	SD0020044	Inspection – Major
City of Watertown	SD0023370	Inspection – Major
City of Belle Fourche	SD0021628	Inspection – Minor
Davisco	SD 0025411	Inspection – Minor
City of Conde	SD0021547	Inspection – Minor
Town of Hitchcock	SD0026051	Inspection – Minor
City of Kadoka	SD0022357	Inspection – Minor
City of Parkston	SD0022021	Inspection – Minor
City of Winner	SD0020401	Inspection – Minor
Town of Reliance	SD0020231	Inspection – Minor
Dakota Beef LLC	SDP000120	Inspection – IU

Section 1: Review of State Inspection Implementation

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

Findings:

The 2006 Performance Partnership Agreement (PPA) and 2006 Inspection Plan outline the inspection commitments for the 2006 inspection year. As 2006 was used as a transition year for moving the NPDES inspection year from July through June to October through September, states had an additional 3 months to complete the inspection commitments. The 2006 inspection year was counted as July 1, 2005 through September 30, 2006.

The South Dakota Department of Environment and Natural Resources (SDDENR) was successful in completing the majority of its inspection commitments in 2006. Inspection commitments identified for majors, minors, storm water, biosolids, CAFOs, and Industrial Users (IU) were met or exceeded. A summary of SDDENR's inspection commitments and number of inspections completed are provided in the table below.

Per the SD FY06 PPA, SDDENR does not manually report inspection numbers for majors, minors, PCIs, PAs, IUs, biosolids, CSO, and SSOs to EPA. Per the PPA, the inspection information is made available in PCS and now in ICIS-NPDES, since the State has migrated to the new system, and EPA performs data pulls to obtain information on what inspections have been performed.

	PPA Commitment	# Completed	% Completed
Majors	29	29	100
Minors	102	128	>100
PCI	4	4	100
PA	2	2	100
IU	10	11	>100
CAFO	100	100	100
SW	100	100	100
CSO	1	1	100
SSO	None	108	N/A
Biosolids	9	9	100

SDDENR did an excellent job of meeting or exceeding its inspection commitments in FY06, and EPA is confident that SDDENR will achieve its inspection commitments in the future.

Citation of information reviewed for this criteria:

1. SD FY06 PPA
2. SD FY06 Compliance Inspection and Monitoring Plan
3. ICIS report for period 7/1/05 to 9/30/06
4. SDDENR FY06 End of Year Report

Recommendations if corrective action is needed: None.

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

Findings:

EPA conducted the following CAFO oversight inspection during FY06:

Facility Name	Inspection Date	Date EPA Rec'd State Inspection Report	Date EPA's Oversight Report sent to State
Britannia Dairy	9/28/06	9/29/06– Checklist 11/29/06 – Photos	11/30/06

The SDDENR inspection reports identified the majority of the deficiencies observed during the CAFO inspections, and the state inspectors had significant knowledge of the CAFO program. A detailed evaluation of SDDENR's inspection was provided to SDDENR in an oversight inspection report on November 30, 2006. Based on EPA's observations during the inspection and a review of the completed inspection report, EPA provided the following comments and recommendations regarding areas of improvement for future SDDENR CAFO inspections and reports.

- It appeared that the SDDENR inspectors took limited handwritten notes throughout the course of the inspection. EPA recommended that SDDENR inspectors note when they make recommendations or give compliance assistance during the inspection, so that all deficiencies/violations are included in the inspection report.
- SDDENR should ensure that all photos taken during the inspection are kept as a record in a part of the official inspection file.
- During this inspection the SDDENR inspectors did not address mortality management, or a silt fence that may have protected a drain from silage runoff. It is important that all areas of the CAFO's compliance are addressed during SDDENR CAFO inspections.

During the on-site file reviews, inspection reports were reviewed to determine whether observations were clearly recorded. In most inspection reports reviewed, SDDENR documented findings in the inspection report write-up. There was one inspection report where conflicting information was found in the inspection report. Detailed findings of inspection report documentation from the file review have been provided to the State.

Citation of information reviewed for this criteria:

1. EPA Oversight Inspection Report, 11/30/06
2. Inspection File Review Summary (Attachment A)
3. NPDES Compliance Inspection Manual (July 2004)

Recommendations if corrective action is needed:

SDDENR should review the recommendations provided in the oversight inspection report and adjust its inspection procedures as necessary. Inspectors should ensure inspection reports are consistent in documenting areas of concern or noncompliance. EPA will conduct oversight inspections in FY08 to determine if the recommendations are being implemented.

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

Findings:

Written inspection reports reviewed by EPA during the file review were used to evaluate this measure. A total of twenty-three (23) inspection reports were reviewed. Nineteen (19) of these inspection reports were completed within forty-five (45) days of the inspection or the receipt of sampling results, and three (3) were completed in excess of forty-five (45) days after the inspection or the receipt of sampling results. One of the CAFO inspection reports reviewed (Meyer Lamb Feeders on 3/9/06) did not have any documentation in the file on when and/or if the inspection report were transmitted to the CAFO, and was therefore not included in the evaluation. SDDENR has explained that since the inspection identified was conducted at Mr. Meyer's operation at his request and with him present to verify all animals had been removed from his operation and that it was properly shut down, it did not make sense to send an inspection report afterward. EPA recognizes that although that Meyer Lamb Feeders was no longer operating, it is good practice to provide a copy of the inspection report to the facility documenting conditions on site. During most CAFO inspections, SDDENR completes an inspection checklist during the inspection, which the producer signs and is given a copy. The percentage of inspection reports being written on time equated to 83% for the files reviewed for FY06.

Citation of information reviewed for this criteria:

SDDENR inspection reports from inspections completed in the July 1, 2005 to September 30, 2006 time frame.

Recommendations if corrective action is needed:

Inspection reports should be completed and reviewed within forty-five (45) days of a compliance evaluation inspection (CEI) or forty-five (45) days from receipt of the lab results from a compliance sampling inspection (CSI). In FY08, EPA will complete spot checks of South Dakota's reports to determine if reports are being completed within the 45-day timeframe.

Section 2: Review of State Enforcement Activity

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

This element evaluates whether significant noncompliance (SNC), as defined in 40 C.F.R. §§ 123.45(a)(2)(ii) and (iii), identified during inspections is accurately and timely reported to ICIS. SNC under these sections pertains to major permittees only. SNC definitions for areas such as storm water and CAFOs have not yet been developed, and violations of these sorts are not currently required to be entered in ICIS. In the four major files reviewed, violations which were identified during the inspections did not meet the definition of SNC. Violations

identified during the inspections at minor, storm water and CAFO sites were not required to be entered into ICIS.

EPA will keep SDDENR informed of any changes to the SNC definitions for the wet weather priority areas. As these definitions are finalized, the requirement that SNC be tracked in ICIS for these facilities will be implemented in a phased approach. EPA will work with SDDENR on any necessary changes to the enforcement agreement once the wet weather SNC definitions are finalized.

Citation of information reviewed for this criteria:

Files reviewed during on-site file review.

Recommendations if corrective action is needed: None.

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.

Findings:

Six enforcement actions issued in FY06 were reviewed to determine if actions to achieve compliance, an enforceable schedule, and consequences for noncompliance are included in a formal enforcement action. All enforcement actions contained appropriate injunctive relief. SDDENR did an excellent job of ensuring the NOV's contained an enforceable schedule that would return the facility to compliance.

Citation of information reviewed for this criteria:

Enforcement Action file reviews.

Recommendations if corrective action is needed: None.

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

Findings:

This question evaluates the state's Enforcement Management System (EMS), and whether the state is following an appropriate EMS to escalate violations to appropriate enforcement in a timely manner. EPA reviewed the SDDENR Division of Environmental Regulation Point Source Control Program Enforcement Management System (EMS) dated May 24, 1993, and the enforcement actions that were issued during FY06 for this question. The EMS does not address newer areas of the NPDES program such as biosolids, storm water, SSOs, or CAFOs, although it should be noted that a national EMS is only available for SSOs at this time. The Enforcement Response Guidance within SDDENR's EMS does not identify Responsible Person(s) for

carrying out enforcement responses.

EPA reviewed NOV's, Compliance Orders and Settlement Agreements issued during FY06 to determine if the enforcement actions issued are consistent with SDDENR's EMS; specifically, if the actions were appropriate and timely according to SDDENR's EMS. EPA reviewed two storm water actions, and four CAFO enforcement actions issued during FY06.

For areas that are not addressed in SDDENR's EMS, such as storm water and CAFOs, EPA used the Region 8 EPA's EMS, or the National EMS and best professional judgment to determine appropriateness and timeliness. Of the six enforcement actions reviewed, all six were found to be appropriate. Two of the actions were considered to be timely. Detailed review findings have been provided to the State.

Citation of information reviewed for this criteria:

1. SDDENR 1993 Enforcement Management System (EMS)
2. EPA Region 8 EMS
3. The Enforcement Management System, National Pollutant Discharge Elimination System (Clean Water Act), 1989
4. Enforcement Actions issued by SDDENR during FY06 listed in the table above.

Recommendations if corrective action is needed:

An appropriate escalation policy for effluent violations which do not reach SNC status, spills, and unpermitted discharges should be included in the EMS. SDDENR should update its EMS to address newer areas of the NPDES program such as biosolids, storm water and CAFOs once a national EMS is available for these areas, and to include all violations addressed by EPA Region 8's EMS.

EPA applauds SDDENR for taking storm water and CAFO enforcement actions in FY06; however, SDDENR should make every effort to complete enforcement actions in a timely manner. As SDDENR works on updating its EMS to include wet weather areas, enforcement time frames should be developed for those areas added to the EMS.

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

Findings:

Three settlement agreements collecting penalties that were finalized during FY06 were reviewed to evaluate this measure. Although an NOV and Compliance Order were issued to Sturgis County Line Campground in FY06, the Settlement Agreement was not finalized FY06, so the penalty was not considered in this review.

SDDENR provides EPA with its draft NOV's and/or Settlement Agreements which do not contain information on SDDENR's penalty calculations. EPA usually asks for additional

information on the penalty calculation and SDDENR generally explains its position on penalty amounts. To determine if the penalties calculated were appropriate, EPA used the national penalty policies available. If the penalties calculated by SDDENR were not consistent with the national penalty policy, EPA took into consideration the state penalty policy to determine if SDDENR was following its own penalty policy. EPA has found that one of the three actions calculated appropriate economic benefit and gravity. EPA was unable to determine appropriateness of the remaining two penalties calculated, due to lack of information. Detailed findings have been provided to the State.

Citation of information reviewed for this criteria:

Enforcement Action file reviews.

Recommendations if corrective action is needed:

Discussions are currently underway between EPA and South Dakota regarding the issue of providing penalty calculations to EPA on state enforcement actions. Please see the Executive Summary for more information. Due to the fact that the State Review Framework review period may be up to three years prior to formal review of enforcement actions, EPA is asking all states to share information on all actions on a real-time basis with EPA.

8. Degree to which penalties in final enforcement actions include economic benefit and gravity in accordance with applicable penalty policies.

Findings:

As stated above, one of the three penalty actions reviewed calculated appropriate gravity and economic benefit of non-compliance. EPA was unable to evaluate the remaining two actions, due to lack of information provided by SDDENR on penalty calculations. The penalty collected in one case was less than the proposed penalty. However, no documentation was included in the file on how this reduced penalty was reached. Without supporting documentation on how the penalty was reduced, EPA does not find that the penalty collected was appropriate.

Citation of information reviewed for this criteria:

Enforcement Action file review.

Recommendations if corrective action is needed:

SDDENR should ensure that the enforcement file clearly identifies how final penalties are reached, and that they take into account, as appropriate, economic benefit and gravity.

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

9. Degree to which enforcement commitments in the PPA/PPA/categorical grants (written

agreements to deliver a product/project at a specified time) are met and any products or projects are completed.

Findings:

Thirteen annual commitments were required per the PPA for the NPDES enforcement program. Nine of these commitments were submitted on time. Of the nine PPA deliverables submitted, all were found to be timely and complete.

	Deliverable	Date Due	Submitted	On Time	Complete
1.	10% of CAFO inspection reports	As written	Yes	Yes	Yes
2.	CAFO Mid-year, end-of-year	3/31/06, 9/30/06	Yes	Yes	Yes
3.	Mid-Year Report	3/31/06	No	No	No
4.	End-of Year Report	12/31/06	Yes	Yes	Yes
5.	Storm Water Database	10/15/05, 4/30/06	No	No	No
6.	Storm water inspection reports	As written	Yes	Yes	No
7.	Inspection Plan Draft	6/1/06	Yes	Yes	Yes
8.	Inspection Plan Final	7/1/06	Yes	Yes	Yes
9.	Annual Non-major Facilities Noncompliance Report	3/31/06	Yes	Yes	Yes
10.	Sioux Falls CMOM Report	6/15/06	No	No	No
11.	Annual SSO Inventory	3/31/06	Yes	Yes	Yes
12.	Copies of final settlement agreements.	As issued.	Yes	Yes	Yes
13.	List of annual PPA commitments	FY06	No	No	No

Citation of information reviewed for this criteria:

1. FY 2006 PPA Deliverables.

Recommendations if corrective action is needed:

It is unknown why the PPA deliverables were not submitted, or were not submitted on time. EPA is asking for clarification from SDDENR on why the PPA deliverables were not submitted, or were not submitted on time as a part of the SRF review process. These

clarifications will then be incorporated as a part of the final SRF report. New time lines for these deliverables will be negotiated in FY08 PPA. During the FY 2008 PPA negotiations, EPA and DENR negotiated a new due date of October 31, 2007, for the Sioux Falls CMOM Report summary submittal.

SDDENR should work to ensure all PPA deliverables are submitted on time and are complete. In the future, a discussion of upcoming PPA deliverables will be conducted between EPA and Division during quarterly calls.

Section 4: Review of Database Integrity

10. Degree to which the Minimum Data Requirements are timely

Findings:

The timeliness of data entry was evaluated (File Review Metric B) during the file reviews by noting indications of data entry (*i.e.* date and initials) in the files and comparing timeliness with National PCS data quality guidance. EPA's Office of Wastewater Enforcement and Compliance (OWEC) and Office of Water (OW) 1992 Permit Compliance System (PCS) Quality Assurance Guidance Manual indicates that Measurement/Violation Data (DMRs) are to be date stamped when received and entered in PCS within 10 working days of receipt of the DMR. The Manual also indicates that inspection data are to be entered within 10 working days of receipt of the inspection report.

Most (54) of the sixty two DMRs reviewed had dates of data entry (and were initialed) and, of those, almost all (51) were entered in a timely manner. None of the 18 inspection reports reviewed had dates of data entry (or were initialed), however, and so the reviewer was unable to determine whether or not the standard was met for timelessness for data entry for inspections. The State should initial and note the entry date for inspections entered into the database.

Citation of information reviewed for this criteria:

File reviews

Recommendations if corrective action is needed: None

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

Findings:

Due to the SDDENR's recent conversion from PCS to ICIS-NPDES, this element was not evaluated.

Citation of information reviewed for this criteria: NA

Recommendations if corrective action is needed: None

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

Findings:

Due to the migration from PCS to ICIS-NPDES and the subsequent unavailability of accurate OTIS data metric reports, EPA can not draw conclusions as to how the State performed compared to the requirements of this element. Information covered by this element will require further review and discussion between EPA and the state.

Citation of information reviewed for this criteria: NA

Recommendations if corrective action is needed: None

**EPA Review of the South Dakota Department of Environment and Natural Resources
(SDDENR) CAA Stationary Sources Enforcement Program
FY 2006**

EPA Evaluator: Albion Carlson (303) 312-6207

State Contacts: Brian Gustafson (605) 773-5504
Marlys Heidt (605) 773-4213

Introduction:

The State Review Framework File Selection Protocol suggests that the EPA select at least 15 files from FY06. EPA selected 15 files to be evaluated for this review. The inspection files reviewed included compliance certifications and Compliance Monitoring Reports (CMRs). South Dakota has a small universe of facilities with a low High Priority Violator (HPV) rate; therefore, EPA selected a variety of sources that covered different inspections, inspectors and industry sectors. South Dakota Department of Environment and Natural Resources (SDDENR) sent all requested files to the EPA via postal and electronic mail and the file review was performed in the regional office. Both a data metrics review and the file review were completed utilizing the State's input.

Information Sources Included in the Review:

1. FCEs are required pursuant to and are defined in the Clean Air Act Stationary Source Compliance Monitoring Strategy, April 2001 (CMS). The CMS and supporting guidance and policies provide the basis for these evaluation criteria;
2. The SDDENR Compliance Inspection and Monitoring Plan CMS for FY 2006, dated September, 2005;
3. Selected source files;
4. AFS/OTIS databases.

EPA selected 15 files for review. The files selected for review were:

Facility	AFS number	Size
3M Company	013-00005	Title V
CCL Label Inc	099-00039	Title V
Cass Clay Creamery Inc	107-00001	Title V
Dakota Kitchen and Bath Inc	099-00030	Title V
Fisher Sand and Gravel Company	103-00045	Title V
Fort Pierre Power and Light Plant	117-00002	Title V
GCC Dacotah	103-00052	Title V

Graco Incorporated	099-00112	Minor
Huron Steel Structures Inc	005-00006	Minor
Minnesota Rubber	029-00015	Title V
Northwestern Public Service Company (Aberdeen)	013-02060	Title V
Northwestern Public Service Company (Redfield)	115-00001	Title V
Pacer Corporation White Bear Mica Plant	033-00003	Title V
Twin City Fan & Blower Company	011-00005	Title V
Wharf Resources (U.S.A.), Inc.	081-00114	Title V

Section 1: Review of State Inspection Implementation

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

Findings:

Nationally, EPA has set an expectation that 100% of a state’s majors are inspected every 2 years. EPA sets an additional goal that states inspect at least 20% of their synthetic minor sources each year. Overall, the SDDENR did an excellent job creating and completing its Compliance Monitoring Strategy (CMS) for Full Compliance Evaluations (FCEs). SDDENR exceeded the minimum requirements of EPA’s Clean Air Stationary Source CMS, dated April 25, 2001, by inspecting major and Synthetic Minor (SM)-80 facilities more frequently than required by the CMS policy and including numerous synthetic minor and minor source inspections in their CMS. SDDENR inspected 93% of their major sources exceeding the national average of 84%. SDDENR inspected 100% of their synthetic minor sources matching the national goal and surpassing the national average of 85%.

Inspections at Major sources:

The SDDENR CMS provides that all active major sources receive an FCE every year. Specifically, stationary sources with a Title V air quality permit and/or Prevention of Significant Deterioration preconstruction permit will have a full compliance evaluation performed on them annually. SDDENR has conducted major source FCEs at that frequency. Consequently, SDDENR’s major source full compliance evaluation coverage of 92.1% exceeds the national average of 81% and is close to the national goal of 100%.

Upon review of the “not counted” list it appears four of the seven facilities listed are asphalt plants which did not operate in South Dakota during FY06, one other facility is no longer a Title V source having become a minor source, and one has never been permitted and has not operated since the year 2000 but was entered into AFS by EPA after Region 8 conducted a multimedia investigation there in 2003. The remaining listed facility, a peaking power plant, is not operating.

Inspections at SM-80s - (synthetic minor \geq 80 percent of major source level):

Active SM-80 sources should receive an FCE every 5 years. SDDENR's CMS provides that all active minor sources receive an FCE every two years. Specifically, stationary sources with a minor permit that have federally enforceable permit conditions will have an FCE performed once every two years. SDDENR has conducted minor source FCES at that frequency. Consequently, SDDENR's coverage of conducting FCEs at least every 5 years at SM-80 facilities was 100%, exceeding the national average of 84%, and achieving the national goal of 100%.

Title V Annual Compliance Certifications received and reviewed:

EPA's CMS Policy requires all self-certifications due and received in FY06 to be reviewed. The state is meeting the national goal of 100 percent in reviewing Title V self-certifications.

Sources with Unknown Compliance Status Designations:

The number of sources in "automatic unknown" compliance status was six and it's a relatively small percentage of the overall universe of sources. This is also a good indicator of state inspection coverage.

Recommendations and Actions: None

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

Findings:

Overall, SDDENR compliance monitoring reports (CMRs) are of very high quality. The State's CMRs follow a standard format, are complete, contain all of the required general information, and the key elements such as enforcement history and recommendations. The State documented enough information to show the facility's compliance status. The tables that were included in the reports outlining compliance history, emission limits at emission units, excess emissions at emission units, CEMS, etc. made reports easy to follow and enhanced overall report quality. State inspector's CMRs accurately and consistently referred to inspections performed as FCEs/PCEs.

Citation of information reviewed for this criterion:

File reviews.

The "Clean Air Act Stationary Source Compliance Monitoring Strategy", April 2001, lists minimum information requirements for inspection or compliance monitoring reports. The general categories for review are General Information, Facility Information, Applicable

Requirements, Inventory and Description of Regulated Units, Enforcement History, Compliance Monitoring Activities, and Findings and Recommendations.

Recommendations and Actions: None

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

Findings:

EPA and SDDENR have previously agreed that compliance monitoring/inspection reports should be completed no later than 60 calendar days following the on-site evaluation or in-office report review. The Uniform Enforcement Oversight System reviews over the past seven years have used the 60 day standard.

Fifteen of fifteen compliance monitoring and inspection reports reviewed were completed within 60 days, the State standard. Overall, SDDENR has a very good record of completing inspection reports in a timely manner.

Citation of information reviewed for this criterion:

File reviews.

Recommendations and Actions: None.

Section 2: Review of State Enforcement Activity

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

Findings:

Of the 82 major facilities evaluated, SDDENR reported to EPA 0 HPVs during FY06; however, on June 8, 2007, the State reported to EPA they were settling an enforcement action against one facility for HPV violations discovered in FY06, and had settled with another facility for non-HPV violations discovered in FY06. EPA was not notified of either of these enforcement proceedings until June 8, 2007. Both facilities were ethanol plants, one of which EPA had referred to the Department of Justice (DOJ) in FY05 after the State informed the EPA they were ceasing their enforcement actions against ethanol plants for Volatile Organic Compound (VOC) related violations. One of the violations at one of these facilities was reported to EPA Region 8 in FY05 and included in EPA's referral to DOJ; however, the other HPV violation at the facility was newly discovered by the State in FY06. The enforcement action at the other ethanol facility was settled for non-HPV violations.

Had the State properly reported the HPVs during FY06, the first statistic would have still

been less than 1 percent, a rate well below the national average of 9.2 percent of major sources evaluated for which HPVs were reported. The percent of actions at majors with prior HPV listing, would have been 100 percent. This is above the national average of 78%. The State attributes the low percentage of HPVs to annual inspections at each facility, which is an inspection frequency well above the national average.

Of the fifteen files that were reviewed, none of the facilities were in violation. There were no violations reported to EPA by the State during FY06 meeting the HPV criterion although the State was pursuing enforcement for HPV violations discovered during FY06.

Citation of information reviewed for this criterion:

“Policy on Timely an Appropriate Enforcement Response to High Priority Violations”; December 22, 1998. (a.k.a.: HPV Policy”)

List of 15 files reviewed identified above.

Recommendations and Actions: The State should adhere to the guidance outlined in the HPV policy and identify potential HPVs to EPA as soon as possible after discovery and no later than 30 days after discovery. The State should apprise EPA of enforcement actions taken. EPA will review the State's progress during the End-of-Year review.

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

Findings:

The State reported no HPVs in FY06. The State settled a non-HPV case against an oil production facility in FY06. That settlement provided for submittal of a compliance plan containing a schedule of specific time frames for each action to be accomplished. These actions included obtaining appropriate permits and installing specific air pollution control equipment.

The State investigated three ethanol plant facilities for non-VOC related violations and discovered violations at two of the facilities (including HPVs at one of these facilities) during FY06 in February and April, 2006. The State became aware of violations at the third facility in February of 2006. The State worked to resolve these violations and issued or amended permits in August of 2006 which allowed the first two facilities to operate in compliance. The third facility was required to comply with the new source performance standards through specific complying actions which included installation of an alarm system through settlement finalized in March, 2007.

Citation of information reviewed for this criterion:

Settlement Agreement between State and the oil production facility.
Settlement Agreements between State and ethanol production facilities (Non-HPV facilities).

“Policy on Timely and Appropriate Enforcement Response to High Priority Violations”; December 22, 1998. (a.k.a.: HPV Policy”)

Telephone conversations with the State.

Recommendations and Actions: None.

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:

The State took four enforcement actions in FY06. One was for HPV violations at an ethanol production facility, two for non- HPV violations at ethanol production facilities, and one for non-HPV violations at an oil production facility.

The State’s actions against the ethanol facilities is typical of their general manner with regard to the enforcement response policies. The State investigated three ethanol plant facilities for non-VOC related violations and discovered violations at two of the facilities (including HPVs at 1 of these facilities) during FY06 in February and April, 2006. The State became aware of violations at the third facility in February of 2006. The State worked to resolve these violations and issued or amended permits in August of 2006 which allowed the first two facilities to operate in compliance. The facilities violations were in one instance, constructing without a permit and in the second violating a permit condition which was removed when the State amended the permit. The permits were issued or amended before Notice of Violations (NOVs) were issued or settlement agreements were finalized. The third facility was required to comply with the new source performance standards through specific complying actions.

The settlement was not finalized until June of 2007 for one of these facilities and the other facility settlement (the one where HPVs were found) is apparently final but for pending signatures. The NOV for the first was not issued until the settlement was finalized in 2007. The NOV for the second facility has not been issued. The third facility also had the NOV issued concurrently with signed settlement. The State did not provide EPA notice these actions were taken and EPA was not consulted until after settlements were finalized.

Citation of information reviewed for this criterion:

AFS/OTIS databases.

Settlement Agreements between State and ethanol production facilities (Non-HPV facilities).

“Policy on Timely and Appropriate Enforcement Response to High Priority Violations”; December 22, 1998. (a.k.a.: HPV Policy”)

Telephone conversations with the State.

Recommendations and Actions: The State should follow the HPV policy and report HPVs, Day Zeroes, and issue NOVs by Day 60, and address or resolve HPVs by Day 270. Settlement of enforcement actions should require compliance with permits issued. The State should consult with EPA during the enforcement actions. EPA will evaluate the State's progress during End-of-Year review.

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

Findings:

The State concluded one formal enforcement action and assessed penalties in FY06. Settlement with the oil production facility required the installation of air pollution control equipment to treat emissions from wells in an oil and gas field. The cost of the equipment exceeds four million dollars. The penalty assessed was \$112,000. EPA recognized the State had reached a settlement to effectively and collectively control large emissions from an oil and gas field source (fireflood relief wells) that hereto had not been permitted or controlled and can be argued to not be required.

The State has concluded two more formal enforcement actions and assessed penalties in FY07 for enforcement actions taken in FY06. The formal action against a third facility for HPV violations is finalized pending signatures.

Because EPA was unable to obtain any documentation of economic and gravity calculations from the State, EPA is unable to assess this element.

The State does not share its penalty calculations with EPA so EPA cannot confirm the State calculated its penalties including both gravity and economic benefit; however, the State's penalty policy is consistent with EPA's penalty policy and when EPA performed independent penalty calculations the overall penalties assessed by the State are appropriate.

Citation of information reviewed for this criterion: File review

Recommendations and Actions: The State should provide penalty calculations to EPA. See the Executive Summary for additional discussion of this issue.

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:

The State concluded one formal enforcement action and assessed penalties in FY06. Settlement with the oil production facility required the installation of air pollution control equipment to treat emissions from wells in an oil and gas field. The cost of the equipment exceeds four million dollars. The penalty assessed was \$112,000. The EPA recognized the State had reached a settlement to effectively and collectively control large emissions from an oil and gas field source (fireflood relief wells) that hereto had not been permitted or controlled and can be argued to not be required.

The State has concluded two more formal enforcement actions and assessed penalties in FY 07 for enforcement actions taken in FY06. The formal action against a third facility for HPV violations is finalized pending signatures.

Because EPA was unable to obtain any documentation of economic and gravity calculations from the State, EPA is unable to assess this element.

The State does not share its penalty calculations with EPA so EPA cannot confirm the State calculated its penalties including both gravity and economic benefit; however, the State's penalty policy is consistent with EPA's penalty policy and when EPA performed independent penalty calculations the overall penalties assessed by the State are appropriate.

Citation of information reviewed for this criterion: File review.

Recommendations and Actions: The State should provide penalty calculations to EPA. See the Executive Summary for additional discussion of this issue.

Section 3: Review of Performance Partnership Agreement or State/U.S. 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:

Enforcement commitments in the PPA/SEA were met and any products or projects were complete.

Citation of information reviewed for this criterion: South Dakota PPA/SEA; SDDENR CMS

Recommendations and Actions: None

Section 4: Review of Database Integrity

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

Findings:

SDDENR has no HPV enforcement actions taken against facilities in AFS. The State has one HPV enforcement action underway since FY06 and has not entered the required minimum data requirements. The State had other non – HPV actions in FY06 for which the State day zero and NOV and addressing actions were all listed as the same day.

Citation of information reviewed for this criterion: AFS and OTIS.

Recommendations and Actions: The State should enter all minimum data requirements in accordance with provisions for timeliness. EPA will review the State's progress during the End-of-Year review.

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

Findings:

As discussed in Element 10 above, there were no formal HPV enforcement actions taken against facilities recorded in AFS. Enforcement actions (including one HPV) were taken in FY06. Regarding stack test results, the state is at 0 percent not correctly reported compared to 16.2% for the national average. The State has exceeded the national average in correct reporting of stack test results.

Comparison of AFS data to the 15 source files reviewed revealed inaccuracies in the database. Two facilities need to have their source classifications in AFS updated and accordingly their CMS classifications and inspection frequencies. Also their compliance status needs to be updated. One other facility needs to update the plant name in AFS and another facility's address in AFS needs to be updated to match the inspection report.

Citation of information reviewed for this criterion:

AFS and list of fifteen files reviewed identified above.

Recommendations and Actions: Correct inaccuracies and make updates to AFS. The State should enter all minimum data requirements in accordance with provisions for enforcement actions and communicate with EPA on HPVs. EPA will review the State's progress during the End-of-Year review.

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:

Title V universe and CMS flags. Significant discrepancies in the universe data appear to be present. The CMS indicated 93 Title V sources (five are PSD sources) were scheduled for inspection in FY06. From discussions with the State it appeared 11 sources were missing from

AFS. The State is working to correct the discrepancies determined 25 sources were listed in the State's Title V database that were not among EPA's list. After review of these sources it seems all 25 are synthetic minor sources with Title V permits. EPA's list were all major sources. The State's Title V program requires Title V permits for these synthetic minor sources.

A number of minimum data requirements are incomplete for both HPV and non-HPV enforcement data in AFS.

Comparison of AFS data to the 15 source files reviewed revealed missing fields in the database. Three facilities had no source classification in AFS and one other was missing an applicable air program and subpart. Operating status on one facility was incorrect.

Citation of information reviewed for this criterion:

AFS and list of fifteen files reviewed identified above.

Recommendations and Actions:

The State should work with EPA to resolve the discrepancies in the universe data in AFS to and the CMS. Also, the State should input the missing data in AFS discovered in the comparison of AFS data to the 15 source files reviewed. The State should enter all minimum data requirements in accordance with provisions for enforcement actions and communicate with EPA on HPVs. EPA will review the State's progress during the End-of-Year review.

**EPA Review of the South Dakota Department of Environment and Natural Resources
(SDDENR) RCRA Enforcement Program
FY 2006**

EPA Evaluator: Philippe Pierre-Louis
U.S. EPA Region 8 Office of Enforcement, Compliance and
Environmental Justice RCRA Technical Enforcement Program

State Contacts: Carrie Jacobson
Department of Environment and Natural Resources

Introduction:

The RCRA evaluation involved the review of fifteen (15) inspection reports, which included two (2) large quantity generators (LQG), two TSDFs facilities, four (4) small quantity generators (SQG), and nine (9) conditionally exempt generators (CESQG) during FY2006. The facilities reviewed covered large quantity generators, transporters, and used oil facilities. In addition, Region VIII utilized EPA Headquarters' data retrievals (metrics) generated from national enforcement and compliance databases (January 2007 OTIS report) and the RCRA/Info national database. This information was used to answer 12 specific questions or elements. The 12 elements address four specific topics: Inspection Implementation; Commitment Activity; Commitments in Annual Agreements; and Database Integrity.

Fifteen (15) FY2006 inspection report files were randomly selected for review. There were no formal or informal enforcement actions available for this evaluation. The files selected for this evaluation were provided by the SDDENR to the EPA Hazardous waste Enforcement program. During FY2006, the Regional staff and the SDDENR staff remained in contact throughout the year via various phone calls to discuss and resolve concerns related to the implementation of the RCRA program. The SDDENR was provided a copy of the EPA Headquarters' data metrics report for FY2006 via e-mail on February 8, 2007. There were no significant issues raised from the SDDENR concerning the data metrics report. Therefore, no further contact was necessary to discuss the findings.

Information Sources Included in the Review:

1. EPA RCRA/Info, RCRA Rep, and OTIS databases;
2. State of South Dakota RCRA compliance monitoring and enforcement files;
3. State of South Dakota/EPA Environmental Performance Partnership Agreement;
4. SDDENR FY2006 RCRA End-of-Year Evaluation Report;
5. EPA Revised RCRA Inspection Manual, dated 1998;
6. EPA Hazardous Waste Civil Enforcement Response Policy (ERP) dated December 2003;
7. OTIS State Review Framework (SRF) Results (review period: FY06), dated January 2007;

8. EPA RCRA Civil Penalty Policy, dated June 23, 2003;
9. State of South Dakota Annual PPA Inspection Schedule for FY2006.
10. EPA Hazardous Waste Civil Enforcement Response Policy, dated October 2003;
11. EPA RCRA State Review Framework Metrics Report, February 8 2007;
12. EPA RCRA Civil Penalty Policy, dated June 23, 2003;
13. EPA 2004 OECA MOA Guidance Manual, dated June 2005;
14. EPA State Review Framework Training Manual, dated April 2006;

Section 1: Review of State Inspection Implementation

1. Degree to which state program has completed the universe of planned inspections.

Findings:

The annual inspection target of 75 inspections were met for all the facilities identified in the FY06 Inspection Plan. The SDDENR met and in some cases exceed their commitment for the FY2006. Inspections reports received were of good quality, clear, comprehensive and concise, and afforded appropriate compliance determinations. Inspection reports reviewed were completed in a timely manner.

The large quantity hazardous waste generator universe which consists of fifteen (15) facilities in South Dakota are routinely inspected at least every other year which exceeds the 100% coverage in five (5) years requirement. Six (6) LQGs were inspected in FY06 which is 40% of the LQGs. universe. Two LQG inspection reports were reviewed for this end of year review. Even though the data metrics listed South Dakota as having 34 LQGs the actual number is 15. Many of the listed LQGs may have been one time LQGs. As reflected in element 11, efforts are ongoing to clean up the database to reflect the actual number of LQGSs.

The only operating TSDF in South Dakota is inspected every other year, covering the entire universe. There are no land disposal facilities (LDFs) in South Dakota.

During FY06, all citizen complaints referred to the State were investigated within a few weeks of the referral with written detailed report was provided to the Agency. Also investigated were fifteen (15) complaints received from private individuals with also written reports provided to the Agency. In addition, South Dakota provided compliance assistance to their constituents in the form of training and community outreach. South Dakota after implementing waste minimization efforts has reduced many large quantity and small quantity hazardous waste generators into CESQG facilities and is to be commended for those efforts.

Information sources utilized for this criterion: 1, 3, 4, 7, 10,

Recommendations and Actions: None

2. Degree to which inspection reports and compliance reviews document inspection findings, including accurate identification of violations.

Findings:

EPA's Revised RCRA Inspection Manual (OSWER Directive #9938.02b, 1998) states that RCRA inspection reports are comprised of 3 elements: a narrative discussion (including a description of facility operations and inspection findings); an inspection checklist; and supporting documentation.

There were 15 inspection/compliance reports reviewed for this evaluation. All the reports reviewed met the basic requirement of completely determining the compliance status for all of the appropriate areas evaluated under the South Dakota Hazardous Waste Management rules and regulations. Minor violations found during an inspection are routinely corrected before the inspector leaves the facility. Inspection reports prepared by state staff contain an extensive narrative that describes observations and findings. The narrative is supplemented by attachments and supporting documents received from the company, as well as photographs (when present), and corporate information obtained from the Secretary of State's office. State HW inspectors prepare a pre-inspection report prior to the inspection, to review what is known about each particular generator. This document serves as a type of checklist, to assist staff with completing a high-quality inspection.

LQG/SQG compliance checklists adequately cover Hazardous Waste Regulation requirements for the types of facilities inspected.

Information sources utilized for this criterion: 2,10,12

Recommendations and Actions: None

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

Findings:

The Hazardous Waste Civil Enforcement Response Policy allows 150 days for violation determination (150 days from the date of the inspection per SDDENR/EPA Enforcement Agreement). Except for one report that was 104 days late, all the inspection reports reviewed to complete this evaluation were completed within the 45 days timeframe as required by the South Dakota and EPA Enforcement Agreement. The report that was late because the State inspector had performed six consecutive oversight inspections with an EPA inspector in just one week. Furthermore, that inspection report covered a very large federal facility, thus the report was longer and more detailed than other reports for smaller facilities.

Information sources utilized for this criterion: 1,3,10,13

Recommendations and Actions: None

Section 2: Review of State Enforcement Activity

4. Degree to which significant violators are accurately identified and reported to EPA's national database in a timely and accurate manner.

Findings:

South Dakota did not identify any significant violators to report as a SNC. The files that were reviewed and reports from RCRA/Info support that finding and EPA is comfortable in the state's ability to identify SNCs. There were no informal enforcement actions taken in South Dakota during this timeframe.

Information sources utilized for this criterion: 1,2,6,7

Recommendations and Actions: None

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

Findings:

South Dakota took no formal or informal enforcement actions in FY06. The inspections performed in South Dakota in FY-06 did not find violations. Most facilities (a majority of which are SQGs and CESQGs) frequently inspected, which significantly reduces the possibility of a facility being in violation.

Information sources utilized for this criterion: 1,2,3,6

Recommendations and Actions: None

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

Findings:

There were no formal or informal enforcement actions taken in South Dakota in FY06. The inspection reports reviewed support that finding.

Information Sources utilized for this criterion: 1,2,3,

Recommendations and Actions: None

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

Finding:

There were no formal enforcement actions taken in South Dakota this year that required economic benefit calculations.

Information sources utilized for this criterion: 1,2,3,7

Recommendations and Actions: None

8. Degree to which penalties in final enforcement actions include economic benefit and gravity in accordance with applicable penalty policies.

Findings:

There were no formal enforcement actions taken in South Dakota this year that required economic benefit calculations

Information sources utilized for this criterion: 1,2,3,7

Recommendations and Actions: None

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

9. Degree to which inspection and enforcement commitments in the PPA/PPG/categorical grants are met, and any products or projects are completed.

Findings:

The state of South Dakota has met all compliance agreements for the files reviewed and End of Year reports were delivered on time and complete.

Information sources utilized for this criterion: 1,2,7

Recommendations and Actions: None

Section 4: Review of Database Integrity

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

Findings:

This data metric measures the lag time between the date of a SNC determination, and the actual reporting of the SNC to RCRAInfo. According to EPA's ERP, SNC data is to be entered at the time of SNC determination (the metric "flags" SNC entries made more than 60 days after the determination). There were no SNCs identified in South Dakota to measure the SNC date of determination versus the actual reporting of the SNC to RCRA/Info.

Information sources utilized for this criterion: 1,2,6,7

Recommendations and Actions: None

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

Findings:

As described in Element 1, above, the universe of LQG facilities is not accurately reflected in RCRAInfo. Otherwise, based on the files that were reviewed and reports from RCRA/Info for this review all the data were verified to be 100% accurate.

Information sources utilized for this criterion: 1,2,7

Recommendations and Actions: The State is pursuing efforts to clean up the database to reflect the actual number of LQGSs. EPA will evaluate the State's progress during the FY07 end-of-year review.

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

Finding:

Based on the files that were reviewed and reports from RCRA/Info for this review all the data were verified to be 100% complete.

Information sources utilized for this criterion: 1,2,7

Recommendations and Actions: None